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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.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Chapter VII

Investment Securities and End-User Derivatives; Interpretive Ruling and Policy Statement

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final Interpretive Ruling and Policy Statement No. 98–2—Supervisory Policy Statement on Investment Securities and End-User Derivatives Activities and Withdrawal of Interpretive Ruling and Policy Statement No. 92–1—Supervisory Policy Statement on Securities Activities.

SUMMARY: The National Credit Union Administration (NCUA), the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), and the Office of Thrift Supervision (OTS), (collectively referred to as the agencies) under the auspices of the Federal Financial Institutions Examination Council (FFIEC) have approved the Supervisory Policy Statement on Investment Securities and End-User Derivatives Activities (1998 Statement) which provides guidance on sound practices for managing the risks of investment activities. This statement replaces the Supervisory Policy Statement on Securities Activities published on February 3, 1992 (1992 Statement). NCUA adopted the 1992 Statement as Interpretive Ruling and Policy Statement No. 92–1 (IRPS No. 92–1). Many elements of the prior statement are retained in the 1998 Statement, while other elements have been revised or eliminated. In adopting the 1998 Statement, the agencies are removing the specific constraints in the 1992 Statement concerning investments by insured depository institutions in ''high risk'' mortgage derivative products. The agencies believe that it is a sound practice for institutions to understand the risks related to all their investment holdings. Accordingly, the 1998 Statement substitutes broader guidance than the specific pass/fail requirements contained in the 1992 Statement. Other than for the supervisory guidance contained in the 1992 Statement, the 1998 Statement does not supersede any other requirements of the agencies' statutory rules, regulations, policies, or supervisory guidance. Because the 1998 Statement does not retain the elements of the 1992 Statement addressing the reporting of securities activities (Section II of the 1992 Statement), the agencies intend to separately issue supervisory guidance on the reporting of investment securities and end-user derivatives activities. Each agency may issue additional guidance to assist institutions in the implementation of this statement.

DATES: The Interpretive Ruling and Policy Statement is effective October 1, 1998.

ADDRESSES: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

FOR FURTHER INFORMATION CONTACT: Daniel Gordon, Senior Investment Officer, Office of Investment Services, (703) 518–6620 or Kim Iverson, Program Officer, Office of Examination and Insurance (703) 518–6360, or at the above address.

SUPPLEMENTARY INFORMATION: In 1992, the agencies implemented the FFIEC's Supervisory Policy Statement on Securities Activities (57 FR 4028, February 3, 1992). The 1992 Statement addressed: (1) selection of securities dealers, (2) portfolio policy and strategies (including unsuitable investment practices), and (3) residential mortgage derivative products (MDPs).

The final section of the 1992 Statement directed institutions to subject MDPs to supervisory tests to determine the degree of risk and the investment portfolio eligibility of these instruments. At that time, the agencies believed that many institutions had demonstrated an insufficient understanding of the risks associated with investments in MDPs. This occurred, in part, because most MDPs were issued or backed by collateral guaranteed by government sponsored enterprises. The agencies were concerned that the absence of significant credit risk on most MDPs had allowed institutions to overlook the significant interest rate risk present in certain structures of these instruments. In an effort to enhance the investment decision making process at financial institutions, and to emphasize the interest rate risk of highly price sensitive instruments, the agencies implemented supervisory tests designed to identify those MDPs with price and average life risks greater than a newly issued residential mortgage pass-through security.

These supervisory tests provided a discipline that helped institutions to better understand the risks of MDPs prior to purchase. The 1992 Statement generally provided that institutions should not hold high risk MDPs in their investment portfolios.[1] A high risk MDP was defined as a mortgage derivative security that failed any of three supervisory tests. The three tests included: an average life test, an average life sensitivity test, and a price sensitivity test.[2]

These supervisory tests, commonly referred to as the ''high risk tests,'' successfully protected institutions from significant losses in MDPs. By requiring a pre-purchase price sensitivity analysis that helped institutions to better understand the interest rate risk of MDPs, the high risk tests effectively precluded institutions from investing in many types of MDPs that resulted in large losses for other investors. However, the high risk tests may have created unintended distortions of the investment decision making process. Many institutions eliminated all MDPs from their investment choices, regardless of the risk versus return merits of such instruments. These reactions were due, in part, to concerns about regulatory burden, such as higher than normal examiner review of MDPs.

[1] The only exceptions granted were for those high risk securities that either reduced interest rate risk or were placed in a trading account. Federal credit unions were not permitted these exceptions.

[2] Average Life: Weighted average life of no more than 10 years; Average Life Sensitivity: (a) weighted average life extends by not more than 4 years (300 basis point parallel shift in rates), (b) weighted average life shortens by no more than 6 years (300 basis point parallel shift in rates); Price Sensitivity: price does not change by more than 17 percent (increase or decrease) for a 300 basis point parallel shift in rates.

By focusing only on MDPs, the test and its accompanying burden indirectly provided incentives for institutions to acquire other types of securities with complex cash flows, often with price sensitivities similar to high risk MDPs. The emergence of the structured note market is just one example. The test may have also created the impression that supervisors were more concerned with the type of instrument involved (i.e., residential mortgage products), rather than the risk characteristics of the instrument, since only MDPs were subject to the high risk test. The specification of tests on individual securities may have removed the incentive for some institutions to apply more comprehensive analytical techniques at the portfolio and institutional level.

As a result, the agencies no longer believe that the pass/fail criteria of the high risk tests as applied to specific instruments constitutes effective supervision of investment activities. The agencies believe that an effective risk management program, through which an institution identifies, measures, monitors, and controls the risks of investment activities, provides a better framework. Hence, the agencies are eliminating the high risk tests as binding constraints on MDP purchases in the 1998 Statement.

Effective risk management addresses risks across all types of instruments on an investment portfolio basis and ideally, across the entire institution. The complexity of many financial products, both on and off the balance sheet, has increased the need for a more comprehensive approach to the risk management of investment activities.

The rescission of the high risk tests as a constraint on an institution's investment activities does not signal that MDPs with high levels of price risk are either appropriate or inappropriate investments for an institution. Whether a security, MDP or otherwise, is an appropriate investment depends upon a variety of factors, including the institution's capital level, the security's impact on the aggregate risk of the portfolio, and management's ability to measure and manage risk. The agencies continue to believe that the stress testing of MDP investments, as well as other investments, has significant value for risk management purposes. Institutions should employ valuation methodologies that take into account all of the risk elements necessary to price these investments. The 1998 Statement states that the agencies believe, as a matter of sound practice, institutions should know the value and price sensitivity of their investments prior to purchase and on an ongoing basis.

Summary of Comments

The 1998 Statement was published by the FFIEC for comment in the **Federal Register** of October 3, 1997 (62 FR 51862). The FFIEC received twenty-one comment letters from a variety of insured depository institutions, trade associations, Federal Reserve Banks, and financial services organizations. Overall, the comments were supportive of the 1998 Statement. The comments generally approved of: (i) The rescission of the high risk test as a constraint on investment choices in the 1992 Statement; (ii) the establishment by institutions of programs to manage market, credit, liquidity, legal, operational, and other risks of investment securities and end-user derivatives activities; (iii) the implementation of sound risk management programs that would include certain board and senior management oversight and a comprehensive risk management process that effectively identifies, measures, monitors, and controls risks; and (iv) the evaluation of investment decisions at the portfolio or institution level, instead of the focus of the 1992 Statement on limiting an institution's investment decisions concerning specific securities instruments.

The following discussion provides a summary of significant concerns or requests for clarifications that were presented in the aforementioned comments.

1. Scope

The guidance covers a broad range of instruments including all securities in held-to-maturity and available-for-sale accounts as defined in the Statement of Financial Accounting Standards No. 115 (FAS 115), certificates of deposit held for investment purposes, and end-user derivative contracts not held in trading accounts.

Some comments focused on the 1998 Statement's coverage of ''end-user derivative contracts not held in trading accounts.'' According to these comments, the 1998 Statement appears to cover derivative contracts not traditionally viewed as investments including: (i) swap contracts entered into when the depository institution makes a fixed rate loan but intends to change the income stream from a fixed to floating rate, (ii) swap contracts that convert the interest rates on certificates of deposit from fixed to floating rates of interest, and (iii) swap contracts used for other asset-liability management purposes. Those commenters objected to the necessity of additional guidance for end-user derivatives contracts given current regulatory guidance issued by the agencies with respect to derivative contracts.

The guidance contained in the 1998 Statement is consistent with existing agency guidance. The agencies believe that institutions should have programs to manage the market, credit, liquidity, legal, operational, and other risks of both investment securities and end-user derivative activities. Given the similarity of the risks in those activities and the similarity of the programs needed to manage those risks, especially when end-user derivatives are used as investment vehicles, the agencies believe that covering both activities within the scope of the 1998 Statement is appropriate.

2. Board Oversight

Some commenters stated that the 1998 Statement places excessive obligations on the board of directors. Specifically, comments indicated that it is unnecessary for an institution's board of directors to: (i) Set limits on the amounts and types of transactions authorized for each securities firm with whom the institution deals, or (ii) review and reconfirm the institution's list of authorized dealers, investment bankers, and brokers at least annually. These commenters suggested that it may be unnecessary for the board—particularly for larger institutions—to review and specifically authorize each dealer. They indicated that it should be sufficient for senior management to ensure that the selection of securities firms is consistent with board approved policies, and that establishment of limits for each dealer is a credit decision that should be issued pursuant to credit policies.

The agencies believe that the board of directors is responsible for supervision and oversight of investment portfolio and end-user derivatives activities, including the approval and periodic review of policies that govern relationships with securities dealers. Especially with respect to the management of the credit risk of securities settlements, the agencies encourage the board of directors or a subcommittee chaired by a director to actively participate in the credit decision process. The agencies understand that institutions will have various approaches to the credit decision process, and therefore that the board of directors may delegate the authority for selecting dealers and establishing dealer limits to senior management. The text of the 1998

Statement has been amended to clarify the obligation of the board of directors.

3. Pre-Purchase Analysis

The majority of the commenters were in full support of eliminating the specific constraints on investing in ''high risk'' MDPs. Some commenters expressed opposition with respect to the 1998 Statement's guidance concerning pre-purchase analysis by institutions of their investment securities. Those commenters felt that neither pre-acquisition stress testing nor any specific stress testing methodology should be required for individual investment decisions. Some commenters involved in the use of securities for collateral purposes emphasized the benefits of pre- and post-purchase stress testing of individual securities.

The agencies wish to stress that institutions should have policies designed to meet the business needs of the institution. These policies should specify the types of market risk analyses that should be conducted for various types of instruments, including that conducted prior to their acquisition and on an ongoing basis. In addition, policies should specify any required documentation needed to verify the analysis. Such analyses will vary with the type of investment instrument.

As stated in Section V of the 1998 Statement, not all investment instruments need to be subjected to a pre-purchase analysis. Relatively simple or standardized instruments, the risks of which are well known to the institution, would likely require no or significantly less analysis than would more volatile, complex instruments. For relatively more complex instruments, less familiar instruments, and potentially volatile instruments, institutions should fully address pre-purchase analysis in their policies. In valuing such investments, institutions should ensure that the pricing methodologies used appropriately consider all risks (for example, caps and floors in adjustable-rate instruments). Moreover, the agencies do not believe that an institution should be prohibited from making an investment based solely on whether that instrument has a high price sensitivity.

4. Identification, Measurement, and Reporting of Risks

Some commenters questioned whether proposed changes by the agencies concerning Schedule RC–B of the Consolidated Reports of Condition and Income (''Call Reports'') conflicted with the 1998 Statement's elimination of the high risk test for mortgage derivative products. The proposed changes to the Call Reports would require the disclosure of mortgage-backed and other securities whose price volatility in response to specific interest rate changes exceeds a specified threshold level. (*See* 62 FR 51715, October 2, 1997.)

The banking agencies have addressed the concerns presented in these comments within the normal process for changing the Call Reports. For the 1998 Call report cycle, there will be no changes to the high risk test reporting requirement in the Call Reports. (The above discussion is not applicable for federal credit unions. Any changes to the Call Report for credit unions will be made through the normal process for changing Call Reports.)

5. Market Risk

One commenter suggested that the agencies enhance the 1998 Statement by discussing and endorsing the concept of total return. The agencies agree that the concept of total return can be a useful way to analyze the risk and return tradeoffs for an investment. This is because the analysis does not focus exclusively on the stated yield to maturity. Total return analysis, which includes income and price changes over a specified investment horizon, is similar to stress test analysis since both examine a security under various interest rate scenarios. The agencies' supervisory emphasis on stress testing securities has, in fact, implicitly considered total return. Therefore, the agencies endorse the use of total return analysis as a useful supplement to price sensitivity analysis for evaluating the returns for an individual security, the investment portfolio, or the entire institution.

6. Measurement System

One respondent stated that the complexity and sophistication of the risk measurement system should not be a factor in determining whether pre-and post-acquisition measurement of interest rate risk should be performed at the individual investment level or on an institutional or portfolio basis. The agencies agree that this statement may be confusing and are amending the Market Risk section.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any final regulation may have on a substantial number of small credit unions, defined as those having less than $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.

Paperwork Reduction Act

NCUA has determined that the final Interpretive Ruling and Policy Statement does not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget (OMB).

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The final Interpretive Ruling and Policy Statement applies directly only to federal credit unions. NCUA has determined that the final Interpretive Ruling and Policy Statement does not constitute a ''significant regulatory action'' for purposes of the Executive Order.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) provides generally for Congressional review of agency rules. The reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedure Act, 5 U.S.C. 551. NCUA is currently awaiting the Office of Management and Budget's (OMB) decision on whether this is a major rule.

By the National Credit Union Administration Board on April 16, 1998.

Becky Baker,

Secretary of the Board.

Accordingly, Interpretive Ruling and Policy Statement No. 98–2 is issued as follows:

1. **Authority:** 12 U.S.C. 1757(7), 1757(8), 1757(15).

2. Interpretive Ruling and Policy Statement No. 92–1 (57 FR 22157, May 27, 1992) is withdrawn.

3. Interpretive Ruling and Policy Statement No. 98–2 is issued to read as follows:

Note: The text of the Interpretive Ruling and Policy Statement (IRPS 98–2) will not appear in the Code of Federal Regulations.

Interpretive Ruling and Policy Statement No. 98–2–Supervisory Policy Statement on Investment Securities and End-User Derivatives Activities

I. Purpose

This policy statement (Statement) provides guidance to financial

institutions (institutions) on sound practices for managing the risks of investment securities and end-user derivatives activities.[1] The FFIEC agencies—the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the National Credit Union Administration—believe that effective management of the risks associated with securities and derivative instruments represents an essential component of safe and sound practices. This guidance describes the practices that a prudent manager normally would follow and is not intended to be a checklist. Management should establish practices and maintain documentation appropriate to the institution's individual circumstances, consistent with this Statement.

II. Scope

This guidance applies to all securities in held-to-maturity and available-for-sale accounts as defined in the Statement of Financial Accounting Standards No.115 (FAS 115), certificates of deposit held for investment purposes, and end-user derivative contracts not held in trading accounts. This guidance covers all securities used for investment purposes, including: money market instruments, fixed-rate and floating-rate notes and bonds, structured notes, mortgage pass-through and other asset-backed securities, and mortgage-derivative products. Similarly, this guidance covers all end-user derivative instruments used for nontrading purposes, such as swaps, futures, and options.[2] This Statement applies to all federally-insured commercial banks, savings banks, savings associations, and federally chartered credit unions.

As a matter of sound practice, institutions should have programs to manage the market, credit, liquidity, legal, operational and other risks of investment securities and end-user derivatives activities (investment activities). While risk management programs will differ among institutions, there are certain elements that are fundamental to all sound risk management programs. These elements include board and senior management oversight and a comprehensive risk management process that effectively identifies, measures, monitors, and controls risk. This Statement describes sound principles and practices for managing and controlling the risks associated with investment activities.

Institutions should fully understand and effectively manage the risks inherent in their investment activities. Failure to understand and adequately manage the risks in these areas constitutes an unsafe and unsound practice.

III. Board and Senior Management Oversight

Board of director and senior management oversight is an integral part of an effective risk management program. The board of directors is responsible for approving major policies for conducting investment activities, including the establishment of risk limits. The board should ensure that management has the requisite skills to manage the risks associated with such activities. To properly discharge its oversight responsibilities, the board should review portfolio activity and risk levels, and require management to demonstrate compliance with approved risk limits. Boards should have an adequate understanding of investment activities. Boards that do not, should obtain professional advice to enhance its understanding of investment activity oversight, so as to enable it to meet its responsibilities under this Statement.

Senior management is responsible for the daily management of an institution's investments. Management should establish and enforce policies and procedures for conducting investment activities. Senior management should have an understanding of the nature and level of various risks involved in the institution's investments and how such risks fit within the institution's overall business strategies. Management should ensure that the risk management process is commensurate with the size, scope, and complexity of the institution's holdings. Management should also ensure that the responsibilities for managing investment activities are properly segregated to maintain operational integrity. Institutions with significant investment activities should ensure that back-office, settlement, and transaction reconciliation responsibilities are conducted and managed by personnel who are independent of those initiating risk taking positions.

IV. Risk Management Process

An effective risk management process for investment activities includes: (1) policies, procedures, and limits; (2) the identification, measurement, and reporting of risk exposures; and (3) a system of internal controls.

Policies, Procedures, and Limits

Investment policies, procedures, and limits provide the structure to effectively manage investment activities. Policies should be consistent with the organization's broader business strategies, capital adequacy, technical expertise, and risk tolerance. Policies should identify relevant investment objectives, constraints, and guidelines for the acquisition and ongoing management of securities and derivative instruments. Potential investment objectives include: generating earnings, providing liquidity, hedging risk exposures, taking risk positions, modifying and managing risk profiles, managing tax liabilities, and meeting pledging requirements, if applicable. Policies should also identify the risk characteristics of permissible investments and should delineate clear lines of responsibility and authority for investment activities.

An institution's management should understand the risks and cashflow characteristics of its investments. This is particularly important for products that have unusual, leveraged, or highly variable cashflows. An institution should not acquire a material position in an instrument until senior management and all relevant personnel understand and can manage the risks associated with the product.

An institution's investment activities should be fully integrated into any institution-wide risk limits. In so doing, some institutions rely only on the institution-wide limits, while others may apply limits at the investment portfolio, sub-portfolio, or individual instrument level.

The board and senior management should review, at least annually, the appropriateness of its investment strategies, policies, procedures, and limits.

Risk Identification, Measurement and Reporting

Institutions should ensure that they identify and measure the risks associated with individual transactions prior to acquisition and periodically after purchase. This can be done at the institutional, portfolio, or individual instrument level. Prudent management of investment activities entails examination of the risk profile of a particular investment in light of its impact on the risk profile of the institution. To the extent practicable, institutions should measure exposures to each type of risk and these

[1] The FFIEC's 1998 Statement (63 FR 20191, April 23, 1998) does not supersede any other requirements of the respective agencies' statutory rules, regulations, policies, or supervisory guidance.

[2] Natural person federal credit unions are not permitted to purchase non-residential mortgage asset-backed securities and may participate in derivative programs only if authorized by the NCLA.

measurements should be aggregated and integrated with similar exposures arising from other business activities to obtain the institution's overall risk profile.

In measuring risks, institutions should conduct their own in-house pre-acquisition analyses, or to the extent possible, make use of specific third party analyses that are independent of the seller or counterparty. Irrespective of any responsibility, legal or otherwise, assumed by a dealer, counterparty, or financial advisor regarding a transaction, the acquiring institution is ultimately responsible for the appropriate personnel understanding and managing the risks of the transaction.

Reports to the board of directors and senior management should summarize the risks related to the institution's investment activities and should address compliance with the investment policy's objectives, constraints, and legal requirements, including any exceptions to established policies, procedures, and limits. Reports to management should generally reflect more detail than reports to the board of the institution. Reporting should be frequent enough to provide timely and adequate information to judge the changing nature of the institution's risk profile and to evaluate compliance with stated policy objectives and constraints.

Internal Controls

An institution's internal control structure is critical to the safe and sound functioning of the organization generally and the management of investment activities in particular. A system of internal controls promotes efficient operations, reliable financial and regulatory reporting, and compliance with relevant laws, regulations, and institutional policies. An effective system of internal controls includes enforcing official lines of authority, maintaining appropriate separation of duties, and conducting independent reviews of investment activities.

For institutions with significant investment activities, internal and external audits are integral to the implementation of a risk management process to control risks in investment activities. An institution should conduct periodic independent reviews of its risk management program to ensure its integrity, accuracy, and reasonableness. Items that should be reviewed include:

(1) Compliance with and the appropriateness of investment policies, procedures, and limits;

(2) The appropriateness of the institution's risk measurement system given the nature, scope, and complexity of its activities;

(3) The timeliness, integrity, and usefulness of reports to the board of directors and senior management.

The review should note exceptions to policies, procedures, and limits and suggest corrective actions. The findings of such reviews should be reported to the board and corrective actions taken on a timely basis.

The accounting systems and procedures used for public and regulatory reporting purposes are critically important to the evaluation of an organization's risk profile and the assessment of its financial condition and capital adequacy. Accordingly, an institution's policies should provide clear guidelines regarding the reporting treatment for all securities and derivatives holdings. This treatment should be consistent with the organization's business objectives, generally accepted accounting principles (GAAP), and regulatory reporting standards.

V. The Risks of Investment Activities

The following discussion identifies particular sound practices for managing the specific risks involved in investment activities. In addition to these sound practices, institutions should follow any specific guidance or requirements from their primary supervisor related to these activities.

Market Risk

Market risk is the risk to an institution's financial condition resulting from adverse changes in the value of its holdings arising from movements in interest rates, foreign exchange rates, equity prices, or commodity prices. An institution's exposure to market risk can be measured by assessing the effect of changing rates and prices on either the earnings or economic value of an individual instrument, a portfolio, or the entire institution. For most institutions, the most significant market risk of investment activities is interest rate risk.

Investment activities may represent a significant component of an institution's overall interest rate risk profile. It is a sound practice for institutions to manage interest rate risk on an institution-wide basis. This sound practice includes monitoring the price sensitivity of the institution's investment portfolio (changes in the investment portfolio's value over different interest rate/yield curve scenarios). Consistent with agency guidance, institutions should specify institution-wide interest rate risk limits that appropriately account for these activities and the strength of the institution's capital position. These limits are generally established for economic value or earnings exposures. Institutions may find it useful to establish price sensitivity limits on their investment portfolio or on individual securities. These sub-institution limits, if established, should also be consistent with agency guidance.

It is a sound practice for an institution's management to fully understand the market risks associated with investment securities and derivative instruments prior to acquisition and on an ongoing basis. Accordingly, institutions should have appropriate policies to ensure such understanding. In particular, institutions should have policies that specify the types of market risk analyses that should be conducted for various types or classes of instruments, including that conducted prior to their acquisition (pre-purchase analysis) and on an ongoing basis. Policies should also specify any required documentation needed to verify the analysis.

It is expected that the substance and form of such analyses will vary with the type of instrument. Not all investment instruments may need to be subjected to a pre-purchase analysis. Relatively simple or standardized instruments, the risks of which are well known to the institution, would likely require no or significantly less analysis than would more volatile, complex instruments.[3]

For relatively more complex instruments, less familiar instruments, and potentially volatile instruments, institutions should fully address pre-purchase analyses in their policies. Price sensitivity analysis is an effective way to perform the pre-purchase analysis of individual instruments. For example, a pre-purchase analysis should show the impact of an immediate parallel shift in the yield curve of plus and minus 100, 200, and 300 basis points. Where appropriate, such analysis should encompass a wider range of scenarios, including non-parallel changes in the yield curve. A comprehensive analysis may also take into account other relevant factors, such as changes in interest rate volatility and changes in credit spreads.

When the incremental effect of an investment position is likely to have a significant effect on the risk profile of the institution, it is a sound practice to analyze the effect of such a position on

[3] Federal credit unions must comply with the investment monitoring requirements of 12 CFR 703.90. *See* 62 FR 32989 (June 18, 1997).

the overall financial condition of the institution.

Accurately measuring an institution's market risk requires timely information about the current carrying and market values of its investments. Accordingly, institutions should have market risk measurement systems commensurate with the size and nature of these investments. Institutions with significant holdings of highly complex instruments should ensure that they have the means to value their positions. Institutions employing internal models should have adequate procedures to validate the models and to periodically review all elements of the modeling process, including its assumptions and risk measurement techniques. Management relying on third parties for market risk measurement systems and analyses should ensure that they fully understand the assumptions and techniques used.

Institutions should provide reports to their boards on the market risk exposures of their investments on a regular basis. To do so, the institution may report the market risk exposure of the whole institution. Alternatively, reports should contain evaluations that assess trends in aggregate market risk exposure and the performance of portfolios in terms of established objectives and risk constraints. They also should identify compliance with board approved limits and identify any exceptions to established standards. Institutions should have mechanisms to detect and adequately address exceptions to limits and guidelines. Management reports on market risk should appropriately address potential exposures to yield curve changes and other factors pertinent to the institution's holdings.

Credit Risk

Broadly defined, credit risk is the risk that an issuer or counterparty will fail to perform on an obligation to the institution. For many financial institutions, credit risk in the investment portfolio may be low relative to other areas, such as lending. However, this risk, as with any other risk, should be effectively identified, measured, monitored, and controlled.

An institution should not acquire investments or enter into derivative contracts without assessing the creditworthiness of the issuer or counterparty. The credit risk arising from these positions should be incorporated into the overall credit risk profile of the institution as comprehensively as practicable. Institutions are legally required to meet certain quality standards (i.e., investment grade) for security purchases. Many institutions maintain and update ratings reports from one of the major rating services. For non-rated securities, institutions should establish guidelines to ensure that the securities meet legal requirements and that the institution fully understands the risk involved. Institutions should establish limits on individual counterparty exposures. Policies should also provide credit risk and concentration limits. Such limits may define concentrations relating to a single or related issuer or counterparty, a geographical area, or obligations with similar characteristics.

In managing credit risk, institutions should consider settlement and pre-settlement credit risk. These risks are the possibility that a counterparty will fail to honor its obligation at or before the time of settlement. The selection of dealers, investment bankers, and brokers is particularly important in effectively managing these risks. The approval process should include a review of each firm's financial statements and an evaluation of its ability to honor its commitments. An inquiry into the general reputation of the dealer is also appropriate. This includes review of information from state or federal securities regulators and industry self-regulatory organizations such as the National Association of Securities Dealers concerning any formal enforcement actions against the dealer, its affiliates, or associated personnel.

The board of directors is responsible for supervision and oversight of investment portfolio and end-user derivatives activities, including the approval and periodic review of policies that govern relationships with securities dealers.

Sound credit risk management requires that credit limits be developed by personnel who are as independent as practicable of the acquisition function. In authorizing issuer and counterparty credit lines, these personnel should use standards that are consistent with those used for other activities conducted within the institution and with the organization's over-all policies and consolidated exposures.

Liquidity Risk

Liquidity risk is the risk that an institution cannot easily sell, unwind, or offset a particular position at a fair price because of inadequate market depth. In specifying permissible instruments for accomplishing established objectives, institutions should ensure that they take into account the liquidity of the market for those instruments and the effect that such characteristics have on achieving their objectives. The liquidity of certain types of instruments may make them inappropriate for certain objectives. Institutions should ensure that they consider the effects that market risk can have on the liquidity of different types of instruments under various scenarios. Accordingly, institutions should articulate clearly the liquidity characteristics of instruments to be used in accomplishing institutional objectives.

Complex and illiquid instruments can often involve greater risk than actively traded, more liquid securities. Oftentimes, this higher potential risk arising from illiquidity is not captured by standardized financial modeling techniques. Such risk is particularly acute for instruments that are highly leveraged or that are designed to benefit from specific, narrowly defined market shifts. If market prices or rates do not move as expected, the demand for such instruments can evaporate, decreasing the market value of the instrument below the modeled value.

Operational (Transaction) Risk

Operational (transaction) risk is the risk that deficiencies in information systems or internal controls will result in unexpected loss. Sources of operating risk include inadequate procedures, human error, system failure, or fraud. Inaccurately assessing or controlling operating risks is one of the more likely sources of problems facing institutions involved in investment activities.

Effective internal controls are the first line of defense in controlling the operating risks involved in an institution's investment activities. Of particular importance are internal controls that ensure the separation of duties and supervision of persons executing transactions from those responsible for processing contracts, confirming transactions, controlling various clearing accounts, preparing or posting the accounting entries, approving the accounting methodology or entries, and performing revaluations.

Consistent with the operational support of other activities within the financial institution, securities operations should be as independent as practicable from business units. Adequate resources should be devoted, such that systems and capacity are commensurate with the size and complexity of the institution's investment activities. Effective risk management should also include, at least, the following:

Valuation. Procedures should ensure independent portfolio pricing. For thinly traded or illiquid securities,

completely independent pricing may be difficult to obtain. In such cases, operational units may need to use prices provided by the portfolio manager. For unique instruments where the pricing is being provided by a single source (e.g., the dealer providing the instrument), the institution should review and understand the assumptions used to price the instrument.

Personnel. The increasingly complex nature of securities available in the marketplace makes it important that operational personnel have strong technical skills. This will enable them to better understand the complex financial structures of some investment instruments.

Documentation. Institutions should clearly define documentation requirements for securities transactions, saving and safeguarding important documents, as well as maintaining possession and control of instruments purchased.

An institution's policies should also provide guidelines for conflicts of interest for employees who are directly involved in purchasing and selling securities for the institution from securities dealers. These guidelines should ensure that all directors, officers, and employees act in the best interest of the institution. The board may wish to adopt policies prohibiting these employees from engaging in personal securities transactions with these same securities firms without specific prior board approval. The board may also wish to adopt a policy applicable to directors, officers, and employees restricting or prohibiting the receipt of gifts, gratuities, or travel expenses from approved securities dealer firms and their representatives.

Legal Risk

Legal risk is the risk that contracts are not legally enforceable or documented correctly. Institutions should adequately evaluate the enforceability of its agreements before individual transactions are consummated. Institutions should also ensure that the counterparty has authority to enter into the transaction and that the terms of the agreement are legally enforceable. Institutions should further ascertain that netting agreements are adequately documented, executed properly, and are enforceable in all relevant jurisdictions. Institutions should have knowledge of relevant tax laws and interpretations governing the use of these instruments.

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 703 and 704

Investment and Deposit Activities; Corporate Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is adopting as final the interim final amendments to the investment regulation as issued last year. The final amendments revise the broker-dealer and safekeeping provisions. NCUA is also deleting the references to the High Risk Securities Test for CMOs/REMICs in its regulations on investments and corporate credit unions. These amendments will clarify certain procedures related to credit unions' involvement with broker-dealers and safekeeping of securities.

DATES: The interim final amendments published at 62 FR 64146 are adopted as final effective May 1, 1998. Amendments in this rule to part 703 are effective October 1, 1998. Amendments in this rule to part 704 are effective May 1, 1998.

ADDRESSES: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

FOR FURTHER INFORMATION CONTACT: Daniel Gordon, Senior Investment Officer, Office of Investment Services, (703) 518–6620 or Kim Iverson (Program Officer), Office of Examination and Insurance (703) 518–6360, or at the above address.

SUPPLEMENTARY INFORMATION:

A. Interim Final Rule

On November 24, 1997, NCUA issued an interim final rule that made substantive revisions and technical changes to part 703. 62 FR 64146, December 4, 1997. NCUA received eleven comment letters, three from trade associations, two from credit union leagues, three from federal credit unions, two from corporate credit unions, and one from a state-chartered credit union. Five commenters supported the technical changes and offered no other comments. The remaining six had specific comments, as discussed below.

The interim final rule amended § 703.50 to state that a federal credit union may use a third party that is not rregistered with the Securities and Exchange Commission (SEC) or is not a federally regulated depository institution to purchase a certificate of deposit (CD) as long as the credit union purchases the CD directly from a bank, credit union, or other depository institution. One commenter requested clarification that wiring funds to a correspondent bank for further credit to the issuing institution is an acceptable practice. Another suggested that the rule should simply state whether credit unions are prohibited from using third-parties, passing their funds through third parties, or passing funds through unregistered brokers. Another commenter suggested the reason for the amendment was that entities that sell only CDs are not usually subject to comprehensive regulatory oversight, and NCUA should not inadvertently force credit unions to stop buying CDs from legitimate, regulated CD brokers (banks and registered broker-dealers).

NCUA wishes to clarify that it is permissible to send funds to an agent depository institution either of the credit union (credit union's correspondent) or of the issuing depository institution (issuer's correspondent) for credit to an issuing depository institution (issuer). For example, a credit union can send its funds directly to the issuer's correspondent. Alternatively, it is permissible for a credit union to send funds to its correspondent and this correspondent can send those funds to the issuer's correspondent or the issuer. A federal credit union may not wire, or send in any manner, funds to an agent depository institution of an unregistered entity to purchase a CD. The account relationship must be directly with the issuer unless the credit union is using a broker-dealer that is SEC-registered or is a federally regulated depository institution. NCUA believes that the amendment made by the interim final rule is sufficiently clear in this area and is not making additional changes to the provision in this final rule.

This interim final rule also established that a credit union may safekeep securities with a selling broker-dealer as long as the safekeeper used by the broker-dealer is regulated by the SEC. Two commenters suggested that the preamble recommend that a safekeeping agreement prohibit a third party from pledging or lending the credit union's securities without notice of each specific transaction. Without notice of each specific transaction, the credit union would have an unknown counterparty exposure. The NCUA Board agrees it is a sound business practice for every credit union to carefully read and understand the details of any agreement it enters into and encourages credit unions to do so. In the absence of a delegation of authority, a credit union must specifically authorize any actions its

broker-dealer may take with its securities (purchases, sales, pledges, securities lending, etc.), and must not sign an account agreement with a broker-dealer that permits the broker-dealer to take any action with its securities without the credit union's consent and knowledge. The credit union must participate in the monetary gains derived from such actions.

The interim final rule also clarified that the requirement to obtain two price quotes prior to purchasing a security does not apply to new issues issued at original issue discount, in addition to those issued at par. Two commenters suggested that the preamble encourage credit unions to compare prices regardless of whether new issue securities are offered at par or at discount. The commenters believe securities purchase decisions should be made within the context of how they compare to similar Treasury securities.

In the interim final rule, the original issue discount securities that NCUA was primarily concerned with were Treasury securities. Credit unions certainly should consider whether other securities sold at original issue discount compare to similar Treasurys. NCUA encourages price comparisons to comparable Treasurys even for new issues issued at original issue discount or at par.

Two commenters requested that NCUA clarify the applicability of Section 703.60(d) to CDs. That provision requires a credit union to obtain and reconcile monthly a statement of purchased investments and repurchase collateral held in safekeeping. The commenters were concerned about CD investments, since monthly safekeeping statements are generally not received from depository institutions. The NCUA Board wishes to clarify that this requirement does not apply to CDs where the credit union has made the investment (deposit) directly with the depository institution and where there is no third party safekeeping of the CD.

In summary, the NCUA Board is adopting the interim final amendments in final, without any changes.

B. Deletion of MDP High Risk Tests

NCUA is deleting the requirements regarding mortgage derivative product (MDP) high risk tests in parts 703 and 704. NCUA no longer believes that the pass/fail criteria of the high risk tests as applied to specific instruments are necessary to constitute effective monitoring of investment activities. The rescission of the high risk tests as a constraint on a credit union's investment activities does not signal that MDPs with high levels of price risk are either appropriate or inappropriate investments. NCUA continues to believe that the stress testing of MDP investments, as well as other investments, is prudent and has significant value for risk management purposes.

An effective risk management process, through which an institution identifies, measures, monitors, and controls the risks of all its investment activities, provides a better framework. Whether a security, MDP or others, is an appropriate investment depends upon a variety of factors, including the credit union's capital level, the security's impact on the aggregate risk of the portfolio, and management's ability to measure and manage risk. Credit unions should employ valuation methodologies that take into account all of the risk elements necessary to price these investments.

For natural person federal credit unions that purchase securities having certain characteristics, as defined in paragraph 703.90(b), in an amount exceeding the credit union's net capital, part 703 requires a reasonable and supportable estimate of the potential impact of an immediate and sustained parallel shift in market interest rates of plus and minus 300 basis points.

Part 704 requires corporate credit unions to subject all their assets and liabilities to a 300 basis point instantaneous, parallel, and sustained shock in interest rates for purposes of generating ''net economic value'' (NEV) volatility measures. Proper NEV calculations will capture the risk of the underlying cash-flows and their corresponding price sensitivity.

C. Corrections

Section 703.50(b)(2) of the current rule refers to the North American State Administrators Association. The correct reference is the North American Securities Administrators Association and the final amendments reflect the proper terminology.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any final regulation may have on a substantial number of small credit unions, defined as those having less than $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.

Paperwork Reduction Act

NCUA has determined that the final amendments do not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget (OMB).

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The final rule applies directly only to federal credit unions. NCUA has determined that the final rule does not constitute a ''significant regulatory action'' for purposes of the Executive Order.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) provides generally for congressional review of agency rules. The reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedure Act, 5 U.S.C. 551. NCUA is currently awaiting the Office of Management and Budget's decision on whether this is a major rule.

List of Subjects

12 CFR Part 703

Credit unions, Investments, Reporting and recordkeeping requirements.

12 CFR Part 704

Credit union, Reporting and recordkeeping requirements.

The National Credit Union Administration Board approved the final amendments to Part 703 and Part 704 on April 16, 1998 and approved as final the interim final amendments to Part 703 on April 22, 1998.

Becky Baker,

Secretary of the Board.

Accordingly NCUA adopts the interim final rule amending 12 CFR part 703 which was published at 62 FR 64146 on December 4, 1997, as a final rule without change and amends 12 CFR parts 703 and 704 as follows:

PART 703—INVESTMENT AND DEPOSIT ACTIVITIES

1. The authority citation for part 703 continues to read as follows:

Authority: 12 U.S.C. 1757(7), 1757(8), 1757(15).

§ 703.30 [Amended]

2. Section 703.30 is amended by removing paragraph (g) and redesignating paragraphs (h), (i), (j), (k),

and (l) as paragraphs (g), (h), (i), (j), and (k).

3. Section 703.50 is amended by revising paragraph (b)(2) to read as follows:

§ 703.50 What rules govern my dealings with entities I use to purchase and sell investments (''broker-dealers'')?

* * * * *

(b) * * *

(2) Information available from state or federal securities regulators and securities industry self-regulatory organizations, such as the National Association of Securities Dealers and the North American Securities Administrators Association, about any enforcement actions against the broker-dealer, its affiliates, or associated personnel.

* * * * *

4. Section 703.100 is amended by revising paragraph (e) to read as follows:

§ 703.100 What investments and investment activities are permissible for me?

* * * * *

(e) You may invest in fixed or variable rate CMOs/REMICs.

* * * * *

5. Section 703.130 is revised to read as follows:

§ 703.130 May I continue to hold investments purchased before January 1, 1998, that will be impermissible after that date?

(a) Subject to safety and soundness considerations, you may hold a CMO/REMIC residual, SMBS, or zero coupon security with a maturity greater than 10 years, if you purchased the investment:

(1) Before December 2, 1991; or

(2) On or after December 2, 1991, but before January 1, 1998, if for the purpose of reducing interest rate risk and you meet the following:

(i) You have a monitoring and reporting system in place that provides the documentation necessary to evaluate the expected and actual performance of the investment under different interest rate scenarios;

(ii) You use the monitoring and reporting system to conduct and document an analysis that shows, before purchase, that the proposed investment will reduce your interest rate risk;

(iii) After purchase, you evaluate the investment at least quarterly to determine whether or not it actually has reduced your interest rate risk; and

(iv) You classify the investment as either trading or available-for-sale.

(b) All grandfathered investments are subject to the valuation and monitoring requirements of §§ 703.70, 703.80, and 703.90.

PART 704—CORPORATE CREDIT UNIONS

6. The authority citation for part 704 continues to read as follows:

Authority: 12 U.S.C. 1757(7), 1757(8), 1757(15).

7. Section 704.5 is amended by revising paragraph (c)(6) to read as follows:

§ 704.5 Investments.

* * * * *

(c) * * *

(6) CMOs/REMICs.

* * * * *

Appendix B to Part 704—[Amended]

8. Appendix B to part 704 is amended as follows:

a. A heading is added to the beginning of the Appendix; and

b. In Part I paragraph (c)(6) is removed and paragraphs (c)(7) through (c)(9) are redesignated as paragraphs (c)(6) through (c)(8); and

c. In Part II paragraph (c)(6) is removed and paragraphs (c)(7) and (c)(8) are redesignated as paragraphs (c)(6) and (c)(7).

The addition reads as follows:

Appendix B to Part 704—Expanded Authorities and Requirements

Part I

* * * * *

[FR Doc. 98–11450 Filed 4–30–98; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 529

Certain Other Dosage Form New Animal Drugs; Isoflurane

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Marsam Pharmaceuticals, Inc. The ANADA provides for inhalational use of isoflurane USP for induction and maintenance of general anesthesia in horses and dogs.

EFFECTIVE DATE: May 1, 1998.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0209.

SUPPLEMENTARY INFORMATION: Marsam Pharmaceuticals, Inc., Bldg. 31, 24 Olney Ave., Cherry Hill, NJ 08034, filed ANADA 200–187 that provides for inhalational use of isoflurane USP for induction and maintenance of general anesthesia in horses and dogs. The drug is limited to use by or on the order of a licensed veterinarian.

Approval of ANADA 200–187 for Marsam Pharmaceuticals, Inc.'s, isoflurane is as a generic copy of Ohmeda Pharmaceutical Product's NADA 135–773 AErrane® (isoflurane, USP). The ANADA is approved as of February 11, 1998, and the regulations are amended in 21 CFR 529.1186(b) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In addition, Marsam Pharmaceuticals, Inc., has not been previously listed in § 510.600 (21 CFR 510.600) as sponsor of an approved application. The regulations are amended in § 510.600(c)(1) and (c)(2) to reflect the new sponsor.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20855, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(d)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects

21 CFR Part 510

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

21 CFR Part 529

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 529 are amended as follows:

PART 510—NEW ANIMAL DRUGS

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

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

2. Section 510.600 is amended in the table in paragraph (c)(1) by alphabetically adding an entry for ''Marsam Pharmaceuticals, Inc.,'' and in the table in paragraph (c)(2) by numerically adding an entry for ''000209'' to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * *	* * *
Marsam Pharmaceuticals, Inc., Bldg. 31, 24 Olney Ave., Cherry Hill, NJ 08034.	000209
* * *	* * *

(2) * * *

Drug labeler code	Firm name and address
* *	* * * * *
000209	Marsam Pharmaceuticals, Inc., Bldg. 31, 24 Olney Ave., Cherry Hill, NJ 08034.
* *	* * * * *

PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS

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

Authority: 21 U.S.C. 360b.

2. Section 529.1186 is amended by revising paragraph (b) to read as follows:

§ 529.1186 Isoflurane.

* * * * *

(b) *Sponsors*. See Nos. 000074, 000209, 010019, 012164, and 059258 in § 510.600(c) of this chapter.

* * * * *

Dated: April 22, 1998.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 98–11685 Filed 4–30–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 522 and 556

Implantation or Injectable Dosage Form New Animal Drugs; Spectinomycin Solution

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Pharmacia & Upjohn Co. The NADA provides for veterinary prescription use of spectinomycin solution as a subcutaneous injection in cattle for treatment of bovine respiratory disease.

EFFECTIVE DATE: May 1, 1998.

FOR FURTHER INFORMATION CONTACT: George K. Haibel, Center for Veterinary Medicine (HFV–133), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1644.

SUPPLEMENTARY INFORMATION: Pharmacia & Upjohn Co., 7000 Portage Rd., Kalamazoo, MI 49001–0199, filed NADA 141–077 that provides for veterinary prescription use of Adspec™ (spectinomycin) sterile solution for cattle, by subcutaneous injection in the neck, for treatment of bovine respiratory disease (pneumonia) associated with *Pasteurella haemolytica*, *P. multocida*, and *Haemophilus somnus*. The NADA is approved as of January 28, 1998, and the regulations are amended by adding § 522.2121 (21 CFR 522.2121) to reflect the approval.

A tolerance for residues of spectinomycin in edible tissues of cattle has not been previously established. The regulations are amended in 21 CFR 556.600 to provide a tolerance for spectinomycin residues in cattle kidney (target tissue) and in cattle muscle.

FDA is also amending the regulations to provide for the acceptable daily intake (ADI) for total residues of spectinomycin. The ADI is the amount of total drug residue that can be consumed by humans every day. Previously, FDA had provided for safe concentrations, which represent the ADI corrected for consumption. The safe concentrations were confusing because few individuals understood the relationship between safe concentration, a value representing total residues, and tolerance, the part of the drug residue in a given tissue that is detected by an analytical method. To eliminate this confusion, FDA is codifying the ADI.

Also, the heading of § 522.2120 *Spectinomycin injection* (21 CFR 522.2120) is revised to ''§ 522.2120 *Spectinomycin dihydrochloride injection*'' to clarify the difference between § 522.2120 and § 522.2121 *Spectinomycin sulfate solution*.

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

Under section 512(c)(2)(F)(ii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(ii)), this approval for food-producing animals qualifies for 3 years of marketing exclusivity beginning January 28, 1998, because the application contains substantial evidence of the effectiveness of the drug involved, studies of animal safety or, in the case of food-producing animals, human food safety studies (other than bioequivalence or residue studies) required for approval and conducted or sponsored by the applicant.

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

List of Subjects

21 CFR Part 522

Animal drugs.

21 CFR Part 556

Animal drugs, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 522 and 556 are amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

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

Authority: 21 U.S.C. 360b.

§ 522.2120 [Amended]

2. Section 522.2120 *Spectinomycin injection* is amended by revising the heading to read ''*Spectinomycin dihydrochloride injection*.''

3. Section 522.2121 is added to read as follows:

§ 522.2121 Spectinomycin sulfate solution.

(a) *Specifications*. Each milliliter of sterile aqueous solution contains spectinomycin sulfate tetrahydrate equivalent to 100 milligrams of spectinomycin.

(b) *Sponsor*. See 000009 in § 510.600(c) of this chapter.

(c) *Related tolerances*. See § 556.600 of this chapter.

(d) *Conditions of use*—(1) *Cattle*—(i) *Dose*. 10 to 15 milligrams per kilogram of body weight, at 24-hour intervals for 3 to 5 consecutive days.

(ii) *Indications for use*. For the treatment of bovine respiratory disease (pneumonia) associated with *Pasteurella haemolytica*, *P. multocida*, and *Haemophilus somnus*.

(iii) *Limitations*. For subcutaneous injection in the neck. Do not inject more than 50 milliliters at each site. Do not slaughter within 11 days of last treatment. Do not use in female dairy cattle 20 months of age or older. Use in this class of cattle may cause residues in milk. A withdrawal period has not been established for this product in pre-ruminating calves. Do not use in calves to be processed for veal. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) [Reserved]

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

4. The authority citation for 21 CFR part 556 continues to read as follows:

Authority: 21 U.S.C. 342, 360b, 371.

5. Section 556.600 is revised to read as follows:

§ 556.600 Spectinomycin.

(a) *Acceptible daily intake (ADI)*. The ADI for total residues of spectinomycin is 25 micrograms per kilogram of body weight per day.

(b) *Chickens and turkeys*. A tolerance of 0.1 part per million (ppm) for negligible residues of spectinomycin in uncooked edible tissues of chickens and turkeys is established.

(c) *Cattle*. A tolerance of 4 ppm for parent spectinomycin (marker residue) in kidney (target tissue) is established. A tolerance of 0.4 ppm for parent spectinomycin in cattle muscle is established.

Dated: April 22, 1998.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 98–11686 Filed 4–30–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF STATE

22 CFR Part 41

[Public Notice 2793]

Documentation of Nonimmigrants Under the Immigration and Nationality Act, as Amended—Fees for Application and Issuance of Nonimmigrant Visas

AGENCY: Department of State.

ACTION: Interim rule with request for comments.

SUMMARY: This rule results from a recent amendment to the law. It permits the Secretary of State to waive the visa fees for a nonimmigrant alien who will be engaged in charitable activities in the United States, subject to criteria the Secretary sets up. This provision became effective on the date of enactment. This rule implements that amendment.

DATES: This interim rule is effective May 1, 1998. Written comments are invited and must be received on or before June 30, 1998.

ADDRESSES: Written comments may be submitted, in duplicate, to the Chief, Legislation and Regulations Division, Visa Services, Department of State, Washington, D.C. 20520–0106.

FOR FURTHER INFORMATION CONTACT: H. Edward Odom, Chief, Legislation and Regulations Division, Visa Services, Department of State, Washington, D.C. 20520–0106, (202) 663–1204.

SUPPLEMENTARY INFORMATION: Section 2 of Pub. L. 105–54 of October 7, 1997, amended section 281 of the Immigration and Nationality Act, as amended, (INA), by adding a sentence providing for the waiver or reduction of nonimmigrant visa fees under certain circumstances for aliens coming to the United States to engage in charitable activities.

Current rules relating to nonimmigrant visa fees are contained in 22 CFR 41.107 subsection (c) which describes certain aliens exempted from fees. This rule expands that subsection to include those individuals who are coming primarily for charitable purposes or for purposes related thereto. As Senator Abraham (a co-sponsor) stated in the Senate discussion of the amendment of INA 281, ''It is not in the U.S. interest to impose fees that inhibit or otherwise burden individuals who seek to help our communities.'' It is in this spirit underlying the legislation that this interim rule has been developed.

The statute provides that the waiver or reduction of fees for application and issuance of a nonimmigrant visa is subject to criteria prescribed by the Secretary of State, including the duration of stay and the financial burden upon the charitable organization.In keeping with that injunction, it is deemed appropriate to require prospective beneficiary charitable organizations to request the relief to be provided because of the financial burden and to furnish sufficient information to establish that the alien(s) concerned will be engaged in activities which motivated the

enactment of this provision. The request should be furnished in writing, *inter alia* to provide documentation reconciling the number of visas issued with the lesser amount of fees collected.

Thus, the current text of 22 CFR 41.107(c) will become ''(c)(1)'' and a new (c)(2) will set forth the data required to support the waiver of the fees. These include, in (c)(2)(i), disclosure of whether the organization, if U.S.-based, is tax exempt as a charitable organization under 26 U.S.C. 501(c) or, if foreign, is equivalently recognized as a charitable organization in the country in which based. Section 41.107(c)(2)(ii) requires that the activities in which the alien(s) will engage will be charitable in nature, providing assistance to the poor and needy including, but not limited to, those activities identified in the legislation. Section 41.107(c)(2)(iii) requires such identifying information as the location in which the services will be provided and the number of and identifying data regarding each of the alien(s) concerned. Finally, § 41.107(c)(2)(iv) seeks data on the proposed duration of the temporary stay of the alien(s) in the United States, which should be commensurate with both the classification in which the alien(s) will be applying and the purposes for which the alien(s) will be entering the United States.

Regulatory Analysis and Notices

Interim Rule

The implementation of this rule as an interim rule, with a 60-day provision for post-promulgation public comments, is based on the ''good cause'' exceptions set forth at 5 U.S.C. 553(b)(3)(B) and 553(d)(3). The provision of law being implemented became effective on enactment on October 7, 1997. It provides a benefit to institutions that it is in the interest of the United States as determined by Congress to benefit. Delay of the benefit for public notice and comment is unnecessary and inconsistent with the intent of the law.

The Regulatory Flexibility Act

Pursuant to § 605 of the Regulatory Flexibility Act, the Department has assessed the potential impact of this rule, and the Assistant Secretary for Consular Affairs hereby certifies, that it is not expected to have a significant economic impact on a substantial number of small entities and will benefit those that are charitable organizations.

E.O. 12988 and E.O. 12866

This rule has been reviewed as required under E.O. 12998 and determined to be in compliance therewith. This rule is exempt from review under E.O. 12866, but has been reviewed internally by the Department to ensure consistency therewith. The rule does not directly affect states or local governments or Federal relationships and does not create unfunded mandates.

5 U.S.C. Chapter 8

As required by 5 U.S.C., chapter 8, the Department has screened this rule and determined that it is not a major rule, as defined in 5 U.S.C. 80412.

Paperwork Reduction Act

While charitable organizations requesting this benefit will have to apply with information matching their situation to legal requirements, that information will be used for agency decisions on individual visas and not used for public dissemination or statistical purposes.

List of Subjects in 22 CFR Part 41

Aliens, Nonimmigrants, Passports, Visas.

In view of the foregoing, 22 CFR part 41 is amended as follows:

PART 41—[AMENDED]

1. The authority citation for part 41 continues to read:

Authority: 8 U.S.C. 1104.

2. Section 41.107 is amended by redesignating paragraph (c) as paragraph (c)(1) and adding a new paragraph (c)(2) to read as follows:

§ 41.107 Visa fees.

* * * * *

(c) * * *

(2) The consular officer shall waive the nonimmigrant visa application and issuance fees for an alien who will be engaging in charitable activities for a charitable organization upon the written request of the charitable organization claiming that it will find the fees a financial burden, if the consular officer is satisfied that:

(i) The organization seeking relief from the fees is, if based in the United States, tax-exempt as a charitable organization under the provisions of section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)); if a foreign organization based outside the United States, it establishes that it is recognized as a charitable institution by the government of the country in which it is based under criteria substantially similar to those of section 501(c)(3), and

(ii) The charitable activities in which the alien will engage are specified and will be a part of, or will be related to and in support of, the organization's provision of services, including but not limited to health care, food and housing, job training, and similar direct services and assistance to the poor and needy, and

(iii) The request includes the location of the proposed activities, the number and identifying data of each of the alien(s) who will be applying for visas, and

(iv) The proposed duration of the alien(s)'s temporary stay in the United States is reasonably consistent with the charitable purpose for which the alien(s) seek to enter the United States.

* * * * *

Dated: April 15, 1998.

Donna J. Hamilton,

Acting Assistant Secretary for Consular Affairs.

[FR Doc. 98–11533 Filed 4–30–98; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF JUSTICE

28 CFR Part 51

[Order No. 2149–98]

RIN 1190–AA35

Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, as Amended; Revision of Procedures

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice is revising its administrative guidelines regarding preclearance of voting changes under Section 5 of the Voting Rights Act of 1965. The amendment is necessary to conform the Department's guidelines with recent case law.

DATES: Effective May 1, 1998.

FOR FURTHER INFORMATION CONTACT: David H. Hunter, Attorney, Voting Section, Civil Rights Division, 202–307–2898, 1–800–253–3931, or david.h.hunter@usdoj.gov.

SUPPLEMENTARY INFORMATION: Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, requires certain jurisdictions (listed in the appendix to the Procedures) to obtain ''preclearance'' from either the United States District Court for the District of Columbia or from the United States Attorney General before implementing any new standard, practice, or procedure that affects voting.

The Supreme Court held in *Reno* v. *Bossier Parish School Board*, 117 S.Ct.

1491, 1497 (1997), that a voting change that violates Section 2 of the Voting Rights Act, 42 U.S.C. 1973 (which proscribes practices that have discriminatory results), should not on that basis alone be denied Section 5 preclearance. Accordingly, we are deleting paragraph (2) of § 51.55(b) (''Section 2'').

Good cause exists under 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d) for implementing this rule as a final rule effective immediately without provision for public comment. The amendment simply conforms the Procedures to the Supreme Court's interpretation of the Voting Rights Act. Public comment could have no effect on this amendment.

List of Subjects in 28 CFR Part 51

Administrative practice and procedure, Archives and records, Authority delegations (Government agencies), Civil rights, Elections, Voting rights.

For the reasons stated in the preamble, 28 CFR Part 51 is amended as follows:

PART 51—PROCEDURES FOR THE ADMINISTRATION OF SECTION 5 OF THE VOTING RIGHTS ACT OF 1965, AS AMENDED

1. The authority citation for part 51 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510; and 42 U.S.C. 1973c.

§ 51.55 [Amended]

2. In § 51.55, the designation of paragraph (b) (1) and the word ''subsequently'' are removed from paragraph (b), and paragraph (b)(2) is removed.

Dated: April 23, 1998.

Janet Reno,

Attorney General.

[FR Doc. 98–11604 Filed 4–30–98; 8:45 am]

BILLING CODE 4410–13–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–98–031]

Special Local Regulations for Marine Events; Approaches to Annapolis Harbor, Spa Creek, and Severn River, Annapolis, MD

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: This notice implements the special local regulations during the transit of participating vessels from Annapolis Harbor, Maryland, to the race start area on the Chesapeake Bay for Leg 8 of the Whitbread Round-the-World sailing race on May 3, 1998. These special local regulations are necessary to control vessel traffic in the vicinity of Spa Creek and the Severn River due to the confined nature of the waterway and expected vessel congestion during the transit of the racers. The effect will be to restrict general navigation in the regulated area for the safety of race participants, spectator craft and other vessels transiting the event area.

DATES: The special local regulations are effective from 10 a.m. EDT (Eastern Daylight Time) to 11 a.m. EDT on May 3, 1998.

FOR FURTHER INFORMATION CONTACT: Chief Warrant Officer R.L. Houck, Marine Events Coordinator, Commander, Coast Guard Activities Baltimore, 2401 Hawkins Point Road, Baltimore, MD 21226–1971, (410) 576–2674.

SUPPLEMENTARY INFORMATION: The start for Leg 8 of the Whitbread Round-the-World sailing race will be held in the vicinity of Annapolis, Maryland, on May 3, 1998. The vessels participating in the race will conduct an organized transit from Annapolis Harbor to the race start area. Therefore, to ensure the safety of the racers, spectators and transiting vessels, 33 CFR 100.511 will be in effect for the duration of the transit to the race start area. Under provisions of 33 CFR 100.511, a vessel may not enter the regulated area unless it receives permission from the Coast Guard Patrol Commander, and the operator of any vessel in the regulated area shall stop the vessel immediately upon being directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign. Spectator vessels may anchor outside the regulated area but may not block a navigable channel. Because these restrictions will be in effect for a limited period, they should not result in a significant disruption of maritime traffic.

Dated: April 21, 1998.

J.S. Carmichael,

Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 98–11649 Filed 4–30–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Diego; 98–009]

RIN 2115–AA97

Safety Zone; Colorado River, Laughlin, NV

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the navigable waters of the Colorado River, Laughlin, Nevada, for the Laughlin River Days marine event on May 30 and 31, 1998. The Laughlin River Days event consists of various watercraft races and other maritime festivities. The safety zone supporting this event consists of a circular area with a radius of approximately 1500 feet centered around a single buoy located approximately equidistant between the following two points: the Laughlin Bridge, and 500 feet north of the launch ramp at Davis Camp. This safety zone is established to protect the lives and property of the event participants and spectators by establishing an exclusionary zone around the race course. Entry into, transit through, or anchoring within this zone is prohibited unless authorized by the Captain of the Port.

DATES: This regulation is effective from 7 a.m. (PDT) until 6:30 p.m. (PDT) on May 30 and 31, 1998.

ADDRESSES: Marine Safety Office San Diego, 2716 N. Harbor Drive, San Diego, CA 92101–1064.

FOR FURTHER INFORMATION CONTACT: LT Mike Arguelles, U.S. Coast Guard, Marine Safety Office, San Diego at (619) 683–6484.

SUPPLEMENTARY INFORMATION:

Regulatory Information

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publication of a notice of proposed rulemaking and delay of its effective date would be contrary to the public interest since the details of the safety zone boundaries necessary to support the Laughlin River Days marine event, and other logistical details surrounding the event, were not finalized until a date fewer than 30 days prior to the event date.

Discussion of Regulation

This regulation is necessary to protect the lives and property of the event participants and spectators by establishing an exclusionary zone around the Laughlin River Days. During race times, vessels will be traveling at high rates of speed which will hinder their reaction time to obstacles. This safety zone will be marked by the sponsor, and enforced by U.S. Coast Guard personnel working in close coordination with the sponsor. Vessels are prohibited from entering into, transiting through, or anchoring within the safety zone unless authorized by the Captain of the Port.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11040; February 26, 1979). Due to the short duration and limited scope of the safety zone, the Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of the Department of Transportation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. Small entities may include small businesses and not-for-profit organizations that are not dominant in their respective fields, and governmental jurisdictions with populations less than 50,000. For the same reasons set forth in the above Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, is not expected to have a significant economic impact on any substantial number of entities, regardless of their size.

Assistance for Small Entities

In accordance with 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact LT Mike Arguelles, Coast Guard Marine Safety Office San Diego, at the Address Listed in **ADDRESSES**.

Collection of Information

This regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism

The Coast Guard has analyzed this regulation under the principles and criteria contained in Executive Order 12612, and has determined that this regulation does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this regulation and concluded that under section 2.B.2 of Commandant Instruction M16475.1B it will have no significant environmental impact and it is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and Environmental Analysis Checklist will be available for inspection and copying in the docket to be maintained at the address listed in **ADDRESSES**.

Unfunded Mandates

Under the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), the Coast Guard must consider whether this rule will result in an annual expenditure by state, local, and tribal governments, in the aggregate of $100 million (adjusted annually for inflation). If so, the Act requires that a reasonable number of regulatory alternatives be considered, and that from those alternatives, the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule be selected.

No state, local, or tribal government entities will be affected by this rule, so this rule will not result in annual or aggregate costs of $100 million or more. Therefore, the Coast Guard is exempt from any further regulatory requirements under the Unfunded Mandates Act.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

In consideration of the foregoing, Subpart F of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for 33 CFR Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. A new § 165.T11–038 is added to read as follows:

§ 165.T11–038 Safety Zone: Colorado River, Laughlin, Nevada.

(a) *Location.* The following area constitutes a safety zone in the navigable waters of the Colorado River, Laughlin, Nevada. The safety zone consists of a circular area with a radius of 1500 feet centered around a single buoy located approximately equidistant between the Laughlin Bridge and 500 feet north of the launch ramp at Davis Camp.

(b) *Effective Dates.* This section is effective from 7 a.m. (PDT) until 6:30 p.m. (PDT) on May 30 and 31, 1998.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within this zone is prohibited unless authorized by the Captain of the Port.

Dated: April 20, 1998.

J.A. Watson,

Commander, U.S. Coast Guard, Captain of the Port, San Diego, California.

[FR Doc. 98–11650 Filed 4–30–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 223

RIN 0596–AB41

Sale and Disposal of National Forest Timber; Indices To Determine Market-Related Contract Term Additions

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends current regulations providing for Market-Related Contract Term Additions, by requiring the use of Industry Series Producer Price Indices from the Bureau of Labor Statistics, rather than the previously required indices in the Commodity Series. Use of a different Producer Price Index series requires a concomitant change in procedures for determining when market-related contract term additions

are needed. In addition to changing the index series, the final rule makes a number of technical changes. The intended affect is to grant timber sale contract term additions based on market criteria that are more representative than those currently used.

DATES: This rule is effective June 1, 1998.

FOR FURTHER INFORMATION CONTACT: Rex Baumback, Timber Management Staff, MAIL STOP 1105, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–1105, (202) 205–0855.

SUPPLEMENTARY INFORMATION:

Background

Experience indicates that the lumber market declines that would justify a market-related timber sale contract term addition generally coincide with substantial economic dislocation in the wood products industry. Such economic distress broadly affects community stability, the ability of the wood products industry to supply construction lumber and other wood products from domestic sources, and threatens the existence of wood manufacturing plants needed to meet future demands for wood products. Accordingly, on December 7, 1990, the Department published a final rule (55 FR 50643) to establish procedures at 36 CFR 223.52 for extending contract termination dates to prevent contract default or severe financial loss to the purchaser in response to adverse conditions in the lumber markets. The rule, which has remained in effect until now, provides that if there is a drastic decline in wood product prices a market-related contract term addition would be triggered.

The rule also requires the use of various wood product Producer Price Indices, prepared by the Department of Labor, Bureau of Labor Statistics (BLS), to determine whether a drastic reduction in wood product prices has occurred. Since adoption of the rule, a drastic reduction occurred for Douglas-fir, Dressed Index, during the first quarter of 1991 and, most recently, in the second quarter of 1995. As a result, the Forest Service notified purchasers and, upon the purchasers' written request, added an additional year to timber sale contract terms for qualifying contracts.

In order to address timber sale purchaser concerns and technical issues related to implementation of this regulation, the Forest Service proposed a revision to this rule and requested public comment on October 21, 1996 (61 FR 54589). The deadline for receiving comments was January 21, 1997.

Response to Comments Received

Nineteen respondents provided responses to the proposed rule. Comments were received from 14 timber sale purchasers, four timber industry associations, and one consulting forester. A summary of the comments and the Department's response to them follow.

General Comments

Comment. One respondent requested that efforts to implement changes to Market-Related Contract Term Additions (MRCTA) be delayed until a formal revision of the timber sale contract could be completed.

Response. The Department realizes that it would be desirable to consider all possible contract changes at one time. However, while a comprehensive revision of the timber sale contract is being considered, the timeframe for the completion of this revision is undetermined. Furthermore, there will always be a need for periodic revisions of portions of the timber sale contract to meet new situations. The revision of MRCTA procedures will allow the timber sale contract to be more responsive to changing economic conditions; therefore, the Department sees no benefit to delaying amendment of the MRCTA regulations.

Comment. One respondent expressed a need for a procedure to address a slow lumber market decline, as well as a rapid lumber market decline.

Response. Major softwood lumber market declines during the past 50 years have occurred within a period of 30 months or less. Both the current MRCTA procedures and this final rule evaluate the significance of market changes over a period of 27 months. Data indicate that nearly 50 percent of the total volume sold is contained in contracts shorter than 3 years in length and nearly 80 percent of all timber sale contracts are shorter than 3 years in length. Average contract length has been declining steadily in recent years. A lumber market decline over a period of more than 30 months is unlikely, based on historic trends, and most contracts would not be adversely affected if such a lumber market decline were to occur. Thus, the Department does not agree that there is a need to establish a new procedure to address the unlikely possibility of a slow lumber market decline.

Availability of MRCTA

Section 223.52(a) of the proposed rule provided that contracts that contain periodic payment requirements will contain a MRCTA provision.

Comment. Thirteen respondents stated that since lumber markets are so volatile, MRCTA should be available for all timber sales over 1 year in length or for any sale that is extended beyond 1 year in length for reasons beyond the control of the purchaser.

Response. It appears that some of these respondents misinterpreted the proposed rule by concluding that MRCTA would apply only to contracts over 2 years in length. Both the current procedure and the proposed rule provide for MRCTA for any contract that contains periodic payment provisions. Periodic payment provisions are included in contracts that are longer than one full normal operating season. Under current procedures, when contracts are awarded during the normal operating season, the length of the contract could exceed 1 year and not include MRCTA provisions. The Department agrees to change procedures and include MRCTA procedures in timber sale contracts that exceed 1 year in length, regardless of whether or not the contract contains periodic payment provisions, except as provided in § 223.52(a)(3), harvesting rapidly deteriorating timber.

However, the Department does not agree with the request to modify timber sale contracts to include MRCTA if those contracts are extended beyond 1 year in length for reasons beyond the control of the purchaser. Since contracts currently contain provisions for compensating purchasers if their contracts are suspended, providing for MRCTA for the few contracts that may be extended beyond 1 year is an additional unnecessary compensation.

Selection of Index

Section 223.52(a)(2) of the proposed rule provided that the Forest Supervisor would select the price index for contracts. This paragraph in the proposed rule also provides that only one price index may be used in contracts.

Comment. Fourteen respondents remarked that purchasers should be allowed to choose the price index when the contract is awarded, based on their assessment of the lumber market and their intended use of the wood from that sale. Some of these respondents said they were concerned about the burden of the Forest Supervisor in choosing an index.

Eight respondents said that if purchasers choose the index, the contract could be modified later to change the index if the sale was

extended beyond 4 years or was transferred to another party.

Response. The index is based on the species and products being sold. It is not a burden on the Forest Supervisor to choose the index, nor are there valid reasons to change the index after the sale is bid. Therefore, the Department declines to change this section of the regulation, based on this comment.

Comment. Seventeen respondents proposed using the Wood Chip Index with all qualifying sales, since all sales have a significant chip component and many sales have a mixture of sawtimber and chipable material. Therefore, contract relief would be granted if either the lumber or the wood chip index showed a drastic decline in market price.

Response. The Department thinks that the volume of chip by-products produced with a sawlog timber sale is not enough to justify the MRCTA extension, based solely on a drastic decline in the Wood Chip Index. Further, it is the Department's view that inclusion of more than one index in a given timber sale would not meet the ''substantial overriding public interest'' standard required by the National Forest Management Act (16 U.S.C. 472a(c)). Substantial overriding public interest has been determined to exist when the criteria in the regulation have been met. When the criteria in the regulation have been met, there is a disruption of the economy that may result in loss of industry and jobs. If more than one index is used for granting extensions on timber sale contracts, it is unlikely that this criteria for substantial overriding public interest would be met.

Harvesting Objective

Section 223.52(a)(3)(i) of the proposed rule provided that MRCTA will not be used in timber sales with a primary objective of harvesting damaged, dead, or dying timber.

Comment. Nine respondents said that only those sales with accelerated harvest provisions should be exempt from MRCTA and, once the accelerated harvest is completed, the contract should be modified to include MRCTA. These respondents pointed out that many sales containing damaged, dead, or dying timber or salvage are not in need of urgent harvest because the material is not deteriorating rapidly.

Response. The Department agrees that some sales containing damaged, dead, or dying timber or salvage are not in need of urgent harvest because the material is not deteriorating rapidly. Therefore, this paragraph has been modified in the final rule to preclude use of MRCTA only when the sale is subject to rapid deterioration. Furthermore, an additional paragraph has been added to state that completion dates specified in such contracts will not be extended, based on MRCTA. Completion dates specified in timber sale contracts usually provide for shorter time periods for the rapid harvest of deteriorating timber or specific timeframes when road construction is required.

Stumpage Rate Adjustment

Section 223.52(a)(3)(ii) of the proposed rule provided that contracts that contain stumpage rate adjustment provisions will not include MRCTA provisions.

Comment. Seventeen respondents indicated that MRCTA and stumpage rate adjustment provisions fulfill separate and distinct functions in the timber sale contract and that both are needed.

Response. Market-related contract term addition provides additional time during a significant lumber market decline for purchasers to perform contracts and to avoid a situation requiring administrative intervention. Thus, the MRCTA procedure allows time for the market to improve and provides an opportunity to harvest a mixture of high and low priced sales. Conversely, the stumpage rate adjustment provisions allow the Government and purchaser to share the risk and reward of market fluctuations, protecting the agency's ability to provide an even flow of products in both good and bad markets. The stumpage rate adjustment procedure provides assistance by allowing a reduced price during lumber market declines. Stumpage rate adjustment and market-related contract term addition respond to different problems associated with lumber market declines and both procedures serve useful functions. Therefore, this paragraph is eliminated from the regulation.

Price Indices

Section 223.52(b)(1)(i) of the proposed rule provided that Bureau of Labor Statistics Producer Price Indices for Hardwood Lumber, Eastern Softwood Lumber, Western Softwood Lumber, and Wood Chips be used in MRCTA provisions.

Comment. Eight respondents expressed a need for a separate index for western hardwood sales.

Response. There is no index available that represents only western hardwood lumber, since the amount of hardwood lumber produced in the West is too small to provide a meaningful index. The amount of hardwood harvested from Forest Service land in the West is also very small. In addition, the available Hardwood Index is representative of most hardwood markets, including those in the West; therefore, no change is being made from the list of indices from what was proposed.

Comment. Eight respondents stated that the Wood Chip Index is based primarily on data on eastern markets (60 percent). They desired more data on western wood chip markets in this index in order to reflect market conditions as closely as possible.

Response. Data available for the producer price wood chip index is limited. Using the two lower level indices for short tons (eastern wood chips) and standard units (western wood chips) would weaken the reliability of both indices. Analysis has indicated little difference between the two indices in their ability to identify a severe chip market decline; therefore, the Department will continue using only one national Wood Chip Index in MRCTA.

Use of Preliminary Indices

Section 223.52(b)(1)(ii) of the proposed rule provided that preliminary index values will be revised when final index values are available, but that the identification of qualifying quarters will not be changed, based on the final index values.

Comment. Eight respondents indicated that to simplify recordkeeping and reduce the chance of error, the Forest Service should utilize preliminary indices and not revise indices when final data becomes available.

Response. The Department believes that the best available data should be used for determining qualifying quarters for MRCTA and that the chance of an undetected clerical error is slight. Therefore, preliminary indices must be updated as final data becomes available. However, as stated in § 223.52(b)(1)(ii) of the final rule, the determination of qualifying quarters, although based partially on preliminary data, will not be revised when final data becomes available.

Significant Market Decline

Section 223.52(b)(2) of the proposed rule provided that a significant market decline has occurred when, for 2 or more consecutive quarters, the index is 15 percent below the average index for the four highest of the previous 8 quarters. On average, this criteria indicates an approximate 25 percent decline in price over a 2-year period.

Comment. Five respondents stated that the preamble of the proposed rule makes an arbitrary, subjective, and unsupported claim that a significant lumber market decline is defined as a 25 percent decline over a 2-year period. These respondents proposed that the procedures be adjusted to ensure that a market similar to the 1991 lumber market decline trigger an MRCTA for all indices.

Response. Between June 1989 and December 1990, the inflation adjusted Softwood Lumber Index declined 16 percent, while the Douglas Fir Dressed lumber index declined 25 percent. Indices, based on a single species, are more volatile. One of the objectives of this MRCTA regulation is to base the drastic wood price determination on indices that are broader-based than a single species. The Department is satisfied with how indices are triggered using the new procedures and no change from the proposed MRCTA triggering procedures is being made.

Normal Operating Season

Section 223.52(c)(1) of the proposed rule provided that, after the first year of contract time is granted, additional time will be added during the ''normal operating season.''

Comment. Sixteen respondents stated that the term ''normal operating season'' should be redefined for this regulation, so that it includes only time periods which actually allow operations to occur. If the definition of normal operating season is not changed, these respondents suggested that additional time could be added day-for-day to the contract during periods when there are no restrictions on logging.

Response. The purpose of a normal operating season is to identify a period of time where additional contract operating time can be granted when the timber sale purchaser is delayed by weather or other reasons. The normal operating season should identify periods of time when the weather is likely to allow logging and operations are not restricted for other reasons. The Department does not believe that a different definition of normal operating season or new criteria for additional contract time is needed for the purposes of this rule.

Conclusion

The MRCTA rule provides additional contract time on timber sale contracts when severe market declines occur. This final rule revises the current rule to use indices that are more representative of the lumber market and to make technical improvements to procedures.

Regulatory Impact

This final rule has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. It has been determined that this is not a significant rule. This rule will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments. This rule will not interfere with an action taken or planned by another agency nor raise new legal or policy issues. In short, little or no effect on the national economy will result from this final rule. This action consists of administrative changes to regulations affecting timber sale contract length. The Producer Price Indices selected and revised procedures better reflect the cyclical nature of lumber markets and help the agency determine whether a drastic downturn has actually occurred in these particular markets. Finally, this action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. Accordingly, this final rule is not subject to OMB review under Executive Order 12866.

Moreover, this final rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and it is hereby certified that this action will not have a significant economic impact on a substantial number of small entities as defined by that Act. Failure to adopt these improved procedures for measuring drastic decline in wood product prices will subject both small purchasers and large purchasers to increased risk of default in those situations where current indices are not as valid as indicators of price decline as those in this final rule. Modifications to timber sale contracts have the intended effect of allowing purchasers of timber sales to complete timber sales when adverse conditions have occurred in the lumber market and when no other means of granting additional contract time are available.

Unfunded Mandates Reform

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the Department has assessed the effects of this rule on State, local, and tribal governments and the private sector. This rule does not compel the expenditure of $100 million or more by any State, local, or tribal governments or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

Environmental Impact

This final rule deals with business practices related to timber sale contracts and, as such, has no direct effect on the amount, location, or manner of timber offered for purchase. Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43180; September 18, 1992) excludes from documentation in an environmental assessment or impact statement ''rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions.'' The agency's assessment is that this rule falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement.

No Takings Implications

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, and it has been determined that the rule does not pose the risk of a taking of Constitutionally-protected private property. There are no Constitutionally-protected private property rights to be affected, since the contract provisions that implement this rule will only be used in new contracts or with contract modifications that are made at the request of the timber sale purchaser.

Civil Justice Reform Act

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This final rule (1) preempts all State and local laws and regulations that are in conflict or which would impede its full implementation; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging its provisions.

Controlling Paperwork Burdens on the Public

This final rule does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR 1320 and, therefore, imposes no paperwork burden on the public. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) and implementing regulations at 5 CFR part 1320 do not apply.

List of Subjects in 36 CFR Part 223

Administrative practice and procedure, Exports, Forests and forest

products, Government contracts, National forests, Reporting requirements, Timber sales.

Therefore, for the reasons set forth in the preamble, Part 223 of Title 36 of the Code of Federal Regulations is amended, as follows:

PART 223—SALE AND DISPOSAL OF NATIONAL FOREST SYSTEM TIMBER

1. The authority citation for part 223 continues to read:

Authority: 90 Stat. 2958, 16 U.S.C. 472a; 98 Stat. 2213, 16 U.S.C. 618, 104 Stat. 714–726, 16 U.S.C. 620–620j, unless otherwise noted.

2. Revise § 223.52 to read as follows:

§ 223.52 Market-related contract term additions.

(a) *Contract provision.* (1) Except as provided in paragraph (a)(3) of this section, each timber sale contract exceeding 1 year in length shall contain a provision for the addition of time to the contract term, under the following conditions:

(i) The Chief of the Forest Service has determined that adverse wood products market conditions have resulted in a drastic reduction in wood product prices applicable to the sale; and

(ii) The purchaser makes a written request for additional time to perform the contract.

(2) The contract term addition provision of the contract must specify the index to be applied to each sale. The Forest Supervisor shall determine, and select from paragraph (b) of this section, the index to be used for each sale based on the species and product characteristics, by volume, being harvested on the sale. The index specified shall represent more than one-half of the advertised volume.

(3) A market-related contract term addition provision shall not be included in contracts where the sale has a primary objective of harvesting timber subject to rapid deterioration.

(b) *Determination of drastic wood product price reductions.* (1) The Forest Service shall monitor and use Producer Price Indices, as prepared by the Department of Labor, Bureau of Labor Statistics (BLS), adjusted to a constant dollar base, to determine if market-related contract term additions are warranted.

(i) The Forest Service shall monitor and use only the following indices:

BLS producer price index	Industry code
Hardwood Lumber	2421# 1
Eastern Softwood Lumber	2421# 3
Western Softwood Lumber	2421# 4
Wood Chips	2421# 5

(ii) Preliminary index values will be revised when final index values become available, however, determination of a qualifying quarter will not be revised when final index values become available.

(2) The Chief of the Forest Service shall determine that a drastic reduction in wood product prices has occurred when, for 2 or more consecutive quarters, the applicable adjusted price index is less than 85 percent of the average of such adjusted index for the 4 highest of the 8 calendar quarters immediately prior to the qualifying quarter. A qualifying quarter is a quarter where the applicable adjusted index is more than 15 percent below the average of such index for the 4 highest of the previous 8 calendar quarters. Qualifying quarter determinations will be made using the Producer Price Indices for the months of March, June, September, and December.

(3) A determination, made pursuant to paragraph (b)(2) of this section, that a drastic reduction in wood product prices has occurred, shall constitute a finding that the substantial overriding public interest justifies the contract term addition.

(c) *Granting market-related contract term additions.* When the Chief of the Forest Service determines, pursuant to this section, that a drastic reduction in wood product prices has occurred, the Forest Service is to notify affected timber sale purchasers. For any contract which has been awarded and has not been terminated, the Forest Service, upon a purchaser's written request, will add 1 year to the contract's terms, except as provided in paragraphs (c)(1) through (4) of this section. This 1-year addition includes time outside of the normal operating season.

(1) Additional contract time may not be granted for those portions of the contract which have a required completion date or for those portions of the contract where the Forest Service determines that the timber is in need of urgent removal or that timber deterioration or resource damage will result from delay.

(2) For each additional consecutive quarter, in which a contract qualifies for a market-related contract term addition, the Forest Service will, upon the purchaser's written request, add an additional 3 months during the normal operating season to the contract.

(3) No more than twice the original contract length or 3 years, whichever is less, shall be added to a contract's term by market-related contract term addition.

(4) In no event shall a revised contract term exceed 10 years as a result of market-related contract term additions.

(d) *Recalculation of periodic payments.* Where a contract is lengthened as a result of market conditions, any subsequent periodic payment dates shall be delayed 1 month for each month added to the contract's term.

Dated: April 27, 1998.

Brian Eliot Burke,

Deputy Under Secretary, Natural Resources and Environment.

[FR Doc. 98–11626 Filed 4–30–98; 8:45 am]

BILLING CODE 3410–11–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–5983–3]

Technical Amendments to Approval and Promulgation of Air Quality Implementation Plans; State of Delaware: Open Burning and Non-CTG RACT Regulations; Correction of Effective Date Under Congressional Review Act (CRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; correction of effective date under CRA.

SUMMARY: On March 12, 1997 (62 FR 11329), the Environmental Protection Agency published in the **Federal Register** a direct final rule concerning the approval of a State Implementation Plan (SIP) revision submitted by the State of Delaware, consisting of two control measures to reduce volatile organic compound (VOC) emissions, which established an effective date of May 12, 1997. This document corrects the effective date of the rule to May 1, 1998 to be consistent with sections 801 to 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 and 808.

EFFECTIVE DATES: This rule is effective on May 1, 1998.

FOR FURTHER INFORMATION CONTACT: Tom Eagles, Office of Air, at (202) 260–5585.

SUPPLEMENTARY INFORMATION:

I. Background

Section 801 of the CRA precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the General Accounting Officer (GAO). EPA recently

discovered that it had inadvertently failed to submit the above rule as required; thus, although the rule was promulgated on the date stated in March 12, 1997, **Federal Register** document, by operation of law, the rule did not take effect on May 12, 1997, as stated therein. Now that EPA has discovered its error, the rule has been submitted to both Houses of Congress and the GAO. This document amends the effective date of the rule consistent with the provisions of the CRA.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, an agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without proposal and opportunity for comment because EPA merely is correcting the effective date of the promulgated rule to be consistent with the congressional review requirements of the Congressional Review Act as a matter of law and has no discretion in this matter. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause under 5 U.S.C. 553(b)(B). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since March 12, 1997, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 553(d)(3) and 808(2).

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the March 12, 1997, **Federal Register** document.

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, 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 General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this rule is effective on May 1, 1998. This rule is not a ''major rule'' as defined in 5 U.S.C. 804(2).

This final rule only amends the effective date of the underlying rule; it does not amend any substantial requirements contained in the rule. Accordingly, to the extent it is available, judicial review is limited to the amended effective date.

Dated: April 22, 1998.

Carol Browner,

Administrator.

[FR Doc. 98–11549 Filed 4–30–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

CFR 40 Part 52

[FRL–5981–8]

Technical Amendments to Approval and Promulgation of Section 182(f) Exemption to the Nitrogen Oxides (NO_X) Control Requirements for the Lake Charles Ozone Nonattainment Area; Louisiana; Correction of Effective Date Under Congressional Review Act (CRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction of effective date under CRA.

SUMMARY: On May 29, 1997 (62 FR 29072), the Environmental Protection Agency published in the **Federal Register** a final rule issuing final approval of a petition from the State of Louisiana requesting that the Lake Charles marginal ozone nonattainment area be exempt from applicable nitrogen oxides (NO_X) control requirements of section 182(f) of the Clean Air Act, which established an effective date of May 27, 1997. This document corrects the effective date of the rule to May 1, 1998, to be consistent with sections 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 and 808.

EFFECTIVE DATE: This rule is effective on May 1, 1998.

FOR FURTHER INFORMATION CONTACT: Tom Eagles, Office of Air at (202) 260–5585.

SUPPLEMENTARY INFORMATION:

I. Background

Section 801 of the CRA precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the General Accounting Office (GAO). EPA recently discovered that it had inadvertently failed to submit the above rule as required; thus, although the rule was promulgated on the date stated in the May 29, 1997, **Federal Register** document, by operation of law, the rule did not take effect on May 27, 1997, as stated therein. Now that EPA has discovered its error, the rule has been submitted to both Houses of Congress and the GAO. This document amends the effective date of the rule consistent with the provisions of the CRA.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, an agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting the effective date of the promulgated rule to be consistent with the congressional review requirements of the Congressional Review Act a matter of law and has no discretion in this matter. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause under 5 U.S.C. 553(b)(B). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since May 29, 1997, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 553(d)(3) and 808(2).

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as

specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the May 29,1997, **Federal Register** document.

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, 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 General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this rule is effective on May 1, 1998. This rule is not a ''major rule'' as defined in 5 U.S.C. 804(2).

This final rule only amends the effective date of the underlying rule; it does not amend any substantive requirements contained in the rule. Accordingly, to the extent it is available, judicial review is limited to the amended effective date.

Dated: April 22, 1998.

Carol Browner,

Administrator.

[FR Doc. 98–11545 Filed 4–30–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–5983–2]

Technical Amendments to Approval of Section 112(l) Program of Delegation; Wisconsin; Correction of Effective Date Under Congressional Review Act (CRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; correction of effective date under CRA.

SUMMARY: On April 1, 1997 (62 FR 15402), the Environmental Protection Agency published in the **Federal Register** a direct final rule concerning the approval of Wisconsin's request for delegation of the Federal Air Toxics program contained within 40 CFR parts 61 and 63 pursuant to section 112(l) of the Clean Air Act (CAA) as amended, which established an effective date of June 2, 1997. This document corrects the effective date of the rule of May 1, 1998 to be consistent with sections 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 and 808.

EFFECTIVE DATE: This rule is effective on May 1, 1998.

FOR FURTHER INFORMATION CONTACT: Tom Eagles, Office of Air and Radiation at (202) 260–5585.

SUPPLEMENTARY INFORMATION:

I. Background

Section 801 of the CRA precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the General Accounting Office (GAO). EPA recently discovered that it had inadvertently failed to submit the above rule as required; thus, although the rule was promulgated on the date stated in the April 1, 1997, **Federal Register** document, by operation of law, the rule did not take effect on June 2, 1997, as stated therein. Now that EPA has discovered its error, the rule has been submitted to both Houses of Congress and the GAO. This document amends the effective date of the rule consistent with the provisions of the CRA.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, an agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting the effective date of the promulgated rule to be consistent with the congressional review requirements of the Congressional Review Act as a matter of law and has no discretion in this matter. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause under 5 U.S.C. 553(b)(B). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since April 1, 1997, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 553(d)(3) and 808(2).

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the April 1, 1997, **Federal Register** document.

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, 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 General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this rule is effective on May 1, 1998. This rule is not a ''major rule'' as defined in 5 U.S.C. 804(2).

This final rule only amends the effective date of the underlying rule; it does not amend any substantive requirements contained in the rule. Accordingly, to the extent it is available, judicial review is limited to the amended effective date.

Dated: April 22, 1998.

Carol Browner,

Administrator.

[FR Doc. 98–11550 Filed 4–30–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 76

[FRL–6006–2]

RIN 2069–AF48

Acid Rain Program; Nitrogen Oxides Emission Reduction Program

AGENCY: Environmental Protection Agency.

ACTION: Final rule in response to court order.

SUMMARY: This action removes a provision of a final rule concerning emission limitations for the second phase of the Nitrogen Oxides Reduction Program under Title IV of the Clean Air Act (''Act''). The provision was recently remanded to EPA by the U.S. Court of Appeals for the District of Columbia Circuit at EPAs request.

EFFECTIVE DATE: May 1, 1998.

FOR FURTHER INFORMATION CONTACT: Dwight C. Alpern, Acid Rain Division (6204J), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460, (202) 564–9151.

SUPPLEMENTARY INFORMATION: On April 13, 1995, EPA promulgated nitrogen oxides (''NO_X'') emission limitations (in lb/mmBtu) for certain types of coal-fired utility boilers for the Acid Rain Program under title IV of the Act. 60 FR 18751 (1995). EPA set limits of 0.45 and 0.50 lb/mmBtu respectively for tangentially fired boilers and dry bottom, wall fired boilers (''Group 1 boilers''). On December 19, 1996, EPA promulgated additional NO_X emission limitations for Phase II of the program, i.e., revised limits for Group 1 boilers and new limits for cell burner, cyclone, wet bottom, and vertically fired boilers (''Group 2 boilers''). 61 FR 67112 (1996). In setting the December 19, 1996 NO_X limits, EPA also promulgated a final rule provision (i.e. § 76.16) that addressed the relationship between NO_X requirements under titles I and IV of the Act and provided a mechanism under which the December 19, 1996 NO_X limits would become inapplicable to certain boilers. As part of recent litigation in which the December 19, 1996 regulations were upheld by the Court (*Appalachian Power* v. *U.S. EPA*, 135 F.3d 791 (D.C. Cir., 1998)), EPA requested a remand, which was granted by the Court, of § 76.16 in order to provide additional opportunity for public comment on the provision. In todays action, EPA is removing the existing, final provision in § 76.16 and will take no further action on the provision in the instant rulemaking proceeding. In a separate, future rulemaking proceeding, EPA intends to propose a similar provision (i.e., as a new, proposed § 76.16) and provide an additional opportunity for public comment.

For the reasons discussed above, this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735 (1993)). For the same reasons, this action does not impose annual costs of $100 million or more, will not significantly or uniquely affect small governments, and is not a significant federal intergovernmental mandate. With regard to this action, the Agency thus has no obligations under sections 202, 203, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (P.L. 104–4). Moreover, since this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, the action is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.).*

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 action and any 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 document in the **Federal Register**. This action is not a ''major rule'' as defined in 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 76

Environmental protection, Acid rain, Air pollution control, Electric utilities, Nitrogen oxides, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: April 24, 1998.

Richard D. Wilson,

Assistant Administrator for Air and Radiation.

Accordingly, for the reasons set out above, 40 CFR part 76 is amended as follows:

PART 76—[AMENDED]

1. The authority citation for part 761 continues to read as follows:

Authority: 42 U.S.C. 7601 and 7651, *et seq.*

§ 576.16 [Removed]

2. Section 76.16 is removed.

[FR Doc. 98–11662 Filed 4–30–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–5983–5]

Technical Amendments to Use of Alternative Analytical Test Methods in the Reformulated Gasoline Program; Correction of Effective Date Under Congressional Review Act (CRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction of effective date under CRA.

SUMMARY: On November 13, 1996 (61 FR 58303), the Environmental Protection Agency published in the **Federal Register** a final rule concerning the extension of the time period during which certain alternative analytical test methods may be used in the Federal Reformulated Gasoline (RFG) program, which established an effective date of January 13, 1997. This document corrects the effective date of the rule to May 1, 1998 to be consistent with sections 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 and 808.

EFFECTIVE DATE: This rule is effective on May 1, 1998.

FOR FURTHER INFORMATION CONTACT: Tom Eagles, Office of Air and Radiation at (202) 260–5585.

SUPPLEMENTARY INFORMATION:

I. Background

Section 801 of the CRA precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the General Accounting Office (GAO). EPA recently discovered that it had inadvertently failed to submit the above rule as required; thus, although the rule was promulgated on the date stated in the November 13, 1996, **Federal Register** document, by operation of law, the rule did not take effect on January 13, 1997, as stated therein. Now that EPA has discovered its error, the November 13, 1996, rule has been submitted to both Houses of Congress and the GAO. This document amends the effective date of the rule consistent with the provisions of the CRA.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable,

unnecessary or contrary to the public interest, an agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting the effective date of the promulgated rule to be consistent with the congressional review requirements of the Congressional Review Act as a matter of law and has no discretion in this matter. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause under 5 U.S.C. 553(b)(B). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since November 13, 1996, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 553(d)(3) and 808(2).

Because the delay in the effective date was caused by EPA's inadvertent failure to submit the rule under the CRA, EPA does not believe that affected entities that acted in good faith relying upon the effective date stated in the November 13, 1996, **Federal Register** should be penalized if they were complying with the rule as promulgated.

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the November 13, 1996, **Federal Register** document.

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, 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 General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this rule is effective on May 1, 1998. This rule is not a ''major rule'' as defined in 5 U.S.C. 804(2).

This final rule only amends the effective date of the underlying rule; it does not amend any substantive requirements contained in the rule. Accordingly, to the extent it is available, judicial review is limited to the amended effective date.

Dated: April 22, 1998.

Carol Browner,

Administrator.

[FR Doc. 98–11548 Filed 4–30–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[FRL–5983–6]

Technical Amendments to Sulfentrazone; Establishment of Tolerances; Correction of Effective Date Under Congressional Review Act (CRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction of effective date under CRA.

SUMMARY: On March 10, 1997 (62 FR 10703), the Environmental Protection Agency published in the **Federal Register** a final rule concerning the establishment of tolerances for residues of the herbicide sulfentrazone (N-[2,4-dichloro-5-[4-(difluromethyl)-4,5-dihydro-3-methyl-5-oxo-1H-1,2,4-triazol-1-yl]pheny]methanesulfonamide) and its major metabolite 3-hydroxymethyl sulfentrazone (N-[2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-hydroxymethyl-5-oxo-1H-1H-1,2,4-triazol-1-yl]pheny]methanesulfonamide), in or on the raw agricultural commodity soybean seed at 0.05 ppm and for combined inadvertent residues of sulfentrazone, and its metabolites, 3-hydroxymethyl sulfentrazone and 3-desmethyl sulfentrazone [N-2[2,4-dichloro-5[4-(difluoromethyl)-4,5-dihydro-5-oxo-1H-1,2,4-triazol-1-yl]phenyl]methanesulfonamide] in cereal grains (excluding sweet corn) forage at 0.2 ppm, straw at 0.6 ppm, hay at 0.2 ppm, grain at 0.1 ppm, stover at 0.1 ppm, bran at 0.15 ppm and hulls at 0.30 ppm. The March 10, 1997, document established an effective date of March 10, 1997. This document corrects the effective date of the rule May 1, 1998 to be consistent with sections 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 and 808.

EFFECTIVE DATE: This rule is effective on May 1, 1998.

FOR FURTHER INFORMATION CONTACT: Angela Hofman, Office of Pesticide Programs and Toxic Substances at (202) 260–2922.

SUPPLEMENTARY INFORMATION:

I. Background

Section 801 of the CRA precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the General Accounting Office (GAO). EPA recently discovered that it had inadvertently failed to submit the above rule as required; thus, although the rule was promulgated on the date stated in the March 10, 1997, **Federal Register** document, by operation of law, the rule did not take effect on March 10, 1997, as stated therein. Now that EPA has discovered its error, the rule has been submitted to both Houses of Congress and the GAO. This document amends the effective date of the rule consistent with the provisions of the CRA.

Section 408(e)(2) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e)(2), provides that the Administrator, before issuing a final rule under section 408(e)(1), shall issue a proposed rule and allow 60 days for public comment unless the Administrator for good cause finds that it would be in the public interest to provide a shorter period. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting the effective date of the promulgated rule to be consistent with the congressional review requirements of the Congressional Review Act as a matter of law and has no discretion in this matter. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause under section 408(e)(2). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since March 10, 1997, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 808(2). Under section 408(g)(1) of FFDCA, today's rule is effective upon publication.

Because the delay in the effective date was caused by EPA's inadvertent failure to submit the rule under the CRA, EPA does not believe that affected entities that acted in good faith relying upon the effective date stated in the March 10, 1997, **Federal Register** should be penalized if they were complying with the rule as promulgated.

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the March 10, 1997, **Federal Register** document.

Pursuant to 5 U.S.C. 801(a)(1)(a), added by the Small Business Regulatory Enforcement Fairness Act of 1996, 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 General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this rule is effective on May 1, 1998. This rule is not a ''major rule'' as defined in 5 U.S.C. 804(2).

This final rule only amends the effective date of the underlying rule; it does not amend any substantive requirements contained in the rule. Accordingly, to the extent it is available, judicial review is limited to the amended effective date.

Dated: April 22, 1998.

Carol Browner,

Administrator.

[FR Doc. 98–11547 Filed 4–30–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[FRL–5983–1]

Technical Amendments to Propiconazole Pesticide Tolerances for Emergency Exemptions Correction; Correction of Effective Date Under Congressional Review Act (CRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction of effective date under CRA.

SUMMARY: On May 2, 1997 (62 FR 24045), the Environmental Protection Agency published in the Federal Register a final rule that corrected the tolerance level for cranberries that had been listed incorrectly in a document published in the **Federal Register** on April 11, 1997, establishing time-limited tolerances for combined residues of the pesticide propiconazole in or on the food commodities almonds and cranberries. The May 2, 1997, notice established an effective date of May 2, 1997. This document corrects the effective date of the rule to May 1, 1998, to be consistent with sections 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 and 808.

EFFECTIVE DATE: This rule is effective May 1, 1998.

FOR FURTHER INFORMATION CONTACT: Angela Hofman, Office of Pesticide Programs and Toxic Substances at (202) 260–2922.

SUPPLEMENTARY INFORMATION:

I. Background

Section 801 of the CRA precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the General Accounting Office (GAO). EPA recently discovered that it had inadvertently failed to submit the above rule as required; thus, although the rule was promulgated on the date stated in the May 2, 1997, **Federal Register** document, by operation of law, the rule did not take effect on May 2, 1997, as stated therein. Now that EPA has discovered its error, the rule has been submitted to both Houses of Congress and the GAO. This document amends the effective date of the rule consistent with the provisions of the CRA.

Section 408(e)(20 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e)(2), provides that the Administrator, before issuing a final rule under section 408(e)(1), shall issue a proposed rule and allow 60 days for public comment unless the Administrator for good cause finds that it would be in the public interest to provide a shorter period. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting the effective date of the promulgated rule to be consistent with the congressional review requirements of the Congressional Review Act as a matter of law and has no discretion in this matter. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause under section 408(e)(2). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since May 2, 1997, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 808(2). Under section 408(g)(1) of FFDCA, today's rule is effective upon publication.

Because the delay in the effective date was caused by EPA's inadvertent failure to submit the rule under the CRA, EPA does not believe that affected entities that acted in good faith relying upon the effective date stated in the May 2, 1997, **Federal Register** should be penalized if they were complying with the rule as promulgated.

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, 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 General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this rule is effective on May 1, 1998. This rule is not a ''major rule'' as defined in 5 U.S.C. 804(2).

This final rule only amends the effective date of the underlying rule; it does not amend any substantive requirements contained in the rule. Accordingly, to the extent it is available, judicial review is limited to the amended effective date.

Dated: April 22, 1998.

Carol Browner,

Administrator.

[FR Doc. 98–11551 Filed 4–30–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[FRL–5982–9]

Technical Amendments to Significant New Uses of Certain Chemical Substances Correction; Correction of Effective Date Under Congressional Review Act (CRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction of effective date under CRA.

SUMMARY: On May 21, 1997 (62 FR 27694), the Environmental Protection Agency published in the **Federal Register** a final rule concerning the correction of two cross-references in a significant new use rule issued pursuant to section 5 of the Toxic Substances Control Act, 15 U.S.C. 604, on December 2, 1996 (61 FR 63726, codified at 40 CFR 721.4484). The correction rule established an effective date of January 31, 1997. This document corrects the effective date of the correction rule to May 1, 1998, to be consistent with sections 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 and 808.

EFFECTIVE DATE: This rule is effective on May 1, 1998.

FOR FURTHER INFORMATION CONTACT: Angela Hofmann, Office of Pesticides Prevention and Toxic Substance, at (202) 260–2922.

SUPPLEMENTARY INFORMATION:

I. Background

Section 801 of the CRA precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the General Accounting Office (GAO). EPA recently discovered that it had inadvertently failed to submit the above rule as required; thus, although the rule was promulgated on the date stated in the May 21, 1997, **Federal Register** document, by operation of law, the rule did not take effect on January 31, 1997, as stated therein. Now that EPA has discovered its error, the rule has been submitted to both Houses of Congress and the GAO. This document amends the effective date of the rule consistent with the provisions of the CRA.

Because the delay in the effective date was caused by EPA's inadvertent failure to submit the rule under the CRA, EPA does not believe that affected entities that acted in good faith relying upon the effective date stated in the May 21, 1997, **Federal Register** should be penalized if they were complying with the rule as promulgated

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 76229, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, 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 General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this rule is effective on May 1, 1998. This rule is not a ''major rule'' as defined in 5 U.S.C. 804(2).

This final rule only amends the effective date of the underlying rule; it does not amend any substantive requirements contained in the rule. Accordingly, to the extent it is available, judicial review is limited to the amended effective date.

Dated: April 22, 1998.

Carol Browner,

Administrator.

[FR Doc. 98–11552 Filed 4–30–98; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 43, 63, and 64

[IB Docket Nos. 97–142 and 95–22, FCC 97–398]

Foreign Participation in the U.S. Telecommunications Market

AGENCY: Federal Communications Commission.

ACTION: Final rule; petitions for reconsideration; corrections.

SUMMARY: The Federal Communications Commission published in the **Federal Register** of December 9, 1997, a summary of a Report and Order that it adopted on November 25, 1997, that created a new regulatory framework for international telecommunications. The Commission inadvertently omitted one sentence from a revised section of the rules. This document corrects that omission. This document also amends the December 9 publication to make clear that the Commission's order disposed of petitions for reconsideration in a related docket.

EFFECTIVE DATE: February 9, 1998.

FOR FURTHER INFORMATION CONTACT: Douglas A. Klein or Susan O'Connell, International Bureau, (202) 418–1460.

SUPPLEMENTARY INFORMATION:

1. In FR Doc. No. 97–32013, published in the **Federal Register** of December 9, 1997 (62 FR 64741), the Commission inadvertently omitted a sentence from the revised § 63.18(e)(4)(ii)(A). This correction adds the necessary sentence. The Commission included this correction in an Errata released on January 12, 1998.

2. The Commission also now wishes to clarify that FR Doc. No. 97–32013 was also an action disposing of petitions for reconsideration filed in IB Docket No. 95–22, Market Entry and Regulation of Foreign-Affiliated Entities.

Corrections

In FR Doc. 97–32013, published on December 9, 1997 (62 FR 64741), make the following corrections.

1. On page 64741, in column 2, line 4 of the document is corrected to read ''IB Docket Nos. 97–142 and 95–22, FCC 97–398.''

2. On page 64741, in column 2, line 9 of the document is corrected to read; Final rule; petitions for reconsideration.

3. On page 64756, in column 2, add the following sentence before the final sentence of § 63.18(e)(4)(ii)(A):

§ 63.18 Contents of applications for international common carriers.

* * * * *

(e) * * *

(4) * * *

(ii) * * *

(A) * * * Except as provided in paragraph (e)(4)(ii)(B) of this section, any carrier that seeks to provide international switched basic services over its authorized private line facilities between the United States and a non-WTO Member country for which the Commission has not previously authorized the provision of switched services over private lines shall demonstrate that settlement rates for at least 50 percent of the settled U.S.-billed traffic between the United States and the country at the foreign end of the private line are at or below the benchmark settlement rate adopted for that country in IB Docket No. 96–261 and that the country affords resale opportunities equivalent to those available under U.S. law.* * *

Federal Communications Commission.

Magalie Roman Salas,

Secretary

[FR Doc. 98–11615 Filed 4–30–98; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 1

[GC Docket No. 97–113; FCC 98–56]

Electronic Filing of Documents in Rulemaking Proceedings

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In order to implement the changes mandated by the Telecommunications Act of 1996 to serve the public more quickly and efficiently, the Commission is expanding the use of electronic filing in FCC proceedings. The Commission is amending its rules to permit the filing of pleadings and comments in rulemaking proceedings (except broadcast allotment proceedings), petitions for rulemaking (except in broadcast allotment proceedings), pleadings in Notice of Inquiry proceedings, and petitions for reconsideration and all responsive pleadings in these proceedings, including ex parte presentations and summaries or oral ex parte presentations in these proceedings, over the Internet. This proceeding will make it easier for the public to participate in FCC rulemaking proceedings and is an important step not only in the Commission's ongoing efforts to streamline and improve the Commission's decision making processes.

EFFECTIVE DATE: June 30, 1998.

FOR FURTHER INFORMATION CONTACT: *Legal information:* Laurence H. Schecker, Office of General Counsel, 202–418–1720; *Technical information:* Sheryl Segal, Office of Public Affairs, 202–418–0265.

SUPPLEMENTARY INFORMATION:

1. In this Order, we amend parts 0 and 1 of our Rules to allow parties to file comments and other pleadings electronically via the Internet in FCC informal notice and comment rulemaking proceedings conducted under section 553 of the Administrative Procedure Act, 5 U.S.C. 553, except for broadcast allotment proceedings. We will also permit the electronic filing of all pleadings and comments in proceedings involving petitions for rulemaking (except in broadcast allotment proceedings) and Notice of Inquiry proceedings (NOIs). We will evaluate the new rules and assess the operation of the system as we gain experience to determine whether there is any need to make modifications, and whether it is feasible to expand further the applicability of the system beyond rulemaking-related proceedings and possibly ultimately to require electronic filing. The electronic comment filing system (ECFS) is now operational and can be used to file comments electronically in individual proceedings designated by the Commission. When the rule changes adopted in this order go into effect, the ECFS may be used for electronic filing of comments as specified in this order. It is anticipated that the transition to the ECFS as the official system of record will be completed by July 1998. A Public Notice will be issued at that time.

2. *Formal Status of Electronically Filed Comments.* Every commenting party supported the concept of electronic filing of comments in rulemaking proceedings. We believe that the electronic transmission of comments to the Commission will make it easier for the public to participate in our proceedings, encouraging greater and more diverse public input. This procedure may well reduce the cost of filing comments, because parties will no longer have to file multiple paper copies and arrange for mailing or messenger delivery if the party to be served agrees to be served electronically. The ECFS will automatically catalogue all of the comments, making it easier to review comments. Electronic comment filing will also make it easier for people with disabilities to participate in our proceedings. As the National Association of the Deaf observed, the deaf and hard of hearing community relies on the Internet as an important form of communication, and the various costs and complications of filing comments on paper has often prevented these individuals from sharing their views with the Commission. Furthermore, this procedure will allow for the on-line review of comments filed with the Commission by the staff and by the public. We believe that increased public participation in our decision making process will allow us to consider a broader range of opinions and input, improving our decision making process. For all these reasons, we strongly encourage the public to use the ECFS system.

3. We note that for now electronic filing procedures will be used in general rulemaking proceedings. The procedure will not be available for rules of ''particular applicability'' (e.g., tariff investigations) unless the Commission has specifically permitted such filings in those types of proceedings. Further, electronic filing may be used in general rulemaking proceedings even when the Commission has dispensed with the use of notice and comment procedures under the Administrative Procedure Act's exceptions. In such rulemaking proceedings, electronic filing could be used for petitions for reconsideration, for example.

4. The choice of the Internet as the filing mechanism generally was supported by the commenting parties, although some commenters questioned whether bandwidth limitations might affect the use of the Internet. Bandwidth is not an issue here because documents will be transmitted to us electronically and even large documents will not be of a size to hamper downloading. Our technical staff is working to ensure that the public easily be able to gain access to and use the ECFS. Some commenters made specific suggestions for the electronic filing interface and recommended that changes to the ''quickstart'' interface be made available for public testing. We are reviewing these suggestions and the final ECFS instructions will explain the Commission's interface choices. Input from the public and FCC staff on the ECFS interface is important, and we will

implement periodic reviews to consider changes to the system in the future.

5. As we have noted, we strongly encourage the public to utilize the ECFS system to file comments electronically. However, the public may continue to file comments by traditional means, on paper. We will treat comments filed on paper and comments filed electronically the same. If a party files its comments electronically, there is no need to file a paper version of the document, and we discourage parties from filing both electronically and on paper. If both electronic and paper versions are filed, we will treat the electronic version as the original, official copy, and one paper copy should be filed. Electronic comments that are received before the applicable deadline and meet the necessary formalities will be treated as formal filings, and comments that are received after the deadlines, or that fail to meet the necessary formalities, will be treated as informal or ex parte filings.

6. *Extension to Other Related Proceedings.* We agree with commenters that electronic filing should be permitted for petitions for rulemaking (except in broadcast allotment proceedings), pleadings in NOIs, and petitions for reconsideration and all responsive pleadings in the foregoing proceedings and rulemaking proceedings (except broadcast allotment proceedings). We see no reason to phase in these additions to our electronic comment filing initiative over time. We will amend our rules accordingly. In the future, after the Commission and the public has had experience with the ECFS system, we anticipate adding other types of pleadings and documents to the electronic filing system and moving toward an all-electronic filing system.

7. *Signatures.* Extension of the ECFS to proceedings other than rulemaking proceedings, we might have to amend the signature rule, 47 CFR 1.52, which requires that ''[t]he original of all petitions, motions, pleadings, briefs, and other documents filed'' by counsel or by any party not represented by counsel must be signed. For example, in rulemaking proceedings, petitions for reconsideration, oppositions, and replies must conform to § 1.52, 47 CFR 1.52. One commenter asserted that filing electronically results in the lack of a traceable signature. The only other parties commenting on this question simply referred to electronic signatures as part of their discussion of security measures. Sections 1.743(e) and 1.913(e) of our rules, 47 CFR 1.743(e) and 1.913(e), currently permit electronic signatures for certain applications. Under these rules, ''the signature on an electronically filed application will consist of the electronic equivalent of the typed name of the individual.'' We believe these procedures can be applied to documents filed electronically through the ECFS, and we will amend § 1.52 of our rules, 47 CFR 1.52, to define electronic signatures similarly for documents filed in this manner.

8. *Ex Parte Submissions.* We agree that the ECFS can be used for summaries of permissible ex parte presentations in rulemaking proceedings (except broadcast allotment proceedings). If a party is filing a notice for the record summarizing an oral ex parte meeting in a permit-but-disclose rulemaking, it may do so electronically or on paper. In proceedings in which electronic filing is permitted, paper filings will also be scanned into the system. The summaries of ex parte presentations will be available to all Commissioners and Commission staff via the FCC's Internet. In addition, the ECFS will, on a daily basis, generate a listing of all documents filed electronically or scanned into the ECFS which will be provided to the Commissioners, Bureaus, and Offices. Thus, Commission employees involved in oral ex parte presentations will receive notice of or and have immediate access to copies of the summaries of oral ex parte presentations. In view of this, in proceedings in which electronic filing is permitted, we are modifying the current requirement in § 1.1206(b)(2) of our rules, 47 CFR 1.1206(b)(2), that persons making oral ex parte presentations must submit copies of the summary of the presentation to the Commissioner or Commission employee involved in the oral presentation. Written ex parte presentations in these proceedings can be filed electronically, or, if filed on paper, will be scanned into the system by Commission personnel. We note that we are permitting electronic filings in NOIs and petition for rulemaking proceedings (except broadcast allotment proceedings). These proceedings are exempt for purposes of ex parte filing rules. In addition, ex parte comments will be able to be filed electronically in these proceedings, as Bell Atlantic/NYNEX suggests. We will reassess the electronic filing of summaries of ex parte presentations as we gain more experience with the ECFS system.

9. *Security.* The FCC's Internet servers are protected by a ''firewall'' that prevents outside users from gaining access to our internal data. The ECFS has been designed to work with the firewall to keep the master database of comments secure. Security measures make it more difficult for members of the public to use electronic filing. A major goal of the ECFS is to make it easier to file information with, and retrieve information from, the FCC. Unlike specialized FCC activities, rulemakings are open to all members of the public. Currently, we have no special security checks for paper filings. Anyone could mail or hand-deliver a set of paper comments claiming to be a certain party, and the Commission would have to rely on the real party to identify the ''imposter'' comments. The same standards should work just as well for electronic comments. We note that in proceedings in which electronic filing has been permitted thus far, we have encountered no problems. We have adequate measures in place to deal with abusive or frivolous filings. We will not take further steps at this time, because we agree with commenting parties that such instances can be addressed on a case-by-case basis.

10. Submission of materials through the ECFS will post them to the World Wide Web. We anticipate that parties submitting confidential materials (either those presumptively confidential or those for which the party seeks confidentiality) will continue to do so on paper. It is administratively difficult to deal with confidentiality requests in the rulemaking context because of the large number of parties typically involved.

11. *Filing Deadline Issues.* We proposed, at least initially, to keep the same filing deadline (5:30 p.m. eastern time) for electronic comments as we currently have for paper comments. Some commenters agree that we should retain the status quo. Other commenters suggested that because the ECFS will be accessible 24 hours a day through the Internet, the filing deadline should be pushed back until midnight. Other parties indicated that the date and time electronic comments are received by the Commission, whenever that occurred, should govern, that is, comments would be received at all times but if received after 5:30 p.m. on a business day, would be deemed to be filed the next business day. Electronic filing makes it technically possible for us to extend our filing deadline later in the day, and we wish to encourage electronic filing. We will therefore permit electronic comments filed via the ECFS to be made until midnight of the date due. Our rules will be amended accordingly. We note that a time stamp mechanism so that the filing date of each comment can be confirmed has already been built into the ECFS, along with automatic notification to the commenter of the official filing date and time.

12. *Extensions of Time.* We will amend our rules (47 CFR 0.231(i)) to delegate to the Secretary authority to grant requests for extensions of time based on operational or congestion problems in appropriate circumstances. We will reassess these procedures after we have had some experience to determine whether congestion and outages are likely to be a significant problem.

13. *Formatting and Copy Issues.* The ECFS has been designed to accept filings created in the following major word processing formats—Microsoft Word, WordPerfect, Adobe Acrobat, and ASCII text—as well as Microsoft Excel for spreadsheets. These formats represent the overwhelming majority of the market today, and virtually every other word processor will export files in these formats. For viewing and printing, the ECFS will automatically convert files into Adobe Acrobat Portable Document Format (PDF) so that users can access the formatted files even if they do not have the word processor used to create the document. The ECFS documentation and on-line help will specify the acceptable formats. We encourage electronic filers to utilize sufficiently large fonts to ensure ease of reading documents. Over time, as users' needs change and technology advances, we will consider adding additional file formats if technically feasible. Because an earlier version of Microsoft Internet Explorer did not support a specific technical feature necessary for uploading files into the FCC's database system, the quickstart system in use for the past months only allowed uploading using Netscape Navigator. Microsoft has since added the necessary feature in the current version of Internet Explorer (4.0), which is free to the public, so the final ECFS implementation will support both the major browsers. We anticipate that other browsers will be able to use the system, and will work to include necessary features as needed. Documentation for the ECFS will provide users with additional information on compatible software.

14. Non-electronic attachments to electronic filings should be filed the same day as the electronic filing. We encourage parties to scan their attachments as PDF files and submit them electronically. If parties cannot do so, we will attempt to scan the non-electronic portion of the filing into the ECFS. If it is not possible to scan the materials, the party submitting such material should reference it in the pleading and the materials will be included in the record. Documents filed electronically should be self-contained. No hyperlinks to other sites on the Internet will be permitted in electronically-filed documents. To allow hyperlinks would permit parties to expand, perhaps endlessly, the materials submitted to us for consideration. It also could conceivably result in linkage to inappropriate sites. We will, however, consider this issue as part of our evaluation of the ECFS.

15. We prefer that parties utilize the ECFS system, but paper filings can continue to be made accompanied by diskettes. As the system matures, we will consider whether a bulletin board system should be added and whether acceptance of CD–ROM is advisable.

16. The ECFS is designed to convert automatically all filings into Adobe Acrobat (PDF) format. PDF preserves document formatting and pagination when viewed on different systems, although in some cases there may be slight differences between the paper and on-line version. Because there may be deviations from the paper and on-line versions, a word limit makes sense, since all major word processors include a word count feature. Also, this measurement is more consistent than file size, which may vary with the word processor and may change during electronic transmission. One double-spaced page is roughly 250 words. Therefore, we will modify our rules to allow either a maximum number of pages or a maximum number of words (calculated at 250 words per page). We encourage parties filing on paper to number their paragraphs. However, we will not require paragraph numbering and failure to include paragraph numbers will not be a reason for us to disregard a comment.

17. Because electronic submissions will be available simultaneously to the staff via the FCC Intranet, there is no need for filing multiple copies. Only one official copy of an electronic filing is necessary, unless the Commission has specified that additional electronic copies must be filed, and we will amend our rules accordingly. Commission staff will handle internal distribution of documents if such distribution is required. However, we do not anticipate this will be necessary because the ECFS provides all Commission staff, including the Commissioners, with almost immediate access to pleadings filed electronically. As we previously noted, the ECFS will also generate on a daily basis a listing of documents filed electronically with or scanned into the system. This listing will be distributed to all Commissioners, Bureaus, and Offices. The ECFS thus makes it unnecessary for parties to provide courtesy copies of pleadings directly to Commissioners, Bureaus, and Offices. Although we will not prohibit courtesy filings, we strongly discourage the filing of excessive copies of documents. If a party wishes to make the additional effort and expenditure of providing one courtesy copy of a pleading directly to a Commissioner, Bureau, or Office, they may do so. Courtesy copies, however, may only be provided on paper. Parties must mark such copies ''Courtesy Copy'' on the title page to avoid confusion as to whether a document is an original or copy. We will continue regularly to reassess our internal distribution methods as we gain more experience with this system.

18. The ECFS was designed to allow an FCC staff person to verify comments after they have been filed electronically and before they are made available for viewing and downloading by the public through the Internet. This intermediate step is designed to ensure that parties have provided essential information, such as the docket number. Paper documents must still be scanned into the system, as with the current RIPS system, which will take slightly longer for them to be available electronically. In addition, determinations may need to be made as to whether a pleading is late filed, ex parte, confidential correspondence, or filed within the Sunshine Period. Other than these processing steps, electronically-submitted comments can be made available to the public immediately after filing. It seems reasonable to commit to having comments available on-line through the FCC's World Wide Web site for downloading the day after the filing deadline (except materials that must be scanned into the ECFS or in extraordinary cases), and we will endeavor to do so. Some parties ask that comments be available from the Commission's copy contractor by 8:30 a.m. following the filing deadline. This would seem to be an overly stringent standard. The copy contractor will receive an electronic mail notification list of all filings at the same time as the Bureaus and copies will be available as soon as they are processed by the Secretary's Office.

19. In some cases, parties must serve copies of their filings on all other participants in a proceeding. Specifically, in rulemaking proceedings, oppositions to petitions for reconsideration and replies to such oppositions must be served on certain parties. Commenters generally agreed that, even when comments were filed electronically with the FCC, service on other parties would have to be on paper unless those parties stated that they would accept electronic service. A party must agree to accept electronic service

at their premises before service may be accomplished in that manner. We are exploring adding a field on the ECFS to allow parties to check whether they will accept electronic service. In the meantime, parties should indicate their willingness to accept electronic filing in their pleadings. We may explore other approaches in the future, but it is important to gain experience with the practice of electronic filing before attempting to do so. When parties agree to electronic service, service in that manner will be considered the same as facsimile service. We will amend the rule accordingly.

20. *Final Regulatory Flexibility Act Certification*. We previously certified that the proposed rules ''[would] not, if promulgated, have a significant economic impact on a substantial number of small entities.'' No comments were received concerning this certification. Our purpose in granting electronically filed comments comparable legal treatment to comments filed on paper is to simplify and clarify the existing rules, and to give parties additional options for filing comments. The modifications do not impose any additional compliance burden on persons dealing with the Commission, including small entities. All parties will still be permitted to file comments on paper, exactly as they do today. We anticipate that the revisions we adopt here will make it somewhat easier for small entities as well as others that wish to file and review comments electronically to do so. Accordingly, we certify that the rules will not have a significant economic impact on a substantial number of small entities. In addition, the Office of Public Affairs, Reference Operations Division, shall send a copy of this Report and Order, including this certification, to the Chief Counsel for Advocacy of the Small Business Administration.

21. Accordingly, it is ordered that pursuant to sections 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), and 303(r), Parts 0 and 1 of the Commission's Rules are amended as set forth in the Rule Changes below.

List of Subjects

47 CFR Part 0

Organization and functions (Government agencies).

47 CFR Part 1

Administrative practice and procedure.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

Parts 0 and 1 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read as follows:

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

2. Section 0.231 is amended by revising paragraph (i) to read as follows:

§ 0.231 Authority delegated.

* * * * *

(i) The Secretary, acting under the supervision of the Managing Director, serves as the official custodian of the Commission's documents and shall have authority to appoint a deputy or deputies for the purposes of custody and certification of documents located in Gettysburg, Pennsylvania or other established locations. The Secretary is delegated authority to rule on requests for extensions of time based on operational problems associated with the Commission's electronic comment filing system. See § 1.46 of this chapter.

3. Section 0.401 is amended by adding paragraph (a)(1)(iii) to read as follows:

§ 0.401 Location of Commission offices.

* * * * *

(a) * * *

(1) * * *

(iii) Electronic filings, where permitted, must be transmitted as specified by the Commission or relevant Bureau or Office.

* * * * *

PART 1—PRACTICE AND PROCEDURE

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

Authority: 15 U.S.C. 79 *et seq.*: 47 U.S.C. 151, 154(i), 154(j), 155, 225, and 303(r).

5. Section 1.4 is amended by revising paragraph (f) and the text of paragraph (h) preceding the examples to read as follows:

§ 1.4 Computation of time.

* * * * *

(f) Except as provided in § 0.401(b) of this chapter, all petitions, pleadings, tariffs or other documents not required to be accompanied by a fee and which are hand-delivered must be tendered for filing in complete form before 5:30 p.m. in the Office of the Secretary, either in Washington or Gettysburg, as directed by § 0.401(b) of this chapter. The Secretary will determine whether a tendered document meets the pre-5:30 deadline. Documents filed electronically pursuant to § 1.49(f) must be received by the Commission's electronic comment filing system before midnight.

* * * * *

(h) If a document is required to be served upon other parties by statute or Commission regulation and the document is in fact served by mail (see § 1.47(f)), and the filing period for a response is 10 days or less, an additional 3 days (excluding holidays) will be allowed to all parties in the proceeding for filing a response. This paragraph (h) shall not apply to documents filed pursuant to § 1.89, § 1.120(d), § 1.315(b) or § 1.316. For purposes of this paragraph (h) service by facsimile or by electronic means shall be deemed equivalent to hand delivery.

6. Section 1.46 is amended by revising paragraphs (b) and (c) to read as follows:

§ 1.46 Motions for extension of time.

* * * * *

(b) Motions for extension of time in which to file responses to petitions for rulemaking, replies to such responses, comments filed in response to notice of proposed rulemaking, replies to such comments and other filings in rulemaking proceedings conducted under Subpart C of this part shall be filed at least 7 days before the filing date. If a timely motion is denied, the responses and comments, replies thereto, or other filings need not be filed until 2 business days after the Commission acts on the motion. In emergency situations, the Commission will consider a late-filed motion for a brief extension of time related to the duration of the emergency and will consider motions for acceptance of comments, reply comments or other filings made after the filing date.

(c) If a motion for extension of time in which to make filings in proceedings other than notice and comment rule making proceedings is filed less than 7 days prior to the filing day, the party filing the motion shall (in addition to serving the motion on other parties) orally notify other parties and Commission staff personnel responsible for acting on the motion that the motion has been (or is being) filed.

7. Section 1.47 is amended by revising paragraph (d) to read as follows:

§ 1.47 Service of documents and proof of service.

* * * * *

(d) Except in formal complaint proceedings against common carriers under §§ 1.720 through 1.736, documents may be served upon a party, his attorney, or other duly constituted agent by delivering a copy or by mailing a copy to the last known address. See § 1.736. Documents that are required to be served must be served in paper form, even if documents are filed in electronic form with the Commission, unless the party to be served agrees to accept service in some other form.

* * * * *

8. Section 1.49 is amended by revising paragraph (a) and adding new paragraph (f) preceeding the note at the end of the section to read as follows:

§ 1.49 Specifications as to pleadings and documents.

(a) All pleadings and documents filed in paper form in any Commission proceeding shall be typewritten or prepared by mechanical processing methods, and shall be filed on A4 (21 cm. x 29.7 cm.) or on 8½ x 11 inch (21.6 cm. x 27.9 cm.) paper with the margins set so that the printed material does not exceed 6 1/2 x 9½ inches (16.5 cm. x 24.1 cm.). The printed material may be in any typeface of at least 12-point (0.42333 cm. or 12/72″) in height. The body of the text must be double spaced with a minimum distance of 7/32 of an inch (0.5556 cm.) between each line of text. Footnotes and long, indented quotations may be single spaced, but must be in type that is 12-point or larger in height, with at least 1/16 of an inch (0.158 cm.) between each line of text. Counsel are cautioned against employing extended single spaced passages or excessive footnotes to evade prescribed pleading lengths. If single-spaced passages or footnotes are used in this manner the pleading will, at the discretion of the Commission, either be rejected as unacceptable for filing or dismissed with leave to be refiled in proper form. Pleadings may be printed on both sides of the paper. Pleadings that use only one side of the paper shall be stapled, or otherwise bound, in the upper left-hand corner; those using both sides of the paper shall be stapled twice, or otherwise bound, along the left-hand margin so that it opens like a book. The foregoing shall not apply to printed briefs specifically requested by the Commission, official publications, charted or maps, original documents (or admissible copies thereof) offered as exhibits, specially prepared exhibits, or if otherwise specifically provided. All copies shall be clearly legible.

* * * * *

(f)(1) In the following types of proceedings, all pleadings, including permissible ex parte submissions, notices of ex parte presentations, comments, reply comments, and petitions for reconsideration and replies thereto, may be filed in electronic format:

(i) General rulemaking proceedings other than broadcast allotment proceedings;

(ii) Notice of inquiry proceedings; and

(iii) Petition for rulemaking proceedings (except broadcast allotment proceedings).

(2) For purposes of paragraphs (b) and (c) of this section, and any prescribed pleading lengths, the length of any document filed in electronic form shall be equal to the length of the document if printed out and formatted according to the specifications of paragraph (a) of this section, or shall be no more that 250 words per page.

* * * * *

9. Section 1.51 is amended by revising paragraph (e) to read as follows:

§ 1.51 Number of copies of pleadings, briefs and other papers.

* * * * *

(e) The parties to any proceeding may, on notice, be required to file additional copies of any or all filings made in that proceeding.

10. Section 1.52 is revised to read as follows:

§ 1.52 Subscription and verification.

The original of all petitions, motions, pleadings, briefs, and other documents filed by any party represented by counsel shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign and verify the document and state his address. Either the original document, or an electronic reproduction of such original document containing the facsimile signature of the attorney or unrepresented party is acceptable for filing. If a facsimile copy of a document is filed, the signatory shall retain the original until the Commission's decision is final and no longer subject to judicial review. If pursuant to § 1.429(h) a document is filed electronically, a signature will be considered any symbol executed or adopted by the party with the intent that such symbol be a signature, including symbols formed by computer-generated electronic impulses. Except when otherwise specifically provided by rule or statute, documents signed by the attorney for a party need not be verified or accompanied by affidavit. The signature or electronic reproduction thereof by an attorney constitutes a certificate by him that he has read the document; that to the best of his knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. If the original of a document is not signed or is signed with intent to defeat the purpose of this section, or an electronic reproduction does not contain a facsimile signature, it may be stricken as sham and false, and the matter may proceed as though the document had not been filed. An attorney may be subjected to appropriate disciplinary action, pursuant to § 1.24, for a willful violation of this section or if scandalous or indecent matter is inserted.

11. Section 1.401 is amended by revising paragraph (b) to read as follows:

§ 1.401 Petitions for rulemaking.

* * * * *

(b) The petition for rulemaking shall conform to the requirements of §§ 1.49, 1.52 and 1.419(b) (or § 1.420(e), if applicable), and shall be submitted or addressed to the Secretary, Federal Communications Commission, Washington, DC 20554, or (except in broadcast allotment proceedings) may be submitted electronically.

* * * * *

12. Section 1.403 is revised to read as follows:

§ 1.403 Notice and availability

All petitions for rule making (other than petitions to amend the FM, Television, and Air-Ground Tables of Assignments) meeting the requirements of § 1.401 will be given a file number and, promptly thereafter, a ''Public Notice'' will be issued (by means of a Commission release entitled ''Petitions for Rule Making Filed'') as to the petition, file number, nature of the proposal, and date of filing. Petitions for rule making are available at the Commission's Dockets Reference Center (1919 M Street NW., Room 239, Washington, DC), and may also be available electronically over the Internet at <http://www.fcc.gov/>.

13. Section 1.419 is amended by adding new paragraphs (d) and (e) to read as follows:

§ 1.419 Form of comments and replies; number of copies.

* * * * *

(d) Participants that file comments and replies in electronic form need only submit one copy of those comments, so long as the submission conforms to any procedural or filing requirements established for formal electronic comments.

(e) Comments and replies filed in electronic form by a party represented by an attorney shall include the name,

street address, and telephone number of at least one attorney of record. Parties not represented by an attorney that file comments and replies in electronic form shall provide their name, street address, and telephone number.

14. Section 1.429 is amended by revising paragraphs (d), (e), (f), (g) and (h) to read as follows:

§ 1.429 Petitions for reconsideration.

* * * * *

(d) The petition for reconsideration and any supplement thereto shall be filed within 30 days from the date of public notice of such action, as that date is defined in § 1.4(b). No supplement to a petition for reconsideration filed after expiration of the 30 day period will be considered, except upon leave granted pursuant to a separate pleading stating the grounds for acceptance of the supplement. The petition for reconsideration shall not exceed 25 double-spaced typewritten pages. See also § 1.49(f).

(e) Except as provided in § 1.420(f), petitions for reconsideration need not be served on parties to the proceeding. (However, where the number of parties is relatively small, the Commission encourages the service of petitions for reconsideration and other pleadings, and agreements among parties to exchange copies of pleadings. See also § 1.47(d) regarding electronic service of documents.) When a petition for reconsideration is timely filed in proper form, public notice of its filing is published in the **Federal Register**. The time for filing oppositions to the petition runs from the date of public notice. See § 1.4(b).

(f) Oppositions to a petition for reconsideration shall be filed within 15 days after the date of public notice of the petition's filing and need be served only on the person who filed the petition. See also § 1.49(d). Oppositions shall not exceed 25 double-spaced typewritten pages. See § 1.49(f).

(g) Replies to an opposition shall be filed within 10 days after the time for filing oppositions has expired and need be served only on the person who filed the opposition. Replies shall not exceed 10 double-spaced typewritten pages. See also § 1.49(d) and § 1.49(f).

(h) Petitions for reconsideration, oppositions and replies shall conform to the requirements of §§ 1.49 and 1.52, except that they need not be verified. Except as provided in § 1.420(e), an original and 11 copies shall be submitted to the Secretary, Federal Communications Commission, Washington, D.C. 20554. Parties filing in electronic form need only submit one copy.

* * * * *

15. Section 1.1206 is amended by revising paragraphs (b)(1) and (b)(2) preceeding Note 1 to read as follows:

§ 1.1206 Permit-but-disclose proceedings.

* * * * *

(b) * * *

(1) *Written presentations.* A person who makes a written ex parte presentation subject to this section shall, no later than the next business day after the presentation, submit two copies of the presentation to the Commission's secretary under separate cover for inclusion in the public record. The presentation (and cover letter) shall clearly identify the proceeding to which it relates, including the docket number, if any, shall indicate that two copies have been submitted to the Secretary, and must be labeled as an ex parte presentation. If the presentation relates to more than one proceeding, two copies shall be filed for each proceeding. Alternatively, in rulemaking proceedings governed by § 1.49(f), the person making the presentation may file one copy of the presentation electronically; no additional paper copies need to be filed.

(2) *Oral presentations.* A person who makes an oral ex parte presentation subject to this section that presents data or arguments not already reflected in that person's written comments, memoranda or other filings in that proceeding shall, no later than the next business day after the presentation, submit to the Commission's Secretary, an original and one copy of a memorandum which summarizes the new data or arguments. Except in proceedings subject to § 1.49(f) in which pleadings are filed electronically, a copy of the memorandum must also be submitted to the Commissioners or Commission employees involved in the oral presentation. In proceedings governed by § 1.49(f), the person making the presentation may, alternatively, electronically file one copy of the memorandum, which will be available to Commissioners and Commission employees involved in the presentation through the Commission's electronic comment filing system. Memoranda must contain a summary of the substance of the ex parte presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. The memorandum (and cover letter) shall clearly identify the proceeding to which it relates, including the docket number, if any, shall indicate that an original and one copy have been submitted to the Secretary or that one copy has been filed electronically, and must be labeled as an ex parte presentation. If the presentation relates to more than one proceeding, two copies of the memorandum (or an original and one copy) shall be filed for each proceeding.

* * * * *

[FR Doc. 98–10310 Filed 4–30–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[CC Docket No. 92–297; RM–7872; PP–22 et al.; FCC 98–71]

Dismissal of All Pending Pioneer's Preference Requests; Review of the Pioneer's Preference Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule; denial of petition for reconsideration.

SUMMARY: By this action, the Commission denies a petition for reconsideration filed by QUALCOMM Incorporated. QUALCOMM contends that the Commission is obligated to consider on its merits QUALCOMM's request for a pioneer's preference in the 2 GHz broadband Personal Communications Service (PCS). However, the Commission affirms that it no longer has the authority to award pioneer's preferences because the Balanced Budget Act of 1997 (Budget Act) terminated the pioneer's preference program. The intended effect of this action is to affirm the Commission's previous Order, which formally terminated the pioneer's preference program and dismissed all pending pioneer's preference requests.

EFFECTIVE DATE: May 1, 1998.

FOR FURTHER INFORMATION CONTACT: Rodney Small, Office of Engineering and Technology, (202) 418–2452; internet: rsmall@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order (MO&O) adopted April 16, 1998, and released April 23, 1998. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision also may be purchased from the Commission's duplication contractor, International

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

Summary of MO&O

1. On October 20, 1997, QUALCOMM filed a petition for reconsideration of the Commission's Order, 62 FR 48951, September 18, 1997, which dismissed all pending pioneer's preference requests, including QUALCOMM's 2 GHz broadband PCS request. For reasons that follow, we deny the petition for reconsideration.

2. In 1994, we denied QUALCOMM's 2 GHz broadband PCS request. In January 1997, however, the United States Court of Appeals for the District of Columbia Circuit (Court) granted QUALCOMM's petition for review of our action, vacated our denial of QUALCOMM's pioneer's preference request, and remanded the proceeding to us for further consideration.

3. On August 5, 1997, President Clinton signed into law the Budget Act. Among other things, the Budget Act revised the expiration date of the pioneer's preference program, as set forth in section 309(j)(13)(F) of the Communications Act of 1934, as amended. That section had been added in 1994 legislation domestically implementing the General Agreement on Tariffs and Trade (GATT), and read prior to enactment of the Budget Act: ''The authority of the Commission to provide preferential treatment in licensing procedures (by precluding the filing of mutually exclusive applications) to persons who make significant contributions to the development of a new service or to the development of new technologies that substantially enhance an existing service shall expire on September 30, 1998.'' The Budget Act advanced that date to ''the date of enactment of the Balanced Budget Act of 1997.'' Thus, the pioneer's preference program expired on August 5, 1997. In our Order, we formally terminated the pioneer's preference program and dismissed all pending pioneer's preference requests, including QUALCOMM's.

4. On October 9, 1997, QUALCOMM filed with the Court a ''Motion to Enforce Mandate and Supporting Memorandum,'' contending that our Order misconstrued the Budget Act and requesting the Court to order us to consider QUALCOMM's pioneer's preference request on its merits. On October 16, 1997, counsel for the Commission filed an opposition to the motion, pointing out, *inter alia*, that QUALCOMM's motion was procedurally improper because QUALCOMM had not filed a petition for reconsideration of the Order affording us an opportunity to address its contentions. On October 20, 1997, while QUALCOMM's motion was still pending before the Court, QUALCOMM filed with the Commission a petition for reconsideration of the Order. On November 5, 1997, the Court dismissed the motion on the grounds that QUALCOMM had failed to exhaust its administrative remedies, stating that the ''appropriate procedure for QUALCOMM to seek relief is to petition to the Commission to reconsider its decision dismissing QUALCOMM's application.''

5. In its petition for reconsideration, QUALCOMM argues that ''the FCC's application of the Budget Act violates the rule against retroactive application of the law,'' that ''the language of the Budget Act suggests that Congress intended to permit continuation of the [pioneer's preference] program, while placing restrictions on the Commission's authority to preclude the filing of mutually exclusive applications,'' and that ''QUALCOMM is entitled to a fair hearing on the merits of its pioneer's preference application.'' QUALCOMM also claims that, in terminating the pioneer's preference program and dismissing its request for a preference without providing for public notice and comment, our Order violated the requirements of the Administrative Procedure Act (APA). We reject each of these arguments.

6. *Retroactivity.* We find QUALCOMM's characterization of our Order dismissing its pioneer's preference request as an improper ''retroactive'' application of the Budget Act to be without merit. The Order appropriately gave *prospective* effect to this statute in concluding that as of the date of its enactment, August 5, 1997, we no longer had authority to grant pending requests for pioneer's preferences. Thus, contrary to QUALCOMM's claim, our action did not violate the traditional presumption against retroactivity that the Supreme Court reiterated in *Landgraf* v. *USI Film Products*, 511 U.S. 244 (1994).

7. Moreover, our application of the Budget Act in this case is consistent with the firmly-established principle that, ''when a law conferring jurisdiction is repealed without any reservation as to pending cases, all cases fall with the law.'' *Bruner* v. *United States*, 343 U.S. 112, 116–117 (1952). The Supreme Court has explained that application of a new jurisdictional rule normally does not raise concerns about retroactivity ''because jurisdictional statutes speak to the power of the court rather than to the rights or obligations of the parties.'' *Landgraf*, 511 U.S. at 273. Similarly, application of the Budget Act in this case does not produce an impermissible retroactive effect because that statute addresses our authority to act, not the merits of QUALCOMM's pioneer's preference request.

8. Accordingly, we find that we properly applied the time-honored tenet of statutory construction that, ''when a law conferring jurisdiction is repealed without any reservation as to pending cases, all cases fall with the law.'' *Bruner*, 343 U.S. at 116–17. Moreover, even if the Budget Act properly could be characterized as altering the substantive law applicable to pioneer's preferences, the statute's application in QUALCOMM's case does not raise the retroactivity concerns identified in *Landgraf*. As the Supreme Court explained, a new statute is considered retroactive only if ''it would impair rights a party possessed when he acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed.'' *Landgraf*, 511 U.S. at 280. *See also Saco River Cellular, Inc.* v. *FCC*, No. 91–1248, slip op. at 9 (DC Cir. Jan. 16, 1998) (*Saco River*). The Budget Act has none of these effects. It neither increases QUALCOMM's liability for past conduct nor imposes new duties relating to completed transactions. Additionally, this new statute does not impair any right possessed by QUALCOMM ''because none vested on the filing of its [request].'' *Chadmoore Communications, Inc.* v. *FCC*, 113 F.3d 235, 241 (DC Cir. 1997).

9. Further, in its remand order, the Court in *Freeman Engineering* did not find that QUALCOMM had a vested right to a pioneer's preference; it simply required us to reevaluate whether QUALCOMM's request for a preference should be granted or denied. Thus, the effect of the remand was to return QUALCOMM's preference request to pending status before the Commission and afforded QUALCOMM no greater or lesser rights than those of any other party with a pending preference request. Clearly, Congress had the power to enact legislation that terminated our authority to grant pending requests for pioneer's preferences; and ''the mere expectations of a license applicant cannot bar the legitimate exercise of such congressional power.'' *Multi-State Communications, Inc.* v. *FCC*, 728 F.2d 1519, 1526 n.12 (DC Cir.), *cert. denied*, 469 U.S. 1017 (1984). The mere fact that a statute is ''applied in a case arising from conduct antedating the statute's enactment or upsets expectations based in prior law'' does not render the statute

retroactive.'' *Saco River,* slip op. at 9, quoting *Landgraf,* 511 U.S. at 269.

10. *Scope of Sunset Provision in Budget Act.* QUALCOMM asserts that the Budget Act does not bar us from awarding pioneer's preferences, but only limits our power to provide preferential treatment to pioneers by precluding the filing of mutually exclusive applications. We disagree. Our preference program rewarded innovators by enabling them to obtain licenses without having to face competing (*i.e.,* mutually exclusive) applications. We are not at liberty to grant some other sort of preference to communications pioneers. Section 309(j)(13)(A) of the Communications Act provides that we ''shall not award licenses'' by giving preferential treatment to innovators ''except in accordance with the requirements'' of section 309(j)(13). 47 U.S.C. 309(j)(13)(A). Following its amendment by the Budget Act, section 309(j)(13) contains no provision authorizing us to give preferences to innovators in the licensing process. Further, while sections 7(a) and 303(g) give us the authority to award pioneer's preferences in the absence of an explicit statute to the contrary, section 309(j)(13)(F) is just such a statute.

11. QUALCOMM contends, however, that Congress did not intend for the Budget Act's immediate termination of the pioneer's preference program to affect its pending preference request because the House Report on the 1994 GATT Legislation stated that Congress did not intend to ''affect the rights of persons who have been denied a pioneer's preference.'' Petition for Reconsideration at 6 (quoting Report to accompany H.R. 5110, 103 Cong. 2d. House Rept. 103–826 (House Report)). We are not persuaded by QUALCOMM's argument. The quoted statement from the House Report does not address the sunset provision set forth in section 309(j)(13)(F) of the Communications Act. Instead, the statement in question clarified that a different provision of the Act, section 309(j)(13)(E), which precluded further administrative and judicial review of certain *grants* of pioneer's preference requests, was not intended to ''affect the rights of persons who have been *denied* a pioneer's preference.'' House Report at 8 (emphasis added). That is, Congress intended simply to make clear in 1994 that parties like QUALCOMM could appeal the denial of a pioneer's preference request despite the no review provision.

12. *Right to a Hearing.* QUALCOMM argues that the Order violated its right to due process by denying its ''right to a fair hearing [that had] vested long before Congress changed the law relating to pioneer's preferences on a going forward basis.'' We disagree. QUALCOMM does not have a constitutional ''right to a fair hearing'' unless that hearing concerns constitutionally protected liberty or property interests: ''The requirements of procedural due process apply only to the deprivation of interests encompassed by the [Constitution's] protection of liberty and property.'' *Board of Regents* v. *Roth,* 408 U.S. 564, 569 (1972). Although QUALCOMM claims a property interest in a fair hearing, any hearing that it would receive at this point would not implicate any property interest because we no longer have authority to grant QUALCOMM's preference request. As the U.S. Court of Appeals for the District of Columbia Circuit recently reaffirmed, ''[t]he filing of an application creates no vested right to a hearing; if the substantive standards change so that the applicant is no longer qualified, the application may be dismissed.'' *Chadmoore,* 113 F.3d at 241 (quoting *Hispanic Information & Telecommunications Network* v. *FCC,* 865 F.2d 1289, 1294–95 (DC Cir. 1989)); *see also Melcher* v. *FCC,* 134 F.3d 1143, 1164–65 (DC Cir. 1998).

13. While QUALCOMM contends that it has a vested right in a pioneer's preference, neither we nor the court has ever found that QUALCOMM was entitled to a preference under our rules. Further, QUALCOMM has no right to a hearing that cannot yield the benefits it seeks. A hearing is a means to an end, and the end that QUALCOMM seeks—grant of a pioneer's preference—is no longer available. A hearing thus would be futile. Accordingly, our decision to dismiss QUALCOMM's preference application ''simply respects the statutorily-fixed deadline'' for exercising our authority to award pioneer's preferences: ''[I]n thus following the legislature's direction, the [Commission] contravened no due process right to fundamentally fair procedures.'' *Spannaus* v. *FCC,* 990 F.2d 643, 645 (DC Cir. 1993).

14. *APA Notice and Comment Requirements.* QUALCOMM argues that ''[t]he APA requires that the Commission allow an opportunity for notice and comment before promulgating rules other than those 'of agency organization, or practice.' '' The APA also, however, permits us to proceed without notice and comment procedures when good cause exists for finding such procedures are ''impracticable, unnecessary, or contrary to the public interest.'' 5 U.S.C. 553(b)(B). Similarly, publication or service of a rule change at least 30 days before its effective date is not required when good cause is found. 5 U.S.C. 553(d)(3). Such is the situation before us. The unambiguous language of the Budget Act terminating our authority to grant pioneer's preferences effective upon enactment of the Act made it unnecessary for us to follow public notice and comment procedures or to provide for at least 30 days advance publication in order to amend our rules to terminate the pioneer's preference program and to dismiss pending pioneer's preference requests.

15. *Other Matters.* In comments filed November 6, 1997, QUALCOMM argues that the Order interpreted the sunset provision of section 309(j)(13)(F) in a manner inconsistent with past Commission precedent but failed to explain the reasons for this departure from precedent. Specifically, QUALCOMM claims that in the Second Report and Order and Further Notice of Proposed Rule Making (Second R&O) in the Pioneer's Preference Review Proceeding, 60 FR 13396, March 13, 1995, we interpreted section 303(j)(13)(F) as applying only to pioneer's preference requests filed after September 1, 1994, but in our Order we applied that provision to pioneer's preference requests, such as QUALCOMM's, which were filed before that date. Because the Order relied on the sunset provision as the basis for dismissing QUALCOMM's request, QUALCOMM asserts that it was denied administrative due process because the Commission changed its interpretation of the sunset provision without explanation.

16. As an initial matter, we agree with observations made by PrimeCo Personal Communications, L.P. and Sprint PCS, in their opposition to the petition, that QUALCOMM's comments constitute a late-filed supplement to its petition for reconsideration. Accordingly, pursuant to section 1.429 of the Commission's rules, we are dismissing those comments. Nonetheless, we note *sua sponte* that the ''unexplained departure from precedent'' argument advanced in QUALCOMM's comments is without merit. In the Second R&O, in rejecting comments suggesting that we immediately repeal the pioneer's preference program, we explained that, for preference requests filed after September 1, 1994, section 309(j)(13)(F) directed us to continue this program until September 30, 1998, and that for preference requests filed on or before September 1, 1994, we did not find any valid reason for terminating the program earlier. No commenter in that

proceeding had raised, and we did not discuss, whether we had the authority to continue the pioneer's preference program beyond the date specified in section 309(j)(13)(F) for preference requests filed on or before September 1, 1994. It is clear, however, that we retained no such authority. The GATT legislation required the termination of the entire pioneer's preference program by a date certain, September 30, 1998. That we retained the discretion to terminate the program with respect to earlier-filed preference requests (but chose not to exercise that discretion) does not imply that we had discretion to continue the program in any respect beyond the date set forth in the legislation. Our actions in the Order dismissing QUALCOMM's preference request and terminating the pioneer's preference program as of the date set forth in section 309(j)(13)(F) as amended by the Budget Act, August 5, 1997, are thus fully consistent with our actions in the Second R&O.

17. Finally, we note that in comments filed November 12, 1997, Global Broadcasting Company, Inc. requests that we ''consider on the merits'' the pioneer's preference request filed by Web SportsNet, Inc. and Gregory D. Deieso but also dismissed in our Order. We are dismissing these comments as an improperly late-filed petition for reconsideration of our action dismissing the preference request, but also note that we have no authority to grant the relief requested.

Ordering Clauses

18. Accordingly, *it is ordered* that the petition for reconsideration filed on October 20, 1997 by QUALCOMM Incorporated *is denied*. This action is taken pursuant to sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r).

19. *It is further ordered* that the comments filed on November 6, 1997 by QUALCOMM Incorporated and on November 12, 1997 by Global Broadcasting Company, Inc. *are dismissed*. This action is taken pursuant to section 1.429(d) of the Commission's rules.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–11616 Filed 4–30–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

48 CFR Parts 5243 and 5252

RIN 0703–AA34

Adjustments to Prices Under Shipbuilding Contracts

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy (DON) is removing certain regulations for adjustments to prices under shipbuilding contracts contained in the Navy Acquisition Procedures Supplement (48 CFR part 5243, §§ 5252.243–9000 and 5252.243–9001). The National Defense Authorization Act of Fiscal Year 1998 eliminated the statutory authority for these rules. Such rules are now unnecessary and are removed immediately. Providing for a comment period before final action in this case would be unnecessary, impracticable, and contrary to public interest. However, DON will accept and consider comments from interested persons in evaluating the effect of this action.

DATES: *Effective Date of Removal:* May 1, 1998.

Comment Date: Comments on this removal action should be submitted in writing to the address shown below on or before June 30, 1998.

ADDRESSES: Interested parties should submit written comments to Department of the Navy, Office of the Assistant Secretary of the Navy (Research, Development and Acquisition) Acquisition and Business Management, 2211 South Clark Place, Arlington, Virginia, 22244–5104.

FOR FURTHER INFORMATION CONTACT: Mr. Michael G. Shaffer, (703)602–1263.

SUPPLEMENTARY INFORMATION:

A. Background

The Department of Defense Authorization Act, 1985 (Pub. L. 98–525 § 1234(a), 98 Stat. 2604, Oct. 19, 1984) established certain limitations on price adjustments made to shipbuilding contracts, which were codified at 10 U.S.C. 2405. The DON published proposed rules to implement the requirements of 10 U.S.C. 2405 in the **Federal Register** on Nov. 16, 1989 (54 FR 47689). A correction and extension of the public comment period was published in the **Federal Register** on Feb. 2, 1990 (55 FR 3603). Revised proposed rules and notice of additional public comment period and public hearing were published in the **Federal Register** on Jun. 29, 1990 (55 FR 26708). Extension of the public comment period and rescheduling of the public hearing were published in the **Federal Register** on Aug. 16 and Oct. 26, 1990 (55 FR 33541 and 43150). An interim rule and request for comments was published in the **Federal Register** on Dec. 5, 1991 (56 FR 63664). This interim rule added to title 48 of the Code of Federal Regulations a new Part 5243, as well as new §§ 5252.243–9000 and 5252.243–9001, and was made effective on Dec. 5, 1991. No final rule was published.

Section 810 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105–85, 111 Stat. 1839, Nov. 18, 1997) repealed 10 U.S.C. 2405, making the Navy's implementing regulations contained in 48 CFR parts 5243 and 5252 unnecessary. For this reason, the Navy is now removing and reserving 48 CFR part 5243 in its entirety, as well as §§ 5252.243–9000 and 5252.243–9001.

While the Navy is removing part 5243 in its entirety from the Code of Federal Regulations, information and policy statements regarding contract modifications remain in part 5243 of the Navy Acquisition Procedures Supplement (''NAPS''), which may be accessed at www.abm.rda.hq.navy.mil/naps, or by contacting the office listed in the **ADDRESSES** block.

B. Determination To Remove Without Prior Public Comment

This removal action is being issued as a final rule without a public comment period as an exception to the DON's standard practice of soliciting comments during the rulemaking process. Providing a period for public comment in this case would be unnecessary, impracticable, and contrary to the public interest. This determination is based on two factors. First, removal of these rules is entirely administrative and corrective in nature, not requiring the exercise of agency discretion. Second, to allow these rules to remain in the Code of Federal Regulations any longer may mislead and confuse the public regarding statutory requirements relating to adjustments of any price under a shipbuilding contract for the amount set forth in a claim, request for equitable adjustment, or demand for payment.

C. Matters of Regulatory Procedure

Executive Order 12866, Regulatory Planning and Review

Removal of these rules does not meet the definition of ''significant regulatory action'' for purposes of E.O. 12866.

Regulatory Flexibility Act

Removal of these rules will not have a significant economic impact on a substantial number of small entities for purposes of the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Paperwork Reduction Act

Removal of these rules will not impose collection of information requirements for purposes of the Paperwork Reduction Act (44 U.S.C. chapter 35, 5 CFR Part 1320).

List of Subjects in 48 CFR Parts 5243 and 5252

Government procurement.

Dated: April 22, 1998.

Michael I. Quinn,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

Under the authority of Sec. 810 of Pub. L. 105–85, and for the reasons set forth in the preamble, remove and reserve part 5243 and Sections 5252.243–9000 and 5252.243–9001 of title 48 of the Code of Federal Regulations.

[FR Doc. 98–11592 Filed 4–30–98; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 232

[FRA Docket No. PB–9, Notice No. 11]

RIN 2130–AB22

Two-Way End-of-Train Telemetry Devices and Certain Passenger Train Operations

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Final rule.

SUMMARY: FRA is revising the regulations regarding the use and design of two-way end-of-train telemetry devices (two-way EOTs) to specifically address certain passenger train operations where multiple units of freight-type equipment, material handling cars, or express cars are part of a passenger train's consist. Trains of this nature are currently being operated by the National Railroad Passenger Corporation (Amtrak), and these revisions are intended to clarify and address the applicability of the two-way EOT requirements to these types of operations.

EFFECTIVE DATE: This rule is effective May 1, 1998.

ADDRESSES: Any petition for reconsideration should identify the docket number and the notice number and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, 400 Seventh Street, S.W., Stop 10, Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: James Wilson, Motive Power and Equipment Division, Office of Safety, RRS–14, FRA, 400 Seventh Street, S.W., Stop 25, Washington, D.C. 20590 (telephone 202–632–3367), or Thomas Herrmann, Trial Attorney, Office of the Chief Counsel, RCC–12, FRA, 400 Seventh Street, S.W., Stop 10, Washington, D.C. 20590 (telephone 202–632–3178).

SUPPLEMENTARY INFORMATION:

Background

On January 2, 1997, FRA published a final rule amending the regulations governing train and locomotive power braking systems at 49 CFR part 232 to add provisions pertaining to the use and design of two-way end-of-train telemetry devices (two-way EOTs). *See* 62 FR 278. The purpose of the revisions was to improve the safety of railroad operations by requiring the use of two-way EOTs on a variety of trains pursuant to 1992 legislation, and by establishing minimum performance and operational standards related to the use and design of the devices. *See* Pub. L. No. 102–365 (September 3, 1992); 49 U.S.C. 20141.

The regulations published on January 2, 1997, regarding two-way EOTs, provided an exception from the requirements for ''passenger trains with emergency brakes.'' *See* 49 CFR 232.23(e)(9). The language used in this exception was extracted in total from the statutory exception contained in the statutory provisions mandating that FRA develop regulations addressing the use and operation of two-way EOTs or similar technology. *See* 49 U.S.C. 20141(c)(2). A review of the legislative history reveals that there was no discussion by Congress as to the precise meaning of the phrase ''passenger trains with emergency brakes.'' Consequently, FRA is required to effectuate Congress' intent based on the precise language used in that and the other express exceptions and based on the overall intent of the statutory mandate. *See* 49 U.S.C. 20141(c)(1)–(c)(5). Furthermore, any exception contained in a specific statutory mandate should be narrowly construed. *See Chesapeake & Ohio Ry.* v. *United States,* 248 F. 85 (6th Cir. 1918) *cert. den.,* 248 U.S. 580; *DRG R.R.* v. *United States,* 249 F. 822 (8th Cir. 1918); *United States* v. *ATSF Ry.,* 156 F.2d 457 (9th Cir. 1946).

The intent of the statutory provisions related to two-way EOTs was to ensure that trains operating at a speed over 30 mph or in heavy grade territory were equipped with the technology to effectuate an emergency application of the train's brakes starting from both the front and rear of the train. The specific exceptions contained in the statute were aimed at trains (i) that do not operate within the express parameters or (ii) that are equipped or operated in a fashion that provides the ability to effectuate an emergency brake application that commences at the rear of the train without the use of a two-way EOT. *See* 49 U.S.C. 20141(c)(1)–(c)(5). Based on the intent of the statute and based upon a consistent and narrow construction of the specific language used by Congress in the express exceptions, FRA believes it is clear that Congress did not intend the phrase ''passenger trains with emergency brakes'' to constitute a blanket exception for all passenger trains. If that was Congress' intent, it would not have added the qualifying phrase ''with emergency brakes.''

In FRA's view, this language limits the specific statutory exception to passenger trains equipped with a separate emergency brake valve in each car throughout the train and, thus, to passenger trains possessing the ability to effectuate an emergency application of the train's brakes from the rear of the train. Therefore, passenger trains that include RoadRailers®, auto racks, express cars, or other similar vehicles designed to carry freight that are placed at the rear of the train, that are not equipped with emergency brake valves, would not fall within the specific statutory or regulatory exception as they are incapable of effectuating an emergency brake application that commences at the rear of the train. Further, FRA does not believe that Congress envisioned a significant number of express or intermodal cars being hauled at the rear of passenger trains when the specific exception was included in the statute.

FRA believes that Congress intended to except only those trains traditionally considered to be passenger trains, which would include passenger trains containing baggage and mail cars as these have consistently been considered passenger equipment with emergency brakes. However, passenger trains which operate with numerous inaccessible baggage or mail cars attached to the rear of the train that lack any ability to effectuate an emergency brake application from the rear of the

train would, in FRA's view, fall outside the specific statutory and regulatory exception for ''passenger trains with emergency brakes.''

Subsequent to the issuance of the final rule on two-way EOTs published on January 2, 1997 and the period permitted for the submission of petitions for reconsideration of that rule, Amtrak raised concerns regarding the applicability of the final rule to some of its passenger train operations, particularly those which recently began to operate with numerous express, material handling cars, or RoadRailers® entrained in the consist. These concerns focused on FRA's enforcement guidance provided to its field inspectors, which stated that the exception for ''passenger trains with emergency brakes'' was intended to apply only to trains traditionally considered to be passenger trains, a category that would include passenger trains containing a limited number of baggage and mail cars at the rear of the train. This guidance was based on the reasoning provided in the preceding discussion. Amtrak contended that FRA's interpretive guidance was an improper reading of the statutory and regulatory exception and did not adequately consider the superior braking capabilities of passenger equipment. Although FRA disagrees that its guidance was improper, FRA did agree that a closer examination of the applicability of the two-way EOT requirements to passenger trains needed to be performed in light of the superior braking ratios of passenger cars and the presence of emergency brake valves on the passenger cars in mixed train consists, which provide certain safety assurances that are not present in traditional freight operations. Consequently, FRA agreed that the mixed passenger and ''express'' service currently being operated by Amtrak is unique and needed to be handled separately from traditional freight operations.

Amtrak currently operates a number of trains that include numerous material handling cars, express cars, auto racks, mail cars, and/or RoadRailer® equipment. These types of rolling equipment are either not equipped with emergency brake valves or, if equipped with such valves, they are not accessible to any member of the train crew.

Amtrak expects that the operation of this type of rolling equipment will continue to grow and that many of its trains will eventually have a number of these vehicles in their consists. As noted above, FRA believes that a passenger train operated with this rolling equipment falls outside the statutory and regulatory exception to the two-way EOT requirement for ''passenger trains with emergency brakes,'' and thus, would be required under the existing rules to be equipped with an operative two-way EOT or alternative technology. However, FRA also recognizes the unique nature of these types of mixed operations and realizes that the safety assurances provided by the braking ratios and the presence of emergency brake valves at various locations through much of the consist on certain mixed passenger trains make requiring the use of a two-way EOT unnecessary.

To gain a perspective on the stopping characteristics and safety implications of the mixed passenger train operations, FRA requested the Volpe National Transportation Systems Center (Volpe) to review the information and procedures used by Amtrak in developing various stopping distance calculations submitted to FRA. In addition, FRA requested that Volpe develop and analyze its own data regarding these types of mixed passenger trains. In making their calculations, both Volpe and Amtrak used variables of grade; train configuration; and the number, weight, and types of cars and locomotives expected to be used in these types of operations. Although all of the calculations were based on worse-case scenarios (e.g., the angle cock was assumed to be closed just behind the last car with an accessible emergency brake valve, and only friction braking—tread or disc brakes of locomotives and cars—was considered available to stop the train), all stops were achieved on the specified grade used in the calculation.

In making its calculations Volpe used a MathCad program to compute stopping distances. Volpe used the results of its calculations as a check against the results Amtrak had produced and submitted to FRA. Volpe concluded that Amtrak's procedures predicted longer (more conservative) stopping distances than the approach taken by Volpe. Amtrak's results were also compared to the requirements of the Amtrak Communication and Signal Department, Specification S–603, Curve 8, which is used to determine stopping distances for passenger equipment for signal block spacing. Curve 8 values for stopping distances are augmented by a factor of 25 percent to account for conditions which may impair brake performance. The absolute (actual) signal block spacing on the Northeast Corridor is actually greater than any of the stopping distances produced by either Volpe or Amtrak in their calculations. Therefore, stopping distances within established signal blocks should not be a problem. The process Amtrak used was sufficiently conservative so that predicted stopping distances were greater than would be experienced in reality. Nevertheless, FRA worked with Amtrak to define further limitations adequate to ensure safety under identified worst-case conditions, and these limitations were set forth in this proposal.

Based on the information provided by Amtrak and the independent calculations conducted by Volpe, FRA published an NPRM on January 16, 1998, proposing to revise the regulations on two-way EOTs to specifically address certain passenger train operations where numerous freight-type cars, material handling cars, or express cars are part of a train's consist. *See* 63 FR 2647 (January 16, 1998). In the NPRM, FRA stated that swift action was necessary with regard to the provisions proposed and that a lengthy comment period would be impracticable, unnecessary, and contrary to the public interest. It was noted that a number of freight railroads were expressing concern and apprehension over permitting these mixed passenger trains to operate over their rails in light of FRA's above-mentioned interpretive guidance. In fact, at least one instance was found in which a mixed Amtrak train was detained for six hours by a freight railroad until a two-way EOT was applied because the freight railroad refused to permit the train to operate without the device. FRA also believed that requiring Amtrak to acquire a number of two-way EOTs and operate under the provisions of the current regulatory scheme during a lengthy comment period would impose a substantial and unwarranted financial and operational burden without improving the safety of Amtrak operations. Furthermore, the proposals contained in the NPRM included certain restrictions on the operation and make-up of certain passenger trains that were proposed for exception from the two-way EOT requirements, restrictions that FRA believe will enhance the safety of those operations and that are not currently mandated.

In addition to the concerns discussed above, FRA also believed that swift action was necessary because Amtrak is continuing to take delivery of express and other equipment and to build this line of business in order to close its operating deficit and to support continued intercity rail passenger service in a time of declining support from the public treasury. The public's interest in continued rail passenger service warrants reasonable flexibility to achieve this business objective. This

development corresponded with the implementation of two-way EOT requirements, rapidly complicating what appeared at the outset to be a relatively straightforward issue. Prior to the effective date of the two-way EOT rule, Amtrak implemented a two-way EOT system on its AutoTrain, previously the only Amtrak train operated with any significant number of unoccupied cars at the rear of the train. Anticipating the need to equip other trains as the express business grows, Amtrak is in the process equipping over 100 locomotives and deploying rear-end units at appropriate points along its lines where trains are built. Amtrak also committed to FRA to operate cars with cables for head-end power transmission (such as mail and baggage cars) at the front of trains where practicable given constraints on loading and unloading, in order limit the number of cars to the rear of the train that are beyond the last car with an accessible emergency valve. However, as Amtrak's express service grows and Amtrak builds trains responsive to that growth (a phenomenon that is well underway), there is an increased danger that Amtrak's own internal policies for use of available two-way EOT systems would not be honored in the field through oversight. Thus, FRA believed that having clear and certain Federal requirements regarding the use of two-way EOTs were essential to public safety.

Based on the concerns noted above, FRA issued the NPRM with a comment period of only 15 days in order to quickly address the applicability of the two-way EOT requirements to mixed passenger train operations. FRA made clear that if no substantive adverse comments were received on the NPRM within the 15-day comment period, it would immediately issue a final rule containing the provisions of the proposal. FRA also made clear in the NPRM that it intended for any final rule issued to take effect immediately upon publication.

Written comments on the NPRM have been received from Amtrak, Consolidated Rail Corporation (Conrail), and the Brotherhood of Locomotive Engineers (BLE). The relatively brief comments received from Amtrak and Conrail do not substantively affect the approach taken in the NPRM and primarily relate to clarifying the language used in the proposed provisions of the NPRM or the discussion contained in the section-by-section analysis of the NPRM. Therefore, these specific comments will be directly addressed in the section-by-section analysis of this final rule. In Amtrak's written comments, Amtrak also requests that trains consisting of six or fewer mail or express cars be specifically excepted from the requirements for the use of a two-way EOT. As the NPRM and this final rule are specifically and narrowly focused on mixed passenger train operations, FRA believes that this rulemaking is not the appropriate forum for addressing Amtrak's request. Furthermore, such a request has much broader industry-wide implications than the issues addressed in this rulemaking and would involve consideration of additional safety concerns and the performance of detailed research not focused on or contemplated in this proceeding.

In its written comments, Conrail raises a concern regarding the responsibility and potential liability of a host railroad if a passenger train operates on its line while not in compliance with the requirements of this rule. The responsibilities of the host railroad with regard to this rule are the same as they are for any of the requirements contained in part 232. *See* 232.0(e). As a matter of policy, enforcement actions for noncompliance with this rule will generally be imposed on the railroad or individuals responsible for the operation of the train (i.e., Amtrak in most cases), unless the host railroad causes the violation of such requirements.

The BLE submitted brief written comments on the NPRM, generally objecting to any amendments to the two-way EOT regulations. The BLE agrees with FRA that Congress did not discuss the potential for mixed passenger train operations and generally asserts that when passenger equipment is used in conjunction with freight equipment it should be equipped with a two-way EOT. The BLE does not provide any specific data or cite to any potential safety or operational problems involved with excepting certain mixed passenger trains from the requirements for use of a two-way EOT. Furthermore, the BLE does not object either to the data assembled and assessed by FRA regarding mixed passenger trains or to the additional safety assurances that exist on these types of trains that are not present in traditional freight operations. Consequently, based on the discussion above and contrary to the broad assertions of the BLE, FRA believes that it would be in the public interest and that there is more than sufficient safety justification for excepting certain mixed passenger trains from the requirements related to the use of two-way EOTs.

After reviewing the above noted comments received on the NPRM, FRA concludes that no substantive adverse comments have been provided that cause FRA to further consider or delay the implementation of the requirements proposed in the NPRM. Furthermore, FRA has received no requests for a public hearing on the NPRM. Consequently, the final rule that is being issued by FRA revising the regulations on two-way EOTs to specifically address certain passenger train operations where numerous freight-type cars, material handling cars, or express cars are part of a train's consist is virtually identical to the proposal contained in the NPRM published on January 16, 1998.

Section-by-Section Analysis

FRA is amending § 232.23 by revising paragraphs (e) and (g) and by adding a new paragraph (h) to specifically address passenger train operations that include using cars that do not have readily accessible emergency brake valves.

Paragraph (e) of § 232.23 contains a listing of the trains that are excepted from the two-way EOT requirements. Conforming changes have been made to paragraphs (e)(8) and (e)(9). In paragraph (e)(9) FRA retains the exception for passenger trains in which all of the cars in the train are equipped with a readily accessible emergency brake valve, as discussed in detail above.

In paragraph (e)(10) FRA adds an exception to the requirements regarding two-way EOTs for passenger trains that operate with a car placed at the rear of the train that is equipped with an emergency brake valve readily accessible to a crew member in radio communication with the locomotive engineer of the train. FRA intends for this exception to be applicable to passenger trains containing cars that do have a readily accessible emergency brake valve at the rear of the train. FRA believes this exception is justified as it is virtually identical to the exception granted to freight trains with an occupied caboose (contained in paragraph (e)(3)) since it would permit an emergency application of brakes to be initiated from the occupied car at the rear of the passenger train.

In paragraph (e)(11) FRA provides an exception for certain passenger trains that have cars placed at the rear of the train that do not have readily accessible emergency brake valves. This exception is intended to recognize the safety of these types of trains if configured and operated in accordance with the provisions of this exception. The exception contained in this subparagraph applies only to trains of twenty-four (24) cars or fewer. Therefore, passenger trains that have

more than 24 cars in the consist and that do not fall within the exceptions contained in subparagraphs (e)(9) or (e)(10) would be required to be equipped with an operative two-way EOT device or alternative technology. It should be noted that a locomotive that is used for power and/or controlling purposes and is not designed to carry passengers will not be considered a car for purposes of these calculations. Therefore, locomotives hauled dead in tow would be required to be counted as a car for purposes of these calculations.

In the NPRM, FRA proposed that each bogie used in RoadRailer® operation be counted as a car for purposes of calculating the number of cars in a passenger train consist. *See* 63 FR 2649. In its written comments, Amtrak objected to this method of calculating the number of cars in a train as it would artificially inflate the number of cars in a train. Amtrak stated that a string of RoadRailer® equipment will always have at least one more bogie than the total number of RoadRailer® vans since bogies include at least one couplermate. It was not FRA's intention to artificially inflate the number of cars in the train by proposing such a method of calculation. FRA's use of the term ''bogie'' was intended to refer to the intermediate bogies not the couplermates. However, after consideration of Amtrak's comments, FRA believes it would be confusing and possibly lead to incorrect calculation of the number of cars in a train if bogies are used as the determining factor. Consequently, in order to avoid confusion and clarify the intent of the final rule, FRA will calculate the number of cars in a train containing RoadRailer® equipment by counting each RoadRailer® van as a car. It should be noted that this method of calculation is solely for the purpose of applying the exception contained in this paragraph. In order to accurately calculate the percentage of operative brakes pursuant to §§ 232.1 and 232.12, it is necessary to consider the brakes on all the bogies in the train.

Based on data and information submitted by Amtrak and reviewed by Volpe and based upon Volpe's independent analysis regarding passenger train braking ratios and the response of passenger train brakes, FRA believes that certain mixed passenger trains can be safely operated without being required to be equipped with a two-way EOT or alternative technology, provided certain operational and train configuration restrictions are maintained. Paragraph (e)(11)(i) requires that if the total number of cars in a passenger train consist is twelve (12) or fewer, a car located no less than halfway through the consist (counting from the first car in the train) must be equipped with an emergency brake valve readily accessible to a crew member. For example, in a consist containing twelve (12) cars, the sixth (6th) car (or a car closer to the rear) in the consist must have a readily accessible emergency brake valve; likewise, in an eleven (11) car consist, the sixth (6th) car (or a car closer to the rear) must have a readily accessible emergency brake valve, since all half numbers will be rounded up. Paragraph (e)(11)(ii) requires that if the total number of cars in a passenger train consist is from thirteen (13) to twenty-four (24), a car located no less than two-thirds (⅔) of the way through the consist (counting from the first car in the train) must be equipped with an emergency brake valve readily accessible to a crew member. For example, in a twenty-one (21) car consist, the fourteenth (14th) car (or a car closer to the rear) must have a readily accessible emergency brake valve.

In addition to these train-configuration requirements, paragraphs (e)(11)(iii) and (iv) contain certain operating requirements that must be followed by any passenger train operating pursuant to this specific exception. Such trains are required to have a train crew member occupy the rearmost car equipped with a readily accessible emergency brake valve and remain in constant radio communication with the locomotive engineer whenever the train is operating over a section of track with an average grade of two percent or higher over two continuous miles. FRA recommends that the engineer alert the train crew member approximately ten (10) minutes prior to descending the heavy grade, so the crew member will be in place at the crest of the grade. Furthermore, the final rule requires that the crew member not leave his or her position until the locomotive engineer advises that the train has traversed the grade. FRA believes that these operational requirements will ensure that immediate action can be taken by a member of the train crew to effectuate an emergency brake application whenever the train is descending a heavy grade.

FRA is also amending paragraph (g) to indicate that the operating limitations that will be imposed on a passenger train required to be equipped with a two-way EOT that experiences an en route failure of the device will be contained in paragraph (h). It should be noted that FRA intends the criteria contained paragraph (g) for determining when a loss of communication between the front and rear units will be considered an en route failure to be applicable to passenger train operations.

Paragraph (h) contains the operational limitations and restrictions that are being placed on passenger trains that experience en route failures of two-way EOTs. Conrail, in its written comments, voiced concern that the language contained in the proposed rule text did not accurately reflect the operating restrictions discussed in the preamble. Consequently, in this final rule FRA has rewritten and reorganized paragraph (h) to make it more understandable and to clarify FRA's intent.

Due to the time-sensitive nature of passenger operations, FRA believes that placing a speed restriction on passenger trains is not the most effective method of handling en route failures of a two-way EOT. Rather than delaying the movement of a passenger train that experiences an en route failure of a device, FRA believes that certain operating restrictions can be imposed on the train and its crew to ensure the safety of these trains, particularly in non-heavy-grade territory. However, FRA believes that in order to realize the benefits of a two-way EOT as contemplated by Congress, the device must be operative when the train descends a heavy grade. Thus, FRA will only permit a passenger train to continue to operate under the operating restrictions contained in this paragraph in other than heavy grade territory. Consequently, paragraph (h)(1) has been slightly modified from the NPRM and is intended to strictly prohibit a passenger train that is required to be equipped with an operable device, from descending an average grade of two percent or more for two continuous miles until an operable device is installed or an alternative method of initiating an emergency brake application from the rear of the train is achieved.

Paragraph (h) has been further modified to make clear that the operating restrictions contained in paragraph (h)(2) are applicable to all passenger trains that experience en route failures of the two-way EOT and that are operating on other than heavy grade territory (i.e., two percent for two continuous miles). Paragraph (h)(2) is intended to permit passenger trains that develop an en route failure of the two-way EOT to continue to operate over track that is not in heavy grade territory as long as a crew member occupies the rearmost car with a readily accessible emergency brake valve and remains in constant radio communication with the locomotive engineer. In addition, FRA believes that since the train no longer

has the safety assurances provided by a two-way EOT, the engineer must periodically test the braking characteristics of the train by making running brake tests. If the engineer suspects the brakes are not functioning properly, immediate action shall be taken to bring the train to a stop until corrections can be made. Paragraph (h)(3) requires that all en route failures of the devices must be corrected either at the next location where the necessary repairs can be made or at the next location where a required brake test of the train is to be conducted, whichever point the train arrives at first.

Regulatory Impact

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule has been evaluated in accordance with existing policies and procedures. Because the requirements contained in this final rule clarify the applicability of the two-way EOT regulations to a specific segment of the industry and generally reduce the regulatory burden on these operators, FRA has concluded that this final rule does not constitute a significant rule under either Executive Order 12866 or DOT's policies and procedures.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of rules to assess their impact on small entities. FRA certifies that this final rule does not have a significant impact on a substantial number of small entities. Because the requirements contained in this final rule clarify the applicability of the two-way EOT regulations to a specific segment of the industry and generally reduce the regulatory burden on these operators, FRA has concluded that there are no substantial economic impacts for small units of government, businesses, or other organizations.

Paperwork Reduction Act

This final rule does not change any information collection requirements.

Environmental Impact

FRA has evaluated this final rule in accordance with its procedures for ensuring full consideration of the potential environmental impacts of FRA actions, as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and DOT Order 5610.1c. It has been determined that this final rule does not have any effect on the quality of the environment.

Federalism Implications

This final rule does not have a substantial effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

List of Subjects in 49 CFR Part 232

Penalties, Railroad power brakes, Railroad safety, Reporting and recordkeeping requirements, Two-way end-of-train devices.

The Rule

In consideration of the foregoing, FRA amends part 232, title 49, Code of Federal Regulations as follows:

PART 232—RAILROAD POWER BRAKES AND DRAWBARS

1. The authority citation for part 232 is revised to read as follows:

Authority: 49 U.S.C. 20102, 20103, 20107, 20108, 20110–20112, 20114, 20133, 20141, 20301–20304, 20701–20703, 21301, 21302, 21304, and 21311; and 49 CFR 1.49(c), (g), and (m).

2. Section 232.23 is amended by revising paragraphs (e) introductory text, (e)(8), and (e)(9) and adding a new sentence to the beginning of the introductory text of paragraph (g), and adding new paragraphs (e)(10), (e)(11), (g)(2) and (h) to read as follows:

§ 232.23 Operations requiring use of two-way end-of-train devices; prohibition on purchase of nonconforming devices.

* * * * *

(e) *Exceptions.* The following types of trains are excepted from the requirement for the use of a two-way end-of-train device:

* * * * *

(8) Trains that operate exclusively on track that is not part of the general railroad system;

(9) Passenger trains in which all of the cars in the train are equipped with an emergency brake valve readily accessible to a crew member;

(10) Passenger trains that have a car at the rear of the train, readily accessible to one or more crew members in radio contact with the engineer, that is equipped with an emergency brake valve readily accessible to such a crew member; and

(11) Passenger trains that have twenty-four (24) or fewer cars (not including locomotives) in the consist and that are equipped and operated in accordance with the following train-configuration and operating requirements:

(i) If the total number of cars in a passenger train consist is twelve (12) or fewer, a car located no less than halfway through the consist (counting from the first car in the train) must be equipped with an emergency brake valve readily accessible to a crew member;

(ii) If the total number of cars in a passenger train consist is thirteen (13) to twenty-four (24), a car located no less than two-thirds (⅔) of the way through the consist (counting from the first car in the train) must be equipped with an emergency brake valve readily accessible to a crew member;

(iii) Prior to descending a section of track with an average grade of two percent or greater over a distance of two continuous miles, the engineer of the train shall communicate with the conductor, to ensure that a member of the crew with a working two-way radio is stationed in the car with the rearmost readily accessible emergency brake valve on the train when the train begins its descent; and

(iv) While the train is descending a section of track with an average grade of two percent or greater over a distance of two continuous miles, a member of the train crew shall occupy the car that contains the rearmost readily accessible emergency brake valve on the train and be in constant radio communication with the locomotive engineer. The crew member shall remain in this car until the train has completely traversed the heavy grade.

* * * * *

(g) *En route failure of device on a freight or other non-passenger train.* Except on passenger trains required to be equipped with a two-way end-of-train device (which are provided for in paragraph (h) of this section), en route failures of a two-way end-of-train device shall be handled in accordance with this paragraph. * * *

* * * * *

(2) [Reserved]

(h) *En route failure of device on a passenger train.* (1) A passenger train required to be equipped with a two-way end-of-train device that develops an en route failure of the device (as explained in paragraph (g) of this section) shall not operate over a section of track with an average grade of two percent or greater over a distance of two continuous miles until an operable two-way end-of-train device is installed on the train or an alternative method of initiating an emergency brake application from the rear of the train is achieved.

(2) Except as provided in paragraph (h)(1) of this section, a passenger train

required to be equipped with a two-way end-of-train device that develops an en route failure of the device (as explained in paragraph (g) of this section) shall be operated in accordance with the following:

(i) A member of the train crew shall be immediately positioned in the car which contains the rearmost readily accessible emergency brake valve on the train and shall be equipped with an operable two-way radio that communicates with the locomotive engineer; and

(ii) The locomotive engineer shall periodically make running tests of the train's air brakes until the failure is corrected; and

(3) Each en route failure shall be corrected at the next location where the necessary repairs can be conducted or at the next location where a required brake test is to be performed, whichever is reached first.

3. Appendix A to Part 232, ''Schedule of Civil Penalties,'' is amended by revising the heading of the entry for § 232.23 and revising the entry for § 232.23(g) and adding an entry for § 232.23(h), to read as follows:

Appendix A to Part 232—Schedule of Civil Penalties

* * * * *

Section	Violation	Willful violation
* * *	*	*
232.23 Operating standards:		
* * *	*	*
(g) En route failure, freight or other non-passenger	5,000	7,500
(h) En route failure, passenger	5,000	7,500
* * *	*	*

Issued in Washington, D.C., on April 24, 1998.

Jolene M. Molitoris,

Administrator.

[FR Doc. 98–11408 Filed 4–30–98; 8:45 am]

BILLING CODE 4910–06–P

Proposed Rules

Federal Register
Vol. 63, No. 84
Friday, May 1, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–113–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace BAe Model ATP 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 British Aerospace BAe Model ATP airplanes. This proposal would require repetitive inspections for discrepancies of the spring strut assembly of the forward door of the main landing gear (MLG), and replacement of the existing spring strut assembly with a new or serviceable part, if necessary. This proposal also would require eventual replacement of the existing spring strut assembly with an improved part, which, when accomplished, 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 failure of the spring strut assembly of the forward door of the MLG, which, if not corrected, could result in inability to extend the MLG.

DATES: Comments must be received by June 1, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–113–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 AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. 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 98–NM–113–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–113–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on certain British Aerospace BAe Model ATP airplanes. The CAA advises that a BAe Model ATP airplane made an emergency landing because the left main landing gear (MLG) failed to extend. Investigation of the incident revealed a number of possible causes, including corrosion, wear, or damage to the operating mechanism. On March 31, 1998, the FAA issued a notice of proposed rulemaking (NPRM) to address these possible causes (reference Docket No. 97–NM–312–AD; 63 FR 16713, April 6, 1998).

Further investigation of the incident revealed that the spring strut assembly of the forward door of the MLG on the airplane was loose. (The spring strut assembly is part of the mechanism which opens the MLG door and allows extension and retraction of the MLG.) Similar loose attachment also was observed on one other in-service airplane, and has been attributed to damage of the rivets that connect the fork end of the spring strut assembly to the tube of the assembly. Failure of these rivets, if not corrected, could cause failure of the spring strut assembly of the forward door of the MLG, which could result in inability to extend the MLG.

Explanation of Relevant Service Information

The manufacturer has issued British Aerospace Alert Service Bulletin ATP–32–85, Revision 1, dated March 20, 1998, which describes procedures for repetitive visual inspections for discrepancies of the fork end of the spring strut assembly of the forward door of the left and right MLG on the airplane. The actions involve inspecting for looseness or damage of the rivets that connect the fork end fitting to the tube of the spring strut assembly, and inspecting for movement between the fork end fitting and the tube of the spring strut assembly. This alert service bulletin also describes procedures for replacing the spring strut assembly with a new or serviceable part, if any rivet is found to be damaged, if any rivet hole is found to be elongated, or if the

attachment of the fork end fitting to the tube is found to be loose. The CAA classified this alert service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

The manufacturer also has issued British Aerospace Service Bulletin ATP–32–87, dated January 29, 1998, which describes procedures for replacing the existing spring strut assembly of the forward door of the MLG with an improved spring strut assembly. Such replacement eliminates the need for the repetitive inspections described previously.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

FAA's Conclusions

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, 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 actions specified in the service bulletins described previously, except as discussed below.

Differences Between Proposed Rule and Service Bulletin

Operators should note that this AD proposes to mandate the replacement of the existing spring strut assembly of the forward door of the MLG with an improved spring strut assembly, as described in British Aerospace Service Bulletin ATP–32–87, dated January 29, 1998, as terminating action for the repetitive inspections specified in British Aerospace Alert Service Bulletin ATP–32–85, Revision 1, dated March 20, 1998. Accomplishment of the modification specified in this service bulletin has not been classified as mandatory by the CAA.

The FAA has determined that, in certain cases, 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 requirement to replace the existing spring strut assembly with an improved spring strut assembly is in consonance with these conditions.

Cost Impact

The FAA estimates that 10 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 4 work hours (2 work hours per MLG) to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on this figure, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $2,400, or $240 per airplane, per inspection cycle.

It would take approximately 12 work hours (6 work hours per MLG) to accomplish the proposed modification, at an average labor rate of $60 per work hour. Required parts would cost approximately $2,200 per airplane ($1,100 per MLG). Based on this figure, the cost impact of the modification proposed by this AD on U.S. operators is estimated to be $29,200, or $2,920 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:

British Aerospace Regional Aircraft (Formerly Jetstream Aircraft Limited; British Aerospace (Commercial Aircraft) Limited): Docket 98–NM–113–AD.

Applicability: BAe Model ATP airplanes, as listed in British Aerospace Alert Service Bulletin ATP–32–85, Revision 1, dated March 20, 1998, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the spring strut assembly of the forward door of the main landing gear (MLG), which, if not corrected, could result in the inability to extend the MLG, accomplish the following:

(a) Within 600 flight hours after the effective date of this AD, perform a visual

inspection for discrepancies of the fork end of the spring strut assembly of the forward door of the MLG, on the left and right side of the airplane; in accordance with British Aerospace Alert Service Bulletin ATP–32–85, Revision 1, dated March 20, 1998.

(1) If no discrepancy is detected, repeat the visual inspection thereafter at intervals not to exceed 1,500 flight hours until the actions specified by paragraph (b) of this AD are accomplished.

(2) If any discrepancy is detected, prior to further flight, replace the existing spring strut assembly with a new or serviceable part, in accordance with the alert service bulletin. Repeat the visual inspection thereafter at intervals not to exceed 1,500 flight hours until the actions specified by paragraph (b) of this AD are accomplished.

(b) Within 18 months after the effective date of this AD, replace the spring strut assembly of the forward door of the MLG with an improved spring strut assembly, on the left and right side of the airplane; in accordance with British Aerospace Service Bulletin ATP–32–87, dated January 29, 1998. This replacement constitutes terminating action for the requirements of this AD.

(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, FAA, Transport Airplane Directorate. Operators shall submit their request 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.

Issued in Renton, Washington, on April 24, 1998.

Gary L. Killion,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–11561 Filed 4–30–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–ANE–59–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT8D Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Pratt & Whitney (PW) JT8D series turbofan engines, that currently requires initial and repetitive inspections of the No. 7 fuel nozzle and support assembly, replacement of the No. 7 fuel nozzle and support assembly with a more leak-resistant configuration, and replacement of aluminum oil pressure and scavenge tube fittings with steel fittings. In addition, the current AD requires replacing an additional aluminum oil scavenge line bolt with a steel bolt. This action would require initial and repetitive borescope inspections for loss of fuel nozzle nut torque and nozzle support wear, and replacement or modification of the fuel nozzles at the next accessibility of the diffuser build group as terminating action to the inspections. This proposal is prompted by reports of loss of fuel nozzle nut torque and nozzle support wear. The actions specified by the proposed AD are intended to prevent loss of fuel nozzle nut torque and nozzle support wear, which could result in a fuel leak and possible engine fire.

DATES: Comments must be received by June 30, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–ANE–59–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9-ad-engineprop@faa.dot.gov''. Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–6600, fax (860) 565–4503. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, telephone (781) 238–7175, fax (781) 238–7199.

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 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–ANE–59–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, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–ANE–59–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On January 24, 1995, the Federal Aviation Administration (FAA) issued airworthiness directive AD 95–02–16, Amendment 39–9135 (60 FR 6654, February 3, 1995), applicable to Pratt & Whitney (PW) JT8D series turbofan engines, to require inspection of the No. 7 fuel nozzle and support assembly for evidence of fuel leakage and burning until replacement of the No. 7 fuel nozzle and support assembly with an improved sealing configuration. That AD also requires replacement of the aluminum oil tube fittings with steel fittings. In addition, that AD requires replacing an additional aluminum oil scavenge line bolt with a steel bolt. That action was prompted by reports of two uncontained engine fires due to fuel leakage from the No. 7 fuel nozzle and

support assembly, ignition of that fuel, melting of aluminum oil pressure and scavenge tube fittings that are in the proximity of the No. 7 nozzle, and augmentation of that fire with the liberated oil. That condition, if not corrected, could result in fuel leakage from the No. 7 fuel nozzle and support assembly, ignition of that leaking fuel, and liberation of oil from melted oil line fittings, which can result in an uncontained engine fire and damage to the aircraft.

Since the issuance of that AD, the FAA has received reports of loss of fuel nozzle nut torque and nozzle support wear. AD 95–02–16 mandated welding of the No. 7 fuel nozzles to the fuel nozzle support to prevent secondary fuel leakage and replacement of oil scavenge lines to a more fire resistant stainless steel. Field experience has shown that the welding of the fuel nozzle to the fuel nozzle support can cause a loss of torque on the fuel nozzle nut. The loss of torque on the fuel nozzle nut results in rotation of the nut and air scoop assembly and subsequent contact between the airscoop and the nozzle support fairing, resulting in wear through the fairing and nozzle support and eventually a secondary fuel leak. The loss of nut torque has also been reported to cause thread wear, which in some cases has resulted in liberation of the nozzle from the support after it has been removed from the engine.

The FAA has reviewed and approved the technical contents of PW Alert Service Bulletin (ASB) No. A6310, dated October 13, 1997, that describes procedures for inspections for loss of fuel nozzle nut torque and nozzle support wear, and ASB No. A6311, dated October 14, 1997, that describes procedures for replacement or modification of fuel nozzles to an improved design.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 95–02–16 to require initial and repetitive inspections for loss of fuel nozzle nut torque and nozzle support wear, and replacement or modification of the fuel nozzles at the next accessibility of the diffuser build group as terminating action to the inspections. The calendar end-date was determined based upon risk analysis and parts availability.

There are approximately 13,902 engines of the affected design in the worldwide fleet. The FAA estimates that 7,100 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 0.3 work hours per engine to accomplish the proposed inspections, and 9.2 hours to perform the proposed modifications or replacement, and that the average labor rate is $60 per work hour. Required parts would cost approximately $12,620 per engine to replace the nozzle and $1,500 to modify existing nozzles. The FAA estimates that 10% of the nozzles will have to be replaced. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $18,950,000 .

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 removing amendment 9135 (60 FR 6654, February 3, 1995) and by adding a new airworthiness directive to read as follows:

Pratt & Whitney: Docket No. 97–ANE–59–AD. Supersedes AD 95–02–16, Amendment 39–9135.

Applicability: Pratt & Whitney (PW) Model JT8D–209, –217, –217A, –217C, –219, –1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR turbofan engines incorporating the modifications described in PW Service Bulletin (SB) No. 5650, dated January 17, 1986, Alert Service Bulletin (ASB) No. A6169, Revision 4, dated June 5, 1996, or earlier revisions, or SB 6240, dated January 20, 1996, and any PW Model JT8D engine with low emissions fuel nozzle and support assemblies, Part Numbers 775485, 809137–01, 802965, 5004308–02, 5004308–032, 814358, 5004308–042 or 815658–01 installed. These engines are installed on but not limited to Boeing 727 and 737 series, and McDonnell Douglas DC–9 and MD–80 series aircraft.

Note 1: This airworthiness directive (AD) applies to each engine 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 engines 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, unless accomplished previously.

To prevent loss of fuel nozzle nut torque and nozzle support wear, which could result in a fuel leak and possible engine fire, accomplish the following:

(a) For engines that have not incorporated modifications to the No. 7 fuel nozzle and support assembly in accordance with PW ASB No. A6169, Revision 4, dated January 20, 1996, or earlier revisions, or PW SB No. 6240, dated January 20, 1996, as of the effective date of this AD; or for engines that have not incorporated the oil scavenge tube and fitting modifications in accordance with ASB No. A6170, dated October 20, 1994, as of the effective date of this AD, accomplish the following:

(1) Inspect No. 7 fuel nozzle and support assemblies in accordance with PW ASB No. A6153, Revision 1, dated June 8, 1994, as follows:

(i) For engines that have accumulated 3,200 hours or more time in service (TIS) since last fuel nozzle and support assembly overhaul and have not received an initial inspection for fuel leakage, perform an initial inspection for fuel leakage before further flight.

(ii) For engines that have accumulated less than 3,200 hours TIS since last fuel nozzle and support assembly overhaul and have not received an initial inspection for fuel leakage, perform an initial inspection for fuel leakage

prior to accumulating 3,200 hours TIS since last fuel nozzle and support assembly overhaul.

(iii) Thereafter, inspect for fuel leakage in accordance with PW ASB A6153, Revision 1, dated June 8, 1994, at intervals not to exceed 700 hours TIS since last inspection.

(iv) Remove from service No. 7 fuel nozzle and support assemblies that exhibit evidence of fuel leakage as described in PW ASB No. A6153, Revision 1, dated June 8, 1994, and replace with the improved sealing configuration nozzle in accordance with paragraph (a)(2)(i) of this AD, as follows:

(A) Within 25 hours TIS, or 25 cycles in service (CIS), whichever occurs first, after the inspection performed in paragraph (a)(1) for aircraft with only one engine exhibiting No. 7 fuel nozzle and support assembly leakage.

(B) Prior to further flight, on aircraft with two or more engines exhibiting No. 7 fuel nozzle and support assembly leakage, remove and replace at least all but one of the leaking No. 7 fuel nozzle and support assemblies. If not replacing all leaking No. 7 fuel nozzle and support assemblies, the remaining No. 7 fuel nozzle and support assembly that exhibits leakage shall be removed and replaced in accordance with paragraph (a)(1)(iv)(A) of this AD.

(2) At the next accessibility of the diffuser build group after the effective date of the AD, but no later than July 31, 1999, accomplish the following:

(i) Replace the No. 7 fuel nozzle and support assembly in accordance with paragraph 1.B.(3) of the Accomplishment Instructions of PW ASB No. A6311, dated October 14, 1997.

(ii) Replace the aluminum pressure and scavenge oil tube fittings with steel fittings in accordance with PW ASB No. A6170, Revision 2, dated October 20, 1994.

(iii) Replacement of the following oil tubes with corresponding oil tubes that incorporate steel fittings constitutes compliance with paragraph (b)(2) of this AD:

(A) Outer internal No. 4 and 5 bearing pressure tube assembly for PW JT8D–200 series engines.

(B) Outer internal main bearing pressure tube assembly for PW JT8D–200 series engines.

(C) Main bearing pressure manifold assembly for PW JT8D–200 series engines.

(D) Front No. 4 1/2 and 6 bearing pressure tube assembly for JT8D–200 series engines.

(E) No. 4 bearing oil scavenge tube assembly for all other JT8D engines.

(F) No. 4 bearing oil pressure tube assembly for all other JT8D engines.

(G) Main bearing pressure manifold assembly for all other JT8D engines.

(3) Incorporation of the hardware required by paragraph (a)(2)(i) of this AD constitutes terminating action for the inspections required by paragraphs (a)(1) of this AD.

(b) For engines that have incorporated modifications of the No. 7 fuel nozzle and support assembly in accordance with PW ASB No. A6169, Revision 4, dated June 5, 1996, or earlier revisions, and have not incorporated the replacement of the No. 7 fuel nozzle and support assembly with a fuel nozzle and support assembly with tack welded lock tabs in accordance with PW SB No. 6240, dated January 12, 1996, accomplish the following.

(1) Borescope inspect, remove, and replace fuel nozzle and support assemblies for nut rotation in accordance with methods, intervals and inspection criteria specified in PW ASB No. 6310, dated October 13, 1997.

(2) At the next accessibility of the diffuser build group after the effective date of the AD, but no later than [Insert 5 years after the effective date of the AD] , replace the No. 7 fuel nozzle and support assembly with a welded air nozzle assembly in accordance with paragraph 1.B.(1), 1.B.(2) and 1.B.(3) of the Accomplishment Instructions of PW ASB No. A6311, dated October 14, 1997.

(3) Accomplishment of paragraph (b)(2) of this AD is terminating action to the inspections of paragraph (b)(1) of this AD.

(c) For engines that have incorporated the replacement of the No. 7 fuel nozzle and support assembly with a fuel nozzle and support assembly with tack welded lock tabs in accordance with PW SB No. 6240, dated January 12, 1996, at the next accessibility of the diffuser build group after the effective date of the AD, but no later than [insert 5 years after the effective date of the AD], replace the No. 7 fuel nozzle and support assembly with a welded air nozzle assembly in accordance with paragraph 1.A.(1), 1.A.(2) and 1.A.(3) of the Accomplishment Instructions of PW ASB No. A6311, dated October 14, 1997.

(d) For the purpose of this AD, accessibility of the diffuser build group is defined as engine maintenance that entails flange separation of the diffuser case from the combustion chamber outer case.

(e) For the purpose of this AD, fuel nozzle and support assembly overhaul is defined as disassembly of the fuel nozzle from the support assembly that entails removal of the fuel nozzle nut.

(f) 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, Engine Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(g) 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 aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on April 23, 1998.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 98–11559 Filed 4–30–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AWP–11]

Proposed Modification to Class E Airspace; Ukiah, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify the Class E airspace at Ukiah, CA, by lowering a portion of the base of controlled airspace from 9,500 feet mean sea level, (MSL) to 1,200 feet above ground level (AGL). This action is due to the proposed establishment of a new federal airway (V–607) between Mendocino and Arcata, CA. The proposed airway, if adopted, will have a minimum enroute altitude of 9,000 feet MSL. A review of airspace classification has made this action necessary in order to achieve compliance with criteria stated in FAA Order 7400.2D. The intended effect of this proposal is to ensure that the Class E airspace at Ukiah, CA will be of sufficient size to contain V–607.

DATES: Comments must be received on or before June 1, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace Branch, AWP–520, Docket No. 98–AWP–11, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

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

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

FOR FURTHER INFORMATION CONTACT: Larry Tonish, Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, CA 90261, telephone (310) 725–6539.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Individuals wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 98–AWP–11.'' The postcard will be date/time stamped and returned to the individual. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Airspace Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11A–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to 14 CFR Part 71 to modify the Class E airspace area at Ukiah, CA, by lowering a portion of the base of controlled airspace from 9,500 feet MSL to 1,200 feet AGL. This action is due to the proposed establishment of a new federal airway (V–607) between Mendocino and Arcata, CA. The proposed airway, if adopted, will have a minimum enroute altitude of 9,000 feet MSL. A review of airspace classification has made this action necessary in order to achieve compliance with criteria stated in FAA Order 7400.2D. The intended effect of this proposal is to ensure that the Class E airspace at Ukiah, CA will be of sufficient size to contain V–607. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6006 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in that Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Subpart E—Class E Airspace

* * * * *

AWP CA E Ukiah, CA [Revised]

Ukiah Municipal Airport, CA
(Lat. 39°07′34″N, long. 123°12′03″W)
Fortuna VORTAC
(Lat. 40°40′17″N, long. 124°14′04″W)
Mendocino VORTAC
(Lat. 39°03′12″N, long. 123°16′27″W)
Red Bluff VORTAC
(Lat. 40°05′56″N, long. 122°14′11″W)

That airspace extending upward from 1,200 feet above the surface within a 17.4 mile radius of the Mendocino VORTAC, excluding that airspace east of the western edge of V25 and that airspace bounded by a line from lat. 39°32′00″N, long. 123°33′14″W; to lat. 39°32′00″N, long. 123°11′34″W; to lat. 39°21′37″N, long. 123°04′54″W; to lat. 39°19′07″N, long. 123°07′22″W, thence counterclockwise via the 17.4 mile radius of the Mendocino VORTAC to lat. 39°19′04″N, long. 123°25′40″W; to lat. 39°32′00″N, long. 123°33′14″W. That airspace extending upward from 7,500 feet MSL south of the Red Bluff VORTAC between the 20.9- and 39.1-mile arcs of the Red Bluff VORTAC bounded on the northwest by the northwest edge of V–199 and on the southeast by the southeast edge of V–25. That airspace extending upward from 8,500 feet MSL south of the Red Bluff VORTAC bounded on the northeast by a 39.1-mile arc of the Red Bluff VORTAC, on the southeast by the southeast edge of V–25, on the south and southwest by the north edge of V–200 and a 17.4-mile arc of the Mendocino VORTAC, and on the northwest by the northwest edge of V–199. That airspace extending upward from 9,500 feet MSL bounded on the southeast by the northwest edge of V–199 to lat. 39°21′37″N, long. 123°04′54″W; to lat. 39°32′00″N, long. 123°11′34″W; to lat. 39°32′00″N, long. 123°20′33″W, and on the west by the east edge of V–607, and on the north by a line 7.8 miles south of a parallel to the Red Bluff VORTAC 291° and Fortuna VORTAC 110° radii to the 17.4-mile arc of the Red Bluff VORTAC, thence counterclockwise to the northwest edge of V–199, and that airspace bounded on the east by the western edge of V607 to lat. 39°46′40″N, long. 123°35′50″W, and on the west by the east edge of V–27 to the 24-mile radius of the Fortuna VORTAC, thence counterclockwise to the west edge of V–607. That airspace extending upward from 5,300 feet MSL bounded on the east by the southwest edge of V–27 and on the west by the west/southwest edge of V–494.

* * * * *

Issued in Los Angeles, California, on April 21, 1998.

John G. Clancy,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 98–11647 Filed 4–30–98; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Trading Hours

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission (''Commission'') is proposing to amend Commission Regulation 1.41(k) to allow additional changes in trading hours to be deemed approved by the Commission one business day after receipt of written notice of a change in accordance with the regulation. The Commission is publishing notice of the proposed rulemaking and requesting public comment.

DATES: Comments on the proposed rulemaking must be made by May 18, 1998.

ADDRESSES: Comments should be mailed to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21 st Street, NW, Washington, D.C. 20581; transmitted by facsimile to (202) 418–5521; or transmitted electronically to (secretary@cftc.gov).

FOR FURTHER INFORMATION CONTACT: Lois J, Gregory, Attorney, Contract Markets, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, N.W., Washington, D.C. 20581. Telephone: (202) 418–5483.

SUPPLEMENTARY INFORMATION:

Regulation 1.41(k) allows a change in trading hours which does not permit trading to open before 7:00 a.m. or close after 6:00 p.m. local time in the city where the contract market is located to be deemed approved by the Commission at the close of business one business day after properly labeled written notice of the change is received by the Commission if the change is not inconsistent with the Commodity Exchange Act or the Commission's other regulations. Trading hour changes which do permit trading to open before 7:00 a.m. or close after 6:00 p.m. local time must be submitted to the Commission for approval pursuant to Regulation 1.41(b).

The Commission is proposing to amend Regulation 1.41(k) to allow additional changes in trading hours to be deemed approved by the Commission one business day after receipt of written notice of a change in accordance with the subsection. Specifically, under the rule as proposed to be amended, if a contract market had previously received Commission approval for trading between 6:00 p.m. and 7:00 a.m. in at least one of its designated contracts, it could submit all subsequent changes in trading hours pursuant to regulation 1.41(k). Thus, under 1.41(k) as proposed to be revised, the first time a contract market proposed changing trading hours for any of its designated contracts to fall between the hours of 6:00 p.m. and 7:00 a.m., the proposal would have to be submitted to the Commission for approval pursuant to Regulation 1.41(b). The Commission would review such initial proposal to ensure that adequate systems and procedures were in place to accommodate the expanded trading hours. Matters to be addressed would include, among other matters, clearing, margin, market date, and surveillance programs. Any subsequent change to trading hours could then be approved under the expedited procedures of revised Regulation 1.41(k).

The Commission is proposing to amend Regulation 1.41(k) in the manner described as a result of its recent efforts to modernize and streamline its regulatory framework. Growth, technological developments, and around-the-clock trading have altered the marketplace. The proposed amendment to Regulation 1.41(k) is part of the Commission's efforts to ensure that its rules have adapted to these changes.

With respect to electronic trading, the proposed amendments to Regulations 1.41(k) contemplate that listing a contract for trading on an automated trading system would constitute more than a change in trading hours. It would also be a change in the method of trading. Accordingly, neither the initial establishment of an electronic trading system nor the subsequent listing of additional contracts would be eligible for treatment under Regulation 1.41(k). However, changes in the trading hours of a contract that was already listed on an electronic system would be eligible for treatment under revised Regulation 1.41(k).

Related Matters

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 [Pub. L. 104–13 (May 13, 1995)] imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the Paperwork Reduction Act. While this proposed regulation has no burden, the group of regulations (3038–0022), of which this is a part has the following burden:

Average burden hours per response.	3,546.26
Number of Respondents	10,971
Frequency of response	On occasion.

Copies of the OMB approved information collection package associated with this regulation may be obtained from the Desk Officer, CFTC, Office of Management and Budget, Room 10202, NEOB, Washington DC 20503, (202) 395–7340.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing rules, consider the impact on small businesses. The only entity this rulemaking would affect would be contract markets. The Commission has previously determined that contract markets are not ''small entities'' for purposes of the Regulatory Flexibility Act, (47 FR 18618 (April 30, 1982)). Therefore, the Chairperson, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the action taken herein would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 17 CFR Part 1

Brokers, Commodity futures, Consumer protection, Reporting and recordkeeping requirements, Segregation requirements.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and, in particular Section 8a thereof, 7 U.S.C. 12a, the Commission hereby proposes to amend Part 1 of Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C. 1a, 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, and 24.

2. Section 1.41 is amended by revising paragraph (k)(1) to read as follows:

1.41 Contract market rules; submission of rules of the Commission; exemption of certain rules.

* * * * *

(k) *Trading hours.* (1) Notwithstanding the provisions of paragraph (b) of this section and except in connection with an initial listing of a contract on an automated trading system, all changes in trading hours shall be deemed approved by the Commission at the close of business one

business day after written notice of such a change is received by the Commission if:

(i) The change is not inconsistent with any provision of the Act or the Commission's regulations;

(ii) For a change that permits trading anytime between 6 p.m. and 7 a.m. local time in the city where the contract market is located, the contract market has previously received Commission approval for trading between such hours in at least one of its designated contracts; and

(iii) The contract market labels the written notice as being submitted pursuant to paragraph (k) of this section.

* * * * *

Issued in Washington D.C. on April 28, 1998, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–11655 Filed 4–30–98; 8:45 am]

BILLING CODE 6351–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 206

RIN 3067–AC69

Disaster Assistance; Hazard Mitigation Grant Program

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the categories of projects currently eligible for funding under the Hazard Mitigation Grant Program (HMGP) by defining eligible mitigation activities under the HMGP to include nonstructural flood hazard mitigation measures and minor flood control projects that do not duplicate the efforts and authorities of other Federal agencies.

DATES: We invite comments on this proposed rule, which may be submitted on or before June 30, 1998.

ADDRESSES: Please send any comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., room 840, Washington, DC 20472, (facsimile) (202) 646–4536, or (email) rules@fema.gov.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3619, (facsimile) (202) 646–3104.

SUPPLEMENTARY INFORMATION:

Background

In December 1993, the President signed the Hazard Mitigation and Relocation Assistance Act, which amended § 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5170c. This amendment provides legislative authority to use the majority of mitigation funding available from flood disasters to undertake nonstructural floodplain management measures.

Nonstructural Measures

Authorized by § 404 of the Stafford Act, the HMGP provides States and local governments financial assistance to implement measures that permanently reduce or eliminate future damages and losses from natural hazards. In response nonstructural measures are FEMA's first priority when grantees use Hazard Mitigation Grant Program funds to address a flood hazard. Our experience with the use of nonstructural flood hazard mitigation measures by acquiring, elevating, and floodproofing high-risk structures sharply reduces the number of structures in harm's way. Advantages of this approach include substantial environmental and hydrologic benefits.

This proposed rule would modify the list of eligible types of projects and clarify types of activities that are eligible under the program, and would reflect FEMA's multi-hazard program objectives and priorities. FEMA would include development and initial implementation of vegetation management programs for wildfire hazard mitigation and erosion hazard mitigation in the list of eligible activities. Routine maintenance and landscaping activities would not be eligible. Vegetation management can reduce the volume and continuity of flammable vegetation in order to slow or prevent the spread of wildfire from vegetation to developed properties and to improve the potential effectiveness of wildfire suppression activities. Vegetation management can also reduce costs associated with erosion from floods and severe storms.

Vegetation management programs often require significant regular maintenance in order to preserve their hazard mitigation benefits. Such maintenance would be the responsibility of the subgrantee. Before approving a grant FEMA or the State may require a maintenance plan and commitment by the subgrantee accepting responsibility for the maintenance.

The list of eligible HMGP projects provided for under subsection (c) is not all-inclusive, but provides a general overview of potential project categories and clarifies that major structural flood control projects would not be considered for funding under the HMGP. Applicants may propose project types not listed for funding consideration.

Warning Systems

While ''Development or improvement of warning systems'' has been removed from the list of eligible project type examples in the rule, FEMA will continue to entertain applications for such projects under the Five Percent Initiative. The five percent initiative provides the State greater flexibility over the approval of HMGP projects up to five percent of the available program funding. FEMA's guidance for implementing the initiative specifically indicates that warning systems, which are difficult to evaluate against HMGP eligibility criteria, are appropriately funded within the five percent initiative.

Structural Assistance

FEMA recognizes that dikes, levees, dams, channelization, channel widening, stream realignment, seawalls, groins, and jetties continue to serve as a means to minimize vulnerability to hazards under certain circumstances. These structures fall traditionally under the water resources design and construction authorities of the U.S. Army Corps of Engineers and the Natural Resources Conservation Service of the U.S. Department of Agriculture. Both of those agencies have extensive experience assisting in the planning, design, and construction of major structural projects. FEMA has limited experience with major structural flood control projects. Rather than duplicate assistance available from other Federal agencies, FEMA limits its flood control assistance to minor flood control projects and localized protection of critical facilities that generally do not fall under the authority of other Federal agencies.

Minor Flood Control Projects

The most common activities under the minor flood control project category include modification of existing culverts and bridges; upgrades of storm drainage systems; installation of floodgates; and creation of small retention or detention basins. Based on these types of projects, the term ''minor flood control projects'' refers to the limited scope of a project's impact upon the floodplain that would lessen the frequency or severity of

flooding and decrease predicted flood damage. For example, minor physical changes, such as a modification to a culvert, that can reduce flooding and losses for whole groups of homes or neighborhoods may be more cost-effective than an individual mitigation measure applied to every home in that area.

Finally, the language in this proposed rule mirrors project eligibility descriptions included in § 553 of the National Flood Insurance Reform Act of 1994, Pub. L. 103–325, which authorizes the new Flood Mitigation Assistance program. This proposed rule would provide a consistent approach throughout FEMA's mitigation grant programs in the funding flood mitigation projects.

Correction to General, Allowable Open Space, Recreational, and Wetlands Management Uses

44 CFR 206.434(d)(2) would be corrected to read ''permeable'' in place of ''previous''. This change is to allow unimproved, unpaved short-term parking areas such as visitors parking areas at an acquired property to be used as a park or recreational area. The change would acknowledge the present misspelling of ''pervious'' as ''previous'' in § 206.434(d)(2) and would substitute the equivalent, more familiar term ''permeable'' for ''pervious''.

Removal of Language Regarding Inapplicability of the Uniform Relocation Act

This proposed rule would delete 44 CFR 206.434(e), *Inapplicability of the Uniform Relocation Act,* which exempts projects that meet certain criteria from meeting the requirements of the Uniform Relocation Act. This exemption was created by amendment to the Stafford Act in 1993 and applied only to disaster assistance for 9 major disasters declared during the Great Midwestern Flood of 1993. Project funding under those 9 disasters is nearly complete; paragraph 206.434(e) is no longer applicable to the program. FEMA's voluntary open space acquisition projects continue to be exempt from most provisions of the Uniform Relocation Act under 49 CFR 24.101(a).

National Environmental Policy Act

This proposed rule is categorically excluded under 44 CFR 10.8. FEMA has not prepared an environmental assessment.

Executive Order 12898, Environmental Justice

FEMA reviewed the socioeconomic conditions relating to this proposed rule and made a finding that no disproportionately high and adverse effect on minority or low-income populations will result from implementation of this program.

Executive Order 12866, Regulatory Planning and Review

This proposed rule is not a significant regulatory action within the meaning of § 2(f) of E.O. 12866 of September 30, 1993, 58 FR 51735, but attempts to adhere to the regulatory principles set forth in E.O. 12866. The rule has not been reviewed by the Office of Management and Budget under E.O. 12866.

Regulatory Flexibility Act

The Director certifies that this rule is not a major rule under Executive Order 12291. It will not have significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, and is not expected (1) to affect adversely the availability of disaster assistance funding to small entities, (2) to have significant secondary or incidental effects on a substantial number of small entities, or (3) to create any additional burden on small entities. FEMA has not prepared a regulatory flexibility analysis of this proposed rule.

Paperwork Reduction Act

This proposed rule does not involve any collection of information for the purposes of the Paperwork Reduction Act.

Executive Order 12612, Federalism

This proposed rule would involve no policies that have federalism implications under E.O. 12612, Federalism, dated October 26, 1987.

List of Subjects in 44 CFR Part 206

Administrative practice and procedure, Grant programs, Hazard mitigation.

Accordingly, 44 CFR part 206 is proposed to be amended as follows:

PART 206—[AMENDED]

1. The authority citation for part 206 continues to read as follows:

Authority: The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p.376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; and E.O. 12673, 54 FR 12571, 3 CFR, 1989 Comp., p. 214.

2. Section 206.434(c) is revised to read as follows:

§ 206.434 Eligibility.

* * * * *

(c) *Types of projects.* Projects may be of any nature that will result in protection of public or private property. Eligible projects include, but are not limited to:

(1) Property acquisition or relocation, as defined in § 206.434(d);

(2) Retrofitting structures and facilities to strengthen against high winds, earthquake, flood, wildfire, or other natural hazards;

(3) Elevation of floodprone structures;

(4) Development and initial implementation of vegetation management programs for wildfire and erosion hazard mitigation, with the subgrantee accepting responsibility for continuing maintenance required to preserve hazard mitigation benefits;

(5) Minor flood control projects that do not duplicate the flood prevention activities of other Federal agencies, that lessen the frequency or severity of flooding, and that decrease predicted flood damages in localized flood problem areas. They include modification of existing culverts and bridges, installation or modification of floodgates, stream bank stabilization, and creation of small retention and detention basins. Minor flood control projects shall not include major flood control projects such as dikes, levees, seawalls, groins, jetties, dams, and stream channelization.

(6) Localized flood control projects, such as ring levees and floodwall systems, which serve to protect critical facilities.

(7) Development and implementation (for example, training for building officials) of State or local mitigation standards;

(8) Development of comprehensive hazard mitigation programs with implementation as an essential component.

* * * * *

3. Section 206.434(d)(2) is revised to read as follows:

§ 206.434 Eligibility.

* * * * *

(d) * * *

(2) In general, allowable open space, recreational, and wetland management uses include parks for outdoor recreational activities, nature reserves, cultivation, grazing, camping (except where adequate warning time is not available to allow evacuation), temporary storage in the open of wheeled vehicles that are easily movable (except mobile homes),

unimproved, permeable parking lots, and buffer zones.

* * * * *

4. Section 206.434 is amended by deleting paragraph (e) and redesignating paragraphs (f) and (g) as paragraphs (e) and (f).

Dated: April 24, 1998.

James L. Witt,

Director.

[FR Doc. 98–11641 Filed 4–30–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 98–54; FCC 98–68]

1998 Biennial Regulatory Review

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In the *Notice of Proposed Rulemaking* (''*NPRM*''), the Commission seeks comment or ways to simplify and make more uniform the Cable Television Service pleading and complaint process rules. This proceeding is initiated in conjunction with the Commission's 1998 biennial regulatory review. The intended effect of this proceeding is to reduce the regulatory burden on franchising authorities, cable operators, and other interested persons making filings under the rules.

DATES: Comments are due on or before June 22, 1998. Reply comments are due on or before July 7, 1998. Public Information requirements are due June 30, 1998.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Room 222, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Thomas Horan, Consumer Protection and Competition Division, Cable Services Bureau, at (202) 418–7200.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Notice of Proposed Rulemaking* in CS Docket No. 98–54, FCC 98–68 which was adopted on April 13, 1998 and released on April 22, 1998. A copy of the complete item is available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, 1919 M Street, NW., Washington, D.C. 20554. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, D.C. 20036, (202) 857–3800. The complete *Notice of Proposed Rulemaking* also is available on the Commission's Internet home page (http://www.fcc.gov).

Summary of Action:

I. Background

1. On April 13, 1998, the Federal Communications Commission (''Commission'') adopted a *Notice of Proposed Rulemaking* which sought comment or ways to simplify and make more uniform the Cable Television Service pleading and complaint process rules, 47 CFR 76. The *NPRM* is summarized below.

A. Introduction

2. Under the Commission's current part 76 rules, the procedures for initiating Commission action on a cable television service issue vary depending on the rules upon which the pleading or complaint is based. Although there are practical and legal reasons for the different pleading procedures, there may be some common elements to every pleading or complaint that could be made uniform across the broad spectrum of issues raised under part 76. The Commission thus seeks comment on whether we can or should institute some uniform pleading process and, if so, what form it should take.

B. Discussion

3. The Commission is initiating this proceeding in conjunction with the Commission's 1998 biennial regulatory review pursuant to section 11 of the 1996 Telecommunications Act, 47 U.S.C. 161. Pursuant to section 11, Congress instructed the Commission to conduct a biennial review of regulations that apply to operations and activities of any provider of telecommunications service and to repeal or modify any regulation it determines to be no longer in the public interest. Although section 11 does not specifically refer to cable operators, the Commission has determined that the first biennial review presents an opportunity for a thorough examination of all of the Commission's regulations. The Commission believes that, where possible, simplification of the complaint processes for part 76 rules by instituting a uniform system would likely serve the public interest by lessening confusion and reducing the regulatory burden on franchising authorities, cable operators, and other interested persons making filings under the part 76 rules.

4. At least thirteen different types of petitions or complaints could be filed to initiate Commission action related to the part 76 rules. Each type of petition or complaint has particular requirements regarding the conditions that must be satisfied before a filing can be made, who must be served with the filing, and the deadline time for a response. One reason for this variation is that our rules have been adopted over a period of time in response to changes in the Communications Act and, more specifically, for changes with respect to cable issues passed in 1984, 1992, and 1996. The rules adopted to implement changes in the law may have adopted a complaint process with its own unique procedures when an existing complaint process would have been sufficient. For example, following the filing of a petition for special relief, interested persons may submit comments or oppositions within twenty days after the date of public notice of the filing of such petition. In contrast, with respect to a petition for an issuance of an order to show cause, interested persons may submit comments or oppositions within thirty days after the petition has been filed. In this proceeding, the Commission seeks comment on whether these types of differences should be maintained or whether in circumstances of similar pleadings, the procedural rules associated with those pleadings should be the same.

5. The rules associated with each different pleading type are designed to establish fair and expeditious procedures for receiving, considering, and resolving issues related to the cable television service rules. The Commission believes that there are some aspects of the pleading requirements in part 76 rules that could be made uniform. The Commission seeks comment on which aspects of the pleading processes can be made consistent regardless of the part 76 rule under which the complaint is being filed; or alternatively, which pleading processes are similar and should have similar procedures. Specifically, is it appropriate to have the same or different (1) periods of time to formulate and file a complaint; (2) service requirements; (3) pleading cycles; (4) affidavit and evidentiary requirements; and (5) burdens of proof? The Commission also seek proposals on how to achieve a more streamlined complaint process for part 76 pleadings. Specifically,the Commission seeks comment on those filing requirements, now unique to a particular type of pleading or complaint, that are beneficial and should be applied universally to all part 76 pleadings; and conversely, which filing requirements are not useful and should be eliminated.

II. Procedural Matters

A. Regulatory Flexibility Analysis

6. As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, the Commission has prepared an Initial

Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals in the *NPRM*. Written public comments are requested on the IRFA. Comments on the IRFA must have a separate and distinct heading designating them as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM*. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

1. Need for, and objectives of, the proposed rules.

7. The Commission has proposed to simply and unify the pleading and complaint process rules for Cable Television Service, 47 CFR 76. The Commission has tentatively concluded that such a procedure would serve the public interest by making the pleading and complaint process for 47 CFR 76 less confusing and less burdensome.

2. Legal basis.

8. The authority for the action proposed for this rulemaking is contained in Section 4 of the Communications Act of 1934, 47 U.S.C. 154.

3. Description and estimate of the number of small entities

9. The Commission is required to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules, if adopted. The RFA defines the term ''small entity'' as having the same meaning as the terms ''small business'' and ''small organization.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under section 3 of the Small Business Act. Under the Small Business Act, a ''small business concern'' is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (''SBA'').

10. *Small MVPDs*. The SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating $11 million or less in annual receipts. This definition includes cable system operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Bureau of the Census, there were 1,758 total cable and other pay television services and 1,423 had less than $11 million in revenue. The Commission addresses below each service individually to provide a more precise estimate of small entities.

11. *Cable Systems*. The Commission has developed, with SBA's approval, our own definition of a small cable system operator for the purposes of rate regulation. Under 47 CFR 76.901(e), a ''small cable company'' is one serving fewer than 400,000 subscribers nationwide. Based on our most recent information, the Commission estimates that there were 1439 cable operators that qualified as small cable companies at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, the Commission estimates that there are fewer than 1439 small entity cable system operators that may be affected by the decisions and rules the Commission is adopting. The Commission believes that only a small percentage of these entities currently provide qualifying ''telecommunications services'' as required by the Communications Act and, therefore, estimate that the number of such entities are significantly fewer than noted.

12. The Communications Act also contains a definition of a small cable system operator, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, the Commission found that an operator serving fewer than 617,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, the Commission finds that the number of cable operators serving 617,000 subscribers or less totals 1450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, the Commission is unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

13. Multipoint Multichannel Distribution Systems (''MMDS''). The Commission refined the definition of ''small entity'' for the auction of MMDS as an entity that together with its affiliates has average gross annual revenues that are not more than $40 million for the preceding three calendar years. This definition of a small entity in the context of MMDS auctions has been approved by the SBA.

14. The Commission completed its MMDS auction in March 1996 for authorizations in 493 basic trading areas (''BTAs''). Of 67 winning bidders, 61 qualified as small entities. Five bidders indicated that they were minority-owned and four winners indicated that they were women-owned businesses. MMDS is an especially competitive service, with approximately 1573 previously authorized and proposed MMDS facilities. Information available to us indicates that no MMDS facility generates revenue in excess of $11 million annually. The Commission concludes that, for purposes of this FRFA, there are approximately 1634 small MMDS providers as defined by the SBA and the Commission's auction rules.

15. *Direct Broadcast Satellite (''DBS'')*. Because DBS provides subscription services, DBS falls within the SBA definition of cable and other pay television services (SIC 4841). As of December 1996, there were eight DBS licensees. Estimates of 1996 revenues for various DBS operators are significantly greater than $11,000,000 and range from a low of $31,132,000 for Alphastar to a high of $1,100,000,000 for Primestar. Accordingly, the Commission concludes that no DBS operator qualifies as a small entity.

16. *Home Satellite Dish (''HSD'')*. The market for HSD service is difficult to quantify. Indeed, the service itself bears little resemblance to other MVPDs. HSD owners have access to more than 265 channels of programming placed on C-band satellites by programmers for receipt and distribution by MVPDs, of which 115 channels are scrambled and approximately 150 are unscrambled. HSD owners can watch unscrambled channels without paying a subscription fee. To receive scrambled channels, however, an HSD owner must purchase an integrated receiver-decoder from an equipment dealer and pay a subscription fee to an HSD programming packager. Thus, HSD users include: (1) viewers who subscribe to a packaged programming service, which affords them access to most of the same programming provided to subscribers of other MVPDs; (2) viewers who receive only nonsubscription programming; and (3) viewers who receive satellite programming services illegally without subscribing.

17. According to the most recently available information, there are

approximately 30 program packagers nationwide offering packages of scrambled programming to retail consumers. These program packagers provide subscriptions to approximately 2,314,900 subscribers nationwide. This is an average of about 77,163 subscribers per program packager. This is substantially smaller than the 400,000 subscribers used in the Commission's definition of a small multiple system operator (''MSO''). Furthermore, because this an average, it is likely that some program packagers may be substantially smaller.

18. *Open Video System (''OVS'').* The Commission has certified nine OVS operators. Of these nine, only two are providing service. On October 17, 1996, Bell Atlantic received approval for its certification to convert its Dover, New Jersey Video Dialtone (''VDT'') system to OVS. Bell Atlantic subsequently purchased the division of Futurevision which had been the only operating program package provider on the Dover system, and has begun offering programming on this system using these resources. Metropolitan Fiber Systems was granted certifications on December 9, 1996, for the operation of OVS systems in Boston and New York, both of which are being used to provide programming. Bell Atlantic and Metropolitan Fiber Systems have sufficient revenues to assure us that they do not qualify as small business entities. Little financial information is available for the other entities authorized to provide OVS that are not yet operational. The Commission believes that one OVS licensee may qualify as a small business concern. Given that other entities have been authorized to provide OVS service but have not yet begun to generate revenues, the Commission concludes that at least some of the OVS operators qualify as small entities.

19. *Satellite Master Antenna Television (''SMATVs'').* Industry sources estimate that approximately 5200 SMATV operators were providing service as of December 1995. Other estimates indicate that SMATV operators serve approximately 1.05 million residential subscribers as of September 1996. The ten largest SMATV operators together pass 815,740 units. If the Commission assumes that these SMATV operators serve 50% of the units passed, the ten largest SMATV operators serve approximately 40% of the total number of SMATV subscribers. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, the Commission is not aware of any privately published financial information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest ten SMATVs, the Commission concludes that a substantial number of SMATV operators qualify as small entities.

20. *Local Multipoint Distribution System (''LMDS'').* Unlike the above pay television services, LMDS technology and spectrum allocation will allow licensees to provide wireless telephony, data, and/or video services. A LMDS provider is not limited in the number of potential applications that will be available for this service. Therefore, the definition of a small LMDS entity may be applicable to both cable and other pay television (SIC 4841) and/or radiotelephone communications companies (SIC 4812). The SBA definition for cable and other pay services is defined above. A small radiotelephone entity is one with 1500 employees or less. However, for the purposes of this *NPRM*, the Commission includes only an estimate of LMDS video service providers.

21. LMDS is a service for which licenses were auctioned by the FCC beginning in February 1998. The vast majority of LMDS entities providing video distribution could be small businesses under the SBA's definition of cable and pay television (SIC 4841). However, the Commission proposed to define a small LMDS provider as an entity that, together with affiliates and attributable investors, has average gross revenues for the three preceding calendar years of less than $40 million. The Commission has not yet received approval by the SBA for this definition.

22. There is only one company, CellularVision, that is currently providing LMDS video services. Although the Commission does not collect data on annual receipts, the Commission assumes that CellularVision is a small business under both the SBA definition and our proposed auction rules. Accordingly, the Commission affirms its tentative conclusion that a majority of the potential LMDS licensees will be small entities, as that term is defined by the SBA.

23. *Program Producers and Distributors.* The Commission has not developed a definition of small entities applicable to producers or distributors of television programs. Therefore, the Commission will utilize the SBA classifications of Motion Picture and Video Tape Production (SIC 7812), Motion Picture and Video Tape Distribution (SIC 7822), and Theatrical Producers (Except Motion Pictures) and Miscellaneous Theatrical Services (SIC 7922). These SBA definitions provide that a small entity in the television programming industry is an entity with $21.5 million or less in annual receipts for SIC 7812 and 7822, and $5 million or less in annual receipts for SIC 7922. The 1992 Bureau of the Census data indicate the following: (1) there were 7265 U.S. firms classified as Motion Picture and Video Production (SIC 7812), and that 6987 of these firms had $16,999 million or less in annual receipts and 7002 of these firms had $24,999 million or less in annual receipts; (2) there were 1139 U.S. firms classified as Motion Picture and Tape Distribution (SIC 7822), and that 1007 of these firms had $16,999 million or less in annual receipts and 1013 of these firms had $24,999 million or less in annual receipts; and (3) there were 5671 U.S. firms classified as Theatrical Producers and Services (SIC 7922), and that 5627 of these firms had less than $5 million in annual receipts.

24. Each of these SIC categories is very broad and includes firms that may be engaged in various industries including television. Specific figures are not available as to how many of these firms exclusively produce and/or distribute programming for television or how many are independently owned and operated. Consequently, the Commission concludes that there are approximately 6987 small entities that produce and distribute taped television programs, 1013 small entities primarily engaged in the distribution of taped television programs, and 5627 small producers of live television programs that may be affected by the rules adopted in this proceeding.

4. Description of reporting, recordkeeping, and other compliance requirements

25. The Commission is not proposing any new or modified recordkeeping or information collection requirements.

5. Significant alternatives which minimize the impact on small entities, and which are consistent with stated objectives.

26. The Notice solicits comments and proposals for means to simplify or make uniform 47 CFR 76 pleading and complaint process rules. Any significant alternatives presented in the comments will be considered.

6. Federal rules which overlap, duplicate, or conflict with these rules.

27. None.

7. Report to Congress.

28. The Commission shall send a copy of this IRFA along with this Notice in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, codified at 5

U.S.C. 801(a)(1)(A). A copy of this IRFA will also be published in the **Federal Register.**

B. Paperwork Reduction Act of 1995 Analysis

29. The requirements proposed in this Notice have been analyzed with respect to the Paperwork Reduction Act of 1995 (the ''1995 Act'') and would impose new and modified information collection requirements on the public. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to take this opportunity to comment on the proposed information collection requirements contained in this Notice, as required by the 1995 Act. Public comments are due June 30, 1998. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information would have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

30. Written comments by the public on the proposed new and modified information collection requirements are June 30, 1998. Comments should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, NW., Washington, D.C. 20554, or via the Internet to jboley@fcc.gov. For additional information on the proposed information collection requirements, contact Judy Boley at 202–418–0214 or via the Internet at the above address.

C. Ex Parte Presentations

31. The *NPRM* is a permit but disclose notice and comment rule making proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. *See generally* 47 CFR 1.1202, 1.1203, and 1.1206(a).

D. Comments

32. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before June 22, 1998 and reply comments on or before July 7, 1998. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. Parties are also asked to submit, if possible, draft rules that reflect their positions. If you want each Commissioner to receive a personal copy of your comments, you must file an original and eleven copies. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, NW., Room 222, Washington, D.C. 20554, with a copy to Thomas Horan of the Cable Services Bureau, 2033 M Street, NW., 7th Floor, Washington, D.C. 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 1231 20th Street, NW., Washington, D.C. 20037. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M Street, NW., Room 239, Washington, D.C. 20554.

33. Parties are also asked to submit comments and reply comments on diskette, where possible. Such diskette submissions would be in addition to and not a substitute for the formal filing requirements addressed above. Parties submitting diskettes should submit them to Thomas Horan of the Cable Services Bureau, 2033 M Street, NW., 7th Floor, Washington, D.C. 20554. Such a submission must be on a 3.5 inch diskette formatted in an IBM compatible form using MS DOS 5.0 and WordPerfect 5.1 software. The diskette should be submitted in ''read only'' mode. The diskette should be clearly labelled with the party's name, proceeding, type of pleading (comment or reply comments) and date of submission. The diskette should be accompanied by a cover letter.

List of Subjects in 47 CFR Part 76

Administrative practice and procedure.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–11617 Filed 4–30–98; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 217

[Docket No. 980414094–8094–01; I.D. No. 091797A]

RIN 0648–AK55

Endangered and Threatened Wildlife and Plants; Definition of ''Harm''

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

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule defines the term ''harm,'' which is contained in the definition of ''take'' in the Endangered Species Act. The purpose of this rulemaking is to clarify the type of harm that may result in a take of a listed species under the ESA. This is not a change in existing law. This proposed rule defines the term ''harm'' to include any act which actually kills or injures fish or wildlife. Such acts may include significant habitat modification or degradation that significantly impairs essential behavioral patterns of fish or wildlife.

DATES: Comments must be received by June 30, 1998.

ADDRESSES: Comments should be sent to Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Joe Blum, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, phone (301)713–1401 or Garth Griffin, NMFS, 525 NE Oregon St, Suite 500, Portland, OR 97232, phone (503)231–2005.

SUPPLEMENTARY INFORMATION:

Background

Section 9 of the ESA makes it illegal to take an endangered species of fish or wildlife. The definition of ''take'' is to ''harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.'' (16 U.S.C. 1532(19)). The U.S. Fish and Wildlife Service (FWS) issued a regulation further defining the term ''harm'' to eliminate confusion concerning its meaning (40 FR 44412; 46 FR 54748). The FWS' definition of ''harm'' has been upheld by the Supreme Court as a reasonable interpretation of the term and supported by the broad purpose of the ESA to conserve endangered and threatened

species (See *Babbitt* v. *Sweet Home Chapter of Communities for a Greater Oregon*, 115 S. Ct. 2407, 2418, 1995). With the listings of Pacific salmon and steelhead stocks, potentially affected parties have questioned whether NMFS also interprets harm to include habitat destruction. This proposed rule clarifies that NMFS' interpretation of harm is consistent with that of FWS.

Definitions and Source of Authority

NMFS interprets the term ''harm'' as an act that actually kills or injures fish or wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including breeding, spawning, rearing, migrating, feeding, and sheltering (Compare 50 CFR 17.3). The habitat modification or degradation contained in the definition of ''harm'' is limited to those actions that actually kill or injure listed fish or wildlife.

This proposed rule is reasonable for the conservation of the habitats of listed species. Congress acknowledged these needs by stating in the ''Purposes'' subsection of the ESA: ''The purposes of this Act are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved * * *.'' (16 U.S.C. 1531(b)). In addition to the text contained in the ''Purposes'' subsection, which indicates the broad goals of the ESA, the structure and legislative history of the ESA indicate Congressional intent to protect the habitats of listed species (*Babbitt* v. *Sweet Home Chapter of Communities for a Greater Oregon*, 115 S. Ct. 2407, 2418, 1995).

Activities That May Constitute a Take

A principle purpose of this proposed rule is to provide clear notification to parties that habitat modification or degradation may harm listed species and, therefore, constitute a ''take'' under the ESA. The following list identifies several examples of habitat-modifying activities that may fall within the scope of this proposed rule when the activities actually kill or injure fish or wildlife. This list is not exhaustive:

1. Constructing or maintaining barriers that eliminate or impede a listed species' access to habitat essential for its survival or recovery;
2. Removing, poisoning, or contaminating plants, fish, wildlife, or other biota required by the listed species for feeding, sheltering, or other essential functions;
3. Discharging pollutants, oil, toxic chemicals, radioactivity, carcinogens, mutagens, or teratogens into a listed species' habitat;
4. Removing or altering rocks, soil, gravel, vegetation, or other physical structures that are essential to the integrity and function of a listed species' habitat;
5. Removing water or otherwise altering streamflow when it is likely to impair spawning, migration, or other essential functions;
6. Releasing non-indigenous or artificially propagated individuals into a listed species' habitat;
7. Constructing or operating inadequate fish screens or fish passage facilities at dams or water diversion structures in a listed species' habitat;
8. Constructing or using inadequate bridges, roads, or trails on stream banks or unstable hill slopes adjacent or above a listed species' habitat; and
9. Constructing or using inadequate pipes, tanks, or storage devices containing toxic substances, where the release of such a substance is likely to significantly modify or degrade listed species' habitat.

Incidental Take Exceptions

The ESA authorizes NMFS to exempt parties from its take prohibitions under certain circumstances. Under section 7 of the ESA, NMFS conducts consultations on proposed Federal actions and determines whether the proposed action is likely to jeopardize the continued existence of a listed species or to result in the destruction or adverse modification of its critical habitat. If the proposed action does not do so or would not if specified reasonable and prudent alternatives were followed, NMFS may then issue a biological opinion and incidental take statement. The incidental take statement estimates the expected incidental take of a listed species resulting from the action and specifies those terms and conditions required to implement the reasonable and prudent measures necessary or appropriate to minimize this incidental take. If the proposed action is conducted in accordance with these terms and conditions, the incidental take is exempted from the ESA's take prohibitions.

Under section 10(a)(1)(B), NMFS may permit non-Federal parties to take a listed species if such a taking is incidental to, and not the purpose of, an otherwise legal activity. Prior to receiving an incidental take permit pursuant to 10(a)(1)(B), a non-Federal party must prepare a permit application and conservation plan. A conservation plan must contain a description of (1) the impact that will likely result from the taking; (2) what steps the applicant will take to minimize and mitigate the impacts and how these steps will be funded; (3) what alternative actions to the take were considered and why they are not being utilized; and (4) any measures the Secretary of Commerce (Secretary) may require as being necessary or appropriate for the purposes of the plan (16 U.S.C. 1539(a)(2)(A)). If the Secretary finds that the applicant will minimize and mitigate the impacts of any incidental take, and will meet other requirements of section 1539 (a)(2)(B), the Secretary may issue a permit, legally binding the applicant to the conservation measures set forth in the conservation plan.

Congress intended that the conservation planning process be used to reduce conflicts between listed species and private development and to provide a framework that would encourage ''creative partnerships'' between the private sector and local, state, and Federal agencies in the interest of endangered and threatened species and habitat conservation. NMFS encourages the development of conservation plans and intends to continue pursuing such agreements in the future with willing parties.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this proposed rule will make no change in the existing law. Accordingly, the Assistant General Counsel for Legislation and Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities, as described in the Regulatory Flexibility Act. Codifying NMFS' current definition of harm, as proposed in this rule, will not result in any additional economic impact on affected entities. NMFS is not implementing a new policy or definition. NMFS definition of harm would remain the same whether or not it is codified.

Non-Federal interests must conduct their actions consistent with the requirements of the ESA. When a species is listed, non-Federal interests must comply with the prohibitions on takings under section 9 of the ESA or associated regulations. If the activity is funded, permitted or authorized by a Federal agency, that agency must comply with the non-jeopardy mandate of section 7 of the ESA, which is also a result of the listing of a species, not the clarification of what is contained in the definition of harm. Since, under sections 9 and 7, not harming a species

is included in the statutory prohibition, affected entities are currently required to meet the existing standards that would be codified by this proposed rule, thus, promulgating this rule would not result in any additional impact. As such, no initial regulatory flexibility analysis has been prepared.

A draft Environmental Assessment will be made available to provide for adequate public review prior to finalizing this regulation.

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 217

Endangered and threatened species, Exports, Fish, Imports, Marine mammals, Transportation.

Dated: April 28, 1998.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 217 is proposed to be amended as follows:

PART 217—GENERAL PROVISIONS

1. The authority citation for part 217 continues to read as follows:

Authority: 16 U.S.C. 742a *et seq.*, 1361 *et seq.*, and 1531-1544, unless otherwise noted.

2. In § 217.12, the definition for ''*Harm*'' is added in alphabetical order to read as follows:

§ 217.12 Definitions.

* * * * *

Harm in the definition of ''take'' in the Act means an act which actually kills or injures fish or wildlife. Such an act may include significant habitat modification or degradation which actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including, breeding, spawning, rearing, migrating, feeding, and sheltering.

* * * * *

[FR Doc. 98–11668 Filed 4–30–98; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 63, No. 84
Friday, May 1, 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

Food and Nutrition Service

National Advisory Council on Maternal, Infant, and Fetal Nutrition; Meeting

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., this notice announces a meeting of the National Advisory Council on Maternal, Infant, and Fetal Nutrition.

DATE AND TIME: May 27–29, 1998, 9:00 a.m.–5:00 p.m.

PLACE: Food and Nutrition Service, 3101 Park Center Drive, th Floor Conference Room, Alexandria, Virginia 22302.

SUPPLEMENTARY INFORMATION: The Council will continue its study of the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) and the Commodity Supplemental Food Program (CSFP).

The agenda items will include the formulation of recommendations for the Council's 1998 report to the President and Congress and a discussion of general program issues.

Recommendations for the report may address administrative and legislative changes for WIC and CSFP as determined by the Council.

STATUS: Meetings of the Council are open to the public. Members of the public may participate, as time permits. Members of the public may file written statements with the contact person named below before or after the meeting.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Persons wishing additional information about this meeting should contact Jackie Rodriguez, Supplemental Food Programs Division, Food and Nutrition Service, Department of Agriculture, 3101 Park Center Drive, Room 540, Alexandria, Virginia 22302. Telephone: (703) 305–2730.

Dated: April 16, 1998.

Yvette S. Jackson,

Administrator.

[FR Doc. 98–11612 Filed 4–30–98; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Forest Service

Withdrawal of Notice of Intent (NOI) for the Angostura Diversity Unit Vegetation Management Plan EIS

AGENCY: Forest Service, USDA.

SUMMARY: The Angostura Diversity Unit Vegetation Management Plan original NOI which was published in the **Federal Register** / Vol. 57, No. 44 / Thursday, March 5, 1992 / Notices on page 7906 is hereby cancelled. A decision on this proposed action is no longer necessary.

DATES: This notice is effective May 1, 1998.

ADDRESSES: For direct comments and further information contact: Carveth Kramer, Carson National Forest, 208 Cruz Alta Road, P.O. Box 558, Taos, NM 87571, (505) 758–62200.

Dated: April 20, 1998.

Leonard L. Lucero,

Forest Supervisor.

[FR Doc. 98–11568 Filed 4–30–98; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and Deletions from the Procurement List.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List commodities and services previously furnished by such agencies.

EFFECTIVE DATE: June 1, 1998.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On February 27, March 6 and 13, 1998, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (63 FR 9999, 11207 and 12438) of proposed additions to and deletions from the Procurement List:

The following comments pertain to Janitorial/Custodial, Buildings 300 and 301, Robins Air Force Base, Georgia.

Comments were received from the current contractor for the janitorial service. The contractor indicated that the addition of the service to the Procurement List would cause harm to his firm, which is a small disadvantaged business, and asked the Committee not to add the service to the Procurement List. The contractor said that if the janitorial services in the two buildings were not retained as part of the larger janitorial contract which his firm would be bidding on, it would hurt the company, which was trying to stay competitive in an overcrowded industry.

The Committee noted that its action would only affect approximately one-third of the value of the contractor's current contract, providing the contractor with the opportunity to continue competing for a significant amount of janitorial work at Robins Air Force Base. The Committee also noted that the percentage of the firm's sales that would be lost by the addition action was below the level that the Committee normally considers to be severe adverse impact.

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities.

The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List:

Janitorial/Custodial

VA Outpatient Clinic, Mobile, Alabama

Janitorial/Custodial

Marine Corps Base including Fallbrook Naval Ordinance Center, Camp Pendleton, California

Janitorial/Custodial

Buildings 300 and 301, Robins Air Force Base, Georgia

Janitorial/Custodial

Walnut Creek National Wildlife Refuge, 9981 Pacific Street, Prairie City, Iowa

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will not have a severe economic impact on future contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services deleted from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the commodities and services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following commodities and services are hereby deleted from the Procurement List.

Commodities

Door Knob Conversion Kit

5340–01–392–6940
5340–01–392–6941
5340–01–392–6944
5340–01–392–6945
5340–01–394–3872
5340–01–392–6943
5340–01–392–6942
5340–01–392–6949
5340–01–395–2928
5340–01–392–6951
5340–01–392–6946
5340–01–392–6950
5340–01–392–6948
5340–01–392–6947
5340–01–392–6954
5340–01–392–6955
5340–01–392–6953
5340–01–392–6958
5340–01–392–6952
5340–01–392–6956
5340–01–392–6959
5340–01–392–6957
5340–01–392–6960
5340–01–392–6962
5340–01–392–6963
5340–01–392–6961
5340–01–394–3873
5340–01–392–6967
5340–01–393–8586
5340–01–393–8585
5340–01–393–8587
5340–01–393–8588
5340–01–393–8589
5340–01–393–8590
5340–01–393–8591
5340–01–394–0238
5340–01–394–0239
5340–01–394–0237
5340–01–394–0240
5340–01–394–3874
5340–01–394–0241
5340–01–394–0242
5340–01–394–0244
5340–01–394–0243
5340–01–391–3805
5340–01–391–8170
5340–01–394–0246
5340–01–394–0247
5340–01–394–7991
5340–01–394–7992
5340–01–394–7994
5340–01–394–7996
5340–01–394–7993
5340–01–394–7995
5340–01–395–1173
5340–01–394–0245

Services

Commissary Shelf Stocking & Custodial

Fort Hamilton, New York

Grounds Maintenance

Naval and Marine Corps Reserve Center, Dayton, Ohio

Janitorial/Custodial

Valley Grove AMSA, Valley Grove, West Virginia

Beverly L. Milkman,

Executive Director.

[FR Doc. 98–11628 Filed 4–30–98; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposal(s) to add to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: June 1, 1998.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodity and services.

3. The action will result in authorizing small entities to furnish the

commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodity and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodity

Body Fluids Barrier Kit

6515–01–376–7247
NPA: Lighthouse for the Blind, St. Louis, Missouri

Services

Base Supply Center

Travis Air Force Base, California
NPA: South Texas Lighthouse for the Blind, Corpus Christi, Texas

Janitorial/Custodial

Federal Building and Courthouse, 1 North Palafox Street, Pensacola, Florida
NPA: Lakeview Center, Inc., Pensacola, Florida

Beverly L. Milkman,

Executive Director.

[FR Doc. 98–11630 Filed 4–30–98; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Proposed Additions to the Procurement List; Correction

In the document appearing on page 23077, FR Doc. 98–10965, in the issue of April 24, 1998, in the second column, the service listed as ''Base Supply Centers, Shaw Air Force Base, South Carolina'' should read ''Operation of Individual Equipment Element and Hazardous Materials Store, Shaw Air Force Base, South Carolina.''

Beverly L. Milkman,

Executive Director.

[FR Doc. 98–11629 Filed 4–30–98; 8:45 am]

BILLING CODE 6353–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the New Mexico Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the New Mexico Advisory Committee to the Commission will convene at 9:30 a.m. and adjourn at 1:00 p.m. on June 3, 1998, at the Clovis Public Library, Ingram Room, 701 North Main Street, Clovis, New Mexico 88101. The purpose of the meeting is to hold a factfinding meeting in followup to the September 15, 1997, inquiry into official activities during food stamp fraud sting operation in Clovis, New Mexico.

Persons desiring additional information, or planning a presentation to the Committee, should contact Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 22, 1998.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 98–11588 Filed 4–30–98; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Texas Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Texas Advisory Committee to the Commission will convene at 3:30 p.m. and adjourn at 7:30 p.m. on Friday, May 29, 1998, at the Westin Galleria Hotel, 5060 West Alabama Street, Houston, Texas 77056. The purpose of the meeting is to discuss ongoing projects and in recognition of Asian American Heritage Month.

Persons desiring additional information, or planning a presentation to the Committee, should contact Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 22, 1998.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 98–11589 Filed 4–30–98; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Bureau of the Census

School Enrollment Report

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 30, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Ann Powell, Bureau of the Census, Room 2330–3, Washington, DC 20233–0001, (301) 457–2441.

SUPPLEMENTARY INFORMATION:

I. Abstract

Each year, the Census Bureau sends the School Enrollment Report, P–4 form to the 40 state departments of education that do not publish enrollment data early enough in the year for us to use their published reports. Information requested includes fall public and nonpublic enrollment by grade for the state and selected counties. In six states we collect year-end enrollment. The Census Bureau uses school enrollment data in preparing estimates of state population. State population estimates are used by dozens of Federal agencies for allocating Federal program funds, as bases for rates of occurrences, and as

input for Federal surveys. State and local governments, businesses, and the general public use state population estimates for planning and other information uses.

II. Method of Collection

The School Enrollment Report, P–4 form, is mailed each Spring to approximately 40 state education agencies. We request fall public and nonpublic school enrollment by grade for the state and selected counties. Responses are returned and reviewed on a flow basis during the summer and early fall. Data collected will be used as input for the development of population estimates. The estimates are made in November, December and January.

III. Data

OMB Number: 0607–0459.
Form Number: P–4.
Type of Review: Regular review.
Affected Public: State education agencies.
Estimated Number of Respondents: 40.
Estimated Time Per Response: 30 minutes.
Estimated Total Annual Burden Hours: 20 hours.
Estimated Total Annual Cost: $545. @ $27.25 per hour.
Respondent's Obligation: Voluntary.
Legal Authority: Title 13 USC, Sections 181 and 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 27, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–11623 Filed 4–30–98; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Census 2000

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 30, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should directed to the Communications Staff, Decennial Management Division, Bureau of the Census, Room 2002, Suitland Federal Center #2, Washington, DC 20233–0001, (301) 457–3947.

SUPPLEMENTARY INFORMATION:

I. Abstract

The United States Constitution mandates that a census of the Nation's population and housing be taken every ten years. The Census Bureau's goal in Census 2000 is to take the most accurate and cost-effective census possible. The importance of an accurate decennial census cannot be overstated. Census data are used to reapportion the House of Representatives and redraw legislative district boundaries, ensuring that political representation is distributed accurately, and to determine funding allocations for the distribution of billions of dollars of federal and state funds each year. Census data tell us what we know about our country; they are the definitive benchmark for virtually all demographic information used by state, local, and tribal governments, policy makers, educators, journalists, and community and nonprofit organizations.

From Census 2000, the Census Bureau will produce the basic population totals by state for Congressional apportionment, as mandated by the Constitution, and more specifically elaborated in Title 13 U.S. Code. In compliance with P.L. 94–171, for each state the Census Bureau will produce population totals by race, Hispanic origin, and age for census blocks and higher geographic levels for legislative redistricting. The Census Bureau also will be collecting a wealth of demographic, social, economic, and housing characteristics from the population. This information is required to implement programs and enforce federal laws and, as noted above, plays an important role in the distribution of federal and state funds each year and serves as a benchmark for many different purposes.

In the process of developing our data collection forms, the Census Bureau has tried to reduce respondent burden in three ways: (1) Including only those questions that are explicitly required in federal law or whose use is strongly implied by the data requirements in the law—both the short form and the long form have fewer questions than their 1990 counterparts, (2) working through the decade to develop forms that are easy to understand and fill out, and (3) asking most questions at only a sample of one in six households nationwide.

II. Method of Collection

In Census 2000, the Census Bureau will make every effort to account for all people living in the Nation and Americans overseas (and their dependents) who are working for the U.S. Government. In most areas where city-style addresses are used for mail delivery, the Census Bureau will mail the following independent mailing pieces: an advance letter, a questionnaire with postage-paid return envelope, and a reminder card. In most areas with non-city style addresses (except for very remote or sparsely populated areas), enumerators will deliver a questionnaire to each housing unit, to be returned in a postage-paid envelope. Housing units in latter areas also will receive an advance letter before questionnaire delivery and a reminder card following questionnaire delivery. In very remote or sparsely populated areas without a city-style address, enumerators will visit each housing unit and complete an unaddressed short-form questionnaire. The enumerators will ask additional long-form questions of a sample of units. They also will develop an address list for the area and spot each housing unit's location on a map at the time of enumeration. In areas where response is by mail, enumerators will visit and collect information from households that did not return a questionnaire by mail or report their census information by other means, such as by telephone—this operation is called nonresponse follow-up. The Census Bureau also will

conduct a reinterview of a small portion of respondents during nonresponse follow-up to ensure the quality of work in this operation.

The Census Bureau plans to take the following additional steps to improve response to the census:

- Build partnerships with state, local, and tribal governments and with community groups to alert the Census Bureau to problems and advise the Bureau of opportunities to publicize Census 2000 and the best ways to communicate the message.
- Motivate individuals to respond (by explaining the benefits and mandatory nature of the census) and make Census 2000 forms attractive, easy to understand, and simple to fill out. Private sector designers have worked with the Census Bureau to simplify the forms and implement the user-friendly features shown to increase response during testing and research conducted by the Census Bureau.
- Placing unaddressed Be Counted forms or language assistance guides in locations, such as community centers and Walk-In Questionnaire Assistance Centers, for use by people who believe they have not been counted in the census. The Census Bureau intends to make these forms available in a broad range of non-English languages, but the number of languages has not yet been finalized.
- Employing new methods to find and enumerate people, such as enumerating persons who use services at shelters, soup kitchens, and other facilities and placing unaddressed Be Counted forms in publicly accessible locations for pick up and completion by people who believe that they have not been counted in the census.
- Providing telephone questionnaire assistance.

The Census Bureau intends to employ statistical sampling to check the quality of the work. An independent quality check—called the Integrated Coverage Measurement survey—will use the information gathered from a second, independent operation to improve the accuracy of the census. The Integrated Coverage Measurement survey will be submitted separately for OMB review, as will the forms for the census enumeration in Puerto Rico, the U.S. Virgin Islands, and the Pacific Island Areas.

III. Data

OMB Number: Not available.

Form Numbers:

Short Form: D–1, D–1(S) and possibly other languages

Long Form: D–2, D–2(S) and possibly other languages

Update/Leave: D–1(UL), D–2(UL), D–1A(UL), D–2A(UL)

Enumerator Forms: D–1E, D–2E, D–1(E)SUPP, D–2(E)SUPP

Household Follow-up: D–1(HF), D–2(HF), D–1(HF)(S), D–2(HF)(S)

Be Counted Forms: D–10, D–10(S) and possibly other languages

Advance Census Report: D–13

Individual Census Questionnaires: D–15A, D–15B

Individual Census Reports: D–20A, D–20A(S), D–20B, D–20B(S)

Military Census Report: D–21

Shipboard Census Report: D–23

Letters/Cards/Notices: D–5(L), D–5(L)(UL), D–9, D–9(UL), D–11, D–1E(S), D–2E(S), D–1(F), D–16A(L), D–16B(L) and possibly other languages, D–16A(L)(UL), D–16B(L)UL, D–19A(L), D–19B(L), D–19C(L), D–19A(L)(S), D–19B(L)(S), D–19C(L)(S), D–26, D–27, D–28, D–31, D–31(P), D–3309

Reinterview: D–806

Type of Review: Regular Submission.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 106,200,000 households (approx.) (Short Form: 83%; Long form: 17%) Reinterview: 1,200,000 households.

Estimated Time Per Response: Short Form: 10 minutes, Long Form: 38 minutes, Reinterview: 5 minutes.

Estimated Total Annual Burden: Short Form: 14,691,000 hours, Long Form: 11,434,200 hours, Reinterview: 100,000 hours, Total: 26,225,200 hours.

Estimated Total Annual Cost: The only cost to respondent is that of their time.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C. Sections 141 and 193.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; the comments will become a matter of public record.

Dated: April 27, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–11624 Filed 4–30–98; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 23–98]

Foreign-Trade Zone 87—Lake Charles, LA; Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board), by the Lake Charles Harbor & Terminal District (a.k.a. the Port of Lake Charles), grantee of Foreign-Trade Zone 87, requesting authority to expand its zone in Lake Charles, Louisiana, within the Lake Charles 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 April 22, 1998.

FTZ 87 was approved on July 22, 1983 (Board Order 217, 48 FR 35478, 8/4/83). The zone project currently consists of four sites along the Calcasieu River and Ship Channel and the Industrial Canal: *Site 1* (463 acres)—general cargo area of the Port of Lake Charles, Lake Charles; *Site 2* (360 acres)—industrial area on both sides of the Industrial Canal, some 12 miles south of the general cargo area, Lake Charles; *Site 3* (11 acres)—warehouse facility at Fournet and Ford Streets, Lake Charles; and, *Site 4* (3 acres)—warehouse facility at 3001 Industrial Avenue, Lake Charles.

The applicant is now requesting authority to expand the general-purpose zone to include two new sites (924 acres) in Calcasieu Parish (Proposed Sites 5 and 6): *Proposed Site 5* (391 acres)—Lake Charles Harbor & Terminal District's Industrial Park East, Highway 397, Lake Charles; and, *Proposed Site 6* (533 acres, 3 parcels at the Chennault Airpark)—*Parcel 1* (523 acres)—3650 J. Bennett Johnston Avenue, Lake Charles; *Parcel 2* (9 acres)—East Broad Street, Lake Charles; and, *Parcel 3* (1 acre)—Avenue C, Lake Charles. Proposed Site 5 was recently acquired by the Port. Proposed Site 6 is adjacent to Proposed Site 5 and is owned by area governmental entities and is leased to the Chennault International Airport Authority. Both sites are designated state enterprise zones. 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 June 30, 1998. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to July 15, 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 Marine Street, Lake Charles, LA 70601

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: April 23, 1998.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–11667 Filed 4–30–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–412–810; C–412–811; A–428–811; C–428–812]

Hot-Rolled Lead and Bismuth Carbon Steel Products From Germany and the United Kingdom; Negative Preliminary Determinations of Circumvention of Antidumping and Countervailing Duty Orders

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

ACTION: Notice of negative preliminary determinations of circumvention of antidumping and countervailing duty orders.

SUMMARY: On April 14, 1997, the Department of Commerce received an application requesting circumvention inquiries of the antidumping and countervailing duty orders on hot-rolled lead and bismuth carbon steel products from Germany and the United Kingdom. The application alleged that the principal German and British producers of hot-rolled lead and bismuth carbon steel products are circumventing the respective orders by shipping leaded steel billets to the United States, where they are easily and inexpensively converted into the hot-rolled lead and bismuth carbon steel products covered by the orders. Pursuant to the application, the Department of Commerce initiated anticircumvention inquiries on June 25, 1997.

We preliminarily determine that imports into the United States of leaded steel billets that were exported from Germany and the United Kingdom do not constitute circumvention of the antidumping and countervailing duty orders on hot-rolled lead and bismuth carbon steel products from Germany and the United Kingdom, within the meaning of section 781(a) of the Tariff Act of 1930, as amended. Interested parties are invited to comment on these preliminary determinations.

EFFECTIVE DATE: May 1, 1998.

FOR FURTHER INFORMATION CONTACT: Anne D'Alauro, Russell Morris, or Richard Herring, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended, by the Uruguay Round Agreements Act (URAA), effective January 1, 1995 (the Act). In addition, unless otherwise indicated, all references to the Department's regulations are to 19 CFR Parts 353 and 355 (1997).

Background

On March 22, 1993, the Department of Commerce (the Department) published in the **Federal Register** the antidumping duty orders (58 FR 15334) and countervailing duty orders (58 FR 15325, 15327) on hot-rolled lead and bismuth carbon steel products (hot-rolled lead bar) from Germany and the United Kingdom. On April 14, 1997, the Department received an application (amended on May 14, 1997) filed by Inland Steel Bar Company and USS/KOBE Steel Company (the petitioners), requesting that the Department conduct anticircumvention inquiries of the antidumping and countervailing duty orders on hot-rolled lead bar from Germany and the United Kingdom pursuant to section 781(a) of the Tariff Act. The petitioners alleged that the principal German (Saarstahl A.G. i.K. and Thyssen Stahl A.G.) and British (British Steel plc) producers of hot-rolled lead bar are circumventing the respective orders by shipping leaded-steel billets (lead billets) to the United States, where they are easily and inexpensively converted into the hot-rolled lead bar products covered by the orders.

The Department received written comments opposing the request to initiate the inquiries from Thyssen on May 12, 1997, from Saarstahl A.G. i.K. on May 16, 1997, from British Steel plc on May 23, 1997, and from the European Community (EC) on May 27, 1997. We also received written comments in opposition to the initiation of the inquiries from Bar Technologies, Inc. (Bar Tech) on May 19, 1997, Sheffield Steel Corporation on June 2, 1997, Birmingham Steel Corporation on June 3, 1997, and Nucor Steel Corporation on June 5, 1997.

Pursuant to the petitioners' application and in accordance with 19 CFR 353.29(e) and 355.29(e), the Department initiated circumvention inquiries of the antidumping and countervailing duty orders on hot-rolled lead bar from Germany and the United Kingdom (62 FR 34213; June 25, 1997).

We sent initial questionnaires to the foreign respondents on June 25, 1997, and received responses on July 21, 1997. On September 10, 1997, the Department again issued questionnaires to all foreign respondents. Also on this date, the Department issued questionnaires to those U.S. steel companies which were identified in the foreign respondents' July 21, 1997 questionnaire responses as lead billet customers. The U.S. steel companies which responded to the Department's questionnaires on October 29, 1997 and November 3, 1997, purchased virtually all of the foreign respondents' exports of lead billets to the United States in 1995 and 1996, and rolled them into hot-rolled lead bar (hereafter referred to as U.S. re-rollers). The Department issued supplemental questionnaires to both the U.S. re-rollers and foreign respondents.

In conducting the inquiries, we requested and received detailed information on a range of topics, such as processing, pricing information, and conversion costs. We also collected data on patterns of trade, sourcing patterns, and other trend data for the period January 1, 1991, through June 30, 1997.

Scope of Antidumping and Countervailing Duty Orders

Imports covered by these orders include hot-rolled bars and rod of non-alloy or other alloy steel, whether or not

descaled, containing by weight 0.03 percent of lead or 0.05 percent of bismuth, in coils or cut lengths, and in numerous shapes and sizes. The order excludes ''other alloy steels,'' as defined by Chapter 72, note 1(f) of the Harmonized Tariff Schedule of the United States (HTSUS), ''except steels classified as other alloy steel by reason of containing by weight 0.4 percent or more of lead or 0.1 percent or more of bismuth, tellurium or selenium.'' Most of the products covered are provided for under subheadings 7213.20.00.00 and 7214.30.00.00 of the HTSUS. Small quantities of these products may also enter the United States under the following HTSUS subheadings: 7213.31.30.00, 60.00; 7213.39.00.30, 00.60, 00.90; 7214.40.00.10, 00.30, 00.50; 7214.50.00.10, 00.30, 00.50; 7214.60.00.10, 00.30, 00.50; and 7228.30.80.00. Although the HTSUS subheadings are provided for convenience and for customs purposes, the written description of the scope of the order remains dispositive.

Scope of the Circumvention Inquiries

The products subject to these circumvention inquiries are carbon or alloy steel billets containing 0.03 percent or more of lead or 0.05 percent or more of bismuth (the only accepted metallurgical equivalent to lead), and other alloy steel billets by reason of containing by weight 0.4 percent or more of lead or 0.1 percent or more of bismuth, tellurium or selenium, that meet the chemical requirements for the merchandise subject to the orders.

Facts Available

Section 776(a)(2) of the Act requires the Department to use facts available if ''an interested party or any other person * * * withholds information that has been requested by the administering authority * * * under this title.'' The facts on the record show that Bar Tech did not comply with the Department's requests for information required to calculate the value of the processing performed in the United States. In our initial questionnaire dated September 10, 1997, the Department requested information regarding the total amount of lead billet consumed in the production of one unit of hot-rolled lead bar (lead billet consumption rate). Bar Tech responded to our questionnaire on October 29, 1997, but did not provide its lead billet consumption rate.

The Department's supplemental questionnaires dated November 18, 1997 and January 7, 1998, again requested that Bar Tech report its lead billet consumption rate. Bar Tech, however, did not provide its lead billet consumption rate to the Department.

Section 776(b) of the Act permits the administrative authority to use an inference that is adverse to the interests of an interested party if that party has ''failed to cooperate by not acting to the best of its ability to comply with a request for information.'' Such an adverse inference may include reliance on information derived from (1) the petition, (2) a final determination in the investigation under this title, (3) any previous review under section 751 or determination under section 753 regarding the country under consideration, or (4) any other information placed on the record. Because Bar Tech did not comply with the Department's request to provide its lead billet consumption rate, we find that Bar Tech failed to cooperate by not acting to the best of its ability to comply with the Department's request. Therefore, we are using adverse inferences in accordance with section 776(b) of the Act. The adverse inference for Bar Tech's lead billet consumption rate is the use of the highest average lead billet consumption rate submitted by another U.S. re-roller participating in these inquiries.

Nature of the Circumvention Inquiry

Section 781(a)(1) of the Act provides that the Department, after taking into account any advice provided by the United States International Trade Commission (ITC) under section 781(e), may include the imported merchandise under review within the scope of an order if the following criteria have been met:

A. The merchandise sold in the United States is of the same class or kind as any other merchandise that is the subject of—

(i) An antidumping duty order issued under section 736,

(ii) A finding issued under the Antidumping Act, 1921, or

(iii) A countervailing duty order issued under section 706 or section 303;

B. Such merchandise sold in the United States is completed or assembled in the United States from parts or components produced in the foreign country with respect to which such order or finding applies;

C. The process of assembly or completion in the United States is minor or insignificant; and

D. The value of the parts or components [produced in the foreign country with respect to which the order applies], is a significant portion of the total value of the merchandise.

If one of the four elements does not apply, there can be no finding of circumvention. However, even if all four of these criteria are met, the Act requires that the Department also consider additional factors. Section 781(a)(3) of the Act directs the Department to consider, in determining whether to include parts or components produced in a foreign country within the scope of a countervailing and antidumping duty order, such factors as: (A) the pattern of trade, including sourcing patterns; (B) whether the manufacturer or exporter of the parts or components is affiliated with the person who assembles or completes the merchandise sold in the United States from the parts or components produced in the foreign country; and (C) whether imports into the United States of the parts or components produced in such foreign country have increased after the initiation of the investigation which resulted in the issuance of such order or finding.

U.S. Re-rollers

We requested information from U.S. re-rollers with respect to these circumvention inquiries. Information was submitted by the following U.S. re-rollers: American Steel & Wire (AS&W), a wholly-owned subsidiary of Birmingham Steel Corporation; Bar Tech; Nucor Steel Corporation (Nucor); Republic Engineered Steels (Republic); and Sheffield Steel Corporation (Sheffield). Based upon our analysis of the information submitted by the foreign respondents and the U.S. re-rollers, we have determined that no affiliation exists between the U.S. re-rollers and the foreign respondents, as defined in section 771(33) of the Act. A determination with respect to section 781(a)(1) and (2) of the Act, is based solely on the processing of lead billets into hot-rolled lead bar by these unaffiliated U.S. re-rollers.

The rolling facilities owned by each of the U.S. re-rollers were in operation before the initiation of the respective antidumping and countervailing (AD and CVD) investigations of hot-rolled lead bar from Germany and the United Kingdom. All of the U.S. re-rollers, except Bar Tech, existed as re-rollers before the initiation of the investigations. Bar Tech was established after the issuance of the AD and CVD orders when Bar Tech purchased Bethlehem Steel's Bar, Rod & Wire (BRW) facilities in Lackawanna, New York in 1994. Bethlehem Steel, a former re-roller of hot-rolled lead bar, was one of the original petitioners in the lead bar investigations.

Much of the information provided by the U.S. re-rollers is proprietary. Therefore, in most instances, the

information used in our analysis below has been ranged, and our discussion of this information has been generalized in order to maintain the proprietary treatment of submitted information. In addition, for most of the U.S. re-rollers, the source of their imported lead billets is also proprietary. Therefore, the analysis below refers to both imports from Germany and the United Kingdom.

Statutory Analysis

(1) Whether the Class or Kind of Merchandise Is Sold in the United States

AS&W, Bar Tech, Republic, and Sheffield sell hot-rolled lead bar in the United States. Nucor processes lead billets into hot-rolled lead bar, which the company further processes into cold-finished products.

(2) Whether Merchandise Sold in the United States Is Completed or Assembled in the United States From Foreign Parts or Components

All of the U.S. re-rollers purchase lead billets from one or more of the foreign respondents subject to the AD and CVD orders. They each use the lead billets to produce hot-rolled lead bar in the United States.

(3) Whether the Process of Assembly or Completion Is Minor or Insignificant

Section 781(a)(2) lists the factors the Department will consider in determining whether the process of assembly or completion is minor or insignificant. The Statement of Administrative Action (SAA), H. Doc. No. 316, Vol. 1, 103d Cong., 2nd Sess. (1994), states that no single factor listed in section 781(a)(2) of the Act will be controlling. SAA at 893. The SAA also states that the Department will evaluate each of the factors as they exist in the United States depending on the particular circumvention scenario. *Id.* Therefore, the importance of any one of the factors listed under 781(a)(2) of the Act can vary from case to case depending on the particular circumstances unique to each specific circumvention inquiry. Each of the factors set forth in section 781(a)(2) of the Act is examined below for the U.S. re-rollers.

(a) The Level of Investment in the United States

The rolling facilities owned by each of the U.S. re-rollers were in operation before the initiation of the respective AD and CVD investigations of hot-rolled lead bar from Germany and the United Kingdom. Although Bar Tech did not exist before the initiation of the investigations, the facility producing subject merchandise that is operated by the company does pre-date the investigations. Each of the U.S. re-rollers has made substantial capital investments in its respective rolling mills.

AS&W entered the hot-rolled lead bar market in 1986, with its purchase of rolling facilities from U.S. Steel. In 1993, Birmingham Steel acquired AS&W and entered the specialty bar, rod, and wire products business. In 1996, Birmingham Steel invested $132 million in a new high-quality rolling mill at AS&W's Cleveland, Ohio facility, enabling the company to produce larger-sized bar products and bars with tighter size tolerances and more stringent mechanical properties. AS&W primarily produces non-lead hot-rolled bars, and less than a quarter of the mill's production utilizes lead billets. AS&W sells the hot-rolled lead bar that it produces to unaffiliated customers.

Bar Tech came into existence in 1994, with the purchase of Bethlehem Steel's BRW facilities for $19 million. Between 1994 and 1997, Bar Tech made additional investments in the rolling facilities' buildings, machinery, and equipment. In April 1996, Bar Tech acquired Bliss & Laughlin (B&L), the largest cold-finishing company in the United States. In September 1997, Bar Tech announced plans to invest $30 million in its steelmaking facilities. Approximately half of the investment is allocated for the production of lead and non-lead semi-finished steels (billets) at its Johnstown meltshop. The majority of the remaining investment is designated for equipment upgrades at its 13 inch rolling mill in Lackawanna, New York to roll both lead and non-lead billets.

Nucor's steel mill in Darlington, South Carolina became operational as a new steel mill in 1969. Prior to 1991, Nucor added a high-speed rolling line to its mill. The addition of such equipment allows for automatic straightening, shearing, stacking, and bundling of bar, and has significantly enhanced Nucor's ability to produce hot-rolled lead and non-lead bar from lead and non-lead billets. Since 1991, Nucor has made several investments for a variety of improvements.

In November 1989, Republic was created through an employee stock ownership plan with the purchase of LTV's Bar Division. With the purchased steelmaking facilities, Republic gained the ability to produce lead and non-lead ingots, and hot-rolled and cold-finished bar products. Republic currently produces lead billets via the ingot process in a shared facility; however, the quantity it can produce is restricted by environmental permit limits. During the 1990's, Republic invested in the construction of a continuous casting facility which has the capability to produce both lead and non-lead billets; however, Republic currently only produces non-lead billets at the facility.

Sheffield was established in the early 1980's, with the purchase of the Sand Springs, Oklahoma meltshop and rolling facility in 1981, and the construction of the Kansas City, Missouri rolling facility in 1985. In 1986, Sheffield purchased a 12 inch rolling mill facility in Joliet, Illinois from Continental Steel for $3.5 million. This rolling mill was originally installed around 1957. Since acquiring the Joliet mill in 1986, Sheffield has made additional investments of approximately $6 million in the facility, which is the company's only rolling mill which produces hot-rolled lead bar. Sheffield entered the hot-rolled lead bar market in 1992.

(b) The Level of Research and Development (R&D) in the United States

Four of the five re-rollers reported that they had little or no R&D related to the production of hot-rolled lead bar. One U.S. re-roller reported that it conducted some R&D with respect to the development of heating, rolling and inspection practices used in the production of leaded steels. The U.S. re-rollers reported that there have been few technological breakthroughs affecting leaded steels since 1991. Because the rolling of hot-rolled lead bar is a technically mature process, R&D into the process of rolling bar is not a significant factor in this industry.

(c) The Nature of the Production Process in the United States

The International Trade Commission (ITC) states that the manufacturing process for the production of hot-rolled lead bar consists of three different stages: (1) melting, (2) casting, and (3) hot-rolling. *See Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From Brazil, France, and the United Kingdom,* Determinations of the Commission in Investigations Nos. 701–TA–314 thru 317, USITC Publication 2611 (March 1993). Lead billets are created during the second stage; the U.S. re-rollers perform the third and final stage in the manufacturing process of hot-rolled lead bar.

Each of the U.S. re-rollers are fully operational hot-rolled lead and non-lead bar producers, manufacturing bar in a like manner. The nature of the process overall consists of a series of sizing and shaping of the lead billets to produce specific sized and shaped hot-rolled bar on rolling equipment used to manufacture either hot-rolled lead or

non-lead bars. The rolling process does not require equipment dedicated exclusively to the production of hot-rolled lead bar. Three of the five re-rollers also have cold-finishing operations to further process the hot-rolled lead bar. In the cold-finishing process, the bar undergoes surface treatments in the form of polishing, turning, grinding, and straightening.

The process for producing hot-rolled lead bar from lead billets is as follows. First, the lead billets are placed in a re-heat furnace and heated to a temperature usually above 2200 degrees Fahrenheit. This heating procedure increases the malleability of the steel, reducing energy consumption and wear on the rolling mill. Once the lead billets reach the necessary temperature, walking beams gradually discharge them from the re-heat furnace onto the rolling lines. The lead billets are then rolled on a series of rolling mills, including roughing, intermediate, and finishing mills. Each rolling mill has a series of stands which compress and shape the lead billets with each pass through. As a lead billet passes through the stands, it becomes elongated and its cross-section becomes smaller. This process transforms a lead billet into a hot-rolled lead bar product having a specific size and shape. Generally four to 15 percent of a lead billet's weight is lost in the rolling process.

The hot-rolled lead bar is then placed on a hot bed and cooled to a temperature of about 800 degrees Fahrenheit. Once cooled, the hot-rolled lead bar undergoes straightening, non-destructive testing, deburring, and saw cutting. The hot-rolled lead bar is either coiled or cut into various lengths at the finishing shear. At this stage, some re-rollers apply a surface treatment to clean and coat their products. After being inspected for straightness, length, and defects, the hot-rolled lead bars are weighed, packaged, and placed in the warehouse for later shipment

There are environmental issues and limitations in rolling lead billets versus non-lead billets. Environmental controls, worker safety, and health regulations are more stringent for lead than for non-lead grades. For instance, additional ventilation of exhaust fumes is necessary as lead and bismuth steel wastes are classified as hazardous waste, necessitating their segregation and separate treatment from other scrap. Specialized safety equipment and more rigorous operating procedures must also be used in compliance with Occupational Safety and Health Administration (OSHA) standards.

(d) The Extent of Production Facilities in the United States

In general, each of the U.S. re-rollers have production facilities in various states throughout the United States, but the rolling of hot-rolled lead bar mainly takes place in Illinois, Ohio, Utah, South Carolina, and New York. As we have noted earlier, most of the U.S. re-rollers were rolling lead billets into hot-rolled lead bar before the initiation of the AD and CVD investigations of hot-rolled lead bar from Germany and the United Kingdom.

In analyzing the extent of production facilities, we considered the square footage of building space dedicated to rolling the semifinished product (lead billet) into hot-rolled lead bar, the number of employees involved in rolling the lead billets, and the capital equipment used in the production of hot-rolled lead bar. Sheffield, for example, reported that its Joliet rolling facility encompasses 334,305 square feet for the processing of lead billet into hot-rolled lead bar.

With regard to the number and level of skilled employees involved in rolling lead billets into hot-rolled lead bar, Sheffield, for example, reported that in the production process of hot-rolled lead bar, from the time the lead billets are received in the billet yard to the time that hot-rolled lead bar is shipped to a customer, there are 25 skilled workers responsible for the rolling of a lead billet into hot-rolled lead bar, and all of the other ancillary functions.

With respect to the capital equipment used in the processing of lead billet into hot-rolled lead bar, the U.S. re-rollers have invested a substantial amount of money not only in the construction of factory buildings used in rolling operations for both lead and non-lead products, but also in the purchase of sophisticated machinery required to produce hot-rolled bar from lead and non-lead billets, and the maintenance required for such machinery.

(e) Whether the Value of the Processing Performed in the United States Represents a Small Proportion of the Value of the Merchandise Sold in the United States

We calculated the difference in value between the hot-rolled lead bar sold in the United States and the value of the lead billets purchased from the foreign respondents that were used in the production of that merchandise. For ASW, BarTech, Republic, and Sheffield, we based our calculation of value-added to the merchandise sold in the United States on the difference between the delivered lead billet import price and the ex-factory sales price of the hot-rolled lead bar. This methodology was used because both transactions (lead billet purchases and hot-rolled lead bar sales) were sales between unaffiliated parties. To derive the value of processing performed by each U.S. re-roller, we subtracted from the ex-factory sales price of hot-rolled lead bar to unaffiliated customers the delivered price of lead billets, after adjusting for a yield factor (to account for additional lead billet consumed in the production of one unit of hot-rolled lead bar).

In regard to Nucor, because the company uses all the hot-rolled lead bar that it produces to further manufacture cold-finished products, we applied a different value-added methodology. We based our calculation of value-added on the comparison between the conversion fee Nucor's rolling mill charged its affiliated cold-finisher and the resulting total input cost of hot-rolled lead bar to the cold-finisher, after adjusting both for a yield factor (to account for additional lead billet consumed in the production of one unit of hot-rolled lead bar).

Some of the U.S. re-rollers purchased lead billets from all three suppliers of lead billets subject to these inquiries, while others purchased exclusively from one source. Some of the U.S. re-rollers, however, were unable to identify the supplier of lead billets on a transaction-specific basis with respect to the U.S. sales of the processed hot-rolled lead bar. Therefore, for each U.S. re-roller, the calculation of value-added is based upon a weighted-average price of imported lead billet from the foreign respondent(s) from whom the U.S. re-roller purchased its lead billets. Because the processing of the imported lead billet into hot-rolled lead bar is virtually identical regardless of the source of the imported lead billet, we consider this weighted-average, non-supplier specific calculation of value-added to be appropriate in those instances. However, where possible, we used the supplier-specific information to calculate the value-added to each supplier.

The value of processing performed in the United States ranges from approximately 10 percent to 29 percent for the U.S. re-rollers. The value of processing varies because of the lead billet prices charged by the foreign respondents to the U.S. re-rollers, the U.S. re-roller's yield factor for rolling one unit of lead billet into one unit of hot-rolled lead bar, and the different prices charged by the U.S. re-rollers to their customers due to size and shape of the hot-rolled lead bar. Because the calculation of the value of processing is based upon proprietary data, the value-

added percentages presented above have been ranged

(4) Whether the Value of Imported Parts Is a Significant Portion of Value of Lead Bar

Under section 781(a)(1)(D) of the Act, the value of the imported parts or components must be a significant portion of the total value of the subject merchandise sold in the United States in order to find circumvention. The imported lead billet is the sole material input into the completed hot-rolled lead bar and a significant portion of the value of the completed hot-rolled lead bar is based upon this material cost.

Other Factors To Consider

In making a determination whether to include parts or components within an order, section 781(a)(3) of the Act instructs us to take into account such factors as: the pattern of trade, including sourcing patterns; whether affiliation exists between the exporter of the parts and the person who assembles or completes the merchandise sold in the United States; and whether imports into the United States of the parts produced in the foreign country have increased after the initiation of the investigation which resulted in the issuance of the order. Each of these factors are examined below.

(1) Pattern of Trade and Sourcing

The first factor to consider under section 781(a)(3) is changes in the pattern of trade, including changes in the sourcing patterns of the lead billets. SAA at 894. Unlike our examination of the processing of lead billets into hot-rolled lead bar in the United States, which was essentially the same for all of the U.S. re-rollers, there are differences in the pattern of trade among the U.S. re-rollers and the three foreign respondents (British Steel, Thyssen, and Saarstahl). Among the foreign respondents, British Steel and Thyssen are the two largest lead billet exporters to the United States. In comparison, Saarstahl is a small exporter of lead billets.

British Steel began selling lead billets to the United States in 1994. By 1996, the company's lead billet sales doubled. British Steel's sales of hot-rolled lead bar peaked in 1992, declined in 1993 and 1994, rebounded in 1995, and continued to trend upwards in 1996. In general, sales of hot-rolled lead bar by British Steel have greatly exceeded its sales of lead billets to the U.S. market (in spite of the AD and CVD orders). British Steel's sales of hot-rolled lead bar in the U.S. market have remained significant since the imposition of the orders. In fact, Sheffield reported that its primary competition for hot-rolled lead bar shapes is imports from British Steel.

Thyssen has been selling lead billets to the United States since 1988, well before the Department initiated its hot-rolled lead bar investigations in May 1992. Thyssen's lead billet shipments to the United States increased steadily from 1991 to 1996, peaking in 1996, while its hot-rolled lead bar sales to the U.S. market terminated in 1992 . Thyssen has stated that lead billets, and not hot-rolled lead bar, have always been its primary U.S. market, and the pattern of trade for both products indicates this to be accurate.

Saarstahl began selling lead billets to the United States in 1992, the last year the steelmaker sold hot-rolled lead bar to U.S. customers. Saarstahl's exports of lead billets to the United States peaked in 1993, and since then have significantly decreased.

AS&W has been purchasing lead billets since its inception in 1986. AS&W reported that since 1992, the company has sourced lead billets from both foreign and domestic suppliers. A major change in the company's sourcing was the termination of a billet supply agreement (inclusive of lead and non-lead billets) with USS/KOBE. When Birmingham Steel purchased AS&W in 1993, there was a lead billet supply agreement in effect with USS/Lorain Works, which subsequently became USS/KOBE. USS/KOBE terminated the supply agreement in 1996, citing a lack of lead billet availability. With the termination of this supply agreement, AS&W was no longer able to source lead billets domestically.

Bar Tech began purchasing lead billets in 1996. Bar Tech has not sourced lead billets from domestic producers. Bar Tech never purchased lead bar from the foreign respondents.

Nucor did not begin purchasing lead billets until 1992, when the company began sourcing from foreign respondents. Purchases from the foreign respondents have been generally declining. Nucor had previously purchased hot-rolled lead bar from foreign sources.

Republic's predecessor began purchasing lead billets from foreign sources in the mid-80's. Since becoming an independent company in 1989, Republic has continued to source its lead billets from foreign sources to supplement its own production. Republic has never purchased lead billets from domestic producers. The company did purchase hot-rolled lead bar from foreign sources in the early 1990's; however, since 1993, Republic has sourced hot-rolled lead bar exclusively from domestic suppliers.

Sheffield has sourced lead billets from both domestic and foreign producers since it began purchasing lead billets in 1992. Throughout much of 1993, Sheffield sourced lead billets from Inland; however, by late 1993, Inland stopped its external sales of lead billets citing its own internal lead billet consumption needs. In June 1995, Inland was again in a position to supply lead billets. Sheffield placed orders with Inland, but by the fourth quarter of 1995, Inland once again stopped selling lead billets. Since 1996, Sheffield has sourced lead billets from abroad.

(2) Affiliation

The second factor to consider under section 781(a)(3) of the Act is whether the manufacturer or exporter of the lead billets is affiliated with the entity that assembles or completes the merchandise sold in the United States from the imported lead billets. In these circumvention inquiries, the Department inquired whether affiliation existed between the U.S. re-roller and the foreign respondents, pursuant to section 771(33) of the Act. Based upon our analysis of the questionnaire responses from both the U.S. re-rollers and the foreign respondents, we find that no affiliation exists between the parties. There is neither common ownership, direct or indirect, between the U.S. re-rollers and the foreign suppliers of lead billets, nor a joint venture between the companies. Further, there are no facts (*e.g.,* close supplier relationship) that suggest control of any of the re-rollers by the foreign respondents. In sum, we have found no evidence to indicate that the foreign respondents have attempted either to purchase or to construct re-rolling facilities in the United States which would allow them to import lead billet and process it into hot-rolled lead bar for their own use.

(3) Whether Imports Have Increased

The third factor to consider under section 781(a)(3) is whether imports of lead billets into the United States have increased after the initiation of the hot-rolled lead bar investigations. Therefore, we have analyzed the level of imports of lead billets from both Germany and the United Kingdom since 1992, the year in which the AD and CVD investigations of hot-rolled lead bar were initiated. While we find that imports of lead billets have increased from all three foreign respondents, the increase appears to be the result of causes other than the initiation of the hot-rolled lead bar investigations.

According to some of the U.S. re-rollers, there has been a switch from domestically produced lead billets to foreign-sourced imports because Inland and USS/KOBE have not met the lead billet supply needs of the U.S. market. In addition, there were two new entrants to the hot-rolled lead bar market after the initiation of the hot-rolled lead bar investigations that required supplies of lead billet. Sheffield entered into the hot-rolled lead bar market after Bethlehem Steel exited the market in 1992. Two years later, Bar Tech entered the hot-rolled lead bar market after purchasing Bethlehem's rolling facilities. Bethlehem Steel, one of the original petitioners in the hot-rolled lead bar investigations, produced its own lead billets; however, neither Sheffield nor Bar Tech currently have lead billet production and thus, must source their lead billets from other outside sources.

Further, according to the ITC, in the United States almost all semifinished steel such as blooms, billets, and slabs are used in captive production of finished steel products. Steel processors, such as the U.S. re-rollers, are an important outlet for excess semifinished steel products manufactured by steel producers. In the relatively limited semifinished steel market, the consumer is likely also to be the supplier's competitor in sales of finished steel. *See* USITC Publication 2758, *Industry & Trade Summary Semifinished Steel* (March 1994) at pages 3, 5, and 11. Because the consumer of a billet is generally a competitor of the supplier, the dynamics of supply operate differently than for finished steel products. A steelmaker with excess melting capacity may have incentive to refrain from selling semifinished steel, such as billets.

It has also been difficult to measure the rise in imports of lead billets from Germany and the United Kingdom against import trends from other countries. This is because the primary HTS number under which lead billets are imported is a basket category which includes other imports of semifinished products of iron or nonalloy steel with a chemical content of under 0.25 percent carbon. In its application, Inland and USS/KOBE provided import data for this HTS category. According to these data, imports of semifinished products of iron or nonalloy steels from countries not subject to antidumping or countervailing duty orders increased after the initiation of the hot-rolled lead bar investigations, and in some cases significantly.

Summary of Statutory Analysis

As discussed above, in order to make an affirmative determination of circumvention, all the elements under sections 781(a)(1) and (2) of the Act must be satisfied. In addition, section 781(a)(3) of the Act instructs the Department to consider, in determining whether to include parts or components within the scope of an order, such factors as: pattern of trade, affiliation, and whether imports into the United States of such parts or components increased after the initiation of the investigation which resulted in the issuance of the order. When the criteria of sections 781(a)(1) and (2) are applied to the individual facts, our analysis of whether circumvention is occurring is inconclusive. However, when the evidence to be considered under section 781(a)(3) of the Act is incorporated into our analysis, we find that all of the evidence, taken as a whole, does not lead us to find a basis for including lead billets within the scope of the AD and CVD orders on hot-rolled lead bar from Germany and the United Kingdom.

Pursuant to sections 781(a)(1) and (2), we find that the processing of lead billets into hot-rolled lead bar is essentially identical for all of the U.S. re-rollers involved in these inquiries. A detailed description of the re-rolling process is provided above. Though the U.S. re-rollers perform only one of the three processes needed to produce hot-rolled lead bar, they do perform the final process of converting the semifinished steel product into a functional finished steel good. Also, because the production process of converting lead billets into hot-rolled lead bar is a technically mature process, we did not expect to find significant R&D expenditures by the U.S. re-rollers.

The process of rolling lead billet into hot-rolled lead bar requires significant capital investment in rolling machinery and equipment, and compliance with a variety of OSHA and environmental regulations. Capital equipment and machinery used by the U.S. re-rollers, once purchased, installed, and operational, represent significant fixed plant and equipment which cannot be easily disassembled and transported to another location. Investment in re-rolling facilities requires a long-term investment of capital, long-term corporate planning, and a long-term business commitment by the U.S. re-roller.

Pursuant to section 781(a)(3), in reaching our determination, we took into consideration the factors of pattern of trade, sourcing, affiliation, and import trends. The facts concerning pattern of trade, sourcing, affiliation, and import trends do not indicate that there is circumvention of the hot-rolled lead bar orders. Even if we were to conclude that the calculated value of processing performed by the U.S. re-rollers in the United States is relatively small, when we examined sections 781(a)(1) and (2) in conjunction with the factors under section 781(a)(3), the facts, taken as a whole, do not lead us to find that circumvention of the hot-rolled lead bar orders is occurring.

Throughout the United States, the U.S. re-rollers have extensive capital-intensive rolling facilities staffed by skilled workers. As previously discussed, the U.S. re-rollers are not affiliated with the foreign respondents and their rolling facilities were in existence and operational before the initiation of the hot-rolled lead bar investigations. Indeed, the petition for the hot-rolled lead bar investigations was filed on behalf of two of the five U.S. re-rollers, AS&W and Republic. In addition, a third U.S. re-roller, Bar Tech, purchased its rolling facilities from Bethlehem Steel, one of the two original petitioners in the hot-rolled lead bar investigations.

According to the responses from the U.S. re-rollers, most of their investment in rolling facilities in the United States was made before the initiation of the AD and CVD investigations of hot-rolled lead bar from Germany and the United Kingdom. In addition, some of the U.S. re-rollers made large investments in their rolling mills after 1992, the year in which the investigations on hot-rolled lead bar began. Thus, before and after 1992, U.S. re-rollers made large investments of capital and resources into their rolling facilities. These facts demonstrate that there were substantial production facilities for converting lead billets into hot-rolled lead bar before the initiation of the hot-rolled lead bar investigations.

Further, as discussed above, British Steel remains a large exporter of hot-rolled lead bar to the United States and its bar market in the United States is still much larger than its U.S. lead billet market. Thyssen was primarily a lead billet exporter to the United States before 1992, the year the lead bar investigations were initiated. That did not change after the initiation of the hot-rolled lead bar investigations. Saarstahl, which exports a relatively small volume of lead billets to the United States, is not a major player in the U.S. lead billet market.

With respect to the U.S. re-rollers, changes in their respective sourcing patterns after 1992, appear to be due to changes in the U.S. market, independent

of the hot-rolled lead bar investigations. U.S. re-rollers were purchasing lead billets and rolling them into hot-rolled lead bar before 1992. As noted above, Republic began purchasing lead billets in the mid-80's from foreign sources. New hot-rolled lead bar entrants came into the market after the departure of Bethlehem, causing an increase in the demand for lead billets. While Bethlehem was able to produce its own lead billets, the two new entrants, Bar Tech and Sheffield, have to purchase their lead billets from independent sources. In addition, there were also shifts from domestic to foreign billet suppliers because the domestic companies producing lead billets were only able to meet their own internal consumption needs. As discussed above, since 1996, both AS&W and Sheffield have been forced to source lead billets from foreign suppliers as a result of the termination of their supply arrangements with USS/KOBE and Inland, respectively.

Our analysis demonstrates that imposition of the hot-rolled lead bar orders in 1993, was not the impetus for the importation of lead billet by the U.S. re-rollers in order to produce hot-25 rolled lead bar. As noted above, a number of the U.S. re-rollers were producing hot-rolled lead bar prior to the orders and continued to produce hot-rolled lead bar after the orders. In addition, these unaffiliated U.S. re-rollers invested a substantial amount in their rolling facilities both before and after the AD and CVD orders to roll both lead and non-lead billets into hot-rolled bar.

The facts of these inquiries also show that the foreign respondents did not change their product lines in the United States as a result of the initiation of the hot-rolled lead bar investigations. As noted, Thyssen's primary market in the United States has been lead billets since the mid-80's. British Steel, which commenced selling lead billets in 1994, continues to export a significant amount of hot-rolled lead bar to the United States.

Based upon this analysis under section 781(a) of the Act, we preliminarily find that circumvention of the AD and CVD orders on hot-rolled lead bar is not occurring by reason of imports of lead billets from Germany and the United Kingdom.

Public Comment

Interested parties may request disclosure of the calculations performed for these determinations within five days of the date of publication of this determination, and may request a hearing within 10 days of publication. Case briefs and/or written comments from interested parties may be submitted no later than 30 days after the date of publication of this notice. Rebuttal briefs and rebuttals to comments, limited to issues raised in those briefs or comments, may be filed no later than 37 days after the publication of this notice. Any hearing, if requested, will be held 44 days after the publication of this notice. The Department will publish the final determinations with respect to these anti-circumvention inquiries, including the results of its analysis of any written comments.

These negative preliminary circumvention determinations and notice are in accordance with section 781(a) of the Tariff Act and 19 CFR 353.29(e) and 19 CFR 355.29(e).

Dated: April 23, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–11666 Filed 4–30–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Membership Opportunity for the U.S.-Haiti Business Development Council

AGENCY: International Trade Administration, Department of Commerce.

SUMMARY: The U.S.-Haiti Business Development Council (BDC) was established in December, 1994 as a principal component of the Department of Commerce's program of activities in support of the Clinton Administration's Haiti Recovery Initiative. The BDC is chaired jointly by the U.S. and Haitian governments. The Department of Commerce is currently seeking nominations of outstanding individuals to serve on the U.S. section of the BDC as representatives of their particular industry sector. The purpose of the BDC is to provide a forum through which U.S. and Haitian private sector representatives can engage in constructive exchanges of information on commercial matters, and in which governments can exchange information and more effectively work together on issues of mutual concern relating to the following:

—Identifying commercial opportunities, impediments, and issues of concern to the respective business communities;
—Improving the dissemination of appropriate commercial information on both markets;
—Promoting trade/business development and promotion programs to assist the respective business communities in accessing each market, including trade missions, exhibits, seminars, and other events;
—Facilitating appropriate technical cooperation; and,
—Considering other steps that may be taken to foster growth and enhance commercial relations.

Obligations

Private sector members will be appointed for a two (2) year term and will serve at the discretion of the Secretary of Commerce. Private sector members shall serve as representatives of the business community and the industry their business represents. Private sector members are expected to participate fully in defining the agenda for the Council and in implementing its work program. It is expected that private sector members chosen for BDC membership will attend at least seventy-five percent (75%) of the BDC meetings which will be held in the United States and Haiti.

Private sector members are fully responsible for travel, living and personal expenses associated with their participation in the BDC. The private sector members will serve in a representative capacity presenting the views and interests of the particular business sector in which they operate; private sector members are not special government employees. It is anticipated that the private sector members of the BDC will form a steering committee to guide overall private sector participation. It is further anticipated that the steering committee will arrange for staff support for the BDC activities at the expense of the steering committee members.

Criteria

The Council shall be composed of two sections, a U.S. section and a Haitian section. The U.S. section will be chaired by the Under Secretary for International Trade of the Department of Commerce, or his designee, and will include approximately 25 members from the U.S. private sector. All potential candidates will be vetted in accordance with the Department of Commerce's vetting procedures.

In order to be eligible for membership in the U.S. section, potential candidates must:

— Must represent a U.S. commercial interest involved in trade and/or investment in Haiti; and,
—Not be a registered foreign agent under the Foreign Agents Registration Act of 1938, as amended (FARA).

In reviewing eligible candidates, the Department of Commerce will consider such selection factors as:

—Depth of experience in the Haitian market;

—Import/export experience;

—Industry or service sector represented;

—When possible, contribution to diversity based on company size, location, demographics, and traditional under-representation in business; and,

—Stated commitment to actively participate in BDC activities and meetings.

To be considered for membership, please provide the following: name and title of individual proposed for consideration; name and address of company or organization sponsoring each individual; company's or organization's product or service line; size of company or organization; export experience/foreign investment experience; a brief statement (not more than 2 pages) on why each candidate should be considered for membership on the Council; the particular segment of the business community each candidate would represent; and a statement that the applicant is not a registered Foreign Agent under the FARA.

DEADLINE: In order to receive full consideration, requests must be received no later than June 1, 1998.

ADDRESSES: Please send your requests for consideration to Ms. Elizabeth Jaffee, Haiti Desk Officer, Office of Latin America and the Caribbean, by fax on 202/482–0464 or by mail at Room 3025, U.S. Department of Commerce, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Jaffee, Haiti Desk Officer, Office of Latin America/Caribbean, Room 3025, U.S. Department of Commerce, Washington, DC 20230, telephone: 202/482–4302.

Authority: Act of February 14, 1903, c.552, as amended, 15 U.S.C. 1512, 32 Stat. 825.

Dated: April 28, 1998.

Walter M. Bastian,

Director, Office of Latin America and the Caribbean.

[FR Doc. 98–11657 Filed 4–30–98; 8:45 am]

BILLING CODE 3510–DA–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of first request for panel review.

SUMMARY: On April 14, 1998, Cemex, S.A. de C.V. filed a first Request for Panel Review with the U.S. Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. A second request for Panel Review was filed by Cementos de Chihuahua S.A. de C.V. Panel review was requested of the final antidumping determination review made by the International Trade Administration in the sixth administrative review respecting Gray Portland Cement and Clinker from Mexico. This determination was published in the **Federal Register** on March 16, 1998 (63 FR 12764). The NAFTA Secretariat has assigned Case Number USA–MEX–98–1904–02 to this request.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter will be conducted in accordance with these Rules.

A first Request for Panel Review was filed with the U.S. Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on April 14, 1998, requesting panel review of the final antidumping duty administrative review described above.

The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is May 14, 1998);

(b) A Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is May 29, 1998); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: April 15, 1998.

James R. Holbein,

U.S. Secretary, NAFTA Secretariat.

[FR Doc. 98–11587 Filed 4–30–98; 8:45 am]

BILLING CODE 3510–GT–M

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the Commission of Fine Arts is scheduled for 21 May 1998 at 10:00 AM 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 23 April 1998.

Charles H. Atherton,

Secretary.

[FR Doc. 98–11570 Filed 4–30–98; 8:45 am]

BILLING CODE 6330–01–M

COMMODITY FUTURES TRADING COMMISSION

Concept Release Concerning the Regulation of Noncompetitive Transactions Executed on or Subject to the Rules of a Contract Market

AGENCY: Commodity Futures Trading Commission.

ACTION: Extension of comment period on Concept Release.

SUMMARY: On January 16, 1998, the Commodity Futures Trading Commission issued a Concept Release concerning the regulation of noncompetitive transactions executed on or subject to the rules of a contract market. Through this release, the Commission solicited comments on a broad range of questions concerning the oversight of transactions involving (i) the exchange of futures contracts for, or in connection with, cash commodities, (ii) other noncompetitive transactions, and (iii) the use of execution facilities for noncompetitive transactions. The Concept Release was initially published for public comment on January 26, 1998 (63 FR 3708) with comments on the release due by March 27, 1998. In response to a request from the Coffee, Sugar and Cocoa Exchange, Inc., the Commission extended the comment period for an additional 30 days, until April 27, 1998.

The Commission has received a request from the Futures Industry Association Inc. to extend the comment period on certain parts of the Concept Release which relate to block trading. The Commission has decided to grant this request. The extended deadline for comments on the issues raised in section III.A.3. (''Alternative Execution Procedures'') of the Concept Release is September 1, 1998. To the extent that comments on sections III.B. (''Qualifying Standards''), III.C. (''Continuing Regulatory Requirements''), and IV. (''Execution Facilities for Noncompetitive Transactions Executed on or Subject to the Rules of a Contract Market'') relate to the block trading issues raised in section III.A.3. of the Concept Release, they also may be received on or before September 1, 1998.

The deadline for comments on all other issues raised in the Concept Release remains April 27, 1998.

Any person interested in submitting written data, views, or arguments on the Concept Release should submit their views and comments by the specified date to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov.

DATES: Comments on section III.A.3. of the Concept Release must be received on or before September 1, 1998. To the extent that comments on sections III.B., III.C., and IV. relate to the block trading issues raised in section III.A.3. of the Concept Release, they must be received on or before September 1, 1998.

FOR FURTHER INFORMATION CONTACT: Rebecca Creed, Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581. Telephone: (202) 418–5493.

Issued in Washington, D.C., on this 27th day of April, 1998, by the Commodity Futures Trading Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–11602 Filed 4–30–98; 8:45 am]

BILLING CODE 6351–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. & 3508(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed. Currently, the Corporation is soliciting comments concerning its proposed Program Development Assistance and Training (PDAT) Budget Form.

Copies of the information collection requests can be obtained by contacting the office listed below in the address section of this notice.

The Corporation is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Written comments must be submitted to the office listed in the addresses section by July 2, 1998.

ADDRESSES: Send comments to the Corporation for National and Community Service, Office of Evaluation and Effective Practices—Training and Technical Assistance, Attn: Jim Ekstrom, 1201 New York Avenue, N.W., Washington, D.C., 20525.

FOR FURTHER INFORMATION CONTACT: Jim Ekstrom, (202) 606–5000, ext. 139.

SUPPLEMENTARY INFORMATION:

A. Background

In the past Program Development Assistance and Training (PDAT) Budget information was requested informally without the form being proposed in this notice. As a result, the PDAT financial information submitted to the Corporation by applicants did not consistently provide the information that was requested. The Corporation anticipates that the use of the one-page budget form being proposed here will result in the submission of more complete PDAT-related financial information by the applicants.

B. Current Action

Each year the Corporation seeks to collect PDAT budget information from the 48 state commissions on national and community service. The information that will be collected on the proposed one-page PDAT budget form will be used during the Corporation's annual review of PDAT applications. The proposed PDAT budget form will be useful to the Corporation in the PDAT application review process that leads to the allocation of PDAT funds to the state commissions.

Type of Review: New form.

Agency: Corporation for National and Community Service.

Title: Program Development Assistance and Training (PDAT) Budget Form.

OMB Number: None.

Agency Number: None.

Affected Public: The 48 state commissions on national and community service.

Total Respondents: 48.

Frequency: Annually.

Average Time Per Response: 2 hours.

Estimated Total Burden Hours: 96 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: April 28, 1998.

Kenneth L. Klothen,

General Counsel.

[FR Doc. 98–11643 Filed 4–30–98; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Department of the Army

Environmental Assessment (EA) on the Disposal and Reuse of the Defense Distribution Depot, Memphis, TN (DDMT)

AGENCY: Department of the Army.

ACTION: Notice of availability.

SUMMARY: The proposed action evaluated by this EA is the disposal of the DDMT, in accordance with the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended. The EA addresses the environmental consequences of the disposal and subsequent reuse of the 642 acres divided into two sections, the main installation (574 acres) and Dunn Field (68 acres). Three alternative methods of disposal were analyzed: Encumbered disposal, unencumbered disposal and retention of the property in caretaker status (i.e., no action alternative). The Army's preferred alternative for disposal of the DDMT is encumbered disposal which involves conveying the property with conditions imposed on historic resources, remedial activities, utility easements, asbestos-containing material and lead-based paint.

The EA, which is incorporated into the Finding of No Significant Impact (FNSI), examines potential effects of the proposed action and alternatives on 15 resources areas and areas of environmental concern: land use, climate, air quality, noise, geology, and water resources infrastructure, hazardous and toxic substances, permits and regulatory authorizations, biological resources and ecosystems, cultural resources, economic development, socioeconomics and quality of life.

The EA concludes that the disposal and subsequent reuse of the property will not have a significant impact on the human environment. Issuance of an FNSI would be appropriate. An Environmental Impact Statement is not required prior to implication of the proposed actions.

DATES: Comments must be submitted on or before June 1, 1998.

ADDRESSES: A copy of the EA or inquiries into the FNSI may be obtained by writing to Mr. Jerry Jones at the Crops of Engineers, Mobile District (ATTN: CESAM–PD–EI), 109 St. Joseph Street, P.O. Box 2288, Mobile, Alabama 36628–0001 or by facsimile at (334) 694–3815.

Dated: April 24, 1998.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environmental, Safety and Occupational Health), OASA (I,L&E).

[FR Doc. 98–11613 Filed 4–30–98; 8:45 am]

BILLING CODE 3710–8–M

DEPARTMENT OF DEFENSE

Department of the Army

Draft Environmental Impact Statement (DEIS) on the Disposal and Reuse of the Stratford Army Engine Plant (SAEP), Stratford, CT

AGENCY: Department of the Army, DOD.

ACTION: Notice of availability.

SUMMARY: The proposed action evaluated by the DEIS is the disposal of the Stratford Army Engine Plant (SAEP), in accordance with the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended. The DEIS addresses the environmental impacts of the disposal and subsequent reuse of SAEP land and facilities. Alternatives examined in the DEIS include encumbered disposal of the property, unencumbered disposal of the property and no action. Encumbered disposal refers to transfer or conveyance of property having restrictions on subsequent use as a result of any Army-imposed or legal restraint. Under the no action alternative, the Army would not dispose of the property but would maintain it in caretaker status for an indefinite period. The Army's preferred alternative for disposal of the SAEP property is encumbered disposal which involves conveying the property with conditions imposed on asbestos-containing materials, easements, groundwater use prohibition, historical resources, lead-based paint, wetlands and remedial activities to protect human health regarding the transfer of land and facilities.

The EIS also analyzes the potential environmental effects of reuse by means of evaluating intensity-based probable reuse scenarios. Appropriate to the SAEP are medium-low, low and medium intensity reuse scenarios reflecting the range of activities that could occur after disposal of the property.

DATES: Comments and suggestions received within the 45 days of the publication of the Environmental Protection Agency's Notice of Availability for this action will be addressed in the Final EIS.

SCOPING: The Army will hold a public meeting for this Draft EIS. The location and date of the meeting, to be scheduled in May 1998, will be announced in the local news media. Oral and written comments may be presented at the public meeting.

ADDRESSES: Copies of the Draft EIS are available for review at the Stratford Public Library, 2203 Main Street, Stratford, Connecticut 06497. Copies may be obtained by writing to Mr. Joe Hand, at the Corps of Engineers, Mobile District, ATTN: TD–EC, 109 St Joseph Street, Mobile, Alabama 36628–0001 or by telephone at (334) 694–3881 or facsimile at (334) 690–2605.

Dated: April 27, 1998.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health), OASA (I, L&E).

[FR Doc. 98–11614 Filed 4–30–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application SN 09/035,910 Concerning Improved Method for Purifying Cholera Toxin

AGENCY: U.S. Army Medical Research and Materiel Command, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability of U.S. Patent Application SN 09/035,910 entitled ''Improved

Method for Purifying Cholera Toxin.'' This patent has been assigned to the United States Government as represented by the Secretary of the Army.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Harris, Patent Attorney, 301–619–7807, Fax 301–619–5034.

SUPPLEMENTARY INFORMATION: A new affinity purification method has been developed that can be used to purify cholera toxin (CT) and the B subunit of CT. In addition to purifying the native CT, it can be used to purify chemical conjugates or genetically engineered fusion proteins composed of CTB. This purification procedure is highly selective, since it can be used to purify CT but not the closely related heat-labile enterotoxin of *Escherichia coli*. This procedure is extremely fast and simple to perform, resulting in an extremely pure preparation. The affinity matrix is available commercially and can be used repeatedly without loss of affinity or resolution.

Mary V. Yonts,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 98–11590 Filed 4–30–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Board of Visitors to the United States Naval Academy

AGENCY: Department of the Navy, DoD.

ACTION: Notice of meeting.

SUMMARY: The United States Naval Academy Board of Visitors will meet to make such inquiry as the Board shall deem necessary into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy. During this meeting inquiries will relate to the internal personnel rules and practices of the Academy, may involve on-going criminal investigations, and include discussions of personal information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. The executive session of this meeting will be closed to the public.

DATE: The meeting will be held on Monday, May 4, 1998 from 8:30 a.m. to 12:00 p.m. The executive session of the meeting will be held from approximately 11:00 a.m. to 12:00 p.m. and will be closed to the public.

ADDRESS: The meeting will be held in the Bo Coppedge Room of Alumni Hall at the United States Naval Academy, Annapolis, MD.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Gerral K. David, U.S. Navy, Executive Secretary to the Board of Visitors, Office of the Superintendent, United States Naval Academy, Annapolis, MD 21402–5000, Telephone number: (410) 293–1503.

SUPPLEMENTARY INFORMATION: This notice of meeting is provided per the Federal Advisory Committee Act (5 U.S.C. App. 2). The executive session of the meeting will consist of discussions of information which pertain to the conduct of various midshipmen at the Naval Academy and internal Board of Visitors matters. Discussion of such information cannot be adequately segregated from other topics, which precludes opening the executive session of this meeting to the public. In accordance with 5 U.S.C. App. 2, section 10(d), the Secretary of the Navy has determined in writing that the special committee meeting shall be partially closed to the public because they will be concerned with matters as outlined in section 552(b)(2), (5), (6), and (7) of title 5, United States Code. Due to unavoidable delay in the administrative process of preparing for this meeting, the normal 15 days notice could not be provided.

Dated: April 28, 1998.

Michael I. Quinn,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 98–11627 Filed 4–30–98; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3189–001]

Atlantic City Electric Company; Notice of Filing

April 27, 1998.

Take notice that on March 2, 1998, Atlantic City Electric Company (Atlantic City Electric) in compliance with the Commission's January 29, 1998 order, 82 FERC ¶ 61,068, filed revised network tariff service rates based on the annual peak which the Commission directed the PJM Companies to file consistent with the use of such peaks for the allocation of fixed transmission rights. Atlantic City Electric requests that this compliance fling be allowed to become effective on April 1, 1998. Atlantic City Electric served copies of the filing on persons on the service list.

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 385.214. All such motions or protests should be filed on or before May 8, 1998. 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 must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–11577 Filed 4–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11181–002 Oregon]

Energy Storage Partners; Notice of Intent To Conduct Public Scoping Meetings and Site Visit

April 27, 1998.

The Federal Energy Regulatory Commission (Commission) received an application from Energy Storage Partners (applicant) to license the Lorella Pumped Storage Project No. 11181–002. The project would be located in Klamath County, Oregon, approximately 20 miles southeast of the town of Klamath Falls, and it would be a closed system project comprised of two artificial reservoirs. The Commission will hold public and agency scoping meetings on May 28, 1998, for preparation of an Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA) for the issuance of a major license for the Lorella Pumped Storage Project No. 11181–002.

Scoping Meetings

FERC staff will conduct one agency scoping meeting and one public meeting. the agency scoping meeting will focus on resource agency and non-governmental organization (NGO) concerns, while the public scoping

meeting is primarily for public input. All interested individuals, organizations, and agencies are invited to attend one or both of the meetings, and to assist the staff in identifying the scope of the environmental issues that should be analyzed in the EA. The times and locations of these meetings are as follows:

Agency Scoping Meeting

When: Thursday, May 28, 1998, from 9:00 a.m. until 12:00 p.m.
Where: Klamath County Museum, 1451 Main Street, Klamath Falls, OR 97601

Public Scoping Meeting

When: Thursday, May 28, 1998, from 7:00 p.m. until 10:00 p.m.
Where: Klamath County Museum, 1451 Main Street, Klamath Falls, OR 97601

To help focus discussions, we will distribute a Scoping Document (SDI) outlining the subject areas to be addressed at the meeting to the parties on the Commission's mailing list. Copies of the SD1 also will be available at the scoping meetings.

Site Visit

The applicant and Commission staff will conduct a project site visit beginning at 11:00 a.m. on May 27, 1998. All interested individuals, organizations, and agencies are invited to attend. All participants should meet at the lobby of Shilo Inns, 2500 Almond Street, Klamath Falls, Oregon. All participants are responsible for their own transportation to the site. Anyone with questions about the site visit should contact Mr. Douglas Spaulding on (612) 315–6309.

Objectives

At the scoping meetings, the staff will: (1) summarize the environemtal issues tentatively identified for analysis in the EIS; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the EIS, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the relative depth of analysis for issues to be addressed in the EIS; and (5) identify resources issues that are of lesser importance, and, therefore, do not require detailed analysis.

Procedures

The meetings will be recorded by a stenographer and will become part of the formal record of the Commission proceeding on the project. Individuals presenting statements at the meetings will be asked to sign in before the meeting starts and to clearly identify themselves for the record. Speaking time for attendees at the meetings will be determined before the meeting, based on the number of persons wishing to speak and the approximate amount of time available for the session. All speakers will be provided at least 5 minutes to present their views.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and to assist the staff in defining and clarifying the issues to be addressed in the EIS.

Persons choosing not to speak at the meetings, but who have views on the issues, may submit written statements for inclusion in the public record at the meeting. In addition, written scoping comments may be filed with the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, not later than June 29, 1998. All filings should contain an original and eight copies, and must clearly show at the top of the first page ''Lorella Pumped Storage Project, FERC No. 11181–002.''

For further information, please contact Hector M. Perez at (202) 219–2843.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–11579 Filed 4–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–5–34–000]

Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

April 27, 1998.

Take notice that on April 23, 1998, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, effective May 1, 1998, the following tariff sheets:

Twenty-Seventh Revised Sheet No. 8A
Eighteenth Revised Sheet No. 8A.01
Nineteenth Revised Sheet No. 8A.02
Twenty-Fourth Revised Sheet No. 8B
Seventeenth Revised Sheet No. 8B.01

FGT states that in Docket No. TM98–4–34–000 filed on February 26, 1998 and approved by Commission order dated March 23, 1998, FGT filed to establish a Base Fuel Reimbursement Charge Percentage (Base FRCP) of 3.46% to become effective April 1, 1998. In the instant filing, FGT is filing a flex adjustment of <0.50>% to be effective May 1, 1998, which, when combined with the Base FRCP of 3.46%, results in an Effective Fuel Reimbursement Charge Percentage of 2.9%.

FGT states that the tariff sheets listed above are being filed pursuant to Section 27.A.2.b of the General Terms and Conditions of FGT's Tariff, which provides for flex adjustments to the Base FRCP. Pursuant to the terms of Section 27.A.2.b, a flex adjustment shall become effective without prior FERC approval provided that such flex adjustment does not exceed 0.5%, is effective at the beginning of a month, is posted on FGT's EBB at least five working days prior to the nomination deadline and is filed no more than sixty and at least seven days before the proposed effective date. The instant filing comports with these provisions and FGT has posted notice of the flex adjustment prior to the instant filing.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–11576 Filed 4–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–192–000]

K N Wattenberg Transmission Limited Liability Co.; Notice of Tariff Filing

April 27, 1998.

Take notice that on April 23, 1998, pursuant to Section 154.204 of the Commission's Regulations, K N Wattenberg Transmission Limited Liability Co. (KNW), tendered for filing and acceptance a revised FERC Gas Tariff, Volume No. 1 to incorporate the

tariff language required in order to facilitate firm transportation service to customers and to file tariff changes to permit KNW to charge negotiated rates for its transportation services.

KNW states that copies of the filing were served upon KNW's jurisdictional customers, interested public bodies and all parties to the proceeding.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 98–11575 Filed 4–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–367–000]

PG&E Gas Transmission, Northwest Corp.; Notice of Request Under Blanket Authorization

April 27, 1998.

Take notice that on April 20, 1998, PG&E Gas Transmission, Northwest Corporation (PG&E), 2100 Southwest River Parkway, Portland, Oregon 97201, filed in Docket No. CP98–367–000 a request pursuant to Sections 157.205, and 157.211, of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to install a new tap in Klamath Falls, Oregon under PG&E's blanket certificate issued in Docket No. CP82–530–000 pursuant to Section 7 of the Natural Gas Act, and all as more fully set forth in the request that is on file with the Commission and open to public inspection.

PG&E requests authorization to install a new tap near the airport in Klamath Falls, Oregon for delivery of gas to WP Natural Gas Company. PG&E states that initial delivery will be 70 dth/hour with potential maximum expandability to 208 dth/hour and that the tap will not have an impact on PG&E's peak day or annual deliveries. PG&E states that the tap will cost $20,000.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–11571 Filed 4–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–131–001]

Sumas International Pipeline Inc., Notice of Compliance Filing

April 27, 1998.

Take notice that on April 17, 1998, Sumas International Pipeline Inc. (SIPI) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, the tariff sheets listed in Appendix A to the filing, to become effective April 1, 1998.

SIPI asserts that the purpose of this filing is to comply with Order No. 587 issued on July 17, 1996; the Notice Clarifying Procedures for Filing Tariff Sheets issued on September 12, 1996, in Docket No. RM96–1–000; and the Commission's direction of 30 March 1998 in Docket No. RP98–131–000 to correct pagination errors on certain tariff sheets and to revise tariff language to incorporate Gas Industry Standards Board (GISB) Standards 1.3.2 and 3.3.4 verbatim.

SIPI states that copies of this filing were mailed to all customers of SIPI and Interested Parties.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–11573 Filed 4–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–191–000]

Texas-Ohio Pipeline, Inc; Notice of Petition for Waiver

April 27, 1998.

Take notice that on April 22, 1998, Texas-Ohio Pipeline, Inc. (Texas-Ohio) tendered for filing a petition for waiver of the electronic communications and Internet transaction requirements of the Commission's Order Nos. 587–B, 587–C, and 587–G.

Texas-Ohio states that copies of the filing have been mailed to all of its jurisdictional customers and to affected state regulatory commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as on or before May 4, 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–11574 Filed 4–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1965–000]

West Texas Wind Energy Partners, LLC; Notice of Issuance of Order

April 28, 1998.

West Texas Wind Energy Partners, LLC (WTWEP) filed an application requesting that the Commission accept a power purchase agreement authorizing it to engage in wholesale power sales at market-based rates to Central and South West Services, Inc. (CSWS),[1] and for certain waivers and authorizations. In particular, WTWEP requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by WTWEP. On April 23, 1998, the Commission issued an Order Conditionally Accepting For Filing Proposed Market-Based Rates (Order), in the above-docketed proceeding.

The Commission's April 23, 1998 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (F), (G), and (I):

(F) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by WTWEP should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(G) Absent a request to be heard within the period set forth in Ordering Paragraph (F) above, WTWEP is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of WTWEP, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(I) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of WTWEP's issuances of securities or assumptions of liabilities * * * .

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is May 26, 1998.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–11618 Filed 4–30–98; 8:45 am]

BILLING CODE 6717–01–M

[1] CSWS is acting as agent for Central Power and Light Company, West Texas Utilities Company, and Southwestern Electric Power Company.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket no. ER98–1617–000, et al.]

Northern States Power Company et al. Electric Rate and Corporate Regulation Filings

April 27, 1998.

Take notice that the following filings have been made with the Commission:

1. Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin)

[Docket Nos. ER98–1617–000, ER98–1618–000, ER98–1656–000, ER98–1657–000, ER98–1658–000, ER98–1659–000, and ER98–1660–000]

Take notice that on April 22, 1998, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (jointly NSP), tendered for filing an amendment to its filing of seven Firm Point-to-Point Transmission Service Agreements between NSP and NSP Wholesale.

NSP is in response to the Commission's deficiency letter dated March 23, 1998. NSP is requesting that the filed Firm Point-to-Point Transmission Service Agreements, 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 Agreements to be accepted for filing on the date requested.

Comment date: May 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, and Southern Electric Power Company

[Docket No. ER98–1944–000]

Take notice that on April 22, 1998, Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, and Southwestern Electric Power Company (collectively, the CSW Operating Companies), submitted an amended filing in the above captioned proceeding.

The CSW Operating Companies state that a copy of this amended filing has been served on the Public Utility Commission of Texas, the Louisiana Public Service Commission, the Arkansas Public Service Commission, the Oklahoma Corporation Commission and all parties to this proceeding.

Comment date: May 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Oklahoma Gas and Electric Company

[Docket No. ER98–2107–000]

Take notice that on April 22, 1998, Oklahoma Gas and Electric Company, tendered for filing an amendment to its March 9, 1998, filing in the above referenced docket. Oklahoma Gas and Electric Company states that the amendment is to notify the Commission that Oklahoma Gas and Electric Company finds the conditions attached to the Commission's March 13, 1998, SPP order acceptable and no longer finds it necessary to condition its submittal in this docket upon the outcome of the Southwest Power Pool Regional Transmission Tariff (Docket No. ER98–1163–000). In addition, Oklahoma Gas and Electric Company has proposed that the effective date of its tariff change submitted in this docket be revised from April 1, 1998 to June 1, 1998 to match the effective date of the SPP Regional Tariff.

Copies of the filing were served upon all parties shown on the official service list in this docket.

Comment date: May 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Louisville Gas and Electric Company

[Docket No. ER98–2536–000]

Take notice that on April 13, 1998, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Short-Term Firm Point-To-Point Transmission Service Agreement between LG&E and Allegheny Power Service Corporation under LG&E's Open Access Transmission Tariff.

Comment date: May 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Niagara Mohawk Power Corporation

[Docket No. ER98–2540–000]

Take notice that on April 14, 1998, Niagara Mohawk Power Corporation tendered for filing a Notice of Cancellation of FERC Rate Schedule No. 245 and any supplements thereto, with Toledo Edison Company.

Comment date: May, 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Northeast Utilities Service Company

[Docket No. ER98–2546–000]

Take notice that on April 15, 1998, Northeast Utilities Service Company (NUSCO), Northeast Utilities Service Company tendered for filing Service Agreements to provide Non-Firm Point To-Point Transmission Service and Firm Point-To-Point Transmission Service to the Columbia Power Marketing Corporation under the NU system Companies' Open Access Transmission Tariff No. 9.

NUSCO states that a copy of this filing has been mailed to the Columbia Power Marketing Corporation.

NUSCO requests that the Service Agreement become effective April 17, 1998.

Comment date: May 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. New England Power Pool

[Docket No. ER98–2548–000]

Take notice that on April 10, 1998, New England Power Pool (NEPOOL), tendered for filing a report on behalf of those electric utility Participants in NEPOOL which are subject to the reporting requirements contained in Section 202(g) of the Federal Power Act and Part 294 of the Commission's Regulations.

Comment date: May 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Virginia Electric and Power Company

[Docket No. ER98–2630–000]

Take notice that on April 22, 1998, Virginia Electric and Power Company (Virginia Power), tendered for filing the Service Agreement between Virginia Electric and Power Company and Griffin Energy Marketing, L.L.C., under the FERC Electric Tariff (First Revised Volume No. 4), which was accepted by order of the Commission dated November 6, 1997, in Docket No. ER97–3561–001. Under the tendered Service Agreement, Virginia Power will provide services to Griffin Energy Marketing, L.L.C., under the rates, terms and conditions of the applicable Service Schedules included in the Tariff.

Virginia Power requests an effective date of April 22, 1998, for the Service Agreement.

Copies of the filing were served upon Griffin Energy Marketing, L.L.C., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: May 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Florida Power Corporation

[Docket No. ER98–2632–000]

Take notice that on April 22, 1998, Florida Power Corporation (Florida Power), tendered for filing a service agreement providing for non-firm point-to-point transmission service and a service agreement providing for firm point-to-point transmission service to PacifiCorp Power Marketing, Inc. (PacifiCorp), pursuant to its open access transmission tariff. Florida Power requests that the Commission waive its notice of filing requirements and allow the agreements to become effective on April 23, 1998.

Comment date: May 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Wisconsin Electric Power Company

[Docket No. ER98–2633–000]

Take notice that on April 22, 1998, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an electric service agreement under its Market Rate Sales Tariff (FERC Electric Tariff, Original Volume No. 8) with Aquila Power Corporation (Aquila). Wisconsin Electric respectfully requests an effective date of April 24, 1998, to allow for economic transactions.

Copies of the filing have been served on Aquila, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: May 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Allegheny Power Service Corporation, on behalf of Monongahela Power Co., The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER98–2634–000]

Take notice that on April 22, 1998, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) filed Supplement No. 41 to add one (1) new Customer to the Standard Generation Service Rate Schedule under which Allegheny Power offers standard generation and emergency service on an hourly, daily, weekly, monthly or yearly basis. Allegheny Power requests a waiver of notice requirements to make service available as of April 21, 1998, to Amoco Energy Trading Corporation.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: May 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Southern California Edison Company

[Docket No. ER98–2635–000]

Take notice that on April 22, 1998, Southern California Edison Company (Edison), tendered for filing a one-time billing adjustment made pursuant to the formula rate contained in the Environmental Energy Storage Agreement between Edison and the Bonneville Power Administration.

Edison seeks waiver of the 60 day prior notice requirement and requests that the Commission assign an effective date of April 23, 1998.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: May 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Southern California Edison Company

[Docket No. ER98–2636–000]

Take notice that on April 22, 1998, Southern California Edison Company (Edison), tendered for filing an executed Service Agreement for Wholesale Distribution Service with Long Beach Generation LLC under Edison's Wholesale Distribution Access Tariff.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: May 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Arizona Public Service Company

[Docket No. ER98–2637–000]

Take notice that on April 22, 1998, Arizona Public Service Company (APS), tendered for filing a Service Agreement under APS' FERC Electric Tariff, Original Volume No. 3 with the Town of Wickenburg.

A copy of this filing has been served on the Arizona Corporation Commission and the Town of Wickenburg.

Comment date: May 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Arizona Public Service Company

[Docket No. ER98–2638–000]

Take notice that on April 22, 1998, Arizona Public Service Company (APS), tendered for filing a revised Service Agreement for providing Network Integration Transmission Service under APS' Open Access Transmission Tariff to the Arizona Public Service Company—Merchant Group.

A copy of this filing has been served on APS' Merchant Group and the Arizona Corporation Commission.

Comment date: May 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Consumers Energy Company

[Docket No. ER98–2639–000]

Take notice that on April 22, 1998, Consumers Energy Company (Consumers), tendered for filing an executed service agreement for Non-Firm Point-to-Point Transmission Service pursuant to the Joint Open Access Transmission Service Tariff filed on December 31, 1996 by Consumers and The Detroit Edison Company (Detroit Edison) with Tennessee Valley Authority.

Copies of the filed agreement were served upon the Michigan Public Service Commission, Detroit Edison and the transmission customer.

Comment date: May 12, 1998, in accordance with Standard Paragraph E at the end of the this notice.

17. Northern States Power Company (Minnesota and Northern States Power Company (Wisconsin)

[Docket No. ER98–2640–000]

Take notice that on April 22, 1998, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (collectively referred to as NSP), tendered for filing its Market-Based Rate Application.

NSP requests that this Market-Based Rates Electric Service Schedule, together with confirming changes to NSP's Electric Services Tariff, be made effective on the date of the Commission issues an order approving NSP's Market-Based Rate Application.

Comment date: May 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Kentucky Utilities Company

[Docket No. ER98–2643–000]

Take notice that on April 22, 1998, Kentucky Utilities Company (KU), tendered for filing non-firm transmission service agreements between KU, Conagra Energy Services, Inc., and OGE Energy Resources, Inc., under its Transmission Services Tariff and service agreements with Tennessee Power Company and Illinois Municipal Electric Agency under its Power Services Tariff.

Comment date: May 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, the Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER98–2644–000]

Take notice that on April 22, 1998, Allegheny Power Service Corporation on behalf of Monogahela Power Company, The Potomac Edison company and West Penn Power Company (Allegheny Power), filed Supplement No. 29 to add Merchant Energy Group of the Americas, Inc., to Allegheny Power's Open Access Transmission Service Tariff which has been submitted for filing with the Federal Energy Regulatory Commission in Docket No. OA96–18–000. The proposed effective date under the Service Agreements is April 21, 1998.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission.

Comment date: May 12, 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. 98–11619 Filed 4–30–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing with the Commission

April 27, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Major Water Power Project, 5 Megawatts or Less.

b. *Project No.:* P–2964–006.

c. *Date Filed:* March 31, 1998.

d. *Applicant:* City of Sturgis, Michigan.

e. *Name of Project:* Sturgis Hydroelectric Project.

f. *Location:* On the St. Joseph River in St. Joseph County, near Centreville, Michigan.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:*

Mr. John J. Griffith, P.E., Electric Department Superintendent, City of Sturgis, 130 North Nottawa, Sturgis, MI 49091

Mr. John E. Fisher, P.E., Chairman, Lawson-Fisher Associates P.C., 525 West Washington Ave., South Bend, Indiana 46601

i. *FERC Contact:* Patrick K. Murphy (202) 219–2659.

j. *Comment Date:* 60 days from the date of this notice.

k. *Description of Project:* The existing run-of-river project consists of: (1) An 800-foot-long dam, comprised of a 300-foot-long spillway and an 500-foot-long earthern portion; (2) two powerhouses (old & new); and (3) an 18-mile-long 14.4/24.9 KV WYE transmission line. The old powerhouse houses two turbine-generator units (each 550 kilowatts (KW)); the new powerhouse houses two units (each 750 KW) totaling 1,300-kw generating capacity. The Sturgis Project reservoir has a surface area of 580 acres and a storage volume of approximately 6,550 acre-feet at 825 feet surface elevation. There is no new construction proposed for power purposes.

l. With this notice, we are initiating consultation with the *MICHIGAN STATE HISTORIC PRESERVATION OFFICER (SHPO),* as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR at 800.4.

m. Pursuant to Section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional

scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of this notice and serve a copy of the request on the applicant.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–11572 Filed 4–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission

April 27, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Exemption of a Constructed Small Hydroelectric Power Project 5 Megawatts or less.

b. *Project No.:* 11613–000.

c. *Date filed:* February 25, 1998.

d. *Applicant:* Ronald Lizotte.

e. *Name of Project:* HE 257.

f. *Location:* In the Tiller Ranger District, Umpqua National Forest, Francis Creek, Sections 27 and 28, Tn.29S., R.1W. Willamette Meridian, Douglas County, Oregon.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Ronald Lizotte, P.O. Box 193, Tiller, Oregon 97484, (541) 825–3942.

i. *FERC Contact:* Gaylord W. Hoisington, (202) 219–2756.

j. *Brief Description of Project:* The project consists of: (1) a 24-inch-high concrete diversion dam; (2) a 1,280-foot-long, 3-inch-diameter PVC pipe; (3) a 12-inch pelton wheel; (4) a 55-volt, 53-amp Davidson Marine alternator; (5) a 5,000-watt invertor; (6) a 1,800-foot-long transmission line; (7) a 0.6-mile-long access road; and (8) other appurtenances.

k. With this notice, we are initiating consultation with the Oregon State Historic Preservation Officer (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

l. Under Section 4.32(b)(7) of the Commission's regulations (18 CFR 4.32(b)(7)), if any resource agency, SHPO, Indian Tribe, or person believes that the applicant should conduct an additional scientific study to form an adequate, factual basis for a complete analysis of this application on its merits, they must file a request for the study with the Commission, together with justification for such request, not later than 60 days after application is filed, and must serve a copy of the request on the applicant. In this case, we will extend the comment period until June 25, 1998.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–11578 Filed 4–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. PL98–5–000 through –007]

Inquiry Concerning the Commission's Policy on Independent System Operators; Notice of Regional Conferences

April 27, 1998.

The Federal Energy Regulatory Commission (Commission) will convene seven public conferences of one day or less to discuss regional factors relevant to our policy concerning Independent System Operators (ISOs). The conferences will be held between May 28 and June 8, 1998.

I. Introduction

In Order Nos. 888 and 889 and their progeny,[1] the Commission established fundamental principles of non-discriminatory open access transmission services and encouraged, but did not require, the formation of ISOs. On March 13, 199, the Commission initiated an Inquiry Concerning the Commission's Policy on ISOs in Docket No. PL98–5–000. A two-day public conference was held at the Commission's headquarters in Washington, D.C. on April 15–16, 1998. The Commission received input on a range of ISO issues from 40 speakers participating on seven topical panels. Approximately 400 individuals attended the conference on each day, while numerous others observed the proceedings electronically. By design, this first conference addressed the Commission's general ISO policies.

To comprehensively examine ISO issues, the Commission believes it is important to provide an adequate forum to explore regional factors that should be taken into account in the Commission's consideration of its ISO policy. For this reason, the Commission will hold seven regional conference between May 28 and June 8, 1998.

The Commission intends each regional conference to examine specific regional characteristics and institutional factors that bear upon the formation, governance, design and functions of ISOs or other types of organizations formed to administer the electric transmission grid on a regional basis. It wishes to examine whether the incorporation of such considerations into the Commission's policy on ISOs will foster more rapid ISO formation. The Commission also wishes to examine whether regional factors present barriers to the formation of ISOs, including ISOs of appropriate size, scope and membership as may be necessary to promote competition and reliability in bulk power markets and to support state initiatives providing for retain customer choice and direct access, and, if so, what actions can be undertaken to remove or reduce such barriers.

II. Regional Conferences

The Commission will hold seven regional conferences as described below. A single Commissioner will preside at each conference. The Commissioner will be accompanied by a Commission staff member who will help direct questions to the panelists. Starting and ending times will be announced in a subsequent order.

Presiding commissioner	Conference date	City and conference location	Docket No.
Comm. Massey	May 28, 1998	Phoenix, AR, Hyatt Regency Phoenix, 122 North Second Street, Phoenix, AR 85004, (602) 252–1234.	PL98–5–001

[1] *See* Promoting Wholesale Completion Through Open Access Nondiscriminatory Transmission Services by Public Utilities; and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 Fed. Reg. 21,540 (1996). FERC Stats, & Regs. ¶ 31,036 (1996), *order on reh'g,* Order No. 888–A, 62 Fed Reg. 12,274 (1997), FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g,* Order No. 888–B, 81 FERC ¶ 61,248 (1997), *order on reh'g,* Order No. 888–C, 82 FERC ¶ 61,046 (1998). Open-Access Same-Time Information System and Standards of Conduct, Order No. 889, 61 Fed. Reg. 21,737 (1996), FERC Stats. & Regs. ¶ 31,035 (1996), *order on reh'g,* Order No. 889–A, 62 Fed. Reg. 12,484 (1997), FERC Stats. & Regs. ¶ 31,049 (1997), *order on reh'g,* Order No. 889–B, 81 FERC ¶ 61,253 (1997).

Presiding commissioner	Conference date	City and conference location	Docket No.
Comm. Massey	May 29, 1998	Kansas City, MO, Embassy Suites, 7640 N.W. Tiffany Springs Parkway, Kansas City, MO 64153, (816) 891–7788.	PL98–5–002
Comm. Hebert	June 1, 1998	New Orleans, LA, Doubletree Inn, 300 Canal Street, New Orleans, LA 70130, (504) 581–1300.	PL98–5–003
Comm. Bailey	June 4, 1998	Indianapolis, IN, Adams Mark, 2544 Executive Drive, Indianapolis, IN, (317) 248–2481.	PL98–5–004
Chr. Hoecker	June 5, 1998	Portland, OR, Sheraton Portland, Airport Hotel, 8235 N.E. Airport Way, Portland, OR 97220, (503) 281–2500.	PL98–5–005
Comm. Bailey	June 8, 1998	Richmond, Va, Richmond Airport, Holiday Inn, 5203 Williamsburg Road, Richmond, VA 23150, (804) 222–6450.	PL98–5–006
Comm. Breathitt	June 8, 1998	Orlando, FL, Marriott Orlando Airport, 7499 Augusta National Dr., Orlando, FL 32822, (407) 851–9000.	PL98–5–007

All conferences will be open to the general public. No pre-registration is required. No food service is provided as part of these conferences. Requests for hotel accommodations should be directed to the hotels identified above for each conference or to other hotels in the area.

III. Participation in Conference

at this time, the Commission does not envision the use of topical panels at each of the regional conferences. However, we may group speakers expressing interests in common or similar issues on a single panel. Potential participants may wish to examine the extensive list of questions and topics appended to the Commission's initial order in this proceeding to become familiar with the scope of the Commission's interests.

Persons wishing to speak at one of the conferences must submit a request to make a statement in the applicable subdocket in Docket No. PL98–5–000. The first page of the request should clearly specify the name, title and organization (if any) of the person desiring to speak, the party or parties the speaker represents, and the city for which participation is requested. The request must also include a brief synopsis (not to exceed three pages) of the regional issue or issues that each speaker wishes to address. The synopsis for each speaker should begin on a separate page.[2] All requests must be filed (with an original and fourteen copies) with the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, on or before May 8, 1998. The Commission may also contact industry experts to participate in each conference. The Commission will issue a further notice listing the speakers and panels for each conference.

In addition, all interested persons are invited to submit written comments (not to exceed 10 pages) addressing topics to be discussed at the regional conferences on or before June 25, 1998. Comments must be filed (with an original and fourteen copies) with the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Comments should pertain directly to the characteristics or institutional factors associated with a particular region and should be captioned with one of the particular subdocket(s) identified above. Comments of a general nature concerning regional issues should be submitted in Docket No. PL98–5–000.[3] Comments in all subdockets as well as the lead docket will be considered in the Commission's examination of its ISO policies. All comments will be placed in the Commission's public files and will be available for inspection or copying in the Commission's Public Reference Room during normal business hours. Comments are also accessible via the Commission's Records Information Management System (RIMS) on the Commission's Internet web site at http://www.ferc.fed.us.

The Commission does not intend to broadcast the regional conferences. However, the Commission will arrange for a court reporter to transcribe the proceedings in each city. Persons interested in receiving a copy of one or more of the regional conference transcripts for a fee should contact Ace-Federal Reporters, Inc., at 202–347–3700.

For further information concerning requests to speak at one of the regional conferences, contact:

E. Allen Mosher, Office of Electric Power Regulation, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, Voice: 202–208–0889, Fax: 202–208–0960, E-mail; allen.mosher@ferc.fed.us

Brian Gish, Office of General Counsel, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, Voice: 202–208–0996, Fax: 202–208–006, E-mail; brian.gish@ferc.fed.us

For further information concerning conference logistics, contact: Wanda V. Washington, Office of Executive Director and Chief Financial Officer, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, Voice: 202–208–1460, Fax: 202–208–0819, E-mail; wanda.washington@ferc.fed.us

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–11580 Filed 4–30–98; 8:45 am]

BILLING CODE 6717–01–M

[2] A party may submit requests to speak for more than one speaker or for more than one city. However, requests should be organized by city and should clearly identify the region-specific issues that the speaker will address.

[3] This order does not extend the May 1, 1998 deadline in Docket No. PL98–5–000 for written comments that do not concern region-specific issues.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6007–2]

Agency Information Collection Activities: Proposed Collection; Comment Request; Electric Utility Steam Generating Unit Mercury Emissions Collection Effort

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: A public meeting will be held by the Office of Air and Radiation, Office of Air Quality Planning and Standards to review the EPA's announced plan to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): Electric Utility Steam Generating Unit Mercury Emissions Information Collection Effort Information Collection Request; EPA ICR No. 1858.01. A 60-day period of public review of the proposed information collection was announced in the **Federal Register** on April 9, 1998 (63 FR 17406).

DATES: The public review meeting will be held on May 21, 1998 at the EPA headquarter's auditorium, 401 M Street, S.W., Washington, D.C. The meeting will be from 8:30 a.m. until 1:00 p.m., Eastern daylight savings time.

ADDRESSES: Members of the public wishing to attend the meeting should register by phoning Ms. Libby Bradley at (919) 541–5578. Please note that space is limited and registrations will be accepted on a first-come, first-served basis.

Copies of the draft OMB Form 83–I, supporting statement, and questionnaire are available from Public Docket No. A–92–55 at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (6102), 401 M Street, S.W., Washington, D.C. 20460. The docket is located at the above address in Room M–1500, Waterside Mall (ground floor), and may be inspected from 8:00 a.m. to 4:00 p.m., Monday through Friday. The draft materials (docket entries A–92–55, I–J–2, I–J–3, and I–J–4) are available for review in the docket center or copies may be mailed on request from the Air and Radiation Docket and Information Center by calling (202) 260–7548 or 7549. The FAX number for the Center is (202) 260–4400. A reasonable fee may be charged for copying. The draft materials are also available free of charge from the EPA's website listing **Federal Register** notices at ''http://www.epa.gov/ttn/oarpg/t3pfpr.html'' or by contacting one of the people listed below.

Docket. Docket No. A–92–55 is available for public inspection and copying as noted above. The docket is an organized file of information used by the EPA in the development of the Final Report to Congress required by section 112(n)(1)(A) of the Clean Air Act. Comments received on the proposed ICR are in category I–J of the docket for review by interested parties.

FOR FURTHER INFORMATION CONTACT: For information concerning specific aspects of this meeting, contact Mr. William Maxwell [telephone number (919) 541–5430; facsimile number (919) 541–5450; e-mail ''maxwell.bill@epa.gov''], Combustion Group, Emission Standards Division (MD–13); or Mr. William Grimley [telephone number (919) 541–1065; facsimile number (919) 541–1039; e-mail ''grimley.william@epa.gov''], Emission Measurement Center, Emission Monitoring and Analysis Division (MD–19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: The EPA has prepared the proposed ICR Electric Utility Steam Generating Unit Mercury Emissions Information Collection Effort Information Collection Request; EPA ICR No. 1858.01, for submittal to the OMB.

A public meeting is being held as part of the process of public review of the proposed ICR required by the Paperwork Reduction Act. The purpose of this meeting is for the EPA to listen to public opinion on the draft ICR and any suggested recommendations the public may have regarding changes the Agency should take. Members of the public wishing to present formal comments at the meeting should so indicate when registering. Individual speaking times will be limited to 10 minutes in order to give everyone an equal opportunity to speak.

Seating will be limited for the meeting and advance registration is suggested. Information about attending the meeting and obtaining a copy of the draft materials is provided elsewhere in this notice.

In addition to the public meeting announced herein, the EPA is also willing to meet with interested constituencies in an open exchange of information at other times. Persons wishing to schedule such a meeting should contact Mr. William Maxwell at the number noted above.

After the meeting and the close of the public comment period on June 8, 1998, the draft ICR will be revised based on the comments received and then submitted for OMB review. Another period of public comment will accompany this OMB review. Those wishing to present comments on the draft ICR and those wishing to comment but unable to attend the public meeting are requested to submit written comments. Written comments on the draft ICR must be received by the Air and Radiation Docket and Information Center by June 8, 1998 at the address noted above. The EPA requests that a separate copy of all comments also be provided to Mr. William Maxwell at the address noted above.

Dated: April 24, 1998.

Bruce C. Jordan,

Director, Emission Standards Division.

[FR Doc. 98–11661 Filed 4–30–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6007–6]

Agency Information Collection Activities: Proposed Collection; Comment Request; Construction Grants Program

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):

Construction Grants Program Information Collection Request, EPA ICR No. 0827.05 and Control No. 2040–0027, current expiration date May 31, 1998. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before June 30, 1998.

ADDRESSES: Lucille Liem, Office of Wastewater Management, Mail Code 4204, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Interested persons may obtain a copy of the ICR without charge by writing to the preceding address.

FOR FURTHER INFORMATION CONTACT: Lucille Liem, Telephone Number: (202) 260-5844/Facsimile Number: (202) 260–1827/E-mail: LIEM.LUCILLE@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are State, Tribal, and Local governments, including the District of Columbia, Puerto Rico, the Outer Pacific Islands, and the Virgin Islands.

Title: Construction Grants Program (OMB Control No. 2040–0027; EPA ICR 0827.05) expiring 05/31/98.

Abstract: This Information Collection Request (ICR) extends the clearance for the information collection activities required under the Environmental Protection Agency's (EPA's) Construction Grants Program. The program is authorized by Title II of the Clean Water Act (CWA). Under this program, municipalities and Indian Tribes may obtain grants for wastewater treatment construction projects.

In order to obtain a construction grant, a municipality must submit information describing the project and its ability to manage it. Municipal

managers use the information to plan, design, build, operate, and maintain a treatment works that protects public health and the environment. In addition, the appropriate State or EPA Regional office reviews the information to determine if the project is necessary, reasonable, in accordance with sound planning principles, and a prudent use of Federal funds.

In general, Indian Tribes submit the same type of information as municipalities. Therefore, estimates of the municipal burden in descriptions of the individual information collections include the Indian Tribes' time, where applicable. EPA Regions assist the Tribes in preparing grant applications, which decreases the burden of the information requirements. In addition, the Indian Health Service provides technical assistance.

EPA collects information from the State to meet statutory and administrative program management requirements. Under this ICR, the only requirement for States is the listing of projects for funding in priority order. State program managers would develop this type of list for their own administrative needs. EPA reviews the information to determine if the State's program meets CWA requirements and evaluates the effectiveness of the State's program management.

Under Title II, construction grant programs may be administered by EPA or delegated States. The requirements for the construction grants program are at 40 CFR Part 35, Subpart I, and Title II of the CWA. These provisions require grantees to submit information to EPA or delegated States, and also require States that award construction grants to submit information to EPA. Authority for collecting this information comes from the Construction Grants Information Collection Request (OMB No. 2040–0027, ICR 0827.05).

EPA is currently phasing out the Construction Grants Program. The program is being replaced by the State Revolving Loan Fund (SRF) Program (Title VI of the Clean Water Act). Established in the 1987 amendment to the CWA, the SRF program provides a continuous source of funding for publicly owned treatment works (POTWs). Because most States are now funding construction projects through the SRF program rather than the Construction Grants Program, the burden associated with the Construction Grants Program has decreased significantly. (The information collection request associated with the SRF program are cleared under a separate ICR, OMB No. 2040–0118, ICR No. 1391.)

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

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

Burden Statement:

Average Burden Hours per Response: 4.7.

Frequency of Response: 280.

Number of Likely Respondents: 60.

Average Annual Cost Burden: $23,823.68.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: April 27, 1998.

Michael B. Cook,

Director, Office of Wastewater Management.

[FR Doc. 98–11663 Filed 4–30–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6007–1]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Compliance Information Project

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Compliance Information Project. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 1, 1998.

FOR FURTHER INFORMATION CONTACT: Contact Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epamail.epa.gov, or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1802.01

SUPPLEMENTARY INFORMATION:

Title: Compliance Information Project (CIP); EPA ICR No. 1802.01. This is a new collection.

Abstract: The purpose of the CIP is to test creative new strategies for identifying compliance information which, to date, EPA or the States may have failed to capture or utilize. Sources of such information may include unutilized studies or reports, produced by States, private parties, or other government agencies, and observations by field personnel which, for one reason or another, escape our traditional methods for collecting and documenting information. The CIP is designed to channel such unidentified or unutilized compliance information to the personnel who design and implement our information, targeting, and planning systems to fill gaps in the Agency's or the States' databases, guide us to previously unidentified compliance problems, enhance our ability to describe our successes, or help us in other ways.

Non-Federal respondents will be State compliance and enforcement personnel, especially field inspectors and persons who manage inspectors. Through the CIP, the Agency will conduct field personnel roundtable interviews in each

of the ten EPA Regions, and invite one or two representatives from each State to participate along with Regional personnel. At the request of the States which participated in the pilot roundtable in Region III, the Agency will provide the interview questions in the form of a questionnaire to each of the participants in advance of the roundtable so that each participating organization may prepare for the roundtables and afterwards prepare detailed written responses. The Agency will conduct the roundtables as a group discussion of the questionnaire topics with managers and/or inspectors from the Region and each of the states in the Region. Participants will then return to their states, distribute the questionnaire across media organizations, complete written responses to the questionnaire, and then forward the responses to EPA.

State involvement and participation is essential if the CIP is to succeed. Consultation and coordination with each State participating in the round table process is an integral part of the overall project design. Each participating State will receive opportunities to comment on all aspects of the Project, including the design and the content of our discussion questions and work products, and how the new information is used. EPA has extended similar opportunities for involvement to the Environmental Council of States and all of the major State environmental associations. Initial responses to the Project from the States have been positive. In general, the States appear to share EPA's interest in exploring for new sources of compliance information. The States will receive access to all of the compliance information gathered by EPA through the Project, whether from federal, state, or non-governmental sources.

Responses to the information collection request are voluntary and not required to obtain or retain any benefit. The Agency will ask persons who participate in the CIP not to refer to specific persons, facilities, or cases by name, nor collect, as part of this project, references to specific persons, facilities, or cases in any form, unless such information is already in the public record. The Agency will not, and in fact will be unable to, use compliance information collected through the CIP to form compliance conclusions, rank or index performance of specific persons, facilities, or cases. The Agency will not ask for, nor collect, any confidential business information (CBI). All information submitted to the Agency for which a claim of confidentiality is made will be safeguarded. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 12/30/97. No comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 117 hours per responding entity. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: States.

Estimated Number of Respondents: 50.

Frequency of Response: 1.

Estimated Total Annual Hour Burden: 5,850 hours.

Estimated Total Annualized Cost Burden: $260,667.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1802.01 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: April 27, 1998.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 98–11660 Filed 4–30–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5491–3]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements Filed April 20, 1998 Through April 24, 1998

Pursuant to 40 CFR 1506.9.

EIS No. 980142, Final EIS, AFS, ID, Sandpoint Noxious Weed Control Project, Implementation, Proposing to control noxious weeds on 46 sites, Idaho Panhandles National Forests, Sandpoint Ranger District, Bonner County, ID, Due: June 01, 1998, Contact: Betsy Hammet (208) 263–5111.

EIS No. 980143, Draft EIS, OSM, TN, Fall Creek Falls Petition Evaluation Document, Implementation, Designate the Land as Unsuitable for Surface Coal Mining Operation, Van Buren and Bledsoe Counties, TN, Due: July 30, 1998, Contact: Sam K. Bae (202) 208–2633.

EIS No. 980144, Final EIS, FRC, WA, Skagit River Basin Hydroelectric Projects, Eight Projects—(FERC. No. 10100) (FERC. No. 4437) (FERC. No. 4376) (FERC. No. 9787) (FERC. No. 10311) (FERC. No. 6984) and FERC No. 10269 and No. 10416) Construction and Operation, Licensing, Whatcom and Skagit Counties, WA, Due: June 01, 1998, Contact: Gordon Warren (202) 219–2836.

EIS No. 980145, Legislative Draft, COE, WA, Howard A. Hanson Dam (HHD Additional Water Storage (AWS) Phase I Project, Construction and Operation, Green River Basin, Pierce and King Counties, WA, Due: June 15, 1998, Contact: Ms. Kris Loll (206) 764–3548.

EIS No. 980146, Draft Supplement, AFS, SD, Anchor Hill Mine Expansion Project in Gilt Edge Mine, Additional Information and Clarification, Plan-of-Operations, Approval Black Hills National Forest, SD, Due: June 15, 1998, Contact: Don Murray (605) 578–2744.

EIS No. 980147, Final EIS, USN, CA, Mare Island, Naval Shipyard Disposal and Reuse, Implementation, City of Valley, Solano County, CA, Due: June 01, 1998, Contact: Jerry Hemstock (650) 244–3023.

Dated: April 28, 1998.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 98–11658 Filed 4–30–98; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5491–4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared April 13, 1998 Through April 17, 1998 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1998 (63 FR 17856).

Draft EISs

ERP No. D–AFS–L65300–AK Rating LO, Canal-Hoya Timber Sale, Implementation, Stikine Area, Tongass National Forest, Value Comparison Unit (VCU), AK.

Summary: EPA used a screening tool to conduct a limited review of this action. Based upon the screen, EPA does not foresee having any environmental objections to the proposed project. Therefore, EPA will not be conducting a detailed review.

ERP No. D–BLM–L08054–AK Rating LO, Northern Intertie Project, Construction of 230 kV Transmission Line from Healy to Fairbanks, AK, Application for Right-of-Way Grant, Gold Valley Electric Association, AK.

Summary: EPA used a screening tool to conduct a limited review of this action. Based upon the screen, EPA does not foresee having any environmental objections to the proposed project. Therefore, EPA will not be conducting a detailed review.

ERP No. D–NOA–E39041–SC Rating EC2, Marine Environmental Health Research Laboratory (MEHRL), Construction and Operation of Premiere, High Technology and Marine Research Center, Approval of Permits, Charleston County, SC.

Summary: EPA expressed environmental concerns and about lack of discussion on fuel storage tanks, spill prevention and containment strategies in the event of a tank runover and impacts from running laboratory ventilation hoods.

ERP No. D–UMC–K11088–CA Rating EO2, Tustin Marine Corps Air Station (MCAS) Disposal and Reuse, Implementation, Orange County, CA.

Summary: EPA expressed environmental objections due to projected adverse impacts to wetlands and other jurisdictional waters. EPA requested that the final EIS demonstrate that all practicable measures were taken to avoid and minimize the placement of fill in wetlands and other aquatic resources. EPA, also expressed concern about potential impacts associated with the use of fertilizers and pesticides at the golf course and recommended that final EIS examine reasonable opportunities to reduce the use of fertilizers and pesticides.

Final EISs

ERP No. F–BLM–J01076–WY, Powder River (WYW136142) and Thundercloud (WYW136458) Coal Lease Applications, Federal Coal Leasing, Campbell and Converse Counties, WY.

Summary: EPA's review has not identified any potential environmental impacts.

ERP No. F–BLM–K67046–NV, Olinghouse Mine Project, Construction of Two Open Pits, Waste Dump, Haul Road and Cyanide Heap Leach Pads, Plan-of-Operation Approval Carson City, Washoe County, NV.

Summary: EPA concerns were addressed in the Final EIS. EPA still have environmental concerns about potential impacts to nearby springs and potentially adverse pit lake chemistry. EPA requested that the Record of Decision (ROD) include specific mitigation and monitoring provisions on these two issues.

ERP No. F–NOA–L91001–AK, Juneau Consolidated Facility, Space for the University of Alaska Fairbanks School of Fisheries and Ocean Science (UAF), Possible Site Lena Point, Fisheries Management Operation, 'Vision for 2005', Juneau, AK.

Summary: EPA continues to have environmental concerns regarding wastewater treatment at the proposed facility and the Record of Decision should specify whether the facility will tie into the existing City and Borough of Juneau treatment system or operate an on-site treatment plant.

ERP No. F–US–J11014–CO United States Army Garrison, Fitzsimons (Formerly Fitzsimons Army Medical Center) Disposal and Reuse for BRAC–95, Implementation, City of Aurora, Denver County, CO.

Summary: EPA expressed lack of objections.

ERP No. FS–USA–E65040–MS, Camp Shelby Continued Military Training Activities, Use of National Forest Lands, Updated Information, Final Site Selected Authorization for Implementation of the Proposed G. V. (Sonny) Montgomery Ranges, Special Use Permit, DeSoto National Forest, Forrest, George and Perry Counties, MS.

Summary: EPA's initial comments on developing this training range have largely been addressed by additional data/exposition. However, certain concerns will only be verified after the range becomes operational. Therefore, EPA will continue to participate in the interagency team, which will be monitoring the facility's progress.

Dated: April 28, 1998.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 98–11659 Filed 4–30–98; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00536; FRL–5788–6]

State FIFRA Issues Research and Evaluation Group (SFIREG) Pesticide Operations and Management Working Committee; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The State FIFRA Issues Research and Evaluation Group(SFIREG) Pesticide Operations and Management Working Committee will hold a 2-day meeting, May 18 and 19, 1998. This notice announces the location and times for the meeting and sets forth the tentative agenda topics. The meetings are open to the public.

DATES: The SFIREG Working Committee on Pesticide Operations and Management will meet on Monday, May 18, 1998, from 8:30 a.m. to 5:00 p.m. and Tuesday, May 19, 1998, from 8:30 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at: The Claremont Hotel, 2000 Fourth Avenue at Virginia, Seattle, WA 98121.

FOR FURTHER INFORMATION CONTACT: By mail: Elaine Y. Lyon, Field and External Affairs Division, Office of Pesticide Programs (7506C) Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 1921 Jefferson Davis Highway, Arlington-Crystal City, VA 22202, CM–II, (703) 305–5306, (703) 308–1850 (fax); e-mail: lyon.elaine@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The tentative agenda of the SFIREG Working Committee on Pesticide Operations Management includes the following.

1. Consumer Information Sheets for the purchase of treated wood products.
2. Anti-coagulant rodenticides and non-target wildlife deaths.
3. Labeling of chlorine gas products for agricultural use.
4. Results of AAPCO federal facilities compliance survey.
5. Use of commodity fumigant methyl bromide for structural fumigation.
6. Enforceability of restrictive label statements - statements required by the agency vs. statements included at registrant's request.
7. EPA's custom blend policy.
8. Proposal to amend the Worker Protection Standard requirement to provide specific information about pesticide applications.
9. Pesticide advertising on the WEB.
10. Pesticide Inspector Regulatory Training.
11. Greenhouse pesticide labeling and enforcement.
12. Update on the Certification and Training Advisory Group.
13. Pesticide Use in the Commercial Practice of Animal Damage Control.
14. Use of federal vs. state credentials during inspections.
15. Antimicrobial compliance program.
16. Waiver of liability statements on pesticide labels.
17. Reports from committee members.
18. Other topics as appropriate.

List of Subjects

Environmental protection.

Dated: April 23, 1998.

Jay Ellenberger,

Director, Field and External Affairs Division, Office of Pesticide Programs.

[FR Doc. 98–11665 Filed 4–30–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–59365; FRL–5787–3]

Certain Chemicals; Approval of a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME–98–02. The test marketing conditions are described below.

DATES: This notice becomes effective April 22, 1998. Written comments will be received until May 18, 1998.

ADDRESSES: Written comments, identified by the docket control number [OPPT–59365] and the specific TME number should be sent to: TSCA Nonconfidential Information Center (NCIC), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. NEB–607 (7407), 401 M Street, SW., Washington, DC 20460. (202) 554–1404, TDD (202) 554–0551.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: oppt.ncic@epamail.epa.gov. Comments and data will also be accepted on disks in WordPerfect in 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by [OPPT–59365]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: Shirley 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 TME–98–02. EPA had determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, 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 application. All other conditions and restrictions, including the stated use and the worker protection provisions described in the application, in the accompanying Material Safety Data Sheet, and in this notice must be met.

Inadvertently the notice of receipt of the application was not published. Therefore, an opportunity to submit comments is being offered at this time. The complete nonconfidential document is available in the TSCA nonconfidential information center (NCIC), Rm. ETG–102 at the above address between 12 noon and 4 p.m., Monday through Friday, excluding legal holidays. EPA may modify or revoke the test marketing exemption if comments are received which cast significant doubt on its finding that the test marketing activities will not present an unreasonable risk of injury.

The following additional restrictions apply to TME–98–02:

1. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME.
2. During manufacturing, processing, and use of the substance at any site controlled by the Company, any person under the control of the Company, including employees and contractors, who may be exposed to the substance shall use a NIOSH-approved air-supplied respirator with an Assigned Protection Factor (APF) of 2,000 for those operations when the substance is handled as a liquid under heated conditions (70°C or greater). This respirator shall also be required in the Material Safety Data Sheet (MSDS) that accompanies this substance to the customer.
3. The applicant must ensure that employees are provided with information and training on the TME substance. This information and training must be provided at the time of each employee's initial assignment to a work area containing the TME substance and whenever the substance is introduced into the employee's work area for the first time.
4. The Company must affix a label to each container of the substance or formulations containing the substance. The label shall include, at a minimum, the following statement:

WARNING: Breathing of this substance may be harmful. Chemicals similar in structure to (insert appropriate name) have been found to cause lung toxicity and respiratory sensitization. To protect yourself, you must wear a NIOSH-approved air-supplied respirator with an Assigned Protection Factor (APF) of 2,000 for those

operations when the substance is handled as a liquid under heated conditions (70°C or greater).

5. The applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

a. Records of the quantity of the TME substance produced and the date of manufacture.

b. Records of dates of the shipments to each customer and the quantities supplied in each shipment.

c. Copies of the labels affixed to containers of the substance or formulations containing the substance.

d. Copies of the bill of lading that accompanies each shipment of the substance.

e. Copies of the written agreements with processors outside the company agreeing to comply with the same worker protection, worker training, and labeling requirements applicable to the applicant.

T–98–02

Date of Receipt: March 2, 1998. The extended comment periods will close (*insert date 15 days after date of publication in the* Federal Register).

Applicant: IFS Industries, Inc.

Chemical: Isocyanic acid, polymethylenepolyphenylene ester, polymer with 2,2-dimethyl-1,3-propanediol, .alpha.-hydro-.omega.-hydroxypoly[oxy(methyl-1,2-ethanediyl)], 1,3-isobenzofurandione and 1,1′-methylenebis[4-isocyanatobenzene].

Use: Adhesive for concrete to metal assembly.

Production Volume: 108,000 kg.

Number of Customers: One.

Test Marketing Period: 12 months.

Risk Assessment: EPA identified concerns for lung toxicity and respiratory sensitization based on data on analogous chemical substances. However, the health concerns were mitigated by requiring workers potentially exposed to the TME substance via inhalation to wear a NIOSH-approved air-supplied respirator with an Assigned Protecton Factor (APF) of 2,000 for those operations when the substance is handled as a liquid under heated conditions (70°C or greater). Therefore, the Agency has determined that the test market activities will not present an unreasonable risk of injury to health or the environment.

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 an unreasonable risk of injury to health or the environment.

List of Subjects

Environmental protection, Test marketing exemptions.

Dated: April 22, 1998.

Flora Chow,

Chief, New Chemicals Notice Management Branch, Office of Pollution Prevention and Toxics.

[FR Doc. 98–11664 Filed 4–30–98; 8:45 am]

BILLING CODE 6560–50–F

EXPORT-IMPORT BANK OF THE UNITED STATES

Agency Information Collection Activities: Submission of OMB Review; Comment Request

AGENCY: Export-Import Bank of the United States.

ACTION: In accordance with the Paperwork Reduction Act of 1995, the Export-Import Bank of the United States (Ex-Im Bank) has submitted to the Office of Management and Budget (OMB) a request to review and approve a revision of a currently approved collection described below. A request for public comment was published in 63 FR, No. 59, 13437, March 27, 1998. No comments have been received.

SUMMARY: The Export-Import Bank of the United States (Ex-Im Bank) is soliciting comments from members of the public concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is 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 estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of collection of information for those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

DATES: Interested persons are invited to submit comments on or before June 1, 1998.

ADDRESSES: Comments and recommendations concerning the submission should be sent to OMB Desk Officer, Dennis Marvich, Office of Management and Budget, Information and Regulatory Affairs, New Executive Office Building, Washington, D.C. 20503, (202) 395–3122.

FOR FURTHER INFORMATION CONTACT: Copies of these submissions and any additional information may be obtained from Dan Garcia, Export-Import Bank of the United States, 811 Vermont Ave., N.W., Washington, D.C. 20571, (202) 565–3335.

SUPPLEMENTARY INFORMATION:

Abstract: OMB 3048–0005: Two applications fall under this collection. EIB–95–9 is the Ex-Im Bank Letter of Interest Application Form and EIB–95–10 is the Ex-Im Bank Preliminary Commitment and Final Commitment Application Form. There are no changes to either EIB–95–9 or EIB–95–10 other than a three-year extension of the expiration date.

Burden Statement Summary:

Type of request: Extension of expiration date.

OMB Number: 3048–0005.

Form Number: EIB–95–9 and EIB–95–10.

Title EIB–95–9—Ex-Im Bank Letter of Interest Application Form and EIB–95–10—Ex-Im Bank Preliminary Commitment and Final Commitment Application Form.

Frequency of Use: Submission of Applications.

Respondents: Any U.S. or foreign bank, other financial institution, other responsible party including the exporter or creditworthy borrowers in a country eligible for Ex-Im Bank assistance.

Estimated total number of annual responses: EIB–95–9: 900, EIB–95–10: 550.

Estimated total number of hours needed to fill out the form: EIB–95–9: 300, EIB–95–10: 550.

Dated: April 29, 1998.

Dan Garcia,

Agency Clearance Officer.

[FR Doc. 98–11791 Filed 4–30–98; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, 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 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning an information collection titled ''Acquisition Services Information Requirements.''

DATES: Comments must be submitted on or before June 30, 1998.

ADDRESSES: Interested parties are invited to submit written comments to Tamara R. Manly, Management Analyst (Regulatory Analysis), (202) 898–7453, Office of the Executive Secretary, Room 4022, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429. All comments should refer to ''Acquisition Services Information Requirements.'' Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m. [FAX number (202) 898–3838; Internet address: comments@fdic.gov].

A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Alexander Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Tamara R. Manly, at the address identified above.

SUPPLEMENTARY INFORMATION: Proposal to renew the following currently approved collection of information:

Title: Acquisition Services Information Requirements.

OMB Number: 3064–0072.

Frequency of Response: Occasional.

Affected Public: Contractors and vendors who wish to do business with the FDIC.

Estimated Number of Respondents: 16,840.

Estimated Time per Response: varies from 0.25 hours to one hour.

Estimated Total Annual Burden: 9,316 hours.

General Description of Collection: The collection involves the submission of information on various forms by contractors who wish to do business, have done business, or are currently under contract with the FDIC. The information is used to enter contractors on the FDIC's nationwide contractor database (the National Contractor System); ensure compliance with established contractors ethics regulations (12 CFR 366); obtain information on a contractor's past performance for proposal evaluation purposes; and review a potential lessor's fitness and integrity prior to entering into a lease transaction.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information 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 information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of this collection. All comments will become a matter of public record.

Dated at Washington, D.C., this 27th day of April, 1998.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 98–11534 Filed 4–30–98; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, 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 continuing information collections. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning the end-of-course evaluation form used for National Fire Academy field courses.

SUPPLEMENTARY INFORMATION: The National Fire Academy (NFA) is mandated under the Fire Prevention and Control Act of 1974, Public Law 93–498, to provide training and education to the nation's fire service and emergency service personnel. The programs offered by the Academy service as models of excellence. To maintain the quality of these programs, it is necessary to evaluate them on an on-going basis. The National fire Academy Field Course Evaluation form provides one means maintaining quality assurance for NFA field (off-campus) or State Weekend Program courses. This form is used for courses delivered throughout the Nation.

Collection of Information

Title: National Fire Academy Field Course Evaluation Form.

Type of Information Collection: Extension of existing collection.

OMB Number: 3067–0233.

Form Numbers. FEMA Form 95–45.

Abstract: The National Fire Academy Field Course Evaluation Form is used in all field deliveries of NFA courses. The form is primarily used to assess the effectiveness of the course materials and instructor delivery. The Demographic information is used in developing needs assessments and identifying the student population's representation. There are no changes to the information collected using FEMA Form 95–45 or the method used to collect the information.

Affected Public: Individuals and households.

Number of Respondents: 25,000.

Estimated Hours Per Response: 15 minutes.

Frequency of Response: One-Time.

Estimated Total Annual Burden Hours: 6,250 hours.

Estimated Cost: $5,000 per year.

COMMENTS: Written comments are solicited to :

(a) Evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility;

(b) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

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

Comments should be received on or before June 30, 1998.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524.

FOR FURTHER INFORMATION CONTACT: Questions concerning the collection of information should be directed to Ms. Polly Birdsall at (301) 447–1228. Contact Ms. Anderson at (202) 646–2625 for copies of the proposed collection of information.

Dated: April 27, 1998.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 98–11637 Filed 4–30–98; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, 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 extension of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning State plans for the administration of the Individual and Family Grant program.

SUPPLEMENTARY INFORMATION: The State Administrative Plans for the Individual and Family Grant Program is required under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288 as amended, Section 411(a), and its implementing federal regulation 44 CFR 206–131. The plan forms an agreement between State and the Federal Emergency Management Agency (FEMA) to administer Individual Family Grants (IFG) according to national criteria, standards, and procedures for determination of disaster victims' eligibility. The IFG program is intended to provide funds to individuals or families with disaster-related necessary expenses or serious needs, who are unable to meet such expenses or needs through other means.

Collection of Information

Title: State Administrative Plans for the Individual and Family Grant Program.

Type of Information Collection: Extension of a currently approved collection.

OMB Number: 3067–0146.

Abstract: The Governor is required by law to administer the IFG Program and FEMA is required to publish regulations and procedures governing administration of the program. FEMA carries out its role by requiring a State plan that conforms to the regulations while allowing individual State procedural variations. There are 56 States that have State Administrative Plans already in place. Each State must update their plan annually to reflect policy changes. Specific requirements for the State Administrative Plan are contained in federal regulation 44 CFR 206.131(e).

Affected Public: State, Local or Tribal Government.

Estimated Total Annual Burden Hours: 168 hours.

Number of Respondents: 56.

Hours Per Response: 3 hours per respondent to prepare and submit annual plan updates.

Estimated Cost. The average salary level for State employees at a GS–9 to update a State plan is estimated to be $2,550.

COMMENTS: Written comments are solicited to:

(a) Evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility;

(b) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

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

Comments should be received on or before June 30, 1998.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524.

FOR FURTHER INFORMATION CONTACT: Contact Sharon Hordesky, Emergency Management Specialist, Response and Recovery Directorate, Program Guidance and Implementation Branch, (202) 646–2778 for additional information. Contact Ms. Anderson at (202) 646–2625 for copies of the proposed collection of information.

Dated: April 27, 1998.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 98–11638 Filed 4–30–98; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for emergency processing in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and OMB regulation 5 CFR 1320.13.

SUPPLEMENTARY INFORMATION: Section 577 of the National Flood Insurance Act Amendments of 1994, mandated the Director, Federal Emergency Management Agency submit a report to Congress within 2 years after the date of the enactment of the Act that:

(1) Lists all communities that are likely to be identified as having erosion hazard areas;

(2) Estimates the amount of flood insurance claims under the national flood insurance program that are attributable to erosion;

(3) States the amount of flood insurance claims under such program that are attributable to claims under section 1306(c) of the National Flood Insurance Act of 1968;

(4) Assesses the full economic impact of erosion on the National Flood Insurance Fund; and

(5) Determines the costs and benefits of expenditures necessary from the National Flood Insurance Fund to complete mapping of erosion hazards.

FEMA has contract with The Heinz Center in October 1997 to conduct the survey. The Center will be assisted by teams of economists at the University of Georgia and at George Washington

University to complete the analysis of the data. The economists will be available full time to work on this project during the summer months.

Collection of Information

Title: Mail Survey of Property Owners in Coastal Erosion Hazard Areas.

Type of Information Collection: New Collection.

Abstract: FEMA is under a Congressional mandate to perform a benefit costs analysis of proposed changes to the National Flood Insurance Program in coastal erosion zones. Benefits will be estimated by a property value study, using data from this mail survey. Information from this survey will be used for statistical purposes only.

The respondent universe for the survey includes all coastal counties in the 29 coastal United States, including the Great Lakes. The sample size of 27 counties was selected and randomly selected coastal property owners will be asked to complete the survey.

Affected Public: Individuals or households, Business or other for-profit.

Number of Respondents: 10,000.

Estimated Time per Respondent: 20 minutes.

Estimated Total Annual Burden Hours: 3,333 hours.

Frequency of Response: One-Time.

COMMENTS: Interested persons are invited to submit written comments on the proposed information collection to Dennis Marvich, Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 on or before June 1, 1998.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524.

Dated: April 27, 1998.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 98–11636 Filed 4–30–98; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: FEMA Contract Clause—Accessibility of Meetings to Persons with Disabilities.

Type of Information Collection: Extension of a currently approved collection.

OMB Number: 3067–0213.

Abstract: Contractors who plan meetings, conferences or seminars for FEMA must submit a plan to the Contracting Officer detailing how the minimum accessibility standards for the disabled set forth in the contract clause will be met.

Affected Public: Business or other for-profit.

Number of Respondents: 10.

Estimated Time per Respondent: 3 hours.

Estimated Total Annual Burden Hours: 30 hours.

Frequency of Response: On occasion.

COMMENTS: Interested persons are invited to submit written comments on the proposed information collection to Dennis Marvich, Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 on or before June 1, 1998.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524.

Dated: April 27, 1998.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 98–11639 Filed 4–30–98; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1214–DR]

Alabama; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Alabama (FEMA–1214–DR), dated March 9, 1998, and related determinations.

EFFECTIVE DATE: April 20, 1998

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective April 20, 1998.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 98–11633 Filed 4–30–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1214–DR]

Alabama; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Alabama, (FEMA–1214-DR), dated April 9, 1998, and related determinations.

EFFECTIVE DATE: April 18, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of

Alabama, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 9, 1998:

Covington County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 98–11634 Filed 4–30–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1195–DR]

Florida; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida (FEMA–1195–DR), dated January 6, 1998, and related determinations.

EFFECTIVE DATE: April 24, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective April 24, 1998.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 98–11635 Filed 4–30–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1215–DR]

Tennessee; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Tennessee (FEMA–1215–DR), dated April 20, 1998, and related determinations.

EFFECTIVE DATE: April 22, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Tennessee, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 20, 1998:

Claiborne, Hancock, and Union Counties for Public Assistance and Individual Assistance.

Anderson, Bradley, Crockett, Dyer, and Robertson Counties for Individual Assistance.

Jackson County for Public Assistance.

Campbell and Lawrence Counties for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 98–11631 Filed 4–30–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1215–DR]

Tennessee; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Tennessee (FEMA–1215–DR), dated April 20, 1998, and related determinations.

EFFECTIVE DATE: April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Tennessee, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 20, 1998:

Dickson, Knox, Loudon, Morgan, Rhea, Sevier, and Wilson Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Robert J. Adamcik,

Division Director, Response and Recovery Directorate.

[FR Doc. 98–11632 Filed 4–30–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Members of Senior Executive Service Performance Review Board

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice lists the names of the members of the FEMA Senior Executive Service Performance Review Board.

EFFECTIVE DATE: December 1, 1997.

FOR FURTHER INFORMATION CONTACT: Denise R. Yachnik, Executive

Coordinator, Office of Human Resources Management, 500 C Street, SW., Washington, DC 20742, 202–646–3040.

SUPPLEMENTARY INFORMATION: The names of the members of the FEMA Senior Executive Service Performance Review Board established under 5 U.S.C. 4314 (c)(4) are: John L. Matticks, Lynn G. Canton, Bruce J. Campbell, Robert J. Adamcik, Patricia A. English and Dianne K. Bona.

Dated: April 27, 1998.

Ernest B. Abbott,

General Counsel.

[FR Doc. 98–11640 Filed 4–30–98; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 203–011618.

Title: APL/MOL/HMM Trans-Pacific Slot Exchange Agreement.

Parties:

American President Lines, Ltd. (''APL'')

APL Co. PTE Ltd. (''APL'')

Mitsui O.S.K. Lines, Ltd. (''MOL'')

Hyundai Merchant Marine Co., Ltd. (''HMM'')

Synopsis: The proposed Agreement authorizes HMM to use up to an annualized average of 6000 TEUs of space per week on vessels operated by either APL or MOL, and for APL and MOL to use up to an annualized average of 7000 TEUs per week on vessels operated by HMM in the trade between the Pacific Coast of the United States and the Far East. The parties may also interchange empty containers and agree upon sailing schedules, service frequency, and collective rate making on a voluntary basis. This Agreement will replace the current APL/MOL/HMM Reciprocal Slot Exchange Agreement, FMC Agreement No. 203–011596.

Agreement No.: 207–011619.

Title: Frota/Global Joint Service and Cooperative Working Agreement.

Parties:

Frota Oceanica e Amazonica S.A. (''Frota'')

Global Transporte Oceanico S.A. (''Global'')

Synopsis: The proposed Agreement would permit the parties to operate a joint service in the trade between United States Atlantic and Gulf ports (except for the Port of New York), and inland points via such ports, and ports and points served via the East Coast of Central America, the Caribbean, and Northern Brazil. The port of New York will be served by Frota as part of a cooperative working agreement (''CWA'') which will utilize vessels operated by the Joint Service. At the Port of New York Frota will hold itself out as a separate carrier and issue its own bill of lading. The parties have requested a shortened review period.

Dated: April 27, 1998.

By Order of the Federal Maritime Commission.

Joseph C. Poling,

Secretary.

[FR Doc. 98–11535 Filed 4–30–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 15, 1998.

A. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Carl D. Larson, Fullerton, North Dakota; to acquire additional voting shares of Omega City Holding Company, La Moure, North Dakota, and thereby indirectly acquire voting shares of First State Bank of La Moure, La Moure, North Dakota.

Board of Governors of the Federal Reserve System, April 28, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–11672 Filed 4–30–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisition by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 98-10567) published on page 19727 of the issue for Tuesday, April 21, 1998.

Under the Federal Reserve Bank of Chicago heading, the entry for 1st Brookfield, Inc., Employee Stock Ownership Plan, Brookfield, Illinois, is revised to read as follows:

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. 1st Brookfield, Inc., Employee Stock Ownership Plan, Brookfield, Illinois; to acquire an additional 12.40 percent, for a total of 42.35 percent, of the voting shares of 1st Brookfield, Inc., Brookfield, Illinois, and thereby indirectly acquire The First National Bank of Brookfield, Brookfield, Illinois.

Comments on this application must be received by May 15, 1998.

Board of Governors of the Federal Reserve System, April 28, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–11670 Filed 4–30–98; 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 May 26, 1998.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. FirstBancorporation, Inc., Beaufort, South Carolina; to acquire 100 percent of the voting shares of FirstBank of the Midlands, N.A., Columbia, South Carolina (in organization).

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Rigler Investment Company, New Hampton, Iowa; to acquire 100 percent of the voting shares of Figge Bancshares, Inc., Ossian, Iowa, and thereby indirectly acquire The Ossian State Bank, Ossian, Iowa, and Iowa State Bank, Calmar, Iowa.

C. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Central Trust Company, Lander, Wyoming; to acquire 64.44 percent of the voting shares of VH Bancorporation Inc., Edina, Minnesota, and thereby indirectly acquire Grand Marais State Bank, Grand Marais, Minnesota.

Board of Governors of the Federal Reserve System, April 28, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–11671 Filed 4–30–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, May 6, 1998.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, .W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank director eligibility issues.

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Joseph R. Coyne, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.bog.frb.fed.us for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: April 29, 1998.

William W. Wiles,

Secretary of the Board.

[FR Doc. 98–11732 Filed 4–29–98; 11:09 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Federal Trade Commission.

TIME AND DATE: 2:00 p.m., Thursday, May 14, 1998.

PLACE: Federal Trade Commission Building, Room 532, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Portions Open to Public: (1) Oral Argument in Automative Breakthrough Sciences, Inc., Docket 9275.

Portions Closed to the Public: (2) Executive Session to follow Oral Argument in Automative Breakthrough Sciences, Inc., Docket 9275.

CONTACT PERSON FOR MORE INFORMATION: Victoria Streitfield, Office of Public Affairs: (202) 326–2180, Recorded Message: (202) 326–2711.

Donald S. Clark,

Secretary.

[FR Doc. 98–11795 Filed 4–29–98; 2:38 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Request for Public Comment: 60-day Proposed Collection: Indian Health Service Medical Staff Credentials and Privileges File

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, to provide a 60-day advance opportunity for public comment on proposed information collection projects, the Indian Health Service (IHS) is publishing for comment a summary of a proposed information collection to be submitted to the Office of Management and Budget (OMB) for review.

PROPOSED COLLECTION: Title: 09–17–0009, ''Indian Health Service Medical Staff Credentials and Privileges File''. Type of Information Collection Request: Revision of currently approved information collection, 09–17–0009, ''Indian Health Service Medical Staff Credentials and Privileges File'' which expires July 31, 1998. Form Number: Instructions and information collection formats are contained in IHS Circular No. 93–2, ''Credentials and Privileges Review Process for the Medical Staff.'' Need and Use of Information Collection: The IHS operates health care facilities that provide health care services to American Indians and Alaska Natives. To provide these services, the IHS employs (directly and under contract) several categories of health care providers including: physicians (M.D. and D.O.), dentists, psychologist, optometrists, podiatrists, audiologist; and in some states, physician assistants, certified registered nurse anesthetists, nurse practitioners, and certified nurse midwives. IHS policy specifically requires physicians and dentists to be members of the health care facility medical staff where they practice. Health care providers become medical staff members, depending on the local health care facility's capabilities and medial staff bylaws. There are three types of IHS medical staff applicants: (1) Health care provider applying for direct employment with IHS; (2) contract health care providers who will not seek to become IHS employees; and, (3) employed IHS health care providers who seek to transfer between IHS health care facilities.

National health care standards developed by the Health Care Financing Administration (HCFA) and by the JCAHO require health care facilities to review, evaluate and verify the credentials, training and experience of

medical staff applicants prior to granting medical staff privileges. To meet these standards, IHS health care facilities require each medical staff applicant to provide information concerning their education, training, licensure, and work experience and any adverse disciplinary actions taken against them. This information is then verified with references supplied by the applicant and may include: former employers, educational institutions, licensure and certification boards, the American Medical Association, the Federation of State Medical Boards, the National Practitioner Data Bank, and the applicants themselves.

In addition to the initial granting of medical staff membership and clinical privileges, JCAHO standards require that a review of the medical staff be conducted not less than every two years.

This review evaluates the current competence of the medical staff and verifies whether they are maintaining their licensure and the certification requirements of their specialty.

The medical staff credentials and privileges records are maintained at the health care facility where the health care provider is a medical staff member. The establishment of these records at IHS health care facilities is not optional; such records must be established and maintained at all health care facilities in the United States that are accredited by JCAHO. This information collection activity is used to evaluate individual health care providers applying for medical staff privileges at Indian Health Service (IHS) health care facilities. Affected Public: Individuals, Businesses or other for-profit, Not-for-profit institutions and State, local or Tribal Government. Type of Respondents: health care providers requesting Medical staff privileges at IHS health facilities.

Table 1 below provides: Types of data collection instruments, Estimated number of respondents, Number of responses per respondent, Annual Number of Responses, Average burden hour per response, and Total annual burden hour.

TABLE 1

Data collection instrument	Estimated number of respondents	Responses per respondent	Annual number of responses	Average burden hour per response*	Total annual burden hours
Application to Medical Staff	600	1	600	0.75 (45 mins)	450.0
Reference letter	1800	1	1800	0.33 (0 mins)	600.0
Reappointment request	644	1	644	1.00 (60 mins)	644.0
Medical Privileges	387	1	387	1.00 (60 mins)	387.0
Ob-Gyn Privileges	25	1	25	1.00 (60 mins)	25.0
Surgical Privileges	23	1	23	1.00 (60 mins)	23.0
Psychiatric Privileges	18	1	18	1.00 (60 mins)	18.0
Anesthesia Privileges	16	1	16	1.00 (60 mins)	16.0
Dental Privileges	128	1	128	0.33 (0 mins)	42.2
Optometric Privileges	21	1	21	0.33 (0 mins)	6.9
Psychology Privileges	23	1	23	0.17 (0 mins)	3.9
Audiologic Privileges	6	1	6	0.08 (0 mins)	0.5
Podiatric Privileges	6	1	6	0.08 (0 mins)	0.5
Radiology Privileges	9	1	9	0.33 (0 mins)	3.0
Pathology Privileges	3	1	3	0.33 (0 mins)	1.0
Total	3,709				2,221.0

*For ease of understanding, burden hours are also provided in actual minutes.

There are no Capital Costs, Operating Costs and/or Maintenance Costs to report.

Request for Comments

Your written comments and/or suggestions are invited on one or more of the following points: (a) Whether the information collection activity is necessary to carry out an agency function; (b) whether the agency processes the information collected in a useful and timely fashion; (c) the accuracy of public burden estimate (the estimated amount of time needed for individual respondents to provide the requested information); (d) whether the methodology and assumptions used to determine the estimate are logical; (e) ways to enhance the quality, utility, and clarity of the information being collected; and (f) ways to minimize the public burden through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

SEND COMMENTS AND REQUESTS FOR FURTHER INFORMATION: Send your written comments, requests for more information on the proposed collection or requests to obtain a copy of the data collection instrument(s) and instructions to: Mr. Lance Hodahkwen, Sr., M.P.H., IHS Reports Clearance Officer, 12300 Twinbrook Parkway, Suite 450, Rockville, MD 20852.1601, call non-toll free (301) 443–1116, send via facsimile to (301) 443–1522, or send your E-mail requests, comments, and return address to: lhodahkw@hqe.ihs.gov.

COMMENT DUE DATE: Your comments regarding this information collection are best assured of having their full effect if received on or before June 30, 1998.

Dated: April 21, 1998.

Michael H. Trujillo,

Assistant Surgeon General, Acting Director.

[FR Doc. 98–11625 Filed 4–30–98; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Prevention; Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Drug Testing Advisory Board of the Center for Substance Abuse Prevention in June 1998.

A portion of the Drug Testing Advisory Board meeting will be open and will include a roll call, general announcements, and a discussion of

various program, procedural, and technical issues. The preliminary agenda for the open session includes, but is not limited to, the following topics: HHS update, DOT update, NRC update, and a discussion of information submitted by industry representatives regarding the proposed draft document alternative drug testing specimens and technologies. Public comments are welcome during the open session. If anyone needs special accommodations for persons with disabilities please notify the Contact listed below.

The DTAB meeting will include the review of sensitive National Laboratory Certification Program (NLCP) internal operating procedures and program development issues. Therefore, a portion of the meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with 5 U.S.C. 552b(c)(2), (4), and (6) and 5 U.S.C. App. 2, § 10(d).

An agenda for this meeting and a roster of board members may be obtained from: Ms. Giselle Hersh, Division of Workplace Programs, Room 13A–54, 5600 Fishers Lane, Rockville, MD 20857, Telephone: (301) 443–6014.

Substantive program information may be obtained from the contact whose name and telephone number is listed below.

Committee name: Drug Testing Advisory Board.

Meeting date: June 9, 1998.

Place: Gaithersburg Hilton, 620 Perry Parkway, Gaithersburg, Maryland 20877.

Open: June 9, 1998, 8:30 a.m.–11:00 a.m.

Closed: June 9, 1998, 11:00 a.m–4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Donna M. Bush, Ph.D., Executive Secretary, Telephone: (301) 443–6014 and FAX: (301) 443–3031.

Dated: April 27, 1998.

Jeri Lipov,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 98–11526 Filed 4–30–98; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4341–N–08]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: May 1, 1998.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7256, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1226; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: April 23, 1998.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 98–11391 Filed 4–30–98; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Application for Approval

The following applicant has applied for approval to conduct certain activities with birds that are protected in accordance with the Wild Bird Conservation Act of 1992. This notice is provided pursuant to Section 112(4) of the Wild Bird Conservation Act of 1992, 50 CFR 15.26(c).

Applicant: David H. Dixon, Bluffdale, Utah. The applicant wishes to establish a cooperative breeding program for the European goshawk (*Accipiter gentilis*), the European sparrowhawk (*Accipiter nisus*), the English peregrine falcon (*Falco peregrinus peregrinus*), the Cassini peregrine falcon (*Falco peregrinus cassini*), the Saker falcon (*Falco cherrug*), the Black shaheen (*Falco peregrinus peregrinator*), the Red-headed merlin (*Falco chicquera*) and the Black sparrowhawk (*Accipiter melanoleucus*). Mr. Dixon wishes to be an active participant in this program with five other private individuals. The Utah Falconers and Raptor Breeders Association has assumed the responsibility for the oversight of the program.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2095); FAX: (703/358–2298).

Dated: April 27, 1998.

Margaret Tieger,

Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 98–11564 Filed 4–30–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8. Pursuant to 25 CFR 83.9(a) notice is hereby given that: Beaver Creek Band of Pee Dee Indians 978 Seivern Road Wagener, South Carolina 29164 has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs (BIA) on January 21,1998, and was signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other

interested parties at the appropriate time.

Under Section 83.9(a) of the Federal regulations, third parties may submit factual or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the BIA's files. Such submissions will be provided to the petitioner upon receipt by the BIA. The petitioner will be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

The petition may be examined, by appointment, in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgment and Research, Room 3427, 1849 C Street, N.W., Washington, D.C. 20240, (202) 208–3592.

Dated: April 20, 1998.

Hilda Manuel,

Deputy Commissioner of Indian Affairs.

[FR Doc. 98–11607 Filed 4–30–98; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe

AGENCY: Bureau of Indian Affairs.

ACTION: Notice.

This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8. Pursuant to 25 CFR 83.9(a) notice is hereby given that the Eno-Occaneechi Indian Tribe, 4031 Mary's Grove Church Road, Mebane, North Carolina 27302 has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs (BIA) on November 24, 1997, and was signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Under Section 83.9(a) of the Federal regulations, third parties may submit factual or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the BIA's files. Such submissions will be provided to the petitioner upon receipt by the BIA. The petitioner will be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

The petition may be examined, by appointment, in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgment and Research, Room 3427, 1849 C Street, N.W., Washington, D.C. 20240, (202) 208–3592.

Dated: April 20, 1998.

Hilda Manuel,

Deputy Commissioner of Indian Affairs.

[FR Doc. 98–11606 Filed 4–30–98; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–958–6310–01; GP8–0167; Form OR–2812–6]

Extension of Approved Information Collection, OMB Number 1004–0168; and Request for Comments

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) announces its intention to request renewal of an existing approval to collect certain information from private landowners which will allow BLM to determine road use and maintenance fees for logging road right-of-way permits issued under the O&C Logging Road Right-of-Way regulations (43 CFR 2812).

EFFECTIVE DATE: Comments on the proposed information collection must be receive by BLM by June 30, 1998 to assure consideration.

ADDRESSES: Mail comments to: John Styduhar (OR958.1), Bureau of Land Management, Oregon State Office, P.O. Box 2965, Portland, OR 97208.

Send comments via Internet to: jstyduha@or.blm.gov. Please include ''ATTN: 1004–0168'' and your name and return address in your Internet message.

You may hand-deliver comments to the Bureau of Land Management, Oregon State Office, 1515 S.W. 5th Ave., Portland, OR 97201.

BLM will make comments available for public review at the 5th Street address during regular business hours (8:30 a.m. to 4:00 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: John Styduhar, BLM Oregon State Office (503)-952–6454.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 1320.12(a), BLM is required to provide 60-day notice in the **Federal Register** concerning a collection of information contained in BLM Form OR–2812–6 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 of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. BLM will receive and analyze any comments sent in response to this notice and include them with its request for approval from the OMB under 44 U.S.C. 3501 *et seq.*

Private landowners in western Oregon obtain authorization to transport their timber over BLM-controlled roads under Title V of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761). Logging road right-of-way permits issued by the BLM are subject to the requirements of the O&C Logging Road Right-of-Way regulations (43 CFR 2812). As a condition of each right-of-way permit, a permittee must provide BLM with a certified statement of the amount of timber hauled, the lands from which the timber was hauled, and the BLM roads over which the timber was hauled. This information is collected on a quarterly basis and provided to BLM using Form OR–2812–6, Report of Road Use.

When a Report of Road Use is received in the BLM office, it is noted in a register and routed through the appropriate staff for verification, calculation of road use and maintenance fees, and subsequent billing and payment from the permittee. Monies received for road use contribute to the recovery of costs incurred by BLM in the construction of forest access roads. Fees collected for road maintenance are reimbursements for services provided by BLM in the maintenance of roads used by the permittee. If BLM did not

require the collection of information included in the Report of Road Use, it would not be possible to determine payment amounts, ledger account status, or monitor a permittee's compliance with the terms of the permit. The costs for services provided by BLM would not be collected in a timely manner if the frequency of reporting is reduced. This would have a direct effect on the ability of BLM to properly maintain it's road system, protect the road investment, and provide safe and efficient access to the public lands.

Based on BLM's experience administering the activities described above, the public reporting burden for the information collected is estimated to average 1 hour per response. The respondents include individuals, partnerships, and corporations engaged in the removal and transportation of timber and other forest products. The frequency of response is quarterly. The number of responses per year is estimated to total 400. The estimated total annual burden on respondents is about 1600 hours. BLM is specifically requesting your comments on its estimate of the amount of time that it takes to prepare a response.

BLM will summarize all responses to this notice and include them in the request for Office of Management and Budget approval. All comments will also become a matter of public record.

Dated: April 23, 1998.

Robert D. DeViney, Jr.,

Chief, Branch of Realty and Records Services.

[FR Doc. 98–11652 Filed 4–30–98; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–018–08—1040–00]

Correction to Red Hills Area of Critical Environmental Concern (ACEC), Tuolumne County

AGENCY: Bureau of Land Management, Folsom Field Office, CA.

ACTION: Notice correction.

The following are corrections to the legal description due to typographical errors in the publication of the **Federal Register** Vol. 50, No. 138, page 29276, second column, published on July 18, 1985. The corrected information for each section is given below:

Mount Diablo Meridian, California

T.1S., R.13E.,

Sec.13, NW¼, N½NE¼, SE¼NE¼, NE¼SE¼;

T.1S., R.14E.,

Sec. 16(*), E½,N½NW¼, S½SE¼SW¼, SE¼SW¼SW¼, N½SW¼SW¼SW¼, SE¼NW¼, N¼SW¼, N½SE¼SW¼, E½NE¼SW¼SW¼, N½SW¼NW¼, W½SW¼SW¼NW¼, E½SE¼SW¼NW¼, NE¼NE¼NW¼SW¼;

Sec. 27, N½NE¼, E½SE¼NE¼, SW¼NE¼, W½SE¼, W½;

Sec. 34, W½NE¼NE¼, NW¼NE¼, N½NW¼.

(*) In addition to typographical corrections in the original publication, section 16 incorporates changes in the boundary of the Area of Critical Environmental Concern due to the issuance of a Recreation and Public Purposes (R&PP) patent and the cancellation of a previous R&PP lease.

Dated: April 22, 1998.

D.K. Swickard,

Folsom Field Manager.

[FR Doc. 98–11582 Filed 4–30–98; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–360–1020–00]

Notice of Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Northwest California Resource Advisory Council, Redding, California.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Public Law 92–463) and the Federal Land Policy and Management Act (Public Law 94–579), the U. S. Bureau of Land Management's Northwest California Resource Advisory Council will meet Thursday and Friday, June 4 and 5, 1998, at the BLM's Redding Field Office, 355 Hemsted Drive, Redding, CA.

SUPPLEMENTARY INFORMATION: The meeting begins at 10 a.m. on June 4. Agenda items include a review of public comments on the proposal to close Black Sands Beach to motor vehicle access, a presentation on the Automated Lands, Minerals and Records System, an overview of the Federal Land Policy and Management Act, and reports from the BLM field managers in Redding, Arcata and Ukiah. Time will be set aside at 1 p.m. for public comments. Depending on the number of people wishing to speak, a time limit may be established. On June 5, the council will participate in a field tour of public lands managed by the Redding Field Office. Members of the public are invited on the tour, but they must provide their own transportation and lunch.

FOR ADDITIONAL INFORMATION: Contact Joseph J. Fontana, public affairs officer, at (530) 257–5381.

Joseph J. Fontana,

Public Affairs Officer.

[FR Doc. 98–11608 Filed 4–30–98; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–958–1430–01; GP8–0166; OR–19043, OR–19159]

Public Land Order No. 7310; Partial Revocation of Executive Order Dated July 2, 1910, and Revocation of Secretarial Order Dated June 13, 1933; Oregon; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

SUMMARY: In Public Land Order No. 7310, published January 14, 1998, as FR Doc. 98–852, on 63 FR 2260, third column, make the following corrections:

1. In the Heading, insert the word ''Partial'' prior to ''Revocation of Executive Order Dated July 2, 1910''.

2. In the Summary, the first sentence which reads ''This order revokes in their entirety an Executive order and a Secretarial order which withdrew 520 acres of public lands for the Bureau of Land Management's Powersite Reserve No. 118 and Powersite Classification No. 274.'', is hereby corrected to read, ''This order revokes an Executive order insofar as it affects 40 acres of public land for the Bureau of Land Management's Powersite Reserve No. 118, and revokes in its entirety a Secretarial order which withdrew 480 acres of public lands for the Bureau of Land Management's Powersite Classification No. 274.''

3. Paragraph 1 which reads, ''The Executive Order dated July 2, 1910, which established Powersite Reserve No. 118, is hereby revoked in its entirety:'', is hereby corrected to read, ''The Executive Order dated July 2, 1910, which established Powersite Reserve No. 118, is hereby revoked insofar as it affects the following described land:''.

Robert D. DeViney, Jr.,

Chief, Branch of Realty and Records Services, Oregon/Washington.

[FR Doc. 98–11476 Filed 4–30–98; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–020–08–1430–01; AZA–30576]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following public lands, are located in Pinal County, Arizona, and found suitable for lease or conveyance under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869, *et seq.*). The lands are not needed for federal purposes. Lease or conveyance is consistent with current Bureau of Land Management (BLM) land use planning and would be in the public interest.

AZA–30576

The following described lands, located near the Town of Queen Valley, Pinal County, have been found suitable for lease or conveyance to the Pinal County Board of Supervisors for an open space park.

Gila and Salt River Meridian, Arizona

T. 1S., R. 10E.
Sec. 34, NE¼ of lot 1
Containing approximately 10 acres.

The lease or conveyance would be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and all applicable regulations of the Secretary of the Interior.
2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals.
3. A right-of-way for ditches and canals constructed by the authority of the United States.
4. Those rights as Gaylord Yost Family Trust, may have as to that portion of the Queen Valley Grazing Allotment.

FOR FURTHER INFORMATION CONTACT: David Redmond at the Phoenix Field Office, 2015 W. Deer Valley Road, Phoenix, Arizona 85027, (602)580–5527.

SUPPLEMENTARY INFORMATION: Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act. For a period of 45 days from the date of publication of this Notice, interested parties may submit comments regarding the proposed lease, conveyance or classification of the lands to the Field Office Manger, Phoenix District Office, 2015 W. Deer Valley Road, Phoenix, Arizona 85027.

Classification Comments

Interested parties may submit comments involving the suitability of the land for: an open space park, for Pinal County. Comments on the classification are restricted to whether the land is physically suited for the proposals, whether the uses will maximize the future use or uses of the land, whether the uses are consistent with local planning and zoning, or if the uses are consistent with state and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific uses proposed in the applications and plans of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for proposed uses. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication in the **Federal Register**.

Dated: April 20, 1998.

Michael A. Taylor,

Field Manager.

[FR Doc. 98–11581 Filed 4–30–98; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–050–4210–05; UTU–72937]

Notice of Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

SUMMARY: In notice document Vol. 63, No. 62 beginning on page 15858 in the issue of Wednesday of April 1, 1998, make the following correction: The legal land description was written as follows:

Salt Lake Meridian

T.28 S., R.11 E.,
Sec. 4 W½NE¼.
Containing 80 acres more or less.

The legal description should be changed to read as follows:

Salt Lake Meridian

T.28 S., R.11 E.,
Sec. 14 W½NE¼.
Containing 80 acres more or less.

Dated: April 21, 1998.

Dave Henderson,

Acting District Manager

[FR Doc. 98–11595 Filed 4–30–98; 8:45 am]

BILLING CODE 4310–DQ–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–020–1220–00]

Nevada; Notice of Public Scoping Meetings Regarding Attempts To Break Land Speed Record on Black Rock Desert

AGENCY: Bureau of Land Management, Interior.

ACTION: Public scoping meetings for an application for a Special Recreation Permit in an attempt to break the world land speed record will be held at the following locations and dates: Monday, May 18, 1998 at the Airport Plaza Hotel, 1981 Terminal Way, Reno, Nevada; Wednesday May 20, 1998 at the Gerlach Community Center, Gerlach, Nevada; and Thursday May 21, 1998 at the Pershing County Community Center, 820 Sixth Street, Lovelock, Nevada, All meetings will begin at 7:00 p.m.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management (BLM), Winnemucca District, received an application from Spirit of America, represented by Bill Breedlove, to conduct high speed runs on the playa of the Black Rock Desert from September through November, 1998. These runs may reach speeds over 700 mph. The intent of the runs is to break the current world land speed record. All comments and concerns about the application must be received by the Winnemucca District, 5100 E. Winnemucca Blvd., Winnemucca, Nevada 89445 by June 10, 1998.

FOR FURTHER INFORMATION CONTACT: Lynn Clemons, 5100 East Winnemucca Blvd., Winnemucca, Nevada 89445 (702) 623–1500.

Dated: April 23, 1998.

Les Boni,

Acting District Manager.

[FR Doc. 98–11651 Filed 4–30–98; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–942–5700–00]

Filing of Plate of Survey; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested state and local government officials of the latest filing of Plats of Survey in California.

EFFECTIVE DATE: Unless otherwise noted, filing was effective at 10:00 a.m. on the next federal work day following the plat acceptance date.

FOR FURTHER INFORMATION CONTACT: Lance J. Bishop, Chief, Branch of Cadastral Survey, Bureau of Land Management (BLM), California State OFfice, 2135 Butano Drive, Sacramento, CA 95825–0451, (916) 978–4310.

SUPPLEMENTARY INFORMATION: The plats of Survey of lands described below have been officially filed at the California State Office of the Bureau of Land Management in Sacramento, CA.

Mount Diablo Meridian, California

T. 30 N., R. 13 E.,—Dependent resurvey and subdivision of sections 1, 2, 3, and 8, (Group 1198) accepted February 17, 1998, to meet certain administrative needs of the BLM, Eagle Lake Field Office.

T. 26 N., R. 17 E.,—Dependent resurvey, and subdivision of sections 3, 11, and 23, (Group 1172) accepted February 17, 1998, to meet certain administrative needs of the BLM, Eagle Lake Field Office.

T. 28 N., R. 4 E.,—Dependent resurvey and subdivision of section 4, (Group 1181) accepted February 17, 1998, to meet certain administrative needs of the BLM, Redding Field Office.

T. 36 N., R. 11 E.,—Dependent resurvey and subdivision of sections 3, 4, 5 and 9, (Group 1202) accepted February 17, 1998, to meet certain administrative needs of the BLM, Alturas Field Office.

T. 25 N., R. 17 E.,—Dependent resurvey and subdivision of section 3, (Group 1172) accepted February 20, 1998, to meet certain administrative needs of the BLM, Eagle Lake Field Office.

T. 29 N., R. 14 E.,—Dependent resurvey and subdivision of sections 30 and 31, (Group 1262) accepted February 24, 1998, to meet certain administrative needs of the BLM, Eagle Lake Field Office.

T. 7 S., R. 21 E.,—Dependent resurvey, subdivision, and mates-and-bounds survey, (Group 1228) accepted February 24, 1998, to meet certain administrative needs of the US Forest Service, Sierra National Forest.

T. 48 N., R. 12 W.,—Retracement survey, corrective dependent resurvey and metes-and-bonds survey, (Group 888) accepted March 4, 1998, to meet certain administrative needs of the US Forest Service, Rogue River National Forest.

T. 40 N., R. 10.,—Dependent resurvey and tract survey, (Group 1241) accepted March 9, 1998, to meet certain administrative needs of the US Forest Service, Klamath National Forest.

T. 18 N., R. 9 E.,—Supplemental plat of the SW ¼ of section 32, accepted March 12, 1998, to meet certain administrative needs of the BLM, Folsom Field Office.

T. 39 N., R. 8 W.,—Dependent resurvey, and metes-and-bounds survey, (Group 1217) accepted March 16, 1998, to meet certain administrative needs of the US Forest Service, Klamath and Shasta-Trinity National Forests.

T. 5 S., R. 30 E.,—Dependent resurvey and metes-and-bounds survey, (Group 1272) accepted March 17, 1998, to meet certain administrative needs of the US Forest Service, Inyo National Forest.

San Bernardino Meridian, California

T. 1 N., R. 18 W.,—Dependent resurvey, subdivision of fractional section 24 and metes-and-bounds survey, (Group 1093) accepted February 9, 1998, to meet certain administrative needs of the National Park Service, Santa Monica Mountains National Recreation Area.

T. 15 S., R. 3 E.,—Dependent resurvey and metes-and-bounds survey, (Group 1019) accepted February 23, 1998, to meet certain administrative needs of the US Forest Service, Cleveland National Forest.

T. 1 S., R. 19 W.,—Dependent resurvey and subdivision of sections 13 and 14, (Group 1222) accepted March 12, 1998, to meet certain administrative needs of the National Park Service, Santa Monica Mountains National Recreation Area.

T. 1 S., R. 20 W.,—Dependent resurvey, subdivision of sections and metes-and-bounds survey, (Group 1111) accepted March 24, 1998, to meet certain administrative needs of the National Park Service, Santa Monica Mountains National Recreation Area.

All of the above listed survey plats are now the basic record for describing the lands for all authorized purposes. The survey plats have been placed in the open files in the BLM, California State office, and are available to the public as a matter of information. Copies of the survey plats and related field notes will be furnished to the public upon payment of the appropriate fee.

Dated: April 20, 1998.

Lance J. Bishop,

Chief, Branch of Cadastral Survey.

[FR Doc. 98–11591 Filed 4–30–98; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–957–1150–00]

Idaho: Filing of Plats of Survey; Idaho

The plat of the following described land were officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m., April 21, 1998.

The plat representing the dependent resurvey of a portion of the subdivisional lines, the subdivision of sections 22 and 27, and a metes-and-bounds survey in section 27, T. 11 N., R. 29 E., Boise Meridian, Idaho, Group 984, was accepted April 21, 1998.

This survey was executed to meet certain administrative needs of the Bureau of Land Management. All inquiries concerning the surveys of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho 83709–1657.

Dated: April 21, 1998.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 98–11584 Filed 4–30–98; 8:45 am]

BILLING CODE 4310–GG–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–957–1420–00]

Idaho: Filing of Plats of Survey; Idaho

The supplemental plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m. April 21, 1998.

The supplemental plat prepared to correct the duplication of two lot 5's T. 6 S., R. 6 E., Boise Meridian, Idaho, Group 1010, was accepted April 21, 1998.

This survey was executed to meet certain administrative needs of the Bureau of Land Management. All inquiries concerning the survey of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho, 83709–1657.

Dated: April 21, 1998.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 98–11585 Filed 4–30–98; 8:45 am]

BILLING CODE 4310–GG–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–933–1430–00; IDI–31824]

Opening of Land in a Proposed Withdrawal; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The temporary 2-year segregation of a proposed withdrawal of 20.00 acres of National Forest System land for the protection of the Nez Perce Indian Chinook Salmon Rearing Ponds expires June 24, 1998, after which the land will be open to mining. The land has been and will remain open to surface entry and mineral leasing.

EFFECTIVE DATE: June 24, 1998.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, BLM Idaho State Office, 1387 S. Vinnell Way, Boise, Idaho 83709, 208–373–3864.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Withdrawal has been published in the **Federal Register** (61 FR 123, June 25, 1996), which segregated the land described therein for up to 2 years from the mining laws, subject to valid existing rights, but not from the general land laws and the mineral leasing laws. The 2-year segregation expires June 24, 1998. The withdrawal application will continue to be processed unless it is canceled or denied. The land is described as follows:

Boise Meridian

T. 35 N., R. 6 E.,
Sec. 1, S½SW¼SE¼

The area described contains 20.00 acres in Idaho County.

At 9 a.m. on June 24, 1998, the land shall be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: April 20, 1998.

Jimmie Buxton,

Branch Chief, Lands and Minerals.

[FR Doc. 98–11583 Filed 4–30–98; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Draft Petition Evaluation Document/ Environmental Impact Statement; Tennessee

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

ACTION: Notice of availability of the draft petition evaluation document/ environmental impact statement (PED/ EIS) for Fall Creek Falls State Park, Tennessee.

SUMMARY: The Office of Surface Mining (OSM) of the United States Department of the Interior is making available for public comment, the draft PED/EIS for a petition to designate certain lands in the watershed and viewshed of Fall Creek Falls State Park and Natural Area, Van Buren and Bledsoe Counties, Tennessee, as unsuitable for all surface coal mining operations.

DATES: *Written comments:* OSM will accept written comments on the draft PED/EIS until July 30, 1998.

Public Hearing: A public hearing will be held at 7 p.m., C.D.T. on Thursday, June 18, 1998, at the address given below.

ADDRESSES: *Copies of the PED/EIS:* Single copies of the draft PED/EIS may be obtained by contacting Beverly Brock at the address and telephone number listed under **FOR FURTHER INFORMATION CONTACT.** A copy of the PED/EIS is available for inspection at that address, and also at the Bledsoe and Van Buren County Clerk's offices.

Written Comments: Written comments may be hand delivered or mailed to Beverly Brock, Supervisor, Technical Group, Office of Surface Mining, 530 Gay Street, S.W., Suite 500, Knoxville, Tennessee 37902.

Public Hearing: A public hearing will be held at the Cumberland County High School Gymnasium, Crossville, Tennessee, at the date and time listed under **DATES.**

FOR FURTHER INFORMATION CONTACT: Beverly Brock, Supervisor, Technical Group, Office of Surface Mining, 530 Gay Street, S.W., Suite 500, Knoxville, Tennessee 37902. Telephone: (423) 545–4103, ext. 146. E-Mail/Internet: bbrock@osmre.gov.

SUPPLEMENTARY INFORMATION: OSM has been petitioned by Save Our Cumberland Mountains, Tennessee Citizens for Wilderness Planning, and forty-nine citizens to designate the watershed and viewshed of Fall Creek Falls State Park and Natural Area, Tennessee, as unsuitable for all types of surface coal mining operations. OSM has prepared a draft PED/EIS as required by Section 522(d) of the Surface Mining Control and Reclamation Act of 1977 and the National Environmental Policy Act of 1969. The draft PED/EIS evaluates the potential coal resources of the area, the demand for coal resources, and the impacts of alternative unsuitability decisions on the human environment, the economy, and the supply of coal.

A public hearing has been scheduled as indicated above. Anyone who wishes to speak will be given the opportunity to do so, but initial comments will be limited to 10 minutes. Time limits may be extended at the discretion of the presiding official. Persons wishing to present testimony are encouraged to contact OSM at the address given above. OSM would appreciate receiving a written copy of the speaker's comments four days prior to the public hearing, if possible. The hearing will be transcribed. Filing a written statement at the time of oral presentation is encouraged as this will facilitate the job of the court reporter. A transcript of the hearing will be available at a nominal fee approximately ten working days after the hearing.

Dated: April 24, 1998.

Michael K. Robinson,

Acting Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 98–11611 Filed 4–30–98; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; FY 1998 Community Policing Discretionary Grants

AGENCY: Office of Community Oriented Policing Services, Department of Justice.

ACTION: Notice of availability.

SUMMARY: The Department of Justice, Office of Community Oriented Policing Services (''COPS'') announces the availability of Universal Hiring Program (UHP) grants to pay up to 75 percent of the total salary and benefits for new officers over three years, and up to a maximum of $75,000 per officer, with the remainder to be paid by state or local funds. Funding will begin once the new officers have been hired or on the

date of the award, whichever is later, and will be paid over the course of the grant. Funding may not be applied to officers hired pre-award without written authorization from the COPS Office. All policing agencies, as well as jurisdictions seeking to establish new policing agencies, are eligible to apply for this program.

DATES: Application deadlines are May 22 and July 10, 1998. If your agency previously was awarded a FAST, AHEAD, or UHP grant, you may request additional officers at any time.

ADDRESSES: To obtain a copy of an application or for more information, call the U.S. Department of Justice Response Center at (202) 307–1480 or 1–800–421–6770.

FOR FURTHER INFORMATION CONTACT: The U.S. Department of Justice Response Center, (202) 307–1480 or 1–800–421–6770. The UHP application and information on the COPS Office also are available on the Internet via the COPS web site at: http://www.usdoj.gov/cops.

SUPPLEMENTARY INFORMATION:

Overview

The Violent Crime Control and Law Enforcement Act of 1994 (Pub. L. 103–322) authorizes the Department of Justice to make grants to increase deployment of law enforcement officers devoted to community policing on the streets and rural routes in this nation. UHP enables interested agencies to supplement their current sworn forces, or interested jurisdictions to establish a new agency, through Federal grants for up to three years. All policing agencies, as well as jurisdictions seeking to establish new policing agencies, are eligible to apply for this program.

Grants will be made of up to 75 percent of the total salary and benefits for each new officer over three years, and up to a maximum of $75,000 per officer, with the remainder to be paid by state or local funds. Funding will begin once the new officers have been hired or on the date of the award, whichever is later, and will be paid over the course of the grant. Funding may not be applied to officers hired pre-award without written authorization from the COPS Office.

Waivers of the non-Federal matching requirement may be requested under UHP, but will be granted only upon a showing of extraordinary fiscal hardship.

COPS grant funds must not be used to replace funds that eligible agencies otherwise would have devoted to future officer hiring. In other words, any hiring under UHP must be in addition to, and not in lieu of, officers that otherwise would have been hired. All grant recipients must develop a written plan to retain their COPS-funded officer positions after Federal funding has ended. This plan must be submitted to the COPS Office with you application.

In hiring additional officers, agencies may not reduce the scope of their customary screening and training procedures, and must include community policing principles in their training curricula.

An award under the COPS Universal Hiring Program will not affect the consideration of an agency's eligibility for a grant under other COPS programs.

The Catalog of Federal Domestic Assistance (CFDA) reference for this program is 16.710.

Dated: April 20, 1998.

Joseph E. Brann,

Director.

[FR Doc. 98–11594 Filed 4–30–98; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental Policy, 28 CFR § 50.7, notice is hereby given that a Consent Decree in *United States* v. *Dennis Gerbaz, et al.*, Civil No. 89–M–554 (D. Colo.), was lodged with the United States District Court for the District of Colorado on April 24, 1998.

The Consent Decree concerns alleged violations of section 301(a) of the Clean Water Act, 33 U.S.C. 1311(a), resulting from the defendant's discharge of dredge and fill material into portions of the Roaring Fork River without a permit from the U.S. Army Corps of Engineers. Under the Consent Decree, the settling defendant will contribute funds towards certain work on portions of the Roaring Fork River, in accordance with the Master Plan. The Master Plan establishes a river restoration and stabilization plan for portions of the Roaring Fork River.

The Department of Justice will receive written comments relating to the proposed Consent Decree for a period of 30 days from the date of publication of this notice. Comments should be addressed to David J. Kaplan, Attorney, U.S. Department of Justice, Environmental Defense Section, Environment and Natural Resources Division, P.O. Box 23986, Washington, DC 20026–3986, and should refer to *United States* v. *Dennis Gerbaz, et al.*, Civil No. 89–M–554 (D. Colo.).

The Consent Judgment may be examined at the Clerk's Office, United States District Court for the District of Colorado, United States Court House, 1929 Stout Street, Rm C–145, Denver, Colorado 80294.

Letitia J. Grishaw,

Chief, Environmental Defense Section, Environment and Natural Resources Division.

[FR Doc. 98–11605 Filed 4–30–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1921–98]

Announcement of District Advisory Council on Immigration Matters; Third Meeting

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of meeting.

SUMMARY: The Immigration and Naturalization Service (Service), has established a District Advisory Council on Immigration Matters (DACOIM) to provide the New York District Director of the Immigration and Naturalization Service with recommendations on ways to improve the response and reaction to customers in the local jurisdiction and to develop new partnerships with local officials and community organizations to build and enhance a broader understanding of immigration policies and practices. The purpose of this notice is to announce the forthcoming meeting.

DATES AND TIMES: The third meeting of the DACOIM is scheduled for May 28, 1998 at 1:00 p.m.

ADDRESSES: The meeting will be held at 201 Varick Street, New York, New York 10014, 11th Floor Conference Room.

FOR FURTHER INFORMATION CONTACT: Susan Young, Designated Federal Officer, Immigration and Naturalization Service, 26 Federal Plaza, Room 14–100, New York, New York 10278, telephone: (212) 264–0736.

SUPPLEMENTARY INFORMATION: Meetings will be held tri-annually on the fourth Thursday during the months of September, January, and May through 1999.

Summary of Agenda

The purpose of the meeting will be to conduct general business, review sub-committee reports and facilitate public participation. The DACOIM will be chaired by Charles Troy, Assistant District Director for Management, New York District, Immigration and Naturalization Service.

Public Participation

The DACOIM meeting is open to the public, but advance notice of attendance is requested to ensure adequate seating. Persons planning to attend should notify the contact person at least two (2) days prior to the meeting. Members of the public may submit written statements at any time before or after the meeting for consideration by the DACOIM. Written statements should be sent to Susan Young, Designated Federal Officer, Immigration and Naturalization Service, 26 Federal Plaza, Room 14–100, New York, New York 10278, telephone: (212) 264–0736. Only written statements received by 5:00 p.m. on May 22, 1998 will be considered for presentation at the meeting. Minutes of the meeting will be available upon request.

Dated: April 27, 1998.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 98–11601 Filed 4–30–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting Notice

Pursuant to the provisions of the Federal Advisory Committee Act (P.L. 92–463 as amended), notice is hereby given of a meeting of the Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time, and place: May 13, 1998, 10:00 am, U.S. Department of Labor, Rm. S–5215 A/B, 200 Constitution Ave., NW, Washington, D.C. 20210.

Purpose: The meeting will include a review and discussion of current issues which influence U.S. trade policy. Potential U.S. negotiating objectives and bargaining positions in current and anticipated trade negotiations will be discussed. Pursuant to 19 U.S.C. 2155(f) it has been determined that the meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions. Accordingly, the meeting will be closed to the public.

For further information contact: Jorge Perez-Lopez, Director, Office of International Economic Affairs, *Phone:* (202) 219–7597.

Signed at Washington, DC, this 25th day of April 1998.

Andrew James Samet,

Deputy Under Secretary, International Affairs.

[FR Doc. 98–11642 Filed 4–30–98; 8:45 am]

BILLING CODE 4510–28–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General Wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None

Volume II

None

Volume III

None

Volume IV

None

Volume V

None

Volume VI

None

Volume VII

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office

(GPO) document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts.'' This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically be subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. this 23rd day of April 1998.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 98–11338 Filed 4–30–98; 8:45 am]

BILLING CODE 4510–27–M

NUCLEAR REGULATORY COMMISSION

[DOCKET NO. 50–341]

Detroit Edison Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–43 issued to the Detroit Edison Company (the licensee) for operation of the Fermi 2 plant located in Monroe County, Michigan.

The proposed amendment would revise Technical Specification (TS) 3.8.1.1 to change the emergency diesel generator (EDG) allowed outage time (AOT) from 3 to 7 days. In order to use the extended AOT, the revised TS will require the licensee to ensure the alternate AC power source (combustion turbine-generator 11–1) is operable and to verify the planned activity is not potentially risk significant in accordance with use of the licensee's configuration risk management program as described in a new paragraph in the Administrative Controls section of the TS.

The amendment was requested in a submittal dated November 22, 1995, as supplemented February 19, April 19, May 3, June 12, and December 4, 1996, January 30 and August 7, 1997, and April 27, 1998. The staff issued a **Federal Register** notice on February 28, 1996 (61 FR 7550), providing the notice of consideration of issuance of the amendment, proposed no significant hazards consideration (NSHC), and opportunity for a hearing. The portions of the November 22, 1995, submittal related to changes in EDG surveillance testing and reporting requirements (also discussed in the NSHC) were addressed in amendment no. 107 issued on June 20, 1996. The February 19, April 19, May 3, June 12, and December 4, 1996, and August 7, 1997, submittals provided additional information but did not change the proposed TS or the staff's initial proposed determination of NSHC. The January 30, 1997, submittal added a verification that the alternate AC source is available prior to entering the 7-day AOT. This submittal also did not change the staff's initial proposed determination of NSHC. The April 27, 1998, submittal added a description of the Fermi 2 configuration risk management program (CRMP) to the Administrative Controls section of the TS. This submittal included a determination of NSHC for the change, as discussed below. The current notice encompasses the changes described in the January 30, 1997, and April 27, 1998, submittals.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the April 27, 1998, supplemental amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Configuration Risk Management Program (CRMP) is an Administrative Program that assesses risk based on plant status. This proposed change does not change the design, configuration, or method of plant operation. Adding the requirement to implement this program for Technical Specification (TS) 3.8.1.1 does not affect the probability or the consequences of an accident.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

This proposed change does not change the design, configuration, or method of plant operation. Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change does not involve a physical modification to the plant, a new mode of operation or a change to the UFSAR [updated final safety analysis report] transient analyses. The proposed change adds additional requirements to the evaluation of equipment outages. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received by the close of business within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should

the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By June 1, 1998 , the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated November 22, 1995, as supplemented February 19, April 19, May 3, June 12, and December 4, 1996, January 30 and August 7, 1997, and April 27, 1998, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Dated at Rockville, Maryland, this 28th day of April 1998.

For the Nuclear Regulatory Commission.

Andrew J. Kugler,

Project Manager, Project Directorate III–1 Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–11656 Filed 4–30–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–387 and 50–388]

Pennsylvania Power and Light Company; Susquehanna Steam Electric Station, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–44 and NPF–22, issued to Pennsylvania Power and Light Company (PP&L, the licensee), for operation of the Susquehanna Steam Electric Station (SSES), Units 1 and 2, located in Luzerne County, Pennsylvania.

Environmental Assessment

Identification of the Proposed Action

The proposed action would amend the Technical Specifications (TSs) to increase the Rod Block Monitor (RBM) flow biased trip setpoints and also change the RBM channel calibration frequency and allowed outage times.

The proposed action is in accordance with the licensee's application for amendment dated November 27, 1996, as supplemented by letter dated February 12, 1997.

The Need for the Proposed Action

The RBM was originally designed to prevent fuel damage during a Rod Withdrawal Error (RWE) event while operating in the power range in a normal mode of operation. The RWE analyses originally assumed that the RBM automatically actuated to stop control rod motion. This automatic stop of control rod motion is the sole design basis of the RBM.

As a result of rod drift events at SSES, the RWE is currently analyzed without taking credit for the RBM to stop control rod motion. The results of these analyses are operating limits that prevent fuel damage from an RWE without the need for an RBM system to automatically actuate to stop control rod motion.

The licensee considered that the RBM system was no longer needed and could be removed from the TSs and in 1996 requested approval from the NRC to remove it. The NRC decided that an acceptable alternative was a proposal to raise the RBM setpoints to reduce its operational impacts. This proposed amendment is about raising the RBM setpoints.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the RBM was initially considered as a system that would prevent fuel damage during an RWE event while operating in the power range in a normal mode of operation. However, the licensee's results of their analyses show that the RBM is not required to prevent fuel damage and the staff agrees with this.

Further, it is noted that with this TS change, the licensee will find the need to do fewer control rod pattern adjustments and a reduction in nuisance alarms. In addition to this, the change should reduce operator interaction with the system (reducing possible man-to-machine interface problems).

The TS changes will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for SSES, Units 1 and 2.

Agencies and Persons Consulted

In accordance with its stated policy, on February 18, 1998, the staff consulted with the Pennsylvania State official, S. Maingi of the Bureau of Radiation Protection, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated November 27, 1996, as supplemented by letter dated February 12, 1997, which 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 Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Dated at Rockville, Maryland, this 27th day of April 1998.

For the Nuclear Regulatory Commission.

Victor Nerses,

Senior Project Manager, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–11621 Filed 4–30–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–22]

Private Fuel Storage, L.L.C., Independent Spent Fuel Storage Installation, Skull Valley Indian Reservation, Tooele County, UT, Notice of Intent To Prepare an Environmental Impact Statement and Conduct Scoping Process

Description of Proposed Action

Private Fuel Storage, L.L.C. (the applicant) submitted an application, dated June 20, 1997, for a license to construct and operate an independent spent fuel storage installation (ISFSI) at the Skull Valley Indian Reservation in Tooele County, Utah. The license, under the provisions of Part 72 to Title 10 of the Code of Federal Regulations (10 CFR part 72), would authorize the applicant to receive, possess, store, and transfer spent nuclear fuel from licensed commercial U.S. nuclear power reactors in dry storage systems. A notice of consideration of issuance of a materials

license for the proposed Private Fuel Storage Facility (PFSF) was published in the **Federal Register** on July 31, 1997 (62 FR 41099).

Environmental Report

In connection with this proposed action, the applicant submitted an Environmental Report in accordance with the requirements specified in 10 CFR part 51 and pursuant to the National Environmental Policy Act of 1969. The Environmental Report is available for public inspection at the Commission's Public Document Room in the Gelman Building, 2120 L Street, NW, Washington, DC, and the Local Public Document Room at the University of Utah, Marriott Library, Documents Division, 295 S. 1500 East, Salt Lake City, Utah 84112–0860.

Environmental Impact Statement

In accordance with NRC regulations specified in 10 CFR 51.20(b)(9), NRC has determined that the proposed action is a major federal action that warrants the preparation of an Environmental Impact Statement (EIS) on the construction and operation of the proposed ISFSI.

NRC will first conduct a scoping process and, as soon as practicable thereafter, prepare a draft EIS for comment by the public and other agencies. The draft EIS will be the subject of a separate notice in the **Federal Register**. After receipt and consideration of comments, the NRC will prepare a final EIS.

Public Scoping Process

The scoping process for the EIS will be used to:

(1) Define the scope of the proposed action which is to be the subject of the EIS.

(2) Determine the scope of the EIS and identify the significant issues to be analyzed in depth.

(3) Identify and eliminate from detailed study issues which are peripheral or are not significant.

(4) Identify any environmental assessments and other EIS which are being or will be prepared that are related to but are not part of the scope of the EIS under consideration.

(5) Identify other environmental review and consultation requirements related to the proposed action.

(6) Indicate the relationship between the timing of the preparation of the environmental analyses and the Commission's tentative planning and decision making schedule.

(7) Identify any cooperating agencies, and as appropriate, allocate assignments for preparation and schedules for completion of the EIS to the NRC and any cooperating agencies.

(8) Describe the means by which the EIS will be prepared, including any contractor assistance to be used.

The NRC invites the following persons to participate in the scoping process:

(1) The applicant, Private Fuel Storage, L.L.C.;

(2) Any person who has petitioned for leave to intervene or who has been admitted as a party to the proceeding on the license application;

(3) Any other Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved or which is authorized to develop and enforce relevant environmental standards;

(4) Affected State and local agencies, including those authorized to develop and enforce relevant environmental standards;

(5) Any affected Indian tribe; and

(6) Any person who has requested an opportunity to participate in the scoping process.

Participants should submit written comments on the EIS scoping process to Dr. Edward Y. Shum, Environmental Project Manager, Spent Fuel Licensing Section, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. To be considered in the scoping process, comments should be postmarked by June 19, 1998.

Participation in the scoping process does not entitle participants to become parties to the proceeding to which the EIS relates. Participation in the adjudicatory proceeding is governed by the procedures specified in 10 CFR 2.714 and 2.715, and in the aforementioned **Federal Register** Notice (62 FR 41099).

Public Scoping Meeting

In accordance with 10 CFR 51.26, the scoping process may include a public scoping meeting to help identify significant issues related to a proposed activity and to determine the scope of issues to be addressed in an EIS. As part of the EIS scoping process related to the applicant's proposed action, NRC will conduct a public scoping meeting at The Ballroom of the Little America Inn, 500 South Main Street, Salt Lake City, Utah 84101, on June 2, 1998, at 6:30 p.m. The meeting will include a briefing by Private Fuel Storage, L.L.C. on the proposed ISFSI, a briefing by the NRC on the environmental review process and the proposed scope of the EIS, and the opportunity for interested agencies, organizations, and individuals to submit comments or suggestions on the environmental issues or proposed scope of the EIS. Persons may register to present oral comments by writing to Dr. Edward Y. Shum, at the aforementioned address, or may register at the meeting. Individual oral comments may be limited in time, depending on the number of persons who register. Comments presented at the meeting will be considered in the EIS scoping process.

Summary

At the conclusion of the scoping process, NRC will prepare a concise summary of the determinations and conclusions reached, including the significant issues identified, and will send a copy of the summary to each participant in the scoping process.

For additional information about the proposed action, the EIS, or the scoping process, contact Dr. Edward Y. Shum at the aforementioned address or by telephone at (301) 415–8545.

Dated at Rockville, Maryland, this 24th day of April 1998.

For the Nuclear Regulatory Commission.

Charles J. Haughney,

Acting Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98–11620 Filed 4–30–98; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23127; 812–10988]

TCW/BQA Enhanced 500 Limited Partnership, et al.; Notice of Application

April 24, 1998.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for an order 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 seek an order to permit certain limited partnerships to transfer their assets to corresponding series of a registered open-end management investment company in exchange for the series' shares.

APPLICANTS: TCW/BQA Enhanced 500 Limited Partnership, TCW Emerging Markets Fixed Income Total Return II Limited Partnership, TCW Large Cap Growth Limited Partnership, TCW Large

Cap Value Limited Partnership (collectively, ''Partnerships''), TCW Galileo Funds, Inc. (''Company''), TCW Asset Management Company (''TAMCO''), and TCW Funds Management, Inc. (''Adviser'').

FILING DATE: The application was filed on February 4, 1998. Applicants have agreed to file an additional 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 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 May 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, 865 South Figueroa Street, Suite 1800, Los Angeles, CA 90017.

FOR FURTHER INFORMATION CONTACT: Annmarie J. Zell, Staff Attorney, at (202) 942–0532, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (telephone (202) 942–8090).

Applicants' Representations

1. TWC/BQA Enhanced 500 Limited Partnership, TCW Emerging Markets Fixed Income Total Return II Limited Partnership, TCW Large Cap Growth Limited Partnership, and TCW Large Cap Value Limited Partnership were organized as California limited partnerships on May 31, 1996, August 23, 1996, June 22, 1993, and October 13, 1997, respectively. The Partnerships are not registered under the Act in reliance on section 3(c)(1) of the Act.

2. TAMCO, a wholly owned subsidiary of The TCW Group, Inc., serves as the sole general partner of the Partnerships and has exclusive responsibility for their overall management, control, and administration. TAMCO is an investment adviser registered under the Investment Advisers Act of 1940 (''Advisers Act'') and serves as an investment adviser with respect to the Partnerships' assets.

3. The Company, a Maryland corporation, is an open-end management investment company registered under Act. Currently, the Company offers seventeen series (''Existing Funds'') and proposes to offer four additional series (''New Funds''), each of which will correspond to a Partnership in terms of investment objective and policies.

4. The Company has entered into an investment advisory agreement with the Adviser, an investment adviser registered under the Advisers Act, pursuant to which the Adviser will provide advisory services to the Existing Funds and New Funds. The officers of TAMCO serving as portfolio managers of the Partnerships also serve as officers of the Adviser and will serve as portfolio managers of the corresponding New Funds.

5. Applicants propose that, pursuant to an Agreement and Plan of Exchange (''Plan''), each of the New Funds will acquire assets from its corresponding Partnership in exchange for New Fund shares (''Exchanges''). New Fund shares delivered to the Partnerships in the Exchanges will have an aggregate net asset value (''NAV'') equal to the NAV of the assets transferred by the Partnerships to the Company (except for any reduction due to the New Funds' payment of organizational expenses). Upon consummation of the Exchanges, each Partnership will distribute the New Fund shares to its respective limited partners, with each limited partner receiving shares having an aggregate NAV equivalent to the NAV of the units of the Partnership held by the limited partner prior to the Exchange (except for the effect of the payment of certain organizational expenses by the New Funds and the retention of assets by the Partnership to pay accrued expenses). After payment of any accrued expenses from retained assets, each Partnership will be liquidated and dissolved. No liabilities of a Partnership will be transferred to its corresponding New Fund; all known liabilities, other than accrued expenses discussed above, will be paid by each Partnership prior to the transfer of its assets to the corresponding New Fund. The General Partner, TAMCO, will be responsible for any unknown liabilities of each Partnership.

6. The expenses of the Exchanges will be borne by TAMCO. Organizational expenses, up to a maximum of $50,000 per New Fund, will be paid by the New Funds and amortized over five years. Organizational expenses in excess of $50,000 per New Fund will be paid by the Adviser. Any unamortized organization expenses associated with the organization of the New Funds at the time the Adviser withdraws its initial investment in the Company will be borne by the Adviser, not the New Funds. Through October 31, 1998, the Adviser will place a limit on the annual expenses of each New Fund. This limit is generally intended to cap New Fund expense ratios at levels projected to be incurred during 1998 by the Partnerships.

7. The board of directors of the Company (''Board'') and TAMCO have considered the desirability of the Exchanges from the points of view of the company and the Partnerships, and all of the members of the Board (including all of the independent directors within the meaning of section 2(a)(19) of the Act) and TAMCO have approved the Exchanges and concluded that: (i) the terms of the Exchanges have been designated to meet the criteria in section 17(b) of the Act; (ii) the Exchanges are desirable as a business matter from the respective points of view of the Company and the Partnerships; (iii) the Exchanges are in the best interests of the Company and the Partnerships; (iv) the Exchanges are reasonable and fair, do not involve overreaching, and are consistent with the policies of the Act; (v) the Exchanges are consistent with the policies of the Company and the Partnerships; and (vi) the interests of existing shareholders in the Company and existing partners in the Partnerships will not be diluted as a result of the Exchanges. These findings, and the basis upon which the findings are made, have been fully recorded in the respective minute books of the Company and TAMCO.

8. The Exchanges will not be effected until (i) the Company's Form N–1A registration statement has been filed; (ii) the Company and the Partnerships have received a favorable opinion of counsel regarding the tax consequences of the Exchanges; and (iii) the SEC has issued the requested order.

Applicants' Legal Analysis

1. Section 17(a) of the Act prohibits any affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal from selling to or purchasing from the registered investment company any security or other property. Section 2(a)(3) of the Act defines an ''affiliated person'' as, among other things, any person directly or indirectly controlling, controlled by, or under common control

with, such other person; and officer, director, partner, copartner or employee of such other person; or, if such other person is an investment company, any investment adviser of the investment company. Each Partnership is an affiliated person of an affiliated person of the Company because TAMCO, the general partner of the Partnerships, and the Adviser are under common control. Thus, the proposed Exchanges may be deemed to be prohibited under section 17(a) of the Act.

2. Rule 17a–7 exempts certain purchase and sale transactions otherwise prohibited by section 17(a) if an affiliation exists solely by reason of having a common investment adviser, common directors, and/or common officers, provided, among other requirements, that the transaction involves a cash payment against prompt delivery of the security. The relief provided by rule 17a–7 may not be available to applicants because the transaction is effected on a basis other than cash. Applicants also note that TAMCO is not only the investment adviser but also has a one percent economic interest in each Partnership. As a result, applicants believe that the relief afforded by rule 17a–7 is not available.

3. Section 17(b) of the Act authorized the SEC to exempt any person from the provisions of section 17(a) if the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned and the proposed transaction is consistent with the policy of each registered investment company concerned and the general purposes of the Act.

4. Applicants believe that the proposed Exchanges satisfy the requirements of section 17(b). Applicants state that because New Fund shares will be issued to the limited partners at net asset value and only nominal shares will be outstanding after the completion of the Exchanges, their interests will not be diluted. Applicants also state that the investment objectives and policies of each New Fund are substantially similar to its corresponding Partnership and that after the Exchanges, limited partners will hold substantially the same assets as Company shareholders as they held as limited partners. Applicants also note that the partners will become investors in an entity that offers greater liquidity, without incurring immediate tax consequences or transaction and brokerage charges. In this sense, applicants submit that the Exchanges can be viewed as a change in the form in which assets are held, rather than a disposition giving rise to section 17(a) concerns.

Applicants' Condition

Applicants agree that the order granting the requested relief will be subject to the following condition:

The Exchanges will comply with the terms of rule 17a–7(b) through (f).

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–11565 Filed 4–30–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39909; File No. SR–BSE–98–4]

Self-Regulatory Organization; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange, Inc., Relating to an Administrative Change to its Listing and Maintenance Rules

April 24, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on April 10, 1998, the Boston Stock Exchange, Inc. (''Exchange'' or ''BSE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. the Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to move the paragraph governing the suspension and restoration of trading in an Exchange listed security, currently located in Chapter XXIV, ¶ 2220 of the Exchange's rules, to Chapter XXVII, ¶ 2264.

The text of the proposed rule change is available at the Office of the Secretary, The Exchange, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this rule change is to move the paragraph governing the suspension and restoration of trading in an Exchange listed security, currently located in Chapter XXIV, ¶ 2220 of the Exchange's rules, to Chapter XXVII, ¶ 2264. The proposed rule change is intended to incorporate all of the Exchange's listing and maintenance requirements in Chapter XXVII. No changes are being made to the text of the rule being relocated.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)(5) of the Act.[2]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change is concerned solely with the administration of the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act[3] and subparagraph (e)(3) of Rule 19b–4 thereunder.[4] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78f(b)(5).

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(e)(3).

purposes of the Act. In reviewing this filing, the Commission considered the proposal's impact on efficiency, competition, and capital formation.[5]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. 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 submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–BSE–98–4 and should be submitted by May 22, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Jonathan G. Katz,

Secretary.

[FR Doc. 98–11566 Filed 4–3010–98; 8:45 am]

BILLING CODE 8010–01–M

[5] *See* 15 U.S.C. 78c(f).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39920; File No. SR–DCC–98–01]

Self-Regulatory Organizations; Delta Clearing Corp.; Order Granting Approval of a Proposed Rule Change to Permit the Use of Mortgage Backed Securities as Margin Collateral

April 27, 1998.

On January 5, 1998, Delta Clearing Corp. (''Delta'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–DCC–98–01) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on February 25, 1998.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

Delta's participants may clear and settle repurchase and reverse repurchase agreements in both treasury securities[3] (''treasury repos'') and in mortgage backed securities[4] (''mortgage backed repos'') through Delta's system. Some participants only clear and settle mortgage backed repos through Delta. Because Delta currently only accepts federal funds[5] or treasury securities as margin collateral, these participants incur an additional cost associated with obtaining treasury securities for purposes of supplying margin collateral. Because these participants already possess mortgage backed securities related to the transactions they are clearing through Delta, it would be a more straightforward process for them to honor their margin obligations with these mortgage backed securities.

Delta has stated its belief that with appropriate haircuts, the acceptance of margin in the form of mortgage backed securities should pose no additional risk to the system. Delta notes that the Commission under its net capital rule generally applies the same haircuts to treasury securities and mortgage backed securities.[6] Consistent with Delta's treatment of treasury securities used for margin collateral, Delta will value mortgage backed securities in accordance with the schedule of applicable haircuts found in the Commission's uniform net capital rule.[7] Furthermore, Delta notes that its clearing bank, The Bank of New York, will accept mortgage backed securities from Delta without further haircuts.

II. Discussion

Section 17A(b)(3)(F) of the Act[8] requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission believes that the rule change is consistent with Delta's obligations under the Act. The rule change should encourage wider use of Delta's system by providing participants with the ability to more efficiently and more economically meet their margin requirements. The revised margin collateral procedures should especially encourage more use of Delta's system by those participants that only clear and settle mortgage backed repos by allowing these participants to honor their margin obligations with mortgage backed securities they possess. Wider use of Delta's system should assist Delta in promoting the prompt and accurate clearance and settlement of securities transactions.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, prusuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DCC–98–01) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Jonathan G. Katz,

Secretary.

[FR Doc. 98–11653 Filed 4–30–98; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 39684 (February 19, 1998), 63 FR 9621.

[3] Treasury securities are defined in Delta's procedures as a treasury bill, treasury bond or treasury note issued by the United States Department of the Treasury.

[4] Mortgage backed securities are defined in Delta's procedures as book entry securities directly issued by the Federal National Mortgage Association (''FNMA'') or Federal Home Loan Mortgage Corporation (''FHLMC''), as applicable, through its mortgage origination program, and which is designed to receive principal payments using a predetermined principal balance schedule. A mortgage security may either be a fixed rate mortgage security or an adjustable rage mortgage security. All of the following securities are excluded from the definition of mortgage securities: (i) securities which are issued in registered or bearer form, (ii) securities which are not transferable through the Federal Reserve System, (iii) securities which are not issued or guaranteed directly by FNMA or FHLMC, (iv) securities where the underlying assets are mortgage backed securities, rather than a pool of mortgages, and (v) notional, interest only, principal only, accrual and partial accrual securities, and floaters and inverse floaters.

[5] Federal funds are defined in Delta's procedures as cash balances available for immediate withdrawal in accounts maintained at banks that are members of the Federal Reserve system.

[6] Section 3(a)(42)(B) of the Act defines government securities to include securities which are issued or guaranteed by corporations in which the United States has a direct or indirect interest and which are designated by the Secretary of the Treasury for exemption as necessary or appropriate in the public interest or for the protection of investors. The Department of Treasury has designated securities issued by FNMA and by FHLMC as exempt. Notice issued by the Department of Treasury (October 7, 1987), 52 FR 38559.

[7] Rule 15c3–1(c)(2)(vi)(A)(*1*), 17 CFR 240.15c3–1(c)(2)(vi)(A)(*1*).

[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39883A; File No. SR–NASD–97–69]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change, as Amended, and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 to the Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to the Tape Recording of Conversations

April 23, 1998.

Correction

In FR Document No. 98–10796, beginning on page 20232 for Tuesday, April 23, 1998, make the following correction. On page 20235, second column, the first full paragraph, revise the second sentence to read:

''The procedures would require, at a minimum, that the member tape record all telephone conversations between all of its registered persons and both existing and potential customers for a period of two years, and maintain these supervisory procedures for two years.''

Jonathan G. Katz,

Secretary.

[FR Doc. 98–11567 Filed 4–30–98; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Comments should be submitted on or before June 30, 1998.

FOR FURTHER INFORMATION CONTACT: Curtis B. Rich, Management Analyst, Small Business Administration, 409 3rd Street, S. W., Suite 5000, Washington, D. C. 20416. Phone Number: 202–205–6629.

SUPPLEMENTARY INFORMATION:

Title: ''8 (a) Export Survey Initiative''.

Type of Request: New Request.

Form No: N/A.

Description of Respondents: 8 (a) Firms who are located in the top ten exporting states and have more than one of the SIC Codes listed as the top ten for exporting.

Annual Responses: 200.

Annual Burden: 50.

Comments: Send all comments regarding this information collection to William A. Fisher, Acting Associate Administrator, Office of Minority Enterprise Development, Small Business Administration, 409 3rd Street, S.W., Suite 8000, Washington, D.C. 20416. Phone No: 202–205–6412.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Dated: April 27, 1998.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 98–11540 Filed 4–30–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster #9841]

Commonwealth of Pennsylvania and Contiguous Counties in Ohio

Mercer County and the contiguous Counties of Butler, Crawford, Lawrence, and Venango in Pennsylvania and Mahoning and Trumbull Counties in Ohio constitute an economic injury disaster loan area as a result of a fire that occurred on April 6, 1998 in the Hermitage Square Plaza in the City of Hermitage, Pennsylvania. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance as a result of this disaster until the close of business on January 25, 1999 at the address listed below or other locally announced locations: Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd. South, 3rd Fl., Niagara Falls, NY 14303.

The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

The economic injury number for Ohio is 9842002.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: April 23, 1998.

Aida Alvarez,

Administrator.

[FR Doc. 98–11539 Filed 4–30–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3079]

Arkansas; (and Contiguous Counties in Missouri and Tennessee)

Mississippi County and the contiguous Counties of Craighead, Crittenden, and Poinsett in the State of Arkansas; Dunklin and Pemiscot Counties in the State of Missouri; and Dyer, Lauderdale, and Tipton Counties in the State of Tennessee constitute a disaster area as a result of damages caused by severe storms and tornadoes that occurred on April 16, 1998. Applications for loans for physical damages as a result of this disaster may be filed until the close of business on June 22, 1998 and for economic injury until the close of business on January 25, 1999 at the address listed below or other locally announced locations: Small Business Administration, Disaster Area 3 Office, 400 Amon Carter Blvd., Suite 102, Ft. Worth, TX 76155.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	7.000
Homeowners Without Credit Available Elsewhere	3.500
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	7.125
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The numbers assigned to this disaster for physical damages are 307912 for Arkansas; 308012 for Missouri; and 308112 for Tennessee. For economic injury the numbers are 984300 for Arkansas; 984400 for Missouri; and 984500 for Tennessee.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: April 23, 1998.

Aida Alvarez,

Administrator.

[FR Doc. 98–11538 Filed 4–30–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3069]

State of Georgia; Amendment #5

In accordance with notices from the Federal Emergency Management Agency dated April 16, 1998, the above-numbered Declaration is hereby amended to include Houston County in the State of Georgia as a disaster area due to damages caused by severe storms and flooding. In addition, the incident period is established as beginning on February 14, 1998 and continuing.

Any counties contiguous to the above-named primary county have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is May 10, 1998 and for economic injury the termination date is December 11, 1998.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: April 17, 1998.

Herbert L. Mitchell,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 98–11536 Filed 4–30–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3077]

State of Ohio

Ottawa County and the contiguous Counties of Erie, Lucas, Sandusky, and Wood in the State of Ohio constitute a disaster area as a result of severe thunderstorms and lake effect damages that occurred April 9, 1998. Applications for loans for physical damage from this disaster may be filed until the close of business on June 22, 1998 and for economic injury until the close of business on January 21, 1999 at the address listed below or other locally announced locations: Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	7.000
Homeowners Without Credit Available Elsewhere	3.500
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	7.125
For Economic Injury	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 307711 and for economic injury the number is 983700.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: April 21, 1998.

Aida Alvarez,

Administrator.

[FR Doc. 98–11537 Filed 4–30–98; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice #2795]

United States International Telecommunications Advisory Committee (ITAC); Notice of Meeting

The Department of State announces that a meeting of the United States International Telecommunications Advisory Committee (ITAC) will be held May 13, 2:00–4:00 p.m., in Room 1107 of the Department of State, 2201 ''C'' Street, N.W., Washington, D.C. The purpose of ITAC is to advise the Department on policy, technical and operational matters and to provide strategic planning recommendations, with respect to international telecommunications and information issues.

The agenda of the ITAC meeting will include: (1) Report and assessment of the World Telcoms Development Conference (WTDC98) held recently in Malta; (2) report on the OAS/CITEL Assembly held recently in Quito, and related activities; and (3) presentation of U.S. positions for the upcoming ITU Council (May 20–29 in Geneva) and related Plenipotentiary Conference preparations. Questions regarding the agenda of ITAC activities in general may be directed to Richard Shrum, Department of State (Ph 202–647–0050).

Members of the general public may attend the meetings and join in the discussions, subject to the instructions of the chair. In this regard, entry to the building is controlled. If you wish to attend, please send a fax to 202–647–7407 not later than 24 hours before the scheduled meeting and include the name of the meeting, your name, affiliation, social security number and date of birth. One of the following valid photo ID's will be required for admittance: U.S. driver's license with picture, U.S. passport, or U.S. government ID (company ID's are no longer accepted by Diplomatic Security). Enter from the ''C'' Street Main Lobby.

Dated: April 22, 1998

John Gilsenan,

Acting Executive Director for International Telecommunications Advisory Committee.

[FR Doc. 98–11598 Filed 4–30–98; 8:45 am]

BILLING CODE 4710–45–M

DEPARTMENT OF STATE

[Public Notice No. 2796]

International Telecommunication Advisory Committee (ITAC), Telecommunication Standardization Sector (ITAC–T) Study Group B; Meeting Notice

The Department of State announces a meeting, under the International Telecommunication Advisory Committee, of Study Group B of the Telecommunication Standardization Sector (ITAC–T). The meeting will be held Wednesday, May 27, 1998, beginning at 9:00 a.m. and scheduled for all day, in Room 1107 of the Department of Commerce, 325 Broadway, Boulder, CO 80303.

The purpose of this meeting is to develop United States positions for specific upcoming meetings dealing with standards activities of the International Telecommunication Union-telecommunication Standardization Sector (ITU–T).

In particular, the meeting agenda will include preparation for a planned ITU–T meeting of Study Group 4 (TMN and Network Maintenance) for June 22–July 3, 1998. Questions regarding the agenda, or Study Group B activities may be directed to William Utlaut, Department of Commerce (303 497–5993), fax number (303 497–5216).

Dated: April 13, 1998.

William J. Kirsch,

Chairman, ITAC–T Sector.

[FR Doc. 98–11599 Filed 4–30–98; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF STATE

[Public Notice #2790]

Shipping Coordinating Committee, Maritime Safety Committee; Notice of Meeting

The Shipping Coordinating Committee will conduct an open meeting at 9:30 A.M. on Tuesday, May 5, 1998, in Room 2415, at U.S. Coast Guard Headquarters, 2100 2nd Street,

SW, Washington, D.C. The purpose of this meeting will be to finalize preparations for the 69th Session of the Maritime Safety Committee, and associated bodies of the International Maritime Organization (IMO), which is scheduled for May 11–20, 1998, at IMO Headquarters in London. At this meeting, papers received and the draft U.S. positions will be discussed.

Among other things, the items of particular interest are:

a. Adoption of amendments to the Safety of Life at Sea.

b. Role of the human element.

c. Matters related to the Irradiated Nuclear Fuel (INF) Code.

d. Formal safety assessment.

e. Sole look-out at night, and;

f. Report of eight subcommittees—Stability, Load Lines and Fishing Safety; Fire Protection; Safety of Navigation; Ship Design and Equipment; Dangerous Goods, Solid Cargoes and Containers; Radiocommunication and Search and Rescue; Bulk Liquids Gases and Training and Watchkeeping.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing to Mr. Joseph J. Angelo, Commandant (G–MS), U.S. Coast Guard, 2100 2nd Street, SW, Room 1218, Washington, DC 20593–0001 or by calling (202) 267–2970.

Dated: March 31, 1998.

Russell A. La Mantia,

Chairman, Shipping Coordinating Committee.

[FR Doc. 98–11596 Filed 4–30–98; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF STATE

[Public Notice #2794]

Shipping Coordinating Committee Subcommittee on Safety of Life at Sea and Associated Bodies; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 12:00 P.M. on Monday, June 15, 1998 in Room 2415, at U.S. Coast Guard Headquarters, 2100 Second Street, SW, Washington, DC 20593–0001. The purpose of the meeting is to finalize preparations for the Flag State Implementation (FSI) Subcommittee on Safety of Life at Sea (SOLAS) and associated bodies of the International Maritime Organization (IMO) which is scheduled for June 22–26, 1998, at the IMO Headquarters in London. At this meeting, the U.S. position on documents submitted for consideration at the sixth session of the FSI Subcommittee will be discussed.

Among other things, the items of particular interest are:

1. Implementation of IMO instruments: Responsibilities of Governments and measures to encourage flag State compliance.

2. Revision of survey guidelines (resolution A.740(18) and Guidelines on surveys (resolution A.560(14)).

3. Guidelines for unscheduled inspections on Ro-Ro passenger ships.

4. Exemption certificates.

5. Surveys of emergency towing arrangements.

6. Deficiency reports.

7. Mandatory reports under MARPOL 73/78.

8. Mandatory reporting procedures on ship detentions.

9. Casualty statistics.

Members of the public may attend the meeting up to the capacity of the room. Interested persons may seek information by writing: LTJG Dave Deaver, U.S. Coast Guard Headquarters (G–MOC–4), 2100 Second Street, SW, Room 1116, Washington, DC 20593–0001 or by calling: (202) 267–0502.

Dated: April 24, 1998.

Russell A. La Mantia,

Chairman, Shipping Coordinating Committee.

[FR Doc. 98–11597 Filed 4–30–98; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF STATE

[Public Notice #2797]

Shipping Coordinating Committee International Maritime Organization (IMO) Legal Committee; Notice of Meeting

The U.S. Shipping Coordinating Committee (SHC) will conduct an open meeting at 10:00 a.m., on Thursday, May 14, 1998, in room 2415 at U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, D.C. The purpose of this meeting is to report on the 77th session of the IMO Legal Committee, which will be held April 20–24, in London, regarding the provision of financial security for seagoing vessels, compensation for pollution from ships' bunkers, a draft convention on wreck removal, and other matters. This meeting will also be a further opportunity for interested members of the public to express their views on whether the United States should ratify the Hazardous and Noxious Substances Convention, adopted in London in May, 1996.

Members of the public are invited to attend the SHC meeting, up to the seating capacity of the room. For further information, or to submit views concerning the subjects of discussion, write to either Captain Malcolm J. Williams, Jr., of Lieutenant Commander Bruce P. Dalcher, U.S. Coast Guard (G–LMI), 2100 Second Street, S.W., Washington, D.C. 20593, or by telephone (202) 267–1527, telefax (202) 267–4496.

Dated: April 13, 1998.

Stephen M. Miller,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 98–11600 Filed 4–30–98; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings, Agreements Filed During the Week of April 24, 1998

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–98–3761
Date Filed: April 20, 1998
Parties: Members of the International Air Transport Association
Subject:
PTC12 Telex Mail Vote 934 (as corrected by TE602)
Middle East-Havana Excursion Fares
Intended effective date: May 1, 1998

Docket Number: OST–98–3762
Date Filed: April 20, 1998
Parties: Members of the International Air Transport Association
Subject:
PTC1 Telex Mail Vote 932 (as amended by TD248)
US-Argentina/Brazil/Uruguay fares
Intended effective date: May 1, 1998
r1—041c
r2—051c

Docket Number: OST–98–3777
Date Filed: April 22, 1998
Parties: Members of the International Air Transport Association
Subject:
PSC/MV/108 dated March 6, 1998
Mail vote S073 (Economic & Monetary Union in Europe)
Amendments dated April 21, 1998 (attached to pleading)
r–1—720a, r–4—725a, r–7—726e
r–2—722, r–5—725b, r–8—726f
r–3—722f, r–6—726a, r–9—742a
Intended effective date: amended to June 1, 1998

Docket Number: OST–98–3778
Date Filed: April 22, 1998
Parties: Members of the International Air Transport Association
Subject:
CTC12 Telex Mail Vote 935 r1–3
US-Austria/Belgium/Germany/

Netherlands/
Scandinavia/Switzerland Cargo Rate Revalidation/Amendment
Telex Amendment to Mail Vote (TW946)
Intended effective date: October 1, 1998
r1—002
r2—554f
r3—584ff

Docket Number: OST–98–3779
Date Filed: April 22, 1998
Parties: Members of the International Air Transport Association
Subject:
PAC/Reso/397 dated March 23, 1998
Reso 850a (Saudi Arabia)
Intended effective date: May 16, 1998

Docket Number: OST–98–3784
Date Filed: April 24, 1998
Parties: Members of the International Air Transport Association
Subject:
PTC1/PTC12 Telex Mail Vote 936
Special Construction Rules—Reso 024j
(Within TC1 and Europe-Africa)
Intended effective date: May 15, 1998

Paulette V. Twine,
Federal Register Liaison.
[FR Doc. 98–11646 Filed 4–30–98; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending April 24, 1998

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–98–3767.
Date Filed: April 24, 1998.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: May 22, 1998.
Description: Application of Western Pacific Airlines, Inc., pursuant to 49 U.S.C. Section 41105, requests authority to transfer its certificate of public convenience and necessity to Blue Line Holding Corp. (''Blue Line''), the assignee of Star Air Trading Corp. (''Star'').

Paulette V. Twine,
Federal Register Liaison.
[FR Doc. 98–11645 Filed 4–30–98; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Correcting Unsafe Conditions That May Develop in Foreign-Manufactured Aircraft

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of policy statement.

SUMMARY: This notice announces the FAA's policy with respect to foreign mandatory continuing airworthiness information, when no aircraft of the affected design are currently in operation in the U.S.

FOR FURTHER INFORMATION CONTACT: Linda S. Walker, Aircraft Engineering Division, AIR–120, Aircraft Certification Service, FAA, 800 Independence Avenue, S.W., Washington, D.C. 20591, telephone (202) 267–9592.

SUPPLEMENTARY INFORMATION:

Discussion

Safety of civil aircraft is assured by a number of means. First the design of such aircraft must meet the safety standards prescribed in parts 21 through 31 of the Federal Aviation Regulation (FAR). Compliance of a particular design (i.e. a particular model) with those standards is evidenced by the issuance of a document known as a type certificate. The drawings and other data which describe that design are known as the type design. A related document is the type certificate data sheet which prescribes the conditions and limitations under which the design meets those standards. Second, each individual aircraft must be shown to conform to that design and be in condition for safe operation. That an aircraft conforms to the approved design and is in condition for safe operation are evidenced by issuance of another document for that particular aircraft known as an airworthiness certificate. Once an individual aircraft receives an airworthiness certificate and goes into service, it must be properly maintained so that it remains in a condition for safe operation.

Notwithstanding compliance with the above requirements, an unsafe condition may be discovered during the lifetime of the aircraft. If an unsafe condition is discovered, and the unsafe condition is likely to exist or develop in other aircraft of the same design, the FAA requires the operator of each affected aircraft to take action to correct that unsafe condition. The required corrective action is specified in a regulation known as an airworthiness directive. Depending on the nature of the unsafe condition, the required corrective action may include a modification of the aircraft, replacement of certain components, periodic inspections or imposition of additional operating limits.

In the case of aircraft imported from other countries, the FAA relies to a certain extent on findings made on its behalf by the airworthiness authority of the state of design (i.e., the country having jurisdiction over the organization responsible for the type design). Under the provisions of Annex 8 to the Convention on International Civil Aviation (''Airworthiness of Aircraft'') and bilateral agreements (bilateral airworthiness agreements and bilateral aviation safety agreements), the airworthiness authority of the state of design certifies to the FAA that a design complies with the applicable standards. Based largely on that certification, the FAA issues a type certificate for that design. In addition, the airworthiness authority certifies to the FAA that an individual aircraft being imported into the U.S. conforms to that design and is in condition for safe operation. Based on that certification, the FAA issues a U.S. airworthiness certificate for that aircraft. Under the provisions of Annex 8 and the bilateral agreements, the airworthiness authority of the country of manufacture must also advise the FAA of all mandatory continuing airworthiness information (MCAI), i.e. the foreign equivalent to FAA airworthiness directives. The FAA assesses that information and determines whether to issue airworthiness directives to require the necessary corrective actions.

In some instances, a type certificate is issued by the FAA for a foreign design long before an individual aircraft of that design is imported into the U.S. Similarly, there are instances in which no aircraft of a specific design currently has a U.S. airworthiness certificate because all that were imported have since been exported, damaged beyond repair or scrapped. Based on experience gained with aircraft of the same design operating in other countries, the airworthiness authority of the state of design frequently advises the FAA, in the meantime, of a number of mandatory airworthiness modifications and special inspections. Even when

there are no aircraft of a design currently operating in this country, the FAA's practice has been to issue corresponding airworthiness directives requiring the necessary corrective action to be taken in the event an aircraft of that design is imported later.

It is recognized that this practice requires the expenditure of considerable FAA resources for safety benefits which could also be achieved through existing requirements for issuance of airworthiness certificates. As discussed above, the airworthiness authority of the state of design must, under the provisions of Annex 8 to the Convention on International Civil Aviation and bilateral agreements, certify to the FAA that an individual aircraft is in condition for safe operation. In order to make that certification, the authority must determine that the aircraft complies with each applicable MCAI it has issued. Sometimes a used aircraft of a particular design is imported from a country other than the state of design. In that event, the finding that the aircraft is in a condition for safe operation must be made by FAA personnel or persons authorized to do so on behalf of the FAA. Regardless of whether it is imported directly from the state of design, an aircraft must be found to be in a condition for safe operation before an airworthiness certificate can be issued; therefore, the issuance of an airworthiness directive merely duplicates existing requirements if no aircraft of the affected design (i.e. the affected model) already has a U.S. airworthiness certificate. In lieu of this duplicative practice, the FAA is adopting an alternative procedure that may be used when no aircraft of the affected model has been issued a U.S. airworthiness certificate.

Under this alternative procedure, the FAA will continue to review each MCAI when received to determine whether it meets established FAA criteria for required corrective action. As is current FAA practice, no further action will be taken for an MCAI that does not meet those criteria. As is also the current practice, an airworthiness directive will be issued for an MCAI that meets those criteria if there is one or more aircraft of the affected design currently in service in this country. If no aircraft of the affected design currently has a U.S. airworthiness certificate, the FAA may elect to defer regulatory action on the MCAI that meet those criteria until an application for airworthiness certificate is made for an aircraft of that design. Compliance with the provisions of each MCAI that meets those criteria will be required then to support a finding that the aircraft is in a condition for safe operation. In the meantime, the FAA will make available, upon request, a list of such MCAI to prospective purchasers of aircraft of that design (i.e. that model).

If an aircraft of the affected model does receive a U.S. airworthiness certificate, the FAA will amend the type certificate data sheet for that model to list the specific MCAI's for which compliance must be shown before the aircraft can be found to be in a condition for safe operation. The FAA will also publish a notice in the **Federal Register** at that time to inform the public of that amendment. The FAA will issue AD's for any subsequent MCAI's that meet FAA criteria for corrective action.

This alternative procedure is not considered appropriate at this time for other products, such as engines or propellers, since there is presently no reliable means to ensure that none have been imported and installed in U.S. registered aircraft.

Issued in Washington, DC, on April 24, 1998.

Abbas A. Rizvi,

Acting Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 98–11648 Filed 4–30–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

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 Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Race and National Origin Identification.

DATES: Written comments should be received on or before June 30, 1998 to be assured of consideration.

ADDRESS: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Dennis Snyder, Employment Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8553.

SUPPLEMENTARY INFORMATION:

Title: Race and National Origin Identification

Form Number: ATF F 2931.1

Abstract: This form on its own and when combined with other Bureau tracking forms will allow the Bureau to determine its applicant/employee pool, and thereby, enhance its recruitment plan. It will also allow the Bureau to determine how its diversity/EEO efforts are progressing and to determine adverse impact on the employee selection process.

Current Actions: This is a new collection of information. Respondents provide the information once per application. The information is voluntary.

Type of Review: New

Affected Public: Individuals or households

Estimated Number of Respondents: 10,000

Estimated Time Per Respondent: 3 minutes

Estimated Total Annual Burden Hours: 500

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 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.

Dated: April 22, 1998.

William T. Earle,

Assistant Director (Management)/CFO.

[FR Doc. 98–11524 Filed 4–30–98; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

[Notice No. 360]

Commerce in Explosives; List of Explosive Materials

Pursuant to the provisions of section 841(d) of Title 18, United States Code, and 27 CFR 55.23, the Director, Bureau of Alcohol, Tobacco and Firearms, must publish and revise at least annually in the **Federal Register**, a list of explosives determined to be within the coverage of 18 U.S.C. Chapter 40, Importation, Manufacture, Distribution and Storage of Explosive Materials. This chapter covers not only explosives, but also blasting agents and detonators, all of which are defined as explosive materials in section 841(c) of Title 18, United States Code. Accordingly, the following is the 1998 List of Explosive Materials subject to regulation under 18 U.S.C. Chapter 40, which includes both the list of explosives (including detonators) required to be published in the **Federal Register** and blasting agents. The list is intended to include any and all mixtures containing any of the materials on the list. Materials constituting blasting agents are marked by an asterisk. While the list is comprehensive, it is not all inclusive. The fact that an explosive material may not be on the list does not mean that it is not within the coverage of the law if it otherwise meets the statutory definitions in section 841 of Title 18, United States Code. Explosive materials are listed alphabetically by their common names followed by chemical names and synonyms in brackets. This revised list supersedes the List of Explosive Materials dated April 25, 1997, FR, Vol. 62 No. 80, and will be effective as of the date of publication in the **Federal Register**.

List of Explosive Materials

A

Acetylides of heavy metals.
Aluminum containing polymeric propellant.
Aluminum ophorite explosive.
Amatex.
Amatol.
Ammonal.
Ammonium nitrate explosive mixtures (cap sensitive).
*Ammonium nitrate explosive mixtures (non cap sensitive).
Aromatic nitro-compound explosive mixtures.
Ammonium perchlorate explosive mixtures.
Ammonium perchlorate composite propellant.
Ammonium picrate [picrate of ammonia, Explosive D] .
Ammonium salt lattice with isomorphously substituted inorganic salts.
*ANFO [ammonium nitrate-fuel oil].

B

Baratol.
Baronol.
BEAF [1, 2-bis (2, 2-difluoro-2-nitroacetoxyethane)].
Black powder.
Black powder based explosive mixtures.
*Blasting agents, nitro-carbo-nitrates, including non cap sensitive slurry and water gel explosives.
Blasting caps.
Blasting gelatin.
Blasting powder.
BTNEC [bis (trinitroethyl) carbonate].
Bulk salutes.
BTNEN [bis (trinitroethyl) nitramine].
BTTN [1,2,4 butanetriol trinitrate].
Butyl tetryl.

C

Calcium nitrate explosive mixture.
Cellulose hexanitrate explosive mixture.
Chlorate explosive mixtures.
Composition A and variations.
Composition B and variations.
Composition C and variations.
Copper acetylide.
Cyanuric triazide.
Cyclotrimethylenetrinitramine [RDX].
Cyclotetramethylenetetranitramine [HMX].
Cyclonite [RDX].
Cyclotol.

D

DATB [diaminotrinitrobenzene].
DDNP [diazodinitrophenol].
DEGDN [diethyleneglycol dinitrate].
Detonating cord.
Detonators.
Dimethylol dimethyl methane dinitrate composition.
Dinitroethyleneurea.
Dinitroglycerine [glycerol dinitrate].
Dinitrophenol.
Dinitrophenolates.
Dinitrophenyl hydrazine.
Dinitroresorcinol.
Dinitrotoluene-sodium nitrate explosive mixtures.
DIPAM.
Dipicryl sulfone.
Dipicrylamine.
Display fireworks.
DNPD [dinitropentano nitrile].
DNPA [2,2-dinitropropyl acrylate].
Dynamite.

E

EDDN [ethylene diamine dinitrate].
EDNA.
Ednatol.
EDNP [ethyl 4,4-dinitropentanoate].
Erythritol tetranitrate explosives.
Esters of nitro-substituted alcohols.
EGDN [ethylene glycol dinitrate].
Ethyl-tetryl.
Explosive conitrates.
Explosive gelatins.
Explosive mixtures containing oxygen releasing inorganic salts and hydrocarbons.
Explosive mixtures containing oxygen releasing inorganic salts and nitro bodies.
Explosive mixtures containing oxygen releasing inorganic salts and water insoluble fuels.
Explosive mixtures containing oxygen releasing inorganic salts and water soluble fuels.
Explosive mixtures containing sensitized nitromethane.
Explosive mixtures containing tetranitromethane (nitroform).
Explosive nitro compounds of aromatic hydrocarbons.
Explosive organic nitrate mixtures.
Explosive liquids.
Explosive powders.

F

Flash powder.
Fulminate of mercury.
Fulminate of silver.
Fulminating gold.
Fulminating mercury.
Fulminating platinum.
Fulminating silver.

G

Gelatinized nitrocellolose.
Gem-dinitro aliphatic explosive mixtures.
Guanyl nitrosamino guanyl tetrazene.
Guanyl nitrosamino guanylidene hydrazine.
Guncotton.

H

Heavy metal azides.
Hexanite.
Hexanitrodiphenylamine.
Hexanitrostilbene.
Hexogen (RDX).
Hexogene or octogene and a nitrated N-methylaniline.
Hexolites.
HMX [cyclo-1,3,5,7-tetramethylene 2,4,6,8-tetranitramine; Octogen].
Hydrazinium nitrate/hydrazine/aluminum explosive system.
Hydrazoic acid.

I

Igniter cord.
Igniters.
Initiating tube systems.

K

KDNBF [potassium dinitrobenzo-furoxane].

L

Lead azide.
Lead mannite.
Lead mononitroresorcinate.
Lead picrate.
Lead salts, explosive.
Lead styphnate [styphnate of lead, lead trinitroresorcinate].
Liquid nitrated polyol and trimethylolethane.
Liquid oxygen explosives.

M

Magnesium ophorite explosives.
Mannitol hexanitrate.
MDNP [methyl 4,4-dinitropentanoate].
MEAN [monoethanolamine nitrate].
Mercuric fulminate.
Mercury oxalate.
Mercury tartrate.
Metriol trinitrate.
Minol-2 [40% TNT, 40% ammonium nitrate, 20% aluminum].
MMAN [monomethylamine nitrate]; methylamine nitrate.
Mononitrotoluene-nitroglycerin mixture.
Monopropellants.

N

NIBTN [nitroisobutametriol trinitrate].
Nitrate sensitized with gelled nitroparaffin.
Nitrated carbohydrate explosive.
Nitrated glucoside explosive.
Nitrated polyhydric alcohol explosives.
Nitrates of soda explosive mixtures.
Nitric acid and a nitro aromatic compound explosive.
Nitric acid and carboxylic fuel explosive.
Nitric acid explosive mixtures.
Nitro aromatic explosive mixtures.
Nitro compounds of furane explosive mixtures.
Nitrocellulose explosive.
Nitroderivative of urea explosive mixture.
Nitrogelatin explosive.
Nitrogen trichloride.
Nitrogen tri-iodide.
Nitroglycerine [NG, RNG, nitro, glyceryl trinitrate, trinitroglycerine].
Nitroglycide.
Nitroglycol (ethylene glycol dinitrate, EGDN)
Nitroguanidine explosives.
Nitroparaffins Explosive Grade and ammonium nitrate mixtures.
Nitronium perchlorate propellant mixtures.
Nitrostarch.
Nitro-substituted carboxylic acids.
Nitrourea.

O

Octogen [HMX].
Octol [75 percent HMX, 25 percent TNT].
Organic amine nitrates.
Organic nitramines.

P

PBX [RDX and plasticizer].
Pellet powder.
Penthrinite composition.
Pentolite.
Perchlorate explosive mixtures.
Peroxide based explosive mixtures.
PETN [nitropentaerythrite, pentaerythrite tetranitrate, pentaerythritol tetranitrate].
Picramic acid and its salts.
Picramide.
Picrate of potassium explosive mixtures.
Picratol.
Picric acid (manufactured as an explosive).
Picryl chloride.
Picryl fluoride.
PLX [95% nitromethane, 5% ethylenediamine].
Polynitro aliphatic compounds.
Polyolpolynitrate-nitrocellulose explosive gels.
Potassium chlorate and lead sulfocyanate explosive.
Potassium nitrate explosive mixtures.
Potassium nitroaminotetrazole.
Pyrotechnic compositions.
PYX [2,6-bis(picrylamino)]-3,5-dinitropyridine.

R

RDX [cyclonite, hexogen, T4, cyclo-1,3,5,-trimethylene-2,4,6,-trinitramine; hexahydro-1,3,5-trinitro-S-triazine].

S

Safety fuse.
Salutes, (bulk).
Salts of organic amino sulfonic acid explosive mixture.
Silver acetylide.
Silver azide.
Silver fulminate.
Silver oxalate explosive mixtures.
Silver styphnate.
Silver tartrate explosive mixtures.
Silver tetrazene.
Slurried explosive mixtures of water, inorganic oxidizing salt, gelling agent, fuel and sensitizer (cap sensitive).
Smokeless powder.
Sodatol.
Sodium amatol.
Sodium azide explosive mixture.
Sodium dinitro-ortho-cresolate.
Sodium nitrate-potassium nitrate explosive mixture.
Sodium picramate.
Special fireworks.
Squibs.
Styphnic acid explosives.

T

Tacot [tetranitro-2,3,5,6-dibenzo-1,3a,4,6a tetrazapentalene].
TATB [triaminotrinitrobenzene].
TEGDN [triethylene glycol dinitrate].
Tetrazene [tetracene, tetrazine, 1(5-tetrazolyl)-4-guanyl tetrazene hydrate].
Tetranitrocarbazole.
Tetryl [2,4,6 tetranitro-N-methylaniline].
Tetrytol.
Thickened inorganic oxidizer salt slurried explosive mixture.
TMETN [trimethylolethane trinitrate].
TNEF [trinitroethyl formal].
TNEOC [trinitroethylorthocarbonate].
TNEOF [trinitroethylorthoformate].
TNT [trinitrotoluene, trotyl, trilite, triton].
Torpex.
Tridite.
Trimethylol ethyl methane trinitrate composition.
Trimethylolthane trinitrate-nitrocellulose.
Trimonite.
Trinitroanisole.
Trinitrobenzene.
Trinitrobenzoic acid.
Trinitrocresol.
Trinitro-meta-cresol.
Trinitronaphthalene.
Trinitrophenetol.
Trinitrophloroglucinol.
Trinitroresorcinol.
Tritonal.

U

Urea nitrate.

W

Water bearing explosives having salts of oxidizing acids and nitrogen bases, sulfates, or sulfamates (cap sensitive).
Water-in-oil emulsion explosive compositions.

X

Xanthamonas hydrophilic colloid explosive mixture.

FOR FURTHER INFORMATION CONTACT: Mark Waller, Specialist, Firearms, Explosives and Arson Programs Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226 (202–927–8310).

Approved:

Dated: April 20, 1998.

John W. Magaw,

Director.

[FR Doc. 98–11525 Filed 4–30–98; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Customs Service

Harbor Maintenance Fee No Longer To Be Collected on Cargo Loaded for Export

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: This document announces that as of April 25, 1998, Customs will no longer be collecting the Harbor Maintenance Fee for cargo loaded on board a vessel for export at a port subject to the Harbor Maintenance Fee. Further, this document announces that protest procedures are inapplicable to refund claims for export-related Harbor Maintenance Fees.

EFFECTIVE DATE: April 25, 1998.

FOR FURTHER INFORMATION CONTACT: Patricia Barbare, Operations Management Specialist, Budget Division, (202) 927–0034.

SUPPLEMENTARY INFORMATION:

Background

The Harbor maintenance Fee was created by the Water Resources Development Act of 1986 (26 U.S.C. 4461 *et seq.*) (the Act) and is implemented by § 24.24 of the Customs Regulations (19 CFR 24.24). The fee, pursuant to the Act and as implemented by the regulations was to be assessed on port use associated with imports, exports, and movements of cargo and passengers between identified ports and paid to the U.S. Customs Service.

On March 31, 1998, the Supreme Curt in *United States, Petitioner* v. *United States Shoe Corporation* _____US_____, No. 97–372 declared that the Harbor Maintenance Fee is unconstitutional as applied to exports. Consequently, as of April 25, 1998, the United States Customs Service will no longer be collecting the Harbor Maintenance Fee for port use associated with exports.

The Supreme Court also affirmed the decision of the lower courts that protest procedures are inapplicable to refund claims for export-related Harbor Maintenance Fees. The public is hereby advised that the Customs Service will not decide or respond to any protest alleging that the export-related Harbor Maintenance Fees are prohibited by the Export Clause of the United States Constitution. Any person who previously received correspondence from Customs concerning any such protests should disregard such correspondence and will not receive further communications regarding such protests.

Pursuant to a court order issued by the United States Court of International Trade in the case *United States Shoe Corp.* v. *The United States* (Court No. 94–11–0068), dated April 6, 1998, the government will design a claim form for refund claims and the claim form process will apply to all claims filed within the 2-year statute of limitations applicable to 28 U.S.C. § 1581(i) cases.

Dated: April 28, 1998.

Samuel H. Banks,

Acting Commissioner of Customs.

[FR Doc. 98–11644 Filed 4–30–98; 8:45 am]

BILLING CODE 4820–02–P

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 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects on the list specified below, to be included in the exhibit, ''Bonnard'' 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 long agreement with the foreign lenders. I also determine that the exhibition or display of the listed exhibit objects at The Museum of Modern Art, New York, New York, from on or about June 21, 1998, to on or about October 13, 1998, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

Dated: April 24, 1998.

Les Jin,

General Counsel.

[FR Doc. 98–11532 Filed 4–30–98; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Ms. Jacqueline Caldwell, Assistant General Counsel, at 202/619–6982, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547–0001.

Corrections

Federal Register
Vol. 63, No. 84
Friday, May 1, 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.

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

Correction

In notice document 98–10470, beginning on page 19964, in the issue of Wednesday, April 22, 1998, make the following corrections:

1. On page 19984, in the second column, in the 24th line, ''*Amendment No.:* 221.'' should read ''*Amendment No.:* 220.''.

2. On the same page, in the same column, after line 39, insert the following text:

IES Utilities Inc, Central Iowa Power Cooperative, and Corn Belt Power Cooperative, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of application for amendment: February 3, 1998.

Brief description of amendment: The amendment revises the definitions of Cold Condition and Cold Shutdown and adds a new section, 3.17, ''Vessel Hydrostatic Pressure and Leak Testing,'' to the Technical Specifications to specifically allow reactor vessel hydrostatic pressure testing to be performed during plant shutdown.

Date of issuance: March 31, 1998.

Effective date: March 31, 1998.

Amendment No.: 221.

Facility Operating License No. DPR-49: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 26, 1998 (63 FR 9874). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 31, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, SE., Cedar Rapids, Iowa 52401.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–69–AD; Amendment 39–10437; AD 98–07–17]

RIN 2120–AA64

Airworthiness Directives; Twin Commander Aircraft Corporation 500, 520, 560, 680, 681, 685, 690, 695, and 720 Series Airplanes

Correction

In rule document 98–8579, beginning on page 16679 in the issue of Monday, April 6, 1998, make the following corrections:

§ 39.13 [Corrected]

On page 16680, in the third column, in § 39.13, in the ''*Applicability*'' section, in the table, in the first line, ''5500–A, 5500–B, 5500–S, 5500–U'' should read ''500–A, 500–B, 500–S, 500–U''. In the second line, ''5560, 5560–A, 5560–E, and 5560–F'' should read ''560, 560–A, 560–E, and 560–F''.

BILLING CODE 1505-01-D

federal register

Friday
May 1, 1998

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 600

Magnuson-Stevens Act Provisions; National Standard Guidelines; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 970708168–8073–02; I.D. 061697B]

RIN 0648–AJ58

Magnuson-Stevens Act Provisions; National Standard Guidelines

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

ACTION: Final rule.

SUMMARY: NMFS revises guidelines for national standards 1 (optimum yield), 2 (scientific information), 4 (allocations), 5 (efficiency), and 7 (costs and benefits); and adds guidelines for new national standards 8 (communities), 9 (bycatch), and 10 (safety of life at sea). The guidelines are intended to assist in the development and review of Fishery Management Plans (FMPs), amendments, and regulations prepared by the Regional Fishery Management Councils (Councils) and the Secretary of Commerce (Secretary) under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The revisions and additions implement the October 1996 amendments to the Magnuson-Stevens Act, which resulted from the Sustainable Fisheries Act (SFA). Additional minor changes are made to conform national standard guideline language to the Magnuson-Stevens Act, as amended. Numerous changes were made to the proposed rule based on comments received.

DATES: Effective June 1, 1998.

FOR FURTHER INFORMATION CONTACT: George H. Darcy, 301–713–2341.

SUPPLEMENTARY INFORMATION: On October 11, 1996, the President signed into law the SFA (Pub. L. 104–297), which made numerous amendments to the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*). This rule amends 50 CFR part 600, subpart D, to update the national standard guidelines and to implement the Magnuson-Stevens Act amendments pertaining to the national standards.

Background

Section 301(a) of the Magnuson-Stevens Act contains 10 national standards for fishery conservation and management, with which all FMPs and amendments prepared by the Councils and the Secretary must comply. Section 303(b) requires that the Secretary establish advisory guidelines, herein referred to as ''national standard guidelines,'' based on the national standards, to assist in the development of FMPs. In addition to amending several existing national standards, the SFA established three new national standards, which require consideration of impacts of fishery management decisions on fishing communities (national standard 8), bycatch (national standard 9), and safety of life at sea (national standard 10).

On August 4, 1997, NMFS published a proposed rule at 62 FR 41907 to amend the national standard guidelines; comments were requested through September 18, 1997. The preamble of the proposed rule contained detailed descriptions of the proposed amendments, which are not repeated here. Thirty-seven sets of comments were received during the comment period, which are responded to in the Comments and Responses section of this preamble.

Because of remaining issues regarding interpretation of the Magnuson-Stevens Act's provisions relative to overfishing and rebuilding overfished stocks, NMFS reopened the public comment period on national standard 1 on December 29, 1997 (62 FR 67608), for an additional 30 days. Comments were specifically requested regarding four issues: (1) Usage of the terms ''overfishing'' and ''overfished,'' (2) usage of the terms ''fishery'' versus ''stock,'' (3) rebuilding schedules for overfished stocks, and (4) exceptions for mixed-stock fisheries. The notice of reopening of the comment period on national standard 1 contained a detailed explanation of those issues, which is not repeated here. Thirty-four additional sets of comments were received during the reopened comment period; those comments are also responded to in the Comments and Responses section.

Changes from the Proposed Rule

As a result of public comments received both during the initial comment period and the reopened comment period, NMFS has made the following changes from the proposed rule:

General

NMFS reviewed the entire text of the guidelines to ensure that the terms ''shall,'' ''must,'' and ''should'' are used consistent with the definitions in § 600.305. ''Shall'' is used only when quoting directly from the statute, ''must'' denotes a statutory obligation, and ''should'' indicates that an action is strongly recommended to fulfill the Secretary's interpretation of the Magnuson-Stevens Act.

National Standard 1

1. Section 600.310(c)(3) has been revised to indicate that a reasonable proxy for the MSY stock size is approximately 40 percent of the pristine stock size, rather than the range of 27–75 percent as previously included. This change was made to better reflect the findings of fishery science literature. (See also the response to comment 20 under national standard 1).

2. Section 600.310(d)(4)(iii) has been revised to include a reference to guidelines issued under section 305(b) of the Magnuson-Stevens Act for Council actions concerning essential fish habitat. (See also the response to comment 18 under national standard 1.)

3. Section 600.310(d)(6) has been revised to provide more flexibility in managing mixed-stock fisheries. The proposed guidelines would have allowed overfishing on one component of a mixed-stock fishery only if the rate or level of fishing mortality would not cause any stock or stock complex to fall below its minimum stock size threshold. Paragraph (d)(6)(iii) has been revised to remove that requirement. Paragraph (d)(6)(ii) has been revised to clarify that the intent of the required analysis is thorough consideration of measures that could prevent or mitigate overfishing of one or more stocks in a mixed-stock fishery. (See also the response to comment 35 under national standard 1.)

4. Section 600.310(e)(4)(ii) has been substantively revised to elaborate on the length of rebuilding programs for overfished stocks. The proposed guidelines had simply repeated the statutory language from section 304(e)(4) of the Magnuson-Stevens Act. The notice reopening the comment period offered two options. After considering public comments (see comments 8–16 under national standard 1), NMFS has chosen the more flexible interpretation.

To give meaning to the statutory requirement that a rebuilding program be ''as short as possible,'' the starting point in structuring a rebuilding program is the length of time in which a stock could be rebuilt in the absence of fishing mortality on that stock. If that period is less than 10 years, the factors in section 304(e)(4)(A)(i), including the needs of fishing communities, may be used to adjust the rebuilding period up to 10 years. If the stock cannot be rebuilt within 10 years, because of the factors listed in section 304(e)(4)(A)(ii), the factors in section 304(e)(4)(A)(i) may be used to justify a schedule longer than the no-mortality period. To ensure that

the rebuilding period is not indefinite, the outside limit of the rebuilding period is the no-mortality period plus one mean generation time (or equivalent period based on the species' life-history characteristics).

5. Section 600.310(f)(2)(i) and (ii) have been revised so as not to under emphasize the benefits to the Nation accruing from food production and recreational opportunities. (See also the response to comment 34 under national standard 1).

6. Section 600.310(f)(4)(ii) has been revised so that the annual harvest level obtained under an OY control rule ''must'' instead of ''should'' always be less than or equal to the harvest level under an MSY control rule. This change reflects the SFA's amendment to the definition of ''optimum.''

7. Section 600.310(f)(4)(iii) has been revised to change the term ''research fishing'' to ''scientific research'' to clarify that ''fishing'' under the Magnuson-Stevens Act does not include scientific research activity conducted from a scientific research vessel. (See also the response to comment 45 under national standard 1.)

National Standard 2

1. Section 600.315(e)(1) introductory text has been revised to clarify that SAFE reports are intended to summarize the most recent information concerning the biological condition of stocks and the marine ecosystems in the fishery management unit and the social and economic condition of the recreational and commercial fishing interests, fishing communities, and the fish processing industries. (See also the response to comment 4 under national standard 2.)

2. Section 600.315(e)(1)(ii) has been revised to include safety as one of the types of information that should be summarized in SAFE reports. (See also the responses to comment 2 under national standard 2 and comment 3 under national standard 10).

National Standard 5

Section 600.330(b)(1) has been revised to replace the term ''encouraging,'' with regard to efficient utilization of fishery resources, with the term ''considering,'' to make the wording consistent with the intent of Congress. (See also the response to comment 1 under national standard 5.)

National Standard 8

Section 600.345(c) has been revised, replacing ''should'' with ''must'' in order to reflect the obligation under national standard 8.

National Standard 9

1. Section 600.350(b) has been revised in its entirety to clarify the consideration of bycatch effects of existing and planned conservation and management measures. (See also the response to comment 11 under national standard 9.)

2. Section 600.350(c) has been revised to add language to clarify that Atlantic highly migratory species harvested in a commercial fishery that are not regulatory discards and that are tagged and released alive under a scientific tag-and-release program established by the Secretary are not considered bycatch. Also, language was added to specify that bycatch includes the discard of whole fish at sea or elsewhere. (See also the responses to comments 7 and 8 under national standard 9.)

3. Section 600.350(c)(2) has been removed. (See also the response to comment 7 under national standard 9.)

4. Section 600.350(d) has been revised by replacing ''should'' with ''must'' in order to reflect the obligation under national standard 9. The introductory text has also been revised to emphasize that NMFS believes the first priority for reducing bycatch should be to avoid catching bycatch species where possible. Additional text has been added to § 600.350(d) to indicate that, in their evaluation of bycatch minimization measures, Councils must consider net benefits to the Nation. At the end of § 600.350(d) introductory text, the word ''shall'' has been changed to ''must'' to emphasize that the evaluation requirements of the Magnuson-Stevens Act under this national standard are not discretionary. (See also the responses to comments 24, 25, and 28 under national standard 9.)

5. The first sentence in section 600.350(d)(1) has been revised, replacing ''should'' with ''must'' in order to reflect the required provisions of a fishery management plan under section 303(a)(11) and (12) of the Magnuson-Stevens Act.

6. Section 600.350(d)(2) has been revised to indicate that, in the absence of quantitative estimates of the impacts of each alternative, Councils may use qualitative ''measures'' (rather than ''estimates''). In addition, a sentence has been added to indicate that information on amount and type of bycatch should be summarized in the SAFE report. (See also the response to comment 31 under national standard 9).

7. Section 600.350(d)(3) has been revised to include language that indicates that determinations of whether conservation and management measures minimize bycatch and bycatch mortality to the extent practicable must also be consistent with maximization of net benefits to the Nation. The paragraphs under § 600.350(d)(3) have been redesignated to accommodate the addition of a new paragraph (d)(ii), which states that the Councils should, in selecting bycatch minimization measures, adhere to the precautionary principle found in the FAO Code of Conduct for Responsible Fisheries. (See also the responses to comments 33 and 35 under national standard 9.)

8. Section 600.350(d)(4) has been revised to delete the terms ''implement'' and ''implementation'' when referring to the Councils' required actions under national standard 9, because it is NMFS' responsibility, rather than that of the Councils, to implement management measures. This change was not a result of public comment.

National Standard 10

Section 600.355(b)(3) has been revised to include language that clarifies that safety of the fishing vessel and the protection from injury of persons aboard the vessel are considered the same as ''safety of human life at sea.'' (See also the response to comment 5 under national standard 10.)

Comments and Responses

General

Numerous commenters concluded that, in general, the proposed guidelines reflect fairly the intent of the SFA's amendments to the Magnuson-Stevens Act. Comments concerning specific aspects of the proposed revisions to guidelines for individual national standards are presented and responded to in the following paragraphs.

NMFS received several comments on language contained in the preamble of the proposed rule. Because the preamble was intended only to explain and clarify material contained in the codified text, NMFS has not responded to comments that pertained only to the preamble. However, in instances where such comments pertained also to language in the codified text, or where such comments led to changes in the codified text from the proposed rule, NMFS has responded in the following paragraphs.

Comment 1: Several commenters expressed their view that sufficient flexibility should be provided in the guidelines to provide managers with appropriate latitude to meet the objectives of the SFA while respecting the needs of communities and citizens.

Response. NMFS agrees that some flexibility in application of the national standards was intended by Congress, is necessary to manage the diverse

fisheries of the Nation, and should be provided to respond to the needs of fishery participants and communities, so long as the stocks upon which the fisheries are based can be rebuilt and their productivity sustained. However, any such flexibility must be consistent with all of the statutory requirements of the Magnuson-Stevens Act. In addition, NMFS believes that the guidelines must reflect the intent of the Magnuson-Stevens Act taken as a whole. After carefully considering the public comments received, the language in the SFA, and the legislative history, NMFS concluded that there is justification to introduce greater flexibility in certain aspects of the guidelines, most notably the rebuilding schedules for overfished stocks and for mixed-stock fisheries; those changes have been made in this final rule. (See also Changes from the Proposed Rule and responses to comments 9 and 35 under national standard 1.)

Comment 2. One letter of comment stated that the final rule should clarify that the national standard guidelines are advisory and do not have the force and effect of law.

Response. NMFS agrees that the guidelines do not have the force and effect of law and believes it made that point clearly in the preamble to the proposed rule. For example, the proposed rule contains the following statements:

(1) ''These proposed guidelines are intended to provide direction and elaboration on compliance with the national standards and, in themselves, do not have the force and effect of law.''

(2) ''The guidelines are intended to assist in the development and review of Fishery Management Plans (FMPs), amendments, and regulations ...''

(3) ''The proposed guidelines explain requirements and provide some options for compliance with the guidelines. Lists and examples are not all inclusive; rather, they are intended to provide illustrations of the kind of information, discussion, or examination/analysis useful in demonstrating consistency with the standard in question. The proposed guidelines are intended to provide for reasonable accommodation of regional or individual fishery characteristics, provided that the requirements of the Magnuson-Stevens Act are met. The guidelines are intended as an aid to decision making, with responsible conservation and management of valued national resources as the goal.''

(4) ''The main purpose of the guidelines is to aid the Councils in fulfilling the requirements of the Magnuson-Stevens Act.''

Throughout the proposed rule, the guidelines are referred to as advisory, explanatory, and interpretive. In addition, NMFS has attempted to make clear the distinction between ''must'' and ''should'' as used in the guidelines.

Comment 4. One commenter stated that it will be very difficult for the Councils to meet the SFA's compliance deadlines for all fisheries, given the requirements set forth in the guidelines.

Response. NMFS agrees that the statutory deadlines established by the SFA and reflected in the guidelines will be challenging to meet. However, NMFS is committed to working closely with the Councils to meet those deadlines.

Comment 5. One commenter suggested that aquaculture activities should be considered in the guidelines because, even with the best regulatory controls and the restoration of wild stocks to levels that produce maximum sustainable yield (MSY), the demand for seafood products cannot be met from these sources alone.

Response. Aquaculture is considered a fishery, as defined by the Magnuson-Stevens Act, so the national standard guidelines apply and should be followed by Councils as they consider integrating aquaculture activities into FMPs.

Comment 6. One commenter questioned NMFS' ability to comply with several provisions of the SFA because of budgetary constraints.

Response. Compliance with all of the provisions of the amended Magnuson-Stevens Act has been difficult, at best. However, NMFS has had significant success in implementation, within the available resources, using all of the available tools at its disposal. For example, the great majority of the deadlines established in the SFA that are within the control of NMFS have been met. In the few instances where deadlines have been missed, it has been primarily the result of providing additional time for public involvement and comment. NMFS' successes in meeting deadlines have been due in part to reprogramming of priorities and resources within NMFS to the maximum extent allowed by law, and to Congressional reprogramming of funds made available within NOAA.

Comment 7. One commenter stated that NMFS must consider all affected users, including seafood consumers, in managing fisheries. The goal should be healthy, sustainable use for everyone's benefit.

Response. NMFS agrees that all users must be considered in achieving the Magnuson-Stevens Act's goal of maximizing net benefits to the Nation.

Comment 8. Two commenters stated that NMFS is inviting trouble by stating in the preamble that it will take considerable time and effort to bring all FMPs into compliance. Waiting until the October 11, 1998, deadline to amend all FMPs will cause a logjam of amendments, and conservation reforms will not be implemented in a timely manner.

Response. NMFS has worked with the Councils from the earliest stages of implementation of the SFA to plan and prepare for necessary amendments of FMPs. In addition, NMFS has conveyed to the Councils that, on October 11, 1996, the day the President signed the SFA into law, many of the provisions of the SFA, such as national standards 8, 9, and 10, became effective. All regulatory actions finalized after that date were required to comply with those standards, as well as with many other provisions of the SFA. In some cases, the details of implementation have had to be developed, such as the national standard guidelines that are the subject of this rule. Until those details are finalized, the Councils will not be able to take them fully into account in development of their management actions. As the specifics of those provisions are finalized, all of the Councils' proposed actions will be judged on the basis of those requirements, as well.

Comment 9. Several commenters suggested that anecdotal information and public testimony should be allowed and treated as fact. A particular concern was that, in establishing objective and measurable criteria for determining the status of a stock, anecdotal information from fishermen, especially commercial information, is precluded from use in stock assessments.

Response. The Magnuson-Stevens Act requires the use of the best scientific information available and the use of quantifiable parameters to manage fisheries. The inclusion of objective and measurable criteria in the guidelines applies the Magnuson-Stevens Act's approach to using reproducible, scientifically based information in stock assessments. This approach is necessary to preclude having to choose among unsubstantiated opinions about a stock's condition. The public is free, however, to submit anecdotal information to the Councils and to the Secretary, including through public testimony and comment during the development of plans and implementing regulations; all such information will be made part of the administrative record. While anecdotal information cannot be afforded the same status as scientific information obtained under a well-designed data collection

plan, it can be particularly useful in identifying potential problems with scientifically obtained information and can be part of the basis for a redesign of the data collection program.

Comment 10. Several commenters requested that, given the complex nature of the proposed guidelines, additional time be allowed for public comment. Others expressed serious concern that the lack of guidance on critical issues such as overfishing could compromise the ability of the Councils to comply with the new conservation requirements of the Magnuson-Stevens Act. Some commenters felt that delays in issuing final guidelines have undermined public confidence in NMFS' commitment and ability to effectively implement the conservation mandates of the Magnuson-Stevens Act and urged NMFS to complete the comment periods and proceed with advice and guidelines to the Councils as swiftly as possible.

Response. Despite its commitment to publish final guidelines as soon as possible, after reviewing the diverse comments received during the first comment period, NMFS determined that it was in the best interest of the public to provide an additional opportunity for comment on the most problematic issues regarding national standard 1. However, the completion of the Report to Congress and notification of Councils of the list of overfished fisheries on September 30, 1997, placed an imperative on NMFS to complete the guidelines as quickly as possible. If Councils fail to submit rebuilding plans for all overfished stocks by September 30, 1998, the Secretary must develop rebuilding plans for the Councils for each overfished stock by June 30, 1999.

Comment 11. One commenter disagreed with NMFS' determination that the proposed rule would not have a significant economic impact on a substantial number of small entities for purposes of the Regulatory Flexibility Act.

Response. NMFS believes that its determination of no significant economic impacts on a substantial number of small entities in the proposed rule accurately reflects the effects of this action on small entities. Because this rule only amends guidelines, and does not have the force and effect of law, it does not, in itself, revise any existing regulatory programs or establish any new regulatory requirements. NMFS has no basis, at this time, to assess specific effects of possible future management actions that may result from this rule, except in the broadest sense. Only when future amendments to fishery management programs are implemented will potential impacts on small entities occur. At the time regulations are developed, the impacts on small entities of potential alternatives will be assessed; Regulatory Flexibility Analyses and other analytical documents will be prepared, as required by applicable law, and made available for public comment.

National Standard 1

Comment 1. Several commenters objected to the fundamental role played by MSY throughout the guidelines for national standard 1. A variety of reasons were cited, including the lack of flexibility afforded by use of MSY, the difficulty of estimating MSY, and the fact that some fishery scientists disfavor the concept.

Response. No change was made. MSY is key to the Magnuson-Stevens Act, even more so than under the former Magnuson Act. MSY now constitutes an upper limit on optimum yield (OY), as stated in section 3(28)(B) of the Magnuson-Stevens Act; is established as the initial target for rebuilding an overfished stock or stock complex in section 3(28)(C); and is the cornerstone of the definition of overfishing in section 3(29). In reviewing the language in the Magnuson-Stevens Act as a whole, and the legislative history of the SFA, NMFS believes the lack of flexibility imposed by ascribing such a fundamental role to MSY was clearly an intent of Congress. The difficulty of estimating MSY is a significant problem that will require the best efforts of NMFS and the Councils to solve. While it is true that some fishery scientists disfavor the concept of MSY, others find it very useful, and its application in international agreements is on the increase, particularly in the establishment of precautionary approaches to fishery management.

Comment 2: Several commenters offered the following view relative to the usage of ''overfishing'' and ''overfished'': The terms ''overfishing'' and ''overfished'' used in the SFA are intended to have the same meaning given to the term ''overfishing'' in the existing guidelines and are not intended to change the emphasis on or timeframe for addressing overfishing. The deletion of the modifier ''long-term'' from the regulatory definition of ''overfishing'' was not significant; the use of MSY is a target, not a constraint within which OY is determined. However, use of the term ''fishery'' instead of ''stock or stock complex'' in the SFA definition of overfishing and overfished was an intentional change from the wording in the existing guidelines to ensure that multi-species or mixed-stock fisheries are managed and considered as a unit.

Other commenters agreed with NMFS' interpretation that removal of the phrase ''long-term'' in the statutory language is significant in that it raises the standard to which conservation and management measures are held.

Response: NMFS disagrees that the definition for ''overfishing'' and ''overfished'' in the SFA did not change the emphasis on or timeframe for addressing overfishing or that MSY is only a target instead of a constraint. However, NMFS does agree that use of the term ''fishery'' instead of ''stock or stock complex'' was an intentional change intended to allow for the management of mixed-stock fisheries on a unit basis (see also response to comments 35 and 36). The definition for ''overfishing'' and ''overfished'' (identically defined) has as its basis the current definition of ''overfishing'' in the existing national standard guidelines (50 CFR 600.310(c)(1)). That definition states: ''Overfishing is a level or rate of fishing mortality that jeopardizes the long-term capacity of a stock or stock complex to produce MSY on a continuing basis.''

During the development of the Magnuson-Stevens Act's amendments, NOAA suggested to Congressional staff that the phrase ''long-term'' be deleted from the definition of ''overfishing'' to require Councils to stop overfishing sooner rather than later. Congress chose to delete the modifier ''long-term'' when referring to the capacity of a stock to produce MSY. NOAA considered this change to be significant. Other amendments to the SFA bolster this interpretation:

(1) The rebuilding requirements (especially the 10-year maximum with three very limited exceptions, and the Secretary's obligation to develop rebuilding plans if the Councils fail to do so).

(2) Congress' conclusion that the survival of certain stocks is threatened and that immediate action needs to be taken to protect those stocks (section 2(a)(2) of the SFA).

In addition, floor debates in both the House and Senate expressed Congressional displeasure with the length of time Councils have taken in the past to address overfishing problems (see, for example, the statement of Senator Stevens at S10810, September 18, 1996).

The SFA points to MSY as the goal of rebuilding programs and to maintenance of stocks at this level on a continuing basis. Unless MSY is established as a strict goal, the greatly enhanced benefits anticipated by enactors of the SFA

cannot be achieved. This position is supported by the following:

(1) The intent of the SFA was to require Councils to ensure that fish stocks were not harvested beyond their MSY, as evidenced by the debate on the floor of the House, when members voted 304–113 to adopt the Gilchrest amendment specifically stating that OY could no longer exceed MSY. The new definition of ''optimum'' was maintained in the Senate bill that ultimately became law.

(2) Section 3(28)(C) indicates that, for overfished fisheries, rebuilding is to occur until the stocks have reached a level that can produce MSY on a continuing basis.

(3) Inclusion of a rebuilding requirement in the Magnuson-Stevens Act implies that stock size is relevant to the concept of ''overfishing'' and ''overfished,'' and that MSY (a measure of biomass) is to be used as the measure against which the success of a rebuilding program is judged. A rebuilding requirement without a biomass foundation has no meaning.

(4) The phrase ''on a continuing basis'' in the SFA definition of ''overfishing'' indicates that stocks are to be maintained at levels capable of producing MSY (and OY) on a continuous (uninterrupted) basis; thus, short-term overfishing that causes populations to decline below these levels is not permissible. HR 39 would have allowed OY to exceed MSY for healthy fisheries, but that approach was rejected in the Senate bill, which became law.

(5) Senator Hollings in the floor debate on the Sustainable Fisheries Act (Congressional Record - Senate, September 18, 1996) stated that ''The bill also: First, caps fishery harvests at the maximum sustainable levels and requires action to prevent overfishing and rebuild depleted fisheries; * * *''

(6) The summary of the Managers Amendment to S. 39 (The Sustainable Fisheries Act), as printed in the Congressional Record - Senate on September 19, 1996, states in the discussion regarding definitions that ''this change prevents the maximum sustainable yield of a fishery from being exceeded.''

(7) Senate Report No. 104–276 regarding the Sustainable Fisheries Act states on page 4077 that ''Finally, the substitute would amend the existing definition of 'optimum' with respect to fishery yield to cap fish harvests at the maximum sustainable yield.''

Comment 3. Several commenters objected to the proposed definition of MSY control rule in § 600.310(c)(1)(ii) or to the identification of the maximum fishing mortality threshold with the MSY control rule in § 600.310(d)(2)(i). Typically, the objections centered around the degree of flexibility afforded to the Councils in choosing the form of the MSY control rule (and thereby, the maximum fishing mortality threshold). Commenters generally felt that the language of the Magnuson-Stevens Act permits only one choice of MSY control rule—namely, harvesting at a single, invariant rate, where this rate is chosen so as to maximize the resulting long-term average yield. Given this interpretation, the commenters stated that the Councils should be denied the option of varying the maximum fishing mortality threshold as a function of stock size.

Response. No change was made. While the Magnuson-Stevens Act clearly requires that fishing mortality be prevented from exceeding rates or levels that would jeopardize the capacity of a stock or stock complex to produce MSY on a continuing basis, it does not indicate that such rates or levels cannot vary with stock size. In general, MSY control rules that allow for the fishing mortality rate to vary with stock size (i.e., those that decrease fishing mortality when stock size is low) provide a higher average catch and a lower probability of observing a seriously reduced stock size than those that require the fishing mortality rate to remain constant. NMFS believes both of these characteristics are very much in keeping with the letter and intent of the Magnuson-Stevens Act.

Comment 4. Several commenters objected to the proposed inclusion of a ''constant catch'' example in § 600.350(c)(2)(i), feeling that this particular MSY control rule is inefficient or potentially dangerous.

Response. No change was made. The example is included partly for logical completeness. The commenters are correct that this control rule is a safe harvest strategy only when the catch level is chosen very conservatively, in which case some amount of potential yield is foregone. However, in cases where minimizing harvest variability is a primary concern, it is conceivable that the greatest net benefits might be realized by making such a tradeoff (i.e., by giving up a certain amount of catch, on average, in order to increase year-to-year stability of harvests).

Comment 5. Several commenters objected to the proposed definition of MSY in § 600.310(c)(1)(i). Concerns included the fact that the largest long-term average catch may vary with changes in the minimum size limit or selectivity pattern, the perception that the definition is invalid for stocks that are already overfished, and the difficulty of establishing a long-term average under current environmental conditions when those conditions do not prevail over the long term.

Response. No change was made. As defined in § 600.310(c)(1)(i), MSY does not vary with changes in the minimum size limit or selectivity pattern. While such changes can have an effect on long-term average catches, the guidelines view MSY in a more global sense. In other words, MSY is the largest long-term average catch across all possible management regimes, not just a single management regime characterized by a particular minimum size limit or selectivity pattern. In terms of its applicability to overfished stocks, the guidelines' definition of MSY is valid, providing that ''long-term'' is suitably defined. As to the relationship between MSY and environmental conditions, it should be noted that MSY is the largest long-term average catch that could be obtained if current ecological and environmental conditions were to remain constant indefinitely. Of course, ecological and environmental conditions do not remain constant indefinitely, which is one of the reasons for the guidelines' emphasis on the fact that MSY is a theoretical concept, rather than an empirical one.

Comment 6. Several commenters were concerned that insufficient consideration was given to allowing for uncertainty in the estimation of MSY, for example due to errors in catch and other input data, estimation errors in stock assessments, frequency of stock assessments, and changes in environmental conditions.

Response. No change was made. As emphasized in § 600.310(c)(2)(ii), allowing for uncertainty in the estimation of MSY is important. The items listed in the above comment are excellent examples of factors that Councils are encouraged to consider in the process of incorporating appropriate consideration of risk into the estimation of MSY.

Comment 7. Several commenters objected to the examples of alternatives to specifying MSY in § 600.310(c)(3). A variety of reasons were cited, including the fact that some of the examples listed might not be appropriate in all cases, the fact that some possible alternatives were not listed, and the fact that the alternatives listed depend on estimated values rather than known quantities.

Response. No change was made. As noted in § 600.305(c)(9), examples (such as those listed in § 600.310(c)(3)) are given by way of illustration and further explanation. They are not inclusive lists; they do not limit options. Thus,

the reference points listed in § 600.310(c)(3) are intended to suggest some ways in which Councils might proceed in the event that data are insufficient to estimate MSY directly. The fact that a reference point is not included in § 600.310(c)(3) does not necessarily mean that it may never be used as a proxy for MSY. Nor does the fact that a reference point is included in § 600.310(c)(3) necessarily mean that it may always be used as a proxy for MSY. However, there is no escaping the conclusion that, regardless of whether MSY or a proxy is used, some sort of estimation will necessarily be involved.

Comment 8. Several commenters objected to proposed paragraphs that contain references to a 10-year time period for rebuilding, but that do not contain the full text of the statutory language clarifying that 10 years is a constraint rather than a target. In particular, some commenters objected to the mention of a 10-year time period for rebuilding in § 600.310(d)(2)(ii), feeling that this contradicted the fuller discussion of the statutory language in § 600.310(e)(4)(ii). More specifically, a stock that is below the MSY level, but not overfished under § 600.310(d)(2)(ii), might take as long as 10 years to rebuild to the MSY level if fished at the maximum rate allowable under § 600.310(d)(2)(i), even though the Magnuson-Stevens Act states clearly that the rebuilding period for an overfished stock or stock complex must be as short as possible, taking into account the status and biology of the stock or stock complex, the needs of fishing communities, recommendations by international organizations in which the United States participates, and the interaction of the overfished stock or stock complex within the marine ecosystem.

Response. No change was made. The statutory timeframe for rebuilding is clearly a binding constraint on Council actions undertaken to rebuild a stock or stock complex that is overfished. No provision of the guidelines can, or is intended to, override the statutory language. The subject of § 600.310(d)(2)(ii), the minimum stock size threshold, is distinctly different from the subject of § 600.310(e)(4)(ii), the acceptable timeframe for rebuilding an overfished stock or stock complex. The former describes how to tell whether a stock or stock complex is overfished, while the latter describes what to do if a stock or stock complex is overfished.

Comment 9. Several commenters asked that the guidelines contain an explicit interpretation of the statutory description of the time period for rebuilding summarized in § 600.310(e)(4)(ii) of the proposed rule.

Response. NMFS agrees; this request was a primary reason the comment period was reopened. As described under Changes from the Proposed Rule, § 600.310(e)(4)(ii) has been substantially revised to interpret the statutory provision.

Comment 10. One commenter stated that the biology of the stock does not dictate a rebuilding period of more than 10 years unless recovery is impossible in the absence of all fishing mortality.

Response. The starting point in structuring a rebuilding program is the length of time it would take a stock to recover if fishing mortality ceased. That a stock is long-lived, or reproduces slowly, does not necessarily mean that it could not be rebuilt within 10 years. The initial relevant inquiry is the no-fishing mortality period. If it is less than 10 years, factors such as the needs of fishing communities may justify lengthening the schedule to 10 years. If the no-mortality period is longer than 10 years, the schedule can also be adjusted, relying on those factors, up to a limit based on the stock's life-history characteristics.

Comment 11. A number of commenters preferred the first option offered in the notice reopening the comment period. They believed the rebuilding period should not be indeterminate. For stocks that cannot be rebuilt within 10 years, even in the absence of fishing mortality, the commenters thought the factors in section 304(e)(4)(A)(i) of the Magnuson-Stevens Act should not be used to extend the rebuilding period.

Response. NMFS agrees that the rebuilding period should not be indeterminate. For stocks that will take more than 10 years to rebuild, the guidelines impose an outside limit that is objective, measurable, and linked to the biology of the particular species. While the statutory language is subject to more than one interpretation, NMFS believes the factors in section 304(e)(4)(A)(i) may be used to extend the rebuilding period, whether the no-fishing mortality period is shorter or longer than 10 years.

Comment 12. Two commenters argued that ''as short as possible'' means the time period should not be allowed to stretch to 10 years for stocks that could be rebuilt more quickly.

Response. The guidelines allow a rebuilding program to extend to 10 years, but only when the Council can justify that the needs of fishing communities or other factors in section 304(e)(4)(A)(i) of the Magnuson-Stevens Act outweigh the imperative to rebuild the stock as quickly as possible.

Comment 13. Other commenters stated the outer limit should be ''reasonable,'' perhaps based on life-history characteristics. Proposals included 10 years plus one reproduction cycle; one generation time; and the no-fishing mortality period plus a period linked to fishing mortality levels that will not prevent steady rebuilding. Some commenters believed that Congress did not intend for many fisheries to be closed if they could not be rebuilt within 10 years; rather, a reduced level of fishing should be allowed.

Response. The guidelines strike a balance between the Congressional directive to rebuild stocks as quickly as possible, and the desire, expressed in national standard 8, to minimize adverse economic effects on fishing communities. For stocks that cannot be rebuilt within 10 years, the guideline allows flexibility in setting the rebuilding schedule beyond the no-fishing mortality period, but places a reasonable, species-specific cap on that flexibility by limiting the extension to one mean generation time. Reduced fishing mortality that result in steady increases in the biomass are acceptable, if rebuilding goals can be met within the timeframe specified in the guideline.

Comment 14. A few commenters thought there should be no upper limit on the rebuilding period, and that the length of a rebuilding schedule should be left to Council discretion.

Response. Congress chose 10 years as the upper limit for the rebuilding period for most stocks; the exceptions in section 304(e)(4)(A)(ii) of the Magnuson-Stevens Act are narrow. For stocks that fall within the exceptions, the mandate that they be rebuilt in ''as short as possible'' a period indicates the need for a definite, measurable bound on the rebuilding schedule. The Congressional intent is very clear, that the previous practice of unlimited discretion in rebuilding stocks must be changed.

Comment 15. Several commenters suggested that stocks whose rebuilding would not be affected by the cessation of fishing mortality should be exempt from the provisions of section 304(e)(4) of the Magnuson-Stevens Act.

Response. NMFS understands that factors other than fishing mortality confound and handicap rebuilding efforts for some stocks, but can find no basis in the statute for exempting such stocks from the rebuilding requirement. (See also the response to comment 18 under national standard 1). The flexibility introduced in the rebuilding and mixed-stock provisions of the

guidelines should assist in management of these stocks.

Comment 16. Two commenters suggested that the guidelines contain an explicit description of the starting point for the rebuilding period.

Response. Section 600.310(e)(4)(ii) has been revised to indicate that the rebuilding period commences as soon as the first measures in a new or revised rebuilding program are implemented.

Comment 17. Two letters of comment raised concern that rebuilding programs may not be adopted until the year 2000 due to delays in approving new overfishing definitions and the submission of rebuilding programs based on those definitions. The commenters believe that new overfishing definitions and rebuilding programs in accordance with those programs should be submitted by October 11, 1998.

Response. NMFS agrees that rebuilding programs may be delayed beyond the year 2000, given the schedules established by the SFA, but will work with the Councils to implement revised definitions of overfishing and rebuilding plans as soon as possible. NMFS has clearly communicated to the Councils that section 108(b) of the SFA requires them to amend their FMPs not later than 24 months after enactment of the SFA (October 11, 1996) to bring them into conformance with the provisions of sections 303(a)(1), (5), (7) and (9)-(14) of the Magnuson-Stevens Act. Section 303(a)(10) specifically requires the specification of objective and measurable criteria for identifying when the fishery to which the FMP applies is overfished, and section 304(e) requires the submission of rebuilding plans for stocks that are determined to be overfished.

On September 30, 1997, NMFS submitted a report to Congress that identified those stocks in their areas of jurisdiction that are overfished or approaching an overfished condition, based on existing overfishing definitions, as required by the Magnuson-Stevens Act. The Councils were notified that they have 1 year within which to submit rebuilding programs for those stocks identified as overfished. Therefore, the Councils are to be simultaneously working on both new definitions of overfishing and rebuilding plans, as necessary. As new overfishing definitions are approved, the status of stocks will need to be reassessed against those new criteria. It is likely that some stocks that were not listed as overfished when judged against the overfishing definitions in place in September 1997 will be determined to be overfished when compared to the criteria in new definitions. If and when that occurs, NMFS will notify the affected Council(s) and the public of that fact and the Council(s) will have 1 year from that date in which to submit a rebuilding plan.

Comment 18. Two commenters suggested that the guidelines elaborate on the relationship between environment/habitat and the specified time period for rebuilding. In particular, the commenters wondered what is meant by the term ''environmental conditions,'' whether remedial action would still be required in the event that environmental conditions cause the minimum possible rebuilding time to exceed 10 years, whether MSY should be re-estimated if habitat capacity changes, and, if so, whether remedial action could appropriately address habitat issues as well as fishing mortality.

Response. Except for a slight revision to § 600.310(d)(4)(iii), as described below, no change was made. ''Environmental conditions'' means those biological or physical components of the marine ecosystem with which the overfished stock or stock complex interacts (also see revised § 600.310(e)(4)(ii)). Council action is required whenever a stock or stock complex is determined to be overfished, regardless of whether it is possible to achieve rebuilding within 10 years. Regarding MSY, it is clear from the definition in § 600.310(c)(1)(i) that MSY is conditional on the state of the environment, which includes habitat. As noted in § 600.310(d)(4)(ii), environmental changes that affect the long-term productive capacity of the stock or stock complex require re-specification of one or more status determination criteria. As noted in § 600.310 (d)(4)(iii), Councils should recommend restoration of habitat in cases where manmade environmental changes are partially responsible for a stock or stock complex being in an overfished condition. In addition, § 600.310(d)(4)(iii) has been revised to reference the Councils' responsibilities in cases where essential fish habitat is concerned.

Comment 19. Several commenters objected to the proposed requirement that each FMP specify, to the extent possible, both a maximum fishing mortality threshold and a minimum stock size threshold for each stock or stock complex covered by that FMP (§ 600.310(d)(2)).

Response. No change was made. Section 303(a)(10) of the Magnuson-Stevens Act requires the specification of status determination criteria, and sections 304(e)(1) and 304(e)(2) state that these criteria are to be used for the purpose of determining which fisheries are in need of action ''to end overfishing'' and ''to rebuild affected stocks of fish.'' The only way that both needs (''end overfishing'' and ''rebuild affected stocks'') can be addressed is if the status determination criteria include measures appropriate to each—namely, one measure pertaining to the rate of fishing mortality and another measure pertaining to the size of the stock. That is, if only a maximum fishing mortality threshold were specified, it would be possible to determine which fisheries require action to end overfishing, but it would not be possible to determine which fisheries require action to rebuild affected stocks. Conversely, if only a minimum stock size threshold were specified, it would be possible to determine which fisheries require action to rebuild affected stocks, but it would not be possible to determine which fisheries require action to end overfishing.

Comment 20. Several commenters objected to the proposed provision in § 600.310(d)(2)(ii) that would allow the minimum stock size to be as low as 50 percent of the MSY stock size, conditional on an appropriate choice of MSY control rule. These commenters felt uniformly that Congress intended for any stock or stock complex below its MSY level to be considered overfished, and suggested that a stock size threshold be set at 80 percent (one commenter said ''at or above 80 percent'') of the MSY stock size. The commenters were divided over whether this reference point should constitute a minimum threshold or an ''interim'' threshold, where an interim threshold was defined as a point that ''should trigger a review of what remedial action is necessary to prevent the decline from continuing.''

Response. No change was made. A key question is whether Congress intended for each stock or stock complex that temporarily falls below its MSY level to be considered overfished, even if the rate of fishing mortality on that stock or stock complex has consistently been within the limit allowed by the MSY control rule. If the answer is ''yes,'' then any threshold below the MSY stock size is unacceptable: For example, a threshold set at 80 percent of the MSY stock size is just as unacceptable as one set at 50 percent of the MSY stock size. However, NMFS believes it is important to remember that natural variability is an inherent part of fishery systems, and that any stock or stock complex managed for MSY will sooner or later

fall below its MSY level, though only temporarily.

Because the Magnuson-Stevens Act explicitly allows OY to be as high as MSY, NMFS believes that Congress must have intended to allow stocks to be managed such that stocks were capable of producing MSY, meaning that Congress must have been willing to accept the consequence that some stocks would fall below their respective MSY producing levels temporarily. Given this interpretation, the question becomes, ''How low is too low?'' While the fishery science literature does not provide a definitive answer to this question, NMFS believes that a prudent rule can be established as follows: Two of the best known models in the fishery science literature find that, on average, the stock size at MSY is approximately 40 percent of the stock size that would be obtained if fishing mortality were zero (the pristine level). (The actual values are 36.8 percent (Gompertz-Fox model) and 50 percent (Verhulst-Schaefer model). Also, the fishery science literature contains several suggestions to the effect that any stock size below about 20 percent of the pristine level should be cause for serious concern. In other words, a stock's capacity to produce MSY on a continuing basis may be jeopardized if it falls below a threshold of about one-fifth the pristine level. Expressing this threshold in terms of the stock size at MSY results in a minimum stock size threshold equal to 50 percent of the MSY level. A stock at 50 percent of its MSY level would typically be close to 20 percent of its pristine level, a threshold below which it must not be allowed to fall.

Of course, the guidelines do not prohibit the Councils from setting as many ''interim'' stock size thresholds as they like, so long as these are above the minimum stock size threshold. However, it would be a mistake for the guidelines to require use of an interim stock size threshold set at 80 percent of the MSY level in all cases, insofar as some stocks may be incapable of rebuilding to the MSY level from such a threshold within the statutory time period, depending on the status and biology of the stock, the stock's interactions with other components of the marine ecosystem, and the choice of MSY control rule.

Comment 21. Several commenters suggested that the guidelines contain an explicit prohibition against ''short-term'' or ''pulse'' overfishing.

Response. No change was made. Taken together, § 600.310(d)(2)(i), (e)(3), and (e)(3)(i) already indicate that exceeding the maximum fishing mortality threshold for even a single year is not permissible, except as provided under § 600.310(d)(6). If ''short-term'' or ''pulse'' overfishing means that the maximum fishing mortality threshold would be exceeded for a period of at least 1 year, then the guidelines clearly prohibit these practices.

Comment 22. Two commenters suggested that the minimum stock size threshold should always be set equal to the MSY stock size. However, one of these commenters further suggested that it should be permissible for a stock or stock complex to fall slightly below its minimum stock size threshold on an occasional basis without being considered overfished.

Response. No change was made. Setting the minimum stock size threshold equal to the rebuilding target means that natural variability will frequently cause stocks to be classified as ''overfished,'' even if no overfishing ever occurs. The suggestion to permit occasional, slight violations of the minimum stock size threshold would require establishing criteria for determining the acceptable rate and extent of threshold violation, which would undoubtedly be a problematic exercise.

Comment 23. Several commenters suggested that the guidelines should incorporate, to the maximum extent possible, recent strides made in the application of the precautionary approach, such as those contained in the United Nations Treaty on Straddling Stocks and Highly Migratory Species.

Response. No change was made. The guidelines are already very much in step with, and in some cases ahead of, recent strides made in the application of the precautionary approach in the international arena. In addition, as noted in the preamble of the proposed rule, further technical guidance regarding specification of a precautionary approach will be provided by NMFS in the near future.

Comment 24. One commenter suggested that the guidelines should require all MSY estimates (both point estimates and ranges) and OY specifications (both single values and ranges) to be accompanied by confidence intervals, which the commenter felt to be a basic component of a risk-averse approach. The commenter suggested that such confidence intervals could be qualitative in nature, if necessary.

Response. No change was made. NMFS agrees that a risk-averse approach is highly desirable, both for estimation of MSY and for specification of OY, but does not believe that requiring confidence intervals for these quantities is necessarily the best or only way to implement such an approach. For example, if point estimates are determined in an explicitly risk-averse manner, the addition of confidence intervals could prove more confusing than helpful, especially to a nontechnical audience. However, in those cases where Councils feel that confidence intervals would be helpful, § 600.310(c)(2)(ii) already gives the Councils explicit latitude to use them. The same paragraph also requires that appropriate consideration of risk be incorporated into estimates of MSY, while § 600.310(f)(5)(iii) states that criteria used to set target catch levels (such as OY) should be explicitly risk averse, so that greater uncertainty regarding the status or productive capacity of a stock or stock complex corresponds to greater caution in setting target catch levels.

Comment 25. One commenter suggested that a precautionary approach is not appropriate for a management target such as OY.

Response. No change was made. Contrary to this comment, NMFS believes a precautionary approach is particularly appropriate for a management target such as OY. If management is effective, harvests will typically be close to the target level, so if the precautionary approach is to have a substantial impact on fishery management, it needs to be applied to management targets at least as much as to management thresholds.

Comment 26. One commenter suggested that the description of the precautionary approach should state that lack of information should not prevent a Council from taking reasonable steps to address fishery resource problems.

Response. No change was made. This suggestion is already implicit in § 600.310(f)(5)(iii), which states that greater uncertainty (i.e., greater lack of information) should correspond to greater caution in setting target catch levels. NMFS believes that prudent decision-making in the face of uncertainty is a cornerstone of any precautionary approach.

Comment 27. Two commenters expressed concern over the target stock size for rebuilding. One commenter suggested that the target should be the OY stock size and felt that the guidelines erred in treating the MSY stock size as though it were the target. The other commenter suggested that the target ought to be the MSY stock size and felt that the guidelines erred in treating the MSY stock size as though it were a threshold.

Response. The Magnuson-Stevens Act, in section 3(28)(C), implies strongly that the MSY stock size is at least an initial target for rebuilding. Of course, to the extent that OY is lower than MSY and that management is generally successful in achieving OY on a continuing basis, the OY stock size will be greater than the MSY stock size; thus the ultimate target level (OY stock size) will be greater than the initial target level (MSY stock size). The guidelines are consistent in treating the MSY stock size as a constraint rather than as a threshold.

Comment 28. Several commenters suggested that the method for calculating rebuilding time requires clarification. Assuming that some sort of estimation is involved in calculating rebuilding time, a number of possibilities present themselves. Does ''rebuilding time'' refer to the expected rebuilding time, the median rebuilding time, some percentile of rebuilding times, or something else?

Response. No change was made. The commenters are correct that there are a large number of ways to calculate rebuilding time. In addition to statistics pertaining to the time required to reach some specified stock size, other possibilities include various statistics pertaining to the stock size achieved at some specified future time—for example, the expected stock size, the median stock size, or some percentile of stock sizes. While these choices pose potentially substantive issues, NMFS believes there are a number of reasonable ways to calculate rebuilding time that would be consistent with the provisions of the national standard 1 guidelines. It is beyond the scope of these guidelines to establish a single method to be used in all cases. However, it is possible that the forthcoming technical guidance regarding the precautionary approach (as described in the preamble to the proposed rule) could address these issues.

Comment 29. One commenter suggested that the maximum fishing mortality threshold should be greater than the fishing mortality rate associated with the chosen MSY control rule. The commenter noted that this would be consistent with the approach taken by Rosenberg *et al.* (1994)(see preamble to the proposed rule).

Response. No change was made. The commenter is correct insofar as the report by Rosenberg *et al.* (1994) interpreted the former Magnuson Act as taking overfishing to be a rate of fishing mortality somewhat greater than the rate associated with any MSY control rule. However, it is clear that the Magnuson-Stevens Act takes a different, more conservative, approach by linking overfishing much more directly to MSY. Allowing the maximum fishing mortality threshold to exceed the fishing mortality rate associated with the MSY control rule would thus be inconsistent with the Magnuson-Stevens Act.

Comment 30. One commenter felt that the proposed procedural requirements for interim measures in § 600.310(e)(5) are too burdensome. The commenter stated that, under the proposed guidelines, the Councils would essentially have to develop the same measures as part on an FMP or amendment for implementation on a more permanent basis, before recommending the measures as interim measures. Instead, the Councils should be allowed to recommend an interim action whenever there is a substantial conservation benefit to be gained.

Response. No change was made. NMFS agrees that actions to address overfishing should not be constrained unnecessarily. Section 304(e)(6) of the Magnuson-Stevens Act states that interim measures can be requested by a Council during its development of an FMP, an FMP amendment, or proposed regulations to address overfishing as required under section 304(e), until such measures can be replaced by such FMP, amendment, or regulations. Section 305(c)(3)(B) of the Magnuson-Stevens Act establishes time constraints on interim actions and makes extensions contingent upon the Council's actively preparing an FMP, FMP amendment, or proposed regulations to address overfishing on a permanent basis. Section 600.310(e)(6) of the guidelines reflects these statutory requirements.

Comment 31. One commenter objected to statements in § 600.310(f)(1)(ii) and (f)(5)(i) to the effect that OY cannot be achieved on a continuing basis if status determination criteria are not met. The commenter contended that the purpose of the status determination criteria is to measure FMP performance, not to control fishing, and that the present wording of the guidelines might preclude a Council from taking a gradual approach toward bringing fishing mortality into conformity with the maximum fishing mortality threshold.

Response. No change was made. NMFS believes that status determination criteria are indeed intended to control fishing. The commenter is correct insofar as the guidelines would preclude a Council from taking a gradual approach toward bringing fishing mortality into conformity with the maximum fishing mortality threshold. Once a Council is notified that overfishing is occurring, it must take action within 1 year to end overfishing. A gradual approach is not permitted.

Comment 32. One commenter suggested that the guidelines should include a clear statement to the effect that, whenever overfishing is occurring, remedial action is required.

Response. No change was made. The statement already appears in § 600.310(e)(3)(i).

Comment 33. One commenter suggested that the guidelines should encourage adoption of target harvest levels set safely below MSY.

Response. No change was made. The statement already appears in § 600.310(f)(5)(i).

Comment 34. Several commenters suggested that § 600.310(f)(2)(i) and (f)(2)(ii) under emphasized the benefits to the Nation accruing from food production relative to those accruing from recreational opportunities. Two commenters suggested that contributions to the surrounding economies ought to be listed as a benefit accruing from food production, as well as from recreational opportunities. One commenter suggested that the guidelines seemed to equate recreational fishing with non-consumptive use and commercial fishing with consumptive use, giving the impression that recreational fishing does not contribute to food production. One commenter was concerned regarding the vague nature of the ''other non-consumptive activities'' that were suggested to be ''important to the national, regional, and local economies'' in § 600.310(f)(2)(ii).

Response. Sections 600.310(f)(2)(i) and (f)(2)(ii) have been revised. NMFS believes that neither the benefits to the Nation accruing from food production nor those accruing from recreational opportunities should be under emphasized. Contributions to the national, regional, and local economies are now listed as benefits accruing from both food production and recreational opportunities. Contrary to one of the comments cited, the proposed rule explicitly acknowledged the contribution of recreational fishing to food production; this acknowledgment is retained in the revised language. The non-specific reference to ''other non-consumptive activities'' has been deleted from § 600.310(f)(2)(ii), insofar as this paragraph is not intended to provide an exhaustive list of non-consumptive uses.

Comment 35. Several commenters disagreed with the proposed guidelines' allowance of an exception to the requirement of preventing overfishing,

in the case of one stock component of a mixed-stock fishery. They said that the legislative history of the SFA supports elimination of this exception, and challenged NMFS' authority to retain it.

Response. The legislative history of the SFA does not directly address this issue. The statute defines ''overfishing'' and ''overfished'' in terms of the capacity of a fishery to produce MSY. National standard 1 requires conservation and management measures to prevent overfishing while achieving the OY from each fishery. Section 304(e) of the Magnuson-Stevens Act requires the Secretary to identify fisheries that are being overfished. The Council must then take steps to end overfishing in the fishery.

A ''fishery'' is defined in the Magnuson-Stevens Act as ''one or more stocks of fish which can be treated as a unit for purposes of conservation and management.'' In a mixed-stock fishery, several stocks are harvested together and are managed as a unit. From the SFA's focus on ''fisheries,'' and the fact that it did not amend national standard 1, NMFS infers that Congress did not mean to eliminate entirely the long-standing practice of allowing a mixed-stock fishery to continue, if certain conditions specified in the guidelines were met.

To respond to concerns that this exception might become a huge loophole, the proposed guidelines considerably narrowed this exception from the existing guidelines. To allow overfishing of one stock in a mixed-stock fishery, a Council must meet three stringent conditions: (1) It must demonstrate by analysis that the action will result in long-term net benefits to the Nation; (2) it must demonstrate by analysis that a similar level of benefits cannot be achieved by modifying fleet behavior, gear selection or configuration, or other technical characteristic so that no overfishing would occur; and (3) it must ensure that the action will not cause any species or evolutionarily significant unit thereof to require protection under the Endangered Species Act.

The exceptions for mixed-stock fisheries have thus been significantly constrained by requiring that (1) demonstrated net benefits to the Nation be long-term, rather than short-term; (2) an analysis be performed to consider technical or operational alternatives to overfishing; and (3) the stock or stock complex not be driven to a dangerously low level.

NMFS believes the guidelines strike the correct balance between preventing a stock from becoming overfished and achieving OY for the fishery as a whole.

Comment 36. The notice reopening the comment period asked whether overfishing evaluations and rebuilding programs should be focused on individual stocks, or on a fishery. In response, many commenters pointed out that a stock-by-stock approach is the only scientifically justified method. Overlooking the condition of each stock is also inconsistent with Congressional intent to rebuild all fishery resources. Other commenters wanted to focus on fisheries, as part of an ecosystem approach to management. A mixed stock fishery should be managed as a unit, and should not be closed just because one component of the fishery is overfished.

Response. A fishery comprised of many stocks cannot be judged as overfished or not; only for a stock or stock complex of fish can measurable, objective criteria of overfishing be established, as required by the SFA. The same concern applies to judging whether a fishery has been rebuilt; biologically, that can be determined only on a stock or stock complex basis. The Secretary's first report to Congress (September 30, 1997, under section 304(e)) identified stocks, not fisheries, as overfished.

Focusing on stocks as a scientific endeavor is not inconsistent with managing a fishery as a unit. As explained in the response to comment 35 under national standard 1, identification of a stock as overfished does not necessarily mean that the entire fishery in which it occurs must be severely constrained while that stock is rebuilt. Scientific judgments on overfishing and rebuilding must be made, to the extent practicable, on a stock-by-stock basis, but management judgments on optimizing benefits can be made on the fishery as a whole. In other words, managers should be aware of the biological status of each stock, and should also be required to justify the continuation of overfishing of a stock in a mixed-stock fishery on the grounds of maximizing benefits.

Comment 37. One commenter suggested that a discussion of ''acceptable biological catch'' (ABC) be included in the guidelines, as in the 1989 version. The commenter felt that ABC is used by most, if not all, of the Councils and in many FMPs.

Response. No change was made. NMFS believes that ABC, as typically used, is an example of the ''annual target harvest levels that vary with stock size'' described in § 600.310(f)(4)(ii). Given that the term ''acceptable biological catch'' does not appear in the Magnuson-Stevens Act (although ''allowable biological catch'' is used once, without definition, in section 303(b)(11)), NMFS does not believe that it is necessary to reference this additional term by name in the guidelines.

Comment 38. One commenter objected to specifying minimum stock size threshold as a function of MSY stock size, as in § 600.310(d)(2)(ii). The commenter was concerned that extreme changes in environmental conditions could lead to extreme changes in carrying capacity and could result in a mismatch between the minimum stock size threshold and the stock's new productive capacity.

Response. No change was made. Section 600.310(d)(4)(ii) requires that status determination criteria be respecified if changes in environmental conditions cause the long-term productive capacity of the stock or stock complex to change. (See also the response to comment 18 for national standard 1).

Comment 39. One commenter objected to the statement in § 600.310(f)(5)(i) that continual harvest at a level above OY would violate national standard 1, even if no overfishing resulted. The commenter felt that it is both physically and fiscally impossible to assure that quotas are not systematically exceeded.

Response. No change was made. NMFS believes that the national standard 1 mandate for ''achieving, on a continuing basis, the OY from each fishery'' should not be interpreted to mean, ''achieving, on a continuing basis, the OY or some greater amount of harvest from each fishery.'' By definition, MSY is the greatest amount of harvest that could be achieved from a fishery on a continuing basis. Presumably, the reason that the Magnuson-Stevens Act makes explicit provision for setting OY at a level below MSY is that, where justified on the basis of relevant economic, social, or ecological factors, continual harvest at a higher level (such as MSY) is to be avoided. NMFS' experience has been that it is indeed possible to assure that quotas are not systematically exceeded. If, however, a Council finds that a systematic amount of harvest overrun is inevitable, quotas should be reduced by that amount.

Comment 40. Several commenters suggested that the guidelines list examples of management actions required under a variety of fishing mortality rates and stock sizes.

Response. No change was made. NMFS believes there are so many variables and contingencies specific to each fishery that it would not be meaningful to list examples of the type

requested. In general, though, it is clear that a Council's primary control will be over fishing mortality. If the fishing mortality rate on a stock or stock complex exceeds the maximum fishing mortality threshold, it must be reduced to the extent that it no longer exceeds that threshold, as described in § 600.310(e)(3)(i) and (e)(4)(i). If a stock or stock complex is overfished, fishing mortality must be controlled such that the stock rebuilds to the MSY level within a time period satisfying the statutory requirements, as described in § 600.310(e)(3)(ii) and (e)(4)(ii).

Comment 41. In discussing fisheries that have large state components, one commenter said that states will have to cooperate to achieve the SFA's rebuilding objectives. He recommended that the possibility of preempting a state's authority over a fishery in its waters be specified in the guidelines.

Response. The criteria and procedures for Federal preemption of state authority are set out in section 306(b) of the Magnuson-Stevens Act. In addition, NMFS would also comply with applicable requirements of Pub. L. 104–4, the Unfunded Mandates Reform Act of 1995, and E.O. 12612, Federalism. NMFS sees no reason to reiterate these requirements in the guidelines, but agrees that consultation and state cooperation will be essential in meeting rebuilding schedules for some fisheries.

Comment 42. One commenter stated that the guidelines should clearly point out that the SFA imposes the obligation to establish a strong domestic plan to rebuild stocks, within 10 years if biologically possible, and that obligation applies to international as well as domestic fisheries.

Response. NMFS agrees that the obligation to establish a strong domestic plan to rebuild stocks, within 10 years if biologically possible, is a requirement of the SFA, regardless of the species involved. The guidelines, as proposed, reflect this view. There is no exception provided in the guidelines for any species or fishery beyond that provided in the SFA (section 304(e)(4)(C)). NMFS notes that the SFA requires that any rebuilding program for fisheries managed under an international agreement must reflect traditional participation in the fishery, relative to other nations, by fishermen of the United States. NMFS does not agree that additional clarifying language is necessary in the guidelines.

Comment 43. With respect to highly migratory species such as tunas and billfish, one commenter believed expressions of yield and overfishing are meaningless on local scales. The commenter questioned what is required of the Councils and what the limits of authority are regarding ending overfishing and rebuilding overfished stocks in areas where the majority of the exclusive economic zone (EEZ) stock/fishery occurs in state waters (e.g., onaga) or in international waters (e.g., armorhead) where no agreements exist.

Response. The Councils have the responsibility under SFA to do all they can to eliminate overfishing and to rebuild overfished stocks. The Councils are limited in their authority and their ability to correct overfishing in many cases. However, this limitation should not prevent the Councils from doing everything within their authority and capabilities to address overfishing. (See also the response to comment 33 under national standard 1.)

Comment 44. One commenter was concerned regarding NMFS' proposed requirement to implement regulations to end (or prevent) overfishing and to rebuild (or sustain) affected fish stocks that are considered to be overfished or approaching an overfished condition. The commenter objected to this provision's application to migratory fish stocks with international harvesters, especially when the majority of the harvest is taken by foreign fleets.

Response: The SFA provisions concerning overfishing and rebuilding migratory fish stocks are not restricted to those situations where the U.S. harvest is a majority of the total fishing mortality. The SFA does, however, recognize the international aspects of migratory species, and provides that the period for rebuilding may exceed 10 years if management measures under an international agreement so dictate. And, as noted in the response to comment 33 under national standard 1, the rebuilding program for fisheries managed under an international agreement must reflect traditional participation in the fishery, relative to other nations, by fishermen of the United States. The guidelines reflect these provisions of the SFA.

Comment 45. One commenter said the proposed rule states that all fishing mortality must be counted against OY, including that resulting from bycatch, research fishing, and any other fishing activities, although the Magnuson-Stevens Act (section 3(15)) defines fishing in a way that does not include scientific research activity that is conducted by a scientific research vessel.

Response. The proposed guidelines have been revised to reflect the fact that the term ''fishing'' does not include any scientific research activity that is conducted by a scientific research vessel. In § 600.310(f)(4)(iii), the words ''research fishing'' have been changed to ''scientific research.'' However, the fishing mortality that occurs during scientific research requires estimation and inclusion in the accounting of all harvesting mortality to which stocks are subjected.

Comment 46. One commenter stated that overfishing criteria do not provide any explicit treatment for hatchery stocks. The commenter assumed that hatchery stocks cannot be aggregated with wild stocks for the purposes of establishing overfishing criteria.

Response. NMFS agrees with the commenter's assumption that hatchery stocks cannot be aggregated with wild stocks for purposes of establishing overfishing criteria.

National Standard 2

Comment 1. One commenter suggested that NMFS should encourage the policy that fisheries management must be based on scientific facts.

Response. NMFS agrees, and recognizes that additional factors, such as social and economic impacts, must be taken into consideration in formulating management measures.

Comment 2. One commenter stated that the guidelines for national 2 should expressly address data on bycatch and safety.

Response. NMFS agrees and has amended § 600.315(e)(1)(ii) to include safety. That section already includes a reference to bycatch.

Comment 3. One commenter stated that data reporting requirements in national standard 2 are too burdensome and will inhibit fisheries management.

Response. Section 301(a)(2) of the Magnuson-Stevens Act requires that conservation and management measures be based on the best scientific information available. The minimum information sets required in FMPs are described in section 303(a) and (b) of the Magnuson-Stevens Act. The guidance provided in § 600.315 summarizes those statutorily required minimum requirements. Moreover, the Paperwork Reduction Act requires NMFS to minimize the burden of its information collection by ensuring the information will have practical utility.

Comment 4. Two commenters suggested there should be more explicit guidance under national standard 2 regarding the data requirements related to fishing communities.

Response. NMFS agrees. The language in § 600.315(e)(1) introductory text has been revised to clarify that Stock Assessment and Fishery Evaluation (SAFE) reports are intended to summarize the most recent information

concerning a variety of aspects of the fishery, including fishing communities.

National Standard 4

Comment 1. One commenter suggested that the guidelines for national standard 4 should be modified by adding: ''In all [FMPs] prepared by any Council in a limited access fishery, all permits must be treated equally and fairly.''

Response. No change was made. The criteria that a Council must use in developing a limited access program are listed in the Magnuson-Stevens Act (section 303(b)(6)). National standard 4 requires that all allocations, including limited access permits, be handled fairly and equitably.

Comment 2. One commenter suggested that national standard 4 should contain a strict prohibition that prevents any one state (such as Alaska) from being granted (by any Council) monopoly control of fisheries management in Federal waters where fishermen from several states harvest under an approved FMP.

Response. The Magnuson-Stevens Act provides that a state may regulate a fishing vessel outside the boundaries of that state (section 306(a)(3)). However, management measures developed by a state pursuant to this authority may not discriminate between residents of different states. Mechanisms exist for ensuring that such authority does not result in unfair treatment. For example, two North Pacific Fishery Management Council FMPs that defer the majority of management authority to the State of Alaska (the crab and salmon FMPs) have mechanisms that provide for individuals to challenge the State's management actions.

Comment 3. One commenter stated that fishing sectors such as subsistence fishing and aboriginal people indigenous to the region should be added to the commercial, recreational, and charter fishing sections identified.

Response. No change was made. The Magnuson-Stevens Act already requires that all fishermen should be treated fairly and equitably.

National Standard 5

Comment 1. Several commenters stated that the guidelines do not adequately reflect the revision from ''promoting economic efficiency'' to ''considering economic efficiency'' in national standard 5, particularly in the use of the term ''encouraging'' relative to efficient utilization.

Response. NMFS agrees that the word ''encouraging'' should be replaced with ''considering,'' to make this standard consistent with the intent of Congress; § 600.330(b)(1) has been revised accordingly. The reference to limited access systems is only an example of a program that may contribute to efficiency. No statements or references are made that limited access is a preferred alternative to increase efficiency.

Comment 2. One commenter stated that the use of the phrase ''least cost to society'' in the national standard 5 guideline is inappropriate, because achieving long-term benefits may require costs that are greater than the least available.

Response. The use of this phrase is similar to its use in the national standard 7 guideline, which refers to minimizing costs. The phrase does not mandate that the alternative with the lowest cost be selected. Rather, it is meant to provide guidance that efficient utilization of resources is a way to achieve benefits for the Nation, while limiting the costs to society. Analysis of alternative management measures, including those that would offer greater efficiency, are expected to estimate the relative benefits and costs of those measures.

National Standard 7

Comment 1. One commenter suggested that the Councils should be required to prepare an FMP for any fishery that has recreational and/or commercial catch.

Response. The Magnuson-Stevens Act did not impose such a requirement. The national standard guidelines do not excuse the Councils from developing FMPs that are necessary or appropriate. The guidelines prior to the SFA stated that an FMP should be prepared only for fisheries in need of management. NMFS believes no change is necessary, because requiring an FMP for every fishery could redirect critical funds needed for resource surveys, data collection, data or impact analyses, or other essential activities, but result in little or no incremental benefit to the Nation.

National Standard 8

Comment 1. One commenter stated that the definition of ''fishing communities'' needs to be amended to include all components of the recreational industry.

Response. No change was made. The definition of ''fishing community'' in the guidelines already includes recreational fishing or directly related fisheries-dependent services and industries.

Comment 2. One commenter stated that ''sustained participation'' referred to in this standard does not guarantee any specific rights, practices, or access to a specific fishery. Two other commenters stated that the intent of Congress in reference to ''sustained participation'' was not to cause fishermen to change gear or species, particularly since some communities are dependent on specific gears and/or fisheries.

Response. No change was made. ''Sustained participation'' means continued access to the fishery within the constraints of the condition of the resource. This standard requires that the importance of fishery resources to a community be taken into account in conservation and management measures; however, the long-term conservation and/or rebuilding of stocks may require limits on particular gears and the harvest of specific stocks.

Comment 3. One commenter stated that proposed § 600.345(b)(2) captures the intent of Congress that this standard does not allocate resources to particular communities, while § 600.345(c)(3) has implicitly allocative language in its focus on ''levels of dependence on and engagement in'' the fishery.

Response. No change was made. The language in § 600.345(c)(3) reflects the meaning of the Magnuson-Stevens Act, which refers to communities being ''substantially engaged'' and ''substantially dependent.'' The levels of dependence on and engagement in a fishery need to be ascertained in order to identify communities, whether located in rural or metropolitan areas, that may be potentially affected. Further, dependence, engagement, and sustained participation are not measured solely in terms of the percent of fishing activity in relation to the entire economic base of the community; there are other social, cultural, and economic assessments specifically focused on the harvesting, processing, and fishery-support industries.

Comment 4. One commenter stated that, in § 600.345(b) and (c), the definitions and explanations are so broad as to render them useless in identification of fishing communities.

Response. NMFS disagrees. The guidance reflects the language and intent of Congress to be inclusive of fishing communities. The definitions and explanations in § 600.345(b) and (c) are acceptable operational definitions for use by social scientists and economists in undertaking data gathering and analysis.

Comment 5. One commenter stated that, in § 600.345, all components of the recreational fishing industry in fishing communities should be described and analyzed in the same manner and depth as commercial fishery components.

Response. NMFS agrees. The guidance in the national standard guidelines covers all sectors.

National Standard 9

Comment 1. Several commenters stated that the guidelines as written diverged significantly from the statute and Congressional intent and require a substantial rewriting. One commenter was concerned that the Councils would not have to take action to amend their FMPs to minimize bycatch and would still be found to be in compliance with national standard 9.

Response. NMFS disagrees. The Councils and NMFS must review all existing FMPs and all future FMPs and FMP amendments for compliance with national standard 9. Existing FMPs will be amended, if necessary, to ensure compliance with this standard. The Councils are required to re-examine the conservation and management measures contained in their FMPs for ways to reduce bycatch below current levels. In addition, the Councils must revisit the measures periodically to ensure that bycatch is reduced as much as practicable. No change in the guidelines is necessary.

Comment 2. Several commenters stated that the SFA sent a very clear message that bycatch is a serious problem and that the Councils are required not to study the problem, as suggested in the proposed guidelines, but to amend FMPs to include measures to ''minimize bycatch and to minimize the mortality of such bycatch that cannot be avoided.''

Response. NMFS agrees that bycatch is a problem in many of the Nation's fisheries. The amendments to the Magnuson-Stevens Act require that conservation and management measures minimize bycatch to the extent practicable and, to the extent bycatch cannot be avoided, minimize the mortality of such bycatch. The requirement is clearly not discretionary. NMFS disagrees that the guidelines only require the Councils to study the bycatch problem; the Councils must take action to minimize bycatch and bycatch mortality to the extent practicable. No change in the guideline is necessary (also see the response to comment 1 under national standard 9).

Comment 3. Several commenters observed that national standard 9 recognizes bycatch as an integral component of the total fishery, with biological if not economic value. The commenter stated that this national standard encourages the redeployment, or perhaps the elimination, of destructive, non-selective gears.

Response: NMFS agrees. The Councils have a range of options available to them to satisfy the requirements of national standard 9; the commenter mentioned only two of the options available. However, the legislative history of the SFA includes a floor statement by Congressman Young that ''it is not the intent of Congress that the [Councils] ban a type of fishing gear or a type of fishing in order to comply with this standard.''

Comment 4. One commenter observed that national standard 9 applies not only to commercially valuable species, but also to all finfish, shellfish, and invertebrate species with no commercial value.

Response. NMFS agrees. The definition of ''fish'' in the Magnuson-Stevens Act includes finfish, shellfish, and invertebrate species, and all other forms of marine animal and plant life except marine mammals and birds; by extension, bycatch applies to these forms of marine life.

Comment 5. One commenter stated that the guidelines are not clear on exactly what is required for compliance with this national standard and what the consequences would be of not meeting that requirement. The commenter also suggested that such requirements would likely not be followed because they are too time/staff/data intensive. Another commenter stated that the guidelines suggest that measures to minimize bycatch need not be implemented if they are determined to be ''inconvenient'' with respect to, for example, ''changes in fishing, processing, disposal, or marketing costs,'' or ''changes in fishing practices and the behavior of fishermen.''

Response. The Secretary is required to ensure that all FMPs are in compliance with the national standards. FMPs or FMP amendments that are not in compliance will not be approved. Inconvenience is not an excuse; bycatch must be avoided as much as practicable, and bycatch mortality must be reduced until further reductions are not practicable. Adherence to the national standards is not discretionary.

Comment 6. One commenter suggested that, in the definition of bycatch in § 600.350(c), NMFS strike the parenthetical in the definition of bycatch and the phrase, ''or that enter commerce through sale, barter, or trade.''

Response. The language in § 600.350(c) is consistent with the Magnuson-Stevens Act; commercial fishing, as defined in section 3(4), ''means fishing in which the fish harvested, either in whole or in part, are intended to enter commerce or enter commerce through sale, barter or trade.'' While the term ''sale'' is inclusive of barter and trade, the phrase has been kept in the guidelines to ensure that there is no ambiguity as to what is considered bycatch. NMFS believes the parenthetical in the definition of ''bycatch'' provides useful clarification of ''harvested in a fishery.'' No change was made.

Comment 7. Several commenters recommended removing the definition of discard in proposed § 600.350(c)(2) because they believed the term was included by NMFS without support in the Magnuson-Stevens Act or its legislative history. They stated that the definition is in conflict with the law and allows the continuation of fishing methods and practices that involve great amounts of bycatch, like roe stripping and shark finning.

Response. The definition in § 600.350(c)(2) has been removed; however, NMFS has retained the interpretation that ''bycatch'' includes the discard of whole fish—not the discard of unwanted parts. Nothing in the definitions of ''bycatch'' or ''economic discards'' suggests that the discard of unwanted parts of fish is addressed accordingly (see the response to comment 12 under national standard 9 for a discussion of practices such as shark finning).

Comment 8. One commenter requested that NMFS add to the last sentence in the definition of bycatch in § 600.350(c) the words ''or Atlantic highly migratory species harvested in a commercial fishery that are not regulatory discards and that are tagged and released alive under a scientific tag and release program established by the Secretary.''

Response. NMFS agrees and has added the suggested language to § 600.350(c).

Comment 9. A commenter asked whether any fish caught and sold would be considered bycatch.

Response. According to the definition of bycatch in the Magnuson-Stevens Act, the sale of any fish removes it from being considered bycatch.

Comment 10. A commenter stated that fish that are ground up and thrown overboard are not counted as discards.

Response. NMFS disagrees. Whole fish that are ground up and thrown overboard would be considered bycatch.

Comment 11. One commenter suggested that, in § 600.350(b), the second sentence be replaced with: ''Bycatch can, in four ways, impede efforts to protect marine ecosystems, achieve sustainable fisheries and the full benefits that they provide to the Nation.'' The suggestion was also made

that the following sentence be added to § 600.350(b): ''First, removing unknown amounts of commercial or non-commercial biomass as bycatch affects marine ecosystems in ways that are poorly understood at best.''

Response. The first suggestion was adopted, because sustainable fisheries are predicated on healthy marine ecosystems. In addition, § 600.350(b) was revised to combine the concepts of increased uncertainty concerning total fishing related mortality and the impact of bycatch on other uses of fishery resources.

Comment 12. One commenter stated that portions of fish not used or retained (e.g., finned sharks) are incidental catch (and are therefore bycatch). Other commenters stated that sharks could be harvested for fins and discarded without being counted as discards.

Response. The Magnuson-Stevens Act does not define incidental catch; however, it defines ''bycatch'' as fish that are harvested in a fishery, but that are not sold or kept for personal use. The Magnuson-Stevens Act does not specify that the entire animal or plant must be sold or kept for personal use. This does not mean, however, that wasteful practices should not be of concern, nor that they may not be restricted by the Councils on some other basis. The issue of how much of a fish should be retained is a utilization issue, which is distinct from the bycatch issue.

Comment 13. One commenter stated that damaged and/or mutilated (e.g., shark-bitten) target species that are discarded are bycatch.

Response. NMFS agrees. Such fish are considered bycatch if they are not sold or kept for personal use.

Comment 14. Economic discards of target species, such as tunas during times of market surplus, including dumping of fish on land, are bycatch.

Response. NMFS agrees. Such discards are considered bycatch.

Comment 15. One commenter observed that the Magnuson-Stevens Act's definition of bycatch does not mention unobserved fishing mortality and recommended that the parenthetical inclusion of unobserved fishing mortality in the definition of bycatch in § 600.350(c) of the regulations should be removed.

Response. NMFS disagrees. The statute does not limit Council actions only to observed bycatch. Unobserved fishing-related mortality is implicitly included in the definition because it constitutes a harvest of fish that are not sold or kept for personal use. NMFS notes, however, that there is little information available on unobserved fishing-related mortality and believes that primary emphasis should initially be placed on minimizing observed sources of fishing-related mortality.

Comment 16. One commenter noted that unobserved fishing-related mortality should be given prominence in the proposed guidelines.

Response. NMFS disagrees. Given the many sources of bycatch mortality, NMFS believes that unobserved fishing-related mortality is sufficiently prominent in the guidelines as proposed.

Comment 17. One commenter asked how NMFS will ever assign a poundage to unobserved mortality and what scientific basis will be used to determine unobserved mortality.

Response. NMFS recognizes that determining unobserved fishing mortality will be extremely difficult. However, all significant sources of fishing-related mortality need to be considered when developing conservation and management measures. While there are some existing technologies that could be used to estimate unobserved fishing mortality (e.g., video-based systems), new methods will need to be developed. This will involve an experimental process, including rigorous peer reviews of the results.

Comment 18. One commenter noted that the amount of discards by the recreational fishery has a significant impact on fish stocks.

Response. NMFS agrees. Discards by recreational anglers are considered to be bycatch unless they are specifically exempted in the Magnuson-Stevens Act. All mortality associated with recreationally caught fish must be considered in the determination of OY and MSY; this is addressed in the guidelines for national standard 1.

Comment 19. One commenter observed that fish released alive in recreational catch-and-release and tagging programs do die and should be counted as bycatch and against OY.

Response. NMFS agrees that all bycatch mortality and mortality attributable to exempted tagging and release programs should be considered in determination of OY. As noted in the response to comment 25 under national standard 9, the Magnuson-Stevens Act exempts only Atlantic highly migratory species harvested in a tag-and-release program established by the Secretary. This is further addressed in the guidelines to national standard 1.

Comment 20. One commenter stated that the SFA specifically excludes recreational catches from the requirements for bycatch reduction and avoidance. The commenter felt that a specific reference to the value of catch-and-release fisheries under the guidelines to national standard 9 would be useful.

Response. NMFS disagrees. Fish caught and released alive under an approved catch-and-release fishery management program are exempt from being considered bycatch under section 3(2) of the Magnuson-Stevens Act (see also the response to comment 21 under national standard 9). Management regulations (e.g., minimum size limits and bag limits) that result in the release of fish by recreational anglers are not considered catch-and-release programs and, therefore, such catches are considered to be bycatch, even though the fish are released alive. Increased efforts to release recreationally caught fish in healthy condition may partially satisfy the requirement in national standard 9 that mortality of bycatch that cannot be avoided be minimized to the extent practicable.

Comment 21. One commenter asked what is meant by the exclusion of ''fish released alive under a recreational catch-and-release fishery'' under the bycatch definition.

Response. A definition of the term ''catch-and-release fishery management program'' has been added to Section 600.350(c) as follows: a catch-and-release fishery management program is one in which the retention of a particular species is prohibited. In such a program, those fish released alive would not be considered bycatch.

Comment 22. One commenter stated that highly migratory species in a commercial fishery managed by the Secretary that are tagged and released alive in the Atlantic are not considered bycatch. The same commenter asked whether the provision also extended to Pacific highly migratory species managed by the Western Pacific Council, and if not, why not?

Response. NMFS agrees that the Magnuson-Stevens Act specifically exempted fish caught in highly migratory species tag-and-release programs in the Atlantic from being considered bycatch. This exemption was not extended in the SFA to Pacific highly migratory programs. Therefore, fish tagged and released in highly migratory species tag-and-release programs in the Pacific are considered bycatch.

Comment 23. One commenter stated that definitions of bycatch as ''catch which is not retained or utilized'' and incidental catch as ''catch which is retained in whole or part but not necessarily targeted,'' as adopted by the Western Pacific Fishery Management Council, are not consistent with the Magnuson-Stevens Act or with the

proposed national standard 9 guidelines.

Response. The Western Pacific Council's definition of ''bycatch,'' though not identical, is not inconsistent with the new definition in the Magnuson-Stevens Act. The definition of ''incidental catch'' is not inconsistent with anything in the Act or the guidelines.

Comment 24. Several commenters disagreed with the following statement in the preamble to the proposed guideline: ''Bycatch can be decreased either by decreasing the catch of fish that would be discarded or by retaining fish that would otherwise be discarded.'' They also stated that avoidance should take precedence over retention and that retention of bycatch fails both tiers of national standard 9 in that it neither avoids nor minimizes it.

Response. NMFS agrees that priority must first be given to avoiding bycatch to the extent possible. To the extent that it is not possible, priority must then be given to minimizing bycatch mortality. Any proposed conservation and management measure that does not give first priority to avoiding the capture of bycatch species must be supported by appropriate analyses, including determination of the net benefits to the Nation. Section 600.350(d) introductory text has been revised accordingly. Sections 313(i) and 405(d)(3) of the Magnuson-Stevens Act suggest that retention and utilization are viable solutions to some bycatch problems.

Comment 25. Several commenters stated that the proposed rule would make national standard 9 a discretionary option for the Councils by using the word ''should'' at the end of § 600.350(d). The commenters believed the proposed guidelines fail to require any Council to select and implement measures to minimize bycatch.

Response. The requirements of the Magnuson-Stevens Act are not discretionary. The Councils must consider the requirements in § 600.350(d) when evaluating conservation and management measures relative to the national standards. To ensure that this point is made, the word ''should'' in § 600.350(d) introductory text has been changed to ''must'' to emphasize the mandatory nature of Council actions under this national standard.

Comment 26. One commenter stated that the proposed language for national standard 9 neglected to include ''to the extent practicable'' when discussing reduction of mortality of bycatch that cannot be avoided. The commenter stated that Congress explicitly recognized that the costs of reducing bycatch at some level outweigh the benefits, and that the Magnuson-Stevens Act does not demand that bycatch be decreased to the point of technical feasibility, just to the point that it still makes sense to reduce it.

Response. NMFS agrees; the guidelines already contain the language suggested. For the purposes of this national standard, the term ''practicable'' is not synonymous with the term ''possible,'' because not all reductions that are possible are practicable. NMFS recognizes that in some fisheries it may not be practicable to eliminate all bycatch and bycatch mortality.

Comment 27. One commenter stated that, as stocks approach overfished conditions or are below their optimum levels, harvests (including bycatch) should be limited to well below the threshold at which there is a risk of precipitating or contributing to a decline.

Response. NMFS agrees. Bycatch mortality is a component of total fishing mortality and must be incorporated into stock assessments. To the extent that stock assessments include information on the types and magnitude of bycatch, total allowable catch determinations will reflect that information.

Comment 28. Several commenters stated that the guidelines ought to point out specifically that economics cannot justify bycatch that has a negative impact on the health of any stock in a multispecies fishery.

Response. NMFS agrees. The primary responsibility of the Councils is to develop conservation and management measures that, to the extent practicable, minimize the capture of bycatch species and that, to the extent bycatch cannot be avoided, minimize the mortality of such bycatch. The economic consequences of dealing with bycatch is one of the factors that determines the extent to which it is practicable to reduce bycatch or bycatch mortality in a particular fishery. The determination must be based on the net benefits to the Nation resulting from particular management measures. Language has been added to § 600.350(d) introductory text to indicate that the net benefits to the Nation include, but are not limited to, negative impacts on affected stocks; incomes accruing to participants in directed fisheries in both the short and long term; incomes accruing to participants in fisheries that target the bycatch species; environmental consequences; non-use values of bycatch species, which include non-consumptive uses of bycatch species and existence values, as well as recreational values; and impacts on other marine organisms.

Comment 29. One commenter believed that, by allowing the Councils to prioritize their actions to address bycatch, NMFS would effectively (and unfairly) penalize those fisheries that have voluntarily collected and submitted bycatch data. The commenter felt that bycatch reduction should be done in a coordinated fashion, involving all harvesters.

Response. NMFS disagrees with the first part of the comment. The collection of such data was voluntarily initiated by the fishing industry because it was recognized that bycatch is a problem that must be dealt with; the fishing industry is to be commended for taking initiative in dealing with bycatch. The guidelines specifically list activities that the Councils must undertake to satisfy the requirements of this national standard. No fishery is exempt from the requirements. However, for practical reasons, the Councils will have to determine their priorities for development of management actions and the basis for setting those priorities.

Comment 30. One commenter stated that non-selective, destructive gear—specifically longlines, gillnets, and trawls—ought to be specifically mentioned in the section on bycatch as gear to which special attention ought to be paid in the development of any fishery management measures.

Response. NMFS disagrees. The Councils will need to prioritize their actions, not only with respect to various fisheries, but also to various gears. The Councils will need to determine, during the development of fishery management measures, which gears to allow and which ones need special attention. No change in the guidelines is necessary.

Comment 31. Several commenters suggested that SAFE reports are important tools in minimizing bycatch and that a requirement be added that information on the amount and type of bycatch be summarized in the SAFE report.

Response. NMFS agrees and has added appropriate language to § 600.350(d)(2). NMFS notes that § 600.315(e)(1)(ii) of the guidelines for national standard 2 already contains this requirement.

Comment 32. Several commenters stated that the list of factors in § 600.350(b)(3) is comprehensive and invites the Councils to use those factors as loopholes to avoid taking action. Commenters questioned why such a comprehensive list is needed for this standard and none of the others.

Response. NMFS disagrees. The lack of complete and perfect information is

not an excuse for not taking action. Uncertainty concerning the desirable and undesirable effects of minimizing bycatch and bycatch mortality should be dealt with similarly. (See also the response to comment 35 under national standard 9).

Comment 33. One commenter stated that there are no criteria or methods for establishing criteria for determining how much bycatch is too much.

Response. NMFS disagrees. Section 600.350(d)(3) provides a list of criteria for evaluating the impacts of bycatch. Each Council must determine how much bycatch is too much by balancing the various factors that will maximize the net benefits to the Nation (see also the response to comment 24 under national standard 9). Language that includes the maximization of net benefits to the Nation has been added to § 600.350(d)(3). The legislative history of the SFA includes the following floor statement by Congressman Young: ''Practicable' requires an analysis of the cost of imposing a management action; the Congress does not intend to ...impose costs on fishermen and processors that cannot be reasonably met.''

Comment 34. Several commenters stated that Councils should prioritize their actions to address those fisheries that have not only the greatest bycatch rate, but also the greatest amount of bycatch.

Response. NMFS agrees that the Councils will need to prioritize their actions to address those fisheries where actions to reduce bycatch can have the greatest impact. Each Council will have to determine the basis for setting its priorities.

Comment 35. One commenter stated that the final rule must clearly reflect that Councils are not constrained from acting when faced with uncertainty surrounding one or several items included in § 600.350(d)(3).

Response. NMFS agrees. The Councils must take action to ensure the sustainability of the Nation's marine fishery resources. National standard 2 specifically requires that conservation and management measures be based on the best scientific information available. Where there is uncertainty surrounding any of the items in § 600.350(d)(3), Councils should adhere to the precautionary approach stated in the Food and Agriculture Organization of the United Nations (FAO) Code of Conduct for Responsible Fisheries (Article 6.5). The Code specifically states, ''The absence of adequate scientific information should not be used as a reason for postponing or failing to take measures to conserve target species, associated or dependent species and non-target species and their environment.'' Language to that effect has been added to § 600.350(d)(3).

Comment 36. Several commenters noted that requirements to implement monitoring programs in FMPs may prevent approval. Such requirements could be an administrative burden for the Councils and be very costly to implement.

Response. NMFS disagrees. Section 303(a)(11) of the Magnuson-Stevens Act specifically requires the Councils to establish, for each fishery, a ''standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery.'' The statute makes no allowance for the financial or administrative burden of establishing such reporting programs. It is clear that, in order to be able to assess the amount and type of bycatch occurring in various fisheries, monitoring programs must be established.

Comment 37. One commenter stated that data collection from all fishermen must be made a high priority.

Response. NMFS agrees and notes that the uncertainty surrounding estimates of the types and amounts of bycatch cannot be reduced without the cooperation and involvement of all components of the fisheries.

National Standard 10

Nine commenters commented specifically on national standard 10. All were positive and most substantive comments were directed at making the standard more restrictive. Several commenters gave unqualified support to the standard. One commenter urged that NMFS work aggressively with the Councils ''to ensure that safety is constantly considered in fishery management.''

Comment 1: One commenter noted that no criteria were provided for the phrase ''to the extent practicable'' in national standard 10, as were provided for national standard 9.

Response: NMFS disagrees. Section 600.355(b)(2) directly addresses these concerns.

Comment 2: One commenter noted ''while it is stated clearly in the opening paragraph of the regulatory text (§ 600.355(b)(1)) that this standard [is] not meant to 'give preference to one method of managing a fishery over another,' the suggested mitigation management measures are replete with inappropriate implicit endorsement of ITQs (individual transferrable quotas) that directly undermine that provision.'' These references include ''limiting the number of participants in the fishery,'' ''spreading effort over time and area,'' and ''implementing management measures that reduce the race for fish.''

Response: The mitigation measures do not necessarily endorse ITQs. While ITQs may be one way to solve some problems with safety of life at sea and reduce the ''race for fish,'' they are not the only way. Vessel/license limitation systems have been and are being adopted without ITQs, such as in the Alaska crab and groundfish fisheries. In New England, the use of ''days at sea'' has spread effort over time and area without creating a ''race for fish.'' The term ''race for fish'' was used in the discussion of the bill that became the SFA, to describe the intensive fisheries that have developed at the expense of safety. As a primary reason for the establishment of this national standard, NMFS believes the term captures the intent of Congress and the legislation.

Comment 3: One commenter recommended that the national standard 10 guidelines require that Councils establish mandatory, standardized, accurate, and complete injury reporting requirements.

Response: NMFS agrees in part. Domestic fishing vessels are already required to report this information to the U.S. Coast Guard (USCG) under provisions at 46 CFR parts 4 and 28. This information can be made available through the USCG, and reports compared against vessels participating in the fisheries. Guidance on contents of SAFE reports at § 600.315(e)(1)(ii) has been revised to include consideration of safety issues.

Comment 4: One commenter recommended that the statement ''This standard is not meant to give preference to one method of managing a fishery over another,'' should be deleted or replaced by, ''While this standard is not meant to give preference to one method of managing a fishery over another, it should be considered a significant factor in allocation and other management decisions and the Council should provide rational justification why the safest method is not being used.'' Common sense would dictate that the safer management regime be used.

Response: NMFS disagrees and believes the guidance, as proposed, is accurate.

Comment 5: One commenter recommended that the term ''safety of human life at sea'' should be modified to read ''safety of human life and limb at sea'' to emphasis reduction in injuries as well as loss of life.

Response: NMFS considers the term ''safety of human life at sea'' to include not only safety of life, but safety of limb and the general operating environment, as well, to the extent that fishery

management measures may affect that safety. The discussion of the term at § 600.355(b)(3) has been revised to reflect this point.

Comment 6: One commenter recommended that this standard require that an FMP specify qualifications for individuals who are responsible for maintaining and controlling the stability of a fishing or fish processing vessel.

Response: Such a requirement is outside the scope of this rulemaking. Other than requiring employment and income information, neither NMFS nor the Councils have specified individual qualifications for fishermen. Individual professional qualifications for the master and crew come under the authority of the USCG, as specified by the Commercial Fishing Industry Vessel Safety Act. NMFS does have the authority to require permits of fishing vessel operators under the Magnuson-Stevens Act, section 303(b)(1)(B).

Comment 7: One commenter recommended that this standard consider more than the stability of the vessel and include safety of machinery and processing equipment, as well. FMPs should require processing vessels to meet and maintain safety standards developed in consultation with the Department of Labor's Occupational Safety and Health Administration (OSHA) as a condition of participation in the fishery.

Response: Onboard safety concerns, to the extent they are caused by fishery management measures, are addressed by the guidelines at § 600.355(c)(2). As noted in the comment, the USCG and OSHA have the primary responsibility for machinery and processing safety on board fishing vessels. Vessels are already required to comply with those standards; additional FMP requirements would therefore be redundant.

Comment 8: One commenter stated that § 600.355(c)(3) does not direct the creation of a mechanism for fisheries to be closed due to adverse weather conditions.

Response: While a mechanism to close, delay the opening of, or otherwise halt the fishery during adverse weather can improve safety, NMFS does not consider such a mechanism mandatory. Rather, it is one mitigation measure available to the Council, as noted in § 600.355(e)(1).

Comment 9: One commenter recommended that OSHA, the National Institute of Occupational Safety and Health, and the National Transportation Safety Board be consulted for vessel safety, in addition to the USCG.

Response: NMFS does not believe that requiring consultations with all these agencies is necessary at this time. These agencies are outstanding sources of information on specific issues, and consultation with one or more of them may be appropriate in certain circumstances. However, routine consultation with these agencies is not necessary and would become burdensome to the Councils and to the agencies involved. NMFS encourages the Councils to use these and other groups, including industry groups, in formulating safer management measures.

Comment 10: One commenter recommended that a risk analysis be conducted for future amendments that include allocations between gear types, inshore-offshore processing allocations, seasonal openings, area openings or closures, and possibly others.

Response: NMFS does not believe that requiring a specific safety risk analysis for all these actions is necessary at this time. While a risk analysis may be appropriate in situations where there are a number of alternatives whose effects on safety are not clear, in others, the alternatives may be constrained by other national standard or legal restrictions, or their effects are very clear and a risk analysis is unnecessary. NMFS prefers to allow each Council to conduct a risk analysis at its option, based on consultations with the USCG and the fishing industry.

Classification

OMB has determined this rule to be economically significant under E.O. 12866 because this rule provides guidance on implementing statutory changes that may have large economic impacts on specific sectors of the economy. Each amendment to an existing FMP and all new FMPs will include detailed analyses of the benefits and costs of the management programs under consideration to ensure compliance with E.O. 12866.

In addition, OMB has determined this rule to be ''major'' under the Small Business Regulatory Enforcement and Fairness Act Congressional Review provision (5 U.S.C. 801 *et seq*.). Pursuant to authority at 5 U.S.C. 808(1), this major rule conducting a regulatory program for commercial and recreational activities related to fishing will be effective June 1, 1998.

The main purpose of these guidelines, in carrying out the 1996 amendments to the Magnuson-Stevens Act, is to reduce overfishing immediately, rebuild overfished stocks within a set timeframe, and prevent by catch and reduce mortality of unavoidable bycatch to the maximum extent possible. The effects of these guidelines can only be described qualitatively; quantified and monetized estimates of benefits, costs and other effects cannot be developed until specific regulatory actions are indentified and proposed. Changes in employment, regional economic development, and a variety of distributional concerns are examples of the important effects not otherwise captured in estimates of social costs and benefits.

Producers will bear costs implementing programs and regulations developed under these guidelines to restore fisheries stocks. These costs will take a variety of forms, such as mandatory investments in new fishing gear to reduce bycatch; restrictions on the level of fishing effort, which raise average costs; and other measures intended to reduce the quantity of fish harvested. Consumers also will bear costs, primarily in the form of lost consumers' surplus resulting from reduced market supply and concomitant higher prices. These costs will rise to the extent that consumer tastes continue to evolve toward greater preference for fish and shellfish over other foods.

Once fisheries stocks have recovered, producers will gain benefits in the form of reduced costs of production. Consumers also will benefit to the extent that restored stocks permit increases in the allowable harvest compatible with sustainable yield. Summed over all fisheries in the exclusive economic zone over the long term, the potential increase in net revenues is estimated at $2.9 billion annually. Social benefits will equal the fraction of this amount remaining after all costs are deducted.

In the short-run, fisheries employment will likely fall as producers adapt to rules and restrictions undertaken to restore long-term sustainability. These job losses will be at least partially offset by increases in employment elsewhere. Once fisheries stocks have recovered, however, fisheries employment could increase by up to 300,000 jobs over present employment levels. As in the case of short-term job losses, these employment gains will be at least partially offset by reductions in jobs elsewhere. Changes in employment do not translate directly into benefits or costs, however, and must be evaluated instead as a separate class of effects resulting from individual rules and regulations promulgated pursuant to this guidance.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial

number of small entities. This rule adds to and updates the national standards and accompanying explanatory and interpretive language to implement statutory provisions of the SFA. The SFA's amendments to the national standards make it necessary for the Councils to examine their existing FMPs and all future proposed management measures to ensure that they comply with the national standards; FMPs found out of compliance will need to be amended. These guidelines are intended to provide direction and elaboration on compliance with the national standards and, in themselves, do not have the force of law. Should Councils propose regulations as a result of the SFA, those actions may affect small entities and could be subject to the requirement to prepare a Regulatory Flexibility Analysis at the time they are proposed. Any future effects on small entities that may ultimately result from amendments to FMPs to bring them into compliance with the Magnuson-Stevens Act would be speculative at this time. One comment was received regarding this determination; the commenter believed that the impacts of these guidelines would have a significant economic impact on a substantial number of small entities. However, as explained in the response to general comment 8 above, NMFS believes that, while significant impacts could result from future management actions, the guidelines themselves have no such effect. Furthermore, NMFS has no basis upon which to assess, at this time, the impacts of regulations that may result from these revisions to the guidelines, except in the broadest sense. As a result, a Regulatory Flexibility Analysis for this rule was not prepared.

List of Subjects in 50 CFR Part 600

Administrative practice and procedure, Confidential business information, Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, National Oceanic and Atmospheric Administration, Penalties, Reporting and recordkeeping requirements, Statistics.

Rolland A. Schmitten

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 600 is amended as follows:

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

1. The authority citation for part 600 continues to read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

2. The part heading is revised to read as set forth above.

3. In § 600.305, paragraph (c)(13) is removed and the second and third sentences of paragraph (a)(2), the last sentence of paragraph (a)(3), and paragraphs (c)(1), (c)(3), (c)(11), and (c)(12) are revised to read as follows:

§ 600.305 General.

(a) * * *

(2) * * * The Secretary will determine whether the proposed management objectives and measures are consistent with the national standards, other provisions of the Magnuson-Stevens Act, and other applicable law. The Secretary has an obligation under section 301(b) of the Magnuson-Stevens Act to inform the Councils of the Secretary's interpretation of the national standards so that they will have an understanding of the basis on which FMPs will be reviewed.

(3) * * * FMPs that are in substantial compliance with the guidelines, the Magnuson-Stevens Act, and other applicable law must be approved.

* * * * *

(c) * * *

(1) *Must* is used, instead of ''shall'', to denote an obligation to act; it is used primarily when referring to requirements of the Magnuson-Stevens Act, the logical extension thereof, or of other applicable law.

* * * * *

(3) *Should* is used to indicate that an action or consideration is strongly recommended to fulfill the Secretary's interpretation of the Magnuson-Stevens Act, and is a factor reviewers will look for in evaluating a SOPP or FMP.

* * * * *

(11) *Council* includes the Secretary, as applicable, when preparing FMPs or amendments under section 304(c) and (g) of the Magnuson-Stevens Act.

(12) *Stock or stock complex* is used as a synonym for ''fishery'' in the sense of the Magnuson-Stevens Act's first definition of the term; that is, as ''one or more stocks of fish that can be treated as a unit for purposes of conservation and management and that are identified on the basis of geographic, scientific, technical, recreational, or economic characteristics,'' as distinguished from the Magnuson-Stevens Act's second definition of fishery as ''any fishing for such stocks.''

4. Section 600.310 is revised to read as follows:

§ 600.310 National Standard 1—Optimum Yield.

(a) *Standard 1.* Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the OY from each fishery for the U.S. fishing industry.

(b) *General.* The determination of OY is a decisional mechanism for resolving the Magnuson-Stevens Act's multiple purposes and policies, implementing an FMP's objectives, and balancing the various interests that comprise the national welfare. OY is based on MSY, or on MSY as it may be reduced under paragraph (f)(3) of this section. The most important limitation on the specification of OY is that the choice of OY and the conservation and management measures proposed to achieve it must prevent overfishing.

(c) *MSY.* Each FMP should include an estimate of MSY as explained in this section.

(1) *Definitions.* (i) ''MSY'' is the largest long-term average catch or yield that can be taken from a stock or stock complex under prevailing ecological and environmental conditions.

(ii) ''MSY control rule'' means a harvest strategy which, if implemented, would be expected to result in a long-term average catch approximating MSY.

(iii) ''MSY stock size'' means the long-term average size of the stock or stock complex, measured in terms of spawning biomass or other appropriate units, that would be achieved under an MSY control rule in which the fishing mortality rate is constant.

(2) *Options in specifying MSY.* (i) Because MSY is a theoretical concept, its estimation in practice is conditional on the choice of an MSY control rule. In choosing an MSY control rule, Councils should be guided by the characteristics of the fishery, the FMP's objectives, and the best scientific information available. The simplest MSY control rule is to remove a constant catch in each year that the estimated stock size exceeds an appropriate lower bound, where this catch is chosen so as to maximize the resulting long-term average yield. Other examples include the following: Remove a constant fraction of the biomass in each year, where this fraction is chosen so as to maximize the resulting long-term average yield; allow a constant level of escapement in each year, where this level is chosen so as to maximize the resulting long-term average yield; vary the fishing mortality rate as a continuous function of stock size, where the parameters of this function are constant and chosen so as to maximize the resulting long-term average yield. In any MSY control rule,

a given stock size is associated with a given level of fishing mortality and a given level of potential harvest, where the long-term average of these potential harvests provides an estimate of MSY.

(ii) Any MSY values used in determining OY will necessarily be estimates, and these will typically be associated with some level of uncertainty. Such estimates must be based on the best scientific information available (see § 600.315) and must incorporate appropriate consideration of risk (see § 600.335). Beyond these requirements, however, Councils have a reasonable degree of latitude in determining which estimates to use and how these estimates are to be expressed. For example, a point estimate of MSY may be expressed by itself or together with a confidence interval around that estimate.

(iii) In the case of a mixed-stock fishery, MSY should be specified on a stock-by-stock basis. However, where MSY cannot be specified for each stock, then MSY may be specified on the basis of one or more species as an indicator for the mixed stock as a whole or for the fishery as a whole.

(iv) Because MSY is a long-term average, it need not be estimated annually, but it must be based on the best scientific information available, and should be re-estimated as required by changes in environmental or ecological conditions or new scientific information.

(3) *Alternatives to specifying MSY*. When data are insufficient to estimate MSY directly, Councils should adopt other measures of productive capacity that can serve as reasonable proxies for MSY, to the extent possible. Examples include various reference points defined in terms of relative spawning per recruit. For instance, the fishing mortality rate that reduces the long-term average level of spawning per recruit to 30–40 percent of the long-term average that would be expected in the absence of fishing may be a reasonable proxy for the MSY fishing mortality rate. The long-term average stock size obtained by fishing year after year at this rate under average recruitment may be a reasonable proxy for the MSY stock size, and the long-term average catch so obtained may be a reasonable proxy for MSY. The natural mortality rate may also be a reasonable proxy for the MSY fishing mortality rate. If a reliable estimate of pristine stock size (i.e., the long-term average stock size that would be expected in the absence of fishing) is available, a stock size approximately 40 percent of this value may be a reasonable proxy for the MSY stock size, and the product of this stock size and the natural mortality rate may be a reasonable proxy for MSY.

(d) *Overfishing*—(1) *Definitions*. (i) ''To overfish'' means to fish at a rate or level that jeopardizes the capacity of a stock or stock complex to produce MSY on a continuing basis.

(ii) ''Overfishing'' occurs whenever a stock or stock complex is subjected to a rate or level of fishing mortality that jeopardizes the capacity of a stock or stock complex to produce MSY on a continuing basis.

(iii) In the Magnuson-Stevens Act, the term ''overfished'' is used in two senses: First, to describe any stock or stock complex that is subjected to a rate or level of fishing mortality meeting the criterion in paragraph (d)(1)(i) of this section, and second, to describe any stock or stock complex whose size is sufficiently small that a change in management practices is required in order to achieve an appropriate level and rate of rebuilding. To avoid confusion, this section uses ''overfished'' in the second sense only.

(2) *Specification of status determination criteria*. Each FMP must specify, to the extent possible, objective and measurable status determination criteria for each stock or stock complex covered by that FMP and provide an analysis of how the status determination criteria were chosen and how they relate to reproductive potential. Status determination criteria must be expressed in a way that enables the Council and the Secretary to monitor the stock or stock complex and determine annually whether overfishing is occurring and whether the stock or stock complex is overfished. In all cases, status determination criteria must specify both of the following:

(i) *A maximum fishing mortality threshold or reasonable proxy thereof*. The fishing mortality threshold may be expressed either as a single number or as a function of spawning biomass or other measure of productive capacity. The fishing mortality threshold must not exceed the fishing mortality rate or level associated with the relevant MSY control rule. Exceeding the fishing mortality threshold for a period of 1 year or more constitutes overfishing.

(ii) *A minimum stock size threshold or reasonable proxy thereof*. The stock size threshold should be expressed in terms of spawning biomass or other measure of productive capacity. To the extent possible, the stock size threshold should equal whichever of the following is greater: One-half the MSY stock size, or the minimum stock size at which rebuilding to the MSY level would be expected to occur within 10 years if the stock or stock complex were exploited at the maximum fishing mortality threshold specified under paragraph (d)(2)(i) of this section. Should the actual size of the stock or stock complex in a given year fall below this threshold, the stock or stock complex is considered overfished.

(3) *Relationship of status determination criteria to other national standards*—(i) *National standard 2*. Status determination criteria must be based on the best scientific information available (see § 600.315). When data are insufficient to estimate MSY, Councils should base status determination criteria on reasonable proxies thereof to the extent possible (also see paragraph (c)(3) of this section). In cases where scientific data are severely limited, effort should also be directed to identifying and gathering the needed data.

(ii) *National standard 3*. The requirement to manage interrelated stocks of fish as a unit or in close coordination notwithstanding (see § 600.320), status determination criteria should generally be specified in terms of the level of stock aggregation for which the best scientific information is available (also see paragraph (c)(2)(iii) of this section).

(iii) *National standard 6*. Councils must build into the status determination criteria appropriate consideration of risk, taking into account uncertainties in estimating harvest, stock conditions, life history parameters, or the effects of environmental factors (see § 600.335).

(4) *Relationship of status determination criteria to environmental change*. Some short-term environmental changes can alter the current size of a stock or stock complex without affecting the long-term productive capacity of the stock or stock complex. Other environmental changes affect both the current size of the stock or stock complex and the long-term productive capacity of the stock or stock complex.

(i) If environmental changes cause a stock or stock complex to fall below the minimum stock size threshold without affecting the long-term productive capacity of the stock or stock complex, fishing mortality must be constrained sufficiently to allow rebuilding within an acceptable time frame (also see paragraph (e)(4)(ii) of this section). Status determination criteria need not be respecified.

(ii) If environmental changes affect the long-term productive capacity of the stock or stock complex, one or more components of the status determination criteria must be respecified. Once status determination criteria have been respecified, fishing mortality may or may not have to be reduced, depending

on the status of the stock or stock complex with respect to the new criteria.

(iii) If manmade environmental changes are partially responsible for a stock or stock complex being in an overfished condition, in addition to controlling effort, Councils should recommend restoration of habitat and other ameliorative programs, to the extent possible (see also the guidelines issued pursuant to section 305(b) of the Magnuson-Stevens Act for Council actions concerning essential fish habitat).

(5) *Secretarial approval of status determination criteria.* Secretarial approval or disapproval of proposed status determination criteria will be based on consideration of whether the proposal:

(i) Has sufficient scientific merit.

(ii) Contains the elements described in paragraph (d)(2) of this section.

(iii) Provides a basis for objective measurement of the status of the stock or stock complex against the criteria.

(iv) Is operationally feasible.

(6) *Exceptions.* There are certain limited exceptions to the requirement to prevent overfishing. Harvesting one species of a mixed-stock complex at its optimum level may result in the overfishing of another stock component in the complex. A Council may decide to permit this type of overfishing only if all of the following conditions are satisfied:

(i) It is demonstrated by analysis (paragraph (f)(6) of this section) that such action will result in long-term net benefits to the Nation.

(ii) It is demonstrated by analysis that mitigating measures have been considered and that a similar level of long-term net benefits cannot be achieved by modifying fleet behavior, gear selection/configuration, or other technical characteristic in a manner such that no overfishing would occur.

(iii) The resulting rate or level of fishing mortality will not cause any species or evolutionarily significant unit thereof to require protection under the ESA.

(e) *Ending overfishing and rebuilding overfished stocks*— (1) *Definition.* A threshold, either maximum fishing mortality or minimum stock size, is being ''approached'' whenever it is projected that the threshold will be breached within 2 years, based on trends in fishing effort, fishery resource size, and other appropriate factors.

(2) *Notification.* The Secretary will immediately notify a Council and request that remedial action be taken whenever the Secretary determines that:

(i) Overfishing is occurring;

(ii) A stock or stock complex is overfished;

(iii) The rate or level of fishing mortality for a stock or stock complex is approaching the maximum fishing mortality threshold;

(iv) A stock or stock complex is approaching its minimum stock size threshold; or

(v) Existing remedial action taken for the purpose of ending previously identified overfishing or rebuilding a previously identified overfished stock or stock complex has not resulted in adequate progress.

(3) *Council action.* Within 1 year of such time as the Secretary may identify that overfishing is occurring, that a stock or stock complex is overfished, or that a threshold is being approached, or such time as a Council may be notified of the same under paragraph (e)(2) of this section, the Council must take remedial action by preparing an FMP, FMP amendment, or proposed regulations. This remedial action must be designed to accomplish all of the following purposes that apply:

(i) If overfishing is occurring, the purpose of the action is to end overfishing.

(ii) If the stock or stock complex is overfished, the purpose of the action is to rebuild the stock or stock complex to the MSY level within an appropriate time frame.

(iii) If the rate or level of fishing mortality is approaching the maximum fishing mortality threshold (from below), the purpose of the action is to prevent this threshold from being reached.

(iv) If the stock or stock complex is approaching the minimum stock size threshold (from above), the purpose of the action is to prevent this threshold from being reached.

(4) *Constraints on Council action.* (i) In cases where overfishing is occurring, Council action must be sufficient to end overfishing.

(ii) In cases where a stock or stock complex is overfished, Council action must specify a time period for rebuilding the stock or stock complex that satisfies the requirements of section 304(e)(4)(A) of the Magnuson-Stevens Act.

(A) A number of factors enter into the specification of the time period for rebuilding:

(*1*) The status and biology of the stock or stock complex;

(*2*) Interactions between the stock or stock complex and other components of the marine ecosystem (also referred to as ''other environmental conditions'');

(*3*) The needs of fishing communities;

(*4*) Recommendations by international organizations in which the United States participates; and

(*5*) Management measures under an international agreement in which the United States participates.

(B) These factors enter into the specification of the time period for rebuilding as follows:

(*1*) The lower limit of the specified time period for rebuilding is determined by the status and biology of the stock or stock complex and its interactions with other components of the marine ecosystem, and is defined as the amount of time that would be required for rebuilding if fishing mortality were eliminated entirely.

(*2*) If the lower limit is less than 10 years, then the specified time period for rebuilding may be adjusted upward to the extent warranted by the needs of fishing communities and recommendations by international organizations in which the United States participates, except that no such upward adjustment can result in the specified time period exceeding 10 years, unless management measures under an international agreement in which the United States participates dictate otherwise.

(*3*) If the lower limit is 10 years or greater, then the specified time period for rebuilding may be adjusted upward to the extent warranted by the needs of fishing communities and recommendations by international organizations in which the United States participates, except that no such upward adjustment can exceed the rebuilding period calculated in the absence of fishing mortality, plus one mean generation time or equivalent period based on the species' life-history characteristics. For example, suppose a stock could be rebuilt within 12 years in the absence of any fishing mortality, and has a mean generation time of 8 years. The rebuilding period, in this case, could be as long as 20 years.

(C) A rebuilding program undertaken after May 1, 1998 commences as soon as the first measures to rebuild the stock or stock complex are implemented.

(D) In the case of rebuilding plans that were already in place as of May 1, 1998, such rebuilding plans must be reviewed to determine whether they are in compliance with all requirements of the Magnuson-Stevens Act, as amended by the Sustainable Fisheries Act.

(iii) For fisheries managed under an international agreement, Council action must reflect traditional participation in the fishery, relative to other nations, by fishermen of the United States.

(5) *Interim measures.* The Secretary, on his/her own initiative or in response

to a Council request, may implement interim measures to reduce overfishing under section 305(c) of the Magnuson-Stevens Act, until such measures can be replaced by an FMP, FMP amendment, or regulations taking remedial action.

(i) These measures may remain in effect for no more than 180 days, but may be extended for an additional 180 days if the public has had an opportunity to comment on the measures and, in the case of Council-recommended measures, the Council is actively preparing an FMP, FMP amendment, or proposed regulations to address overfishing on a permanent basis. Such measures, if otherwise in compliance with the provisions of the Magnuson-Stevens Act, may be implemented even though they are not sufficient by themselves to stop overfishing of a fishery.

(ii) If interim measures are made effective without prior notice and opportunity for comment, they should be reserved for exceptional situations, because they affect fishermen without providing the usual procedural safeguards. A Council recommendation for interim measures without notice-and-comment rulemaking will be considered favorably if the short-term benefits of the measures in reducing overfishing outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants in the fishery.

(f) *OY*—(1) *Definitions*. (i) The term ''optimum,'' with respect to the yield from a fishery, means the amount of fish that will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities and taking into account the protection of marine ecosystems; that is prescribed on the basis of the MSY from the fishery, as reduced by any relevant economic, social, or ecological factor; and, in the case of an overfished fishery, that provides for rebuilding to a level consistent with producing the MSY in such fishery.

(ii) In national standard 1, use of the phrase ''achieving, on a continuing basis, the OY from each fishery'' means producing, from each fishery, a long-term series of catches such that the average catch is equal to the average OY and such that status determination criteria are met.

(2) *Values in determination*. In determining the greatest benefit to the Nation, these values that should be weighed are food production, recreational opportunities, and protection afforded to marine ecosystems. They should receive serious attention when considering the economic, social, or ecological factors used in reducing MSY to obtain OY.

(i) The benefits of food production are derived from providing seafood to consumers, maintaining an economically viable fishery together with its attendant contributions to the national, regional, and local economies, and utilizing the capacity of the Nation's fishery resources to meet nutritional needs.

(ii) The benefits of recreational opportunities reflect the quality of both the recreational fishing experience and non-consumptive fishery uses such as ecotourism, fish watching, and recreational diving, and the contribution of recreational fishing to the national, regional, and local economies and food supplies.

(iii) The benefits of protection afforded to marine ecosystems are those resulting from maintaining viable populations (including those of unexploited species), maintaining evolutionary and ecological processes (e.g., disturbance regimes, hydrological processes, nutrient cycles), maintaining the evolutionary potential of species and ecosystems, and accommodating human use.

(3) *Factors relevant to OY*. Because fisheries have finite capacities, any attempt to maximize the measures of benefit described in paragraph (f)(2) of this section will inevitably encounter practical constraints. One of these is MSY. Moreover, various factors can constrain the optimum level of catch to a value less than MSY. The Magnuson-Stevens Act's definition of OY identifies three categories of such factors: Social, economic, and ecological. Not every factor will be relevant in every fishery. For some fisheries, insufficient information may be available with respect to some factors to provide a basis for corresponding reductions in MSY.

(i) *Social factors*. Examples are enjoyment gained from recreational fishing, avoidance of gear conflicts and resulting disputes, preservation of a way of life for fishermen and their families, and dependence of local communities on a fishery. Other factors that may be considered include the cultural place of subsistence fishing, obligations under Indian treaties, and worldwide nutritional needs.

(ii) *Economic factors*. Examples are prudent consideration of the risk of overharvesting when a stock's size or productive capacity is uncertain, satisfaction of consumer and recreational needs, and encouragement of domestic and export markets for U.S.-harvested fish. Other factors that may be considered include the value of fisheries, the level of capitalization, the decrease in cost per unit of catch afforded by an increase in stock size, and the attendant increase in catch per unit of effort, alternate employment opportunities, and economies of coastal areas.

(iii) *Ecological factors*. Examples are stock size and age composition, the vulnerability of incidental or unregulated stocks in a mixed-stock fishery, predator-prey or competitive interactions, and dependence of marine mammals and birds or endangered species on a stock of fish. Also important are ecological or environmental conditions that stress marine organisms, such as natural and manmade changes in wetlands or nursery grounds, and effects of pollutants on habitat and stocks.

(4) *Specification*. (i) The amount of fish that constitutes the OY should be expressed in terms of numbers or weight of fish. However, OY may be expressed as a formula that converts periodic stock assessments into target harvest levels; in terms of an annual harvest of fish or shellfish having a minimum weight, length, or other measurement; or as an amount of fish taken only in certain areas, in certain seasons, with particular gear, or by a specified amount of fishing effort.

(ii) Either a range or a single value may be specified for OY. Specification of a numerical, fixed-value OY does not preclude use of annual target harvest levels that vary with stock size. Such target harvest levels may be prescribed on the basis of an OY control rule similar to the MSY control rule described in paragraph (c)(1)(ii) of this section, but designed to achieve OY on average, rather than MSY. The annual harvest level obtained under an OY control rule must always be less than or equal to the harvest level that would be obtained under the MSY control rule.

(iii) All fishing mortality must be counted against OY, including that resulting from bycatch, scientific research, and any other fishing activities.

(iv) The OY specification should be translatable into an annual numerical estimate for the purposes of establishing any TALFF and analyzing impacts of the management regime. There should be a mechanism in the FMP for periodic reassessment of the OY specification, so that it is responsive to changing circumstances in the fishery.

(v) The determination of OY requires a specification of MSY, which may not always be possible or meaningful. However, even where sufficient scientific data as to the biological characteristics of the stock do not exist,

or where the period of exploitation or investigation has not been long enough for adequate understanding of stock dynamics, or where frequent large-scale fluctuations in stock size diminish the meaningfulness of the MSY concept, the OY must still be based on the best scientific information available. When data are insufficient to estimate MSY directly, Councils should adopt other measures of productive capacity that can serve as reasonable proxies for MSY to the extent possible (also see paragraph (c)(3) of this section).

(vi) In a mixed-stock fishery, specification of a fishery-wide OY may be accompanied by management measures establishing separate annual target harvest levels for the individual stocks. In such cases, the sum of the individual target levels should not exceed OY.

(5) *OY and the precautionary approach*. In general, Councils should adopt a precautionary approach to specification of OY. A precautionary approach is characterized by three features:

(i) Target reference points, such as OY, should be set safely below limit reference points, such as the catch level associated with the fishing mortality rate or level defined by the status determination criteria. Because it is a target reference point, OY does not constitute an absolute ceiling, but rather a desired result. An FMP must contain conservation and management measures to achieve OY, and provisions for information collection that are designed to determine the degree to which OY is achieved on a continuing basis—that is, to result in a long-term average catch equal to the long-term average OY, while meeting the status determination criteria. These measures should allow for practical and effective implementation and enforcement of the management regime, so that the harvest is allowed to reach OY, but not to exceed OY by a substantial amount. The Secretary has an obligation to implement and enforce the FMP so that OY is achieved. If management measures prove unenforceable—or too restrictive, or not rigorous enough to realize OY—they should be modified; an alternative is to reexamine the adequacy of the OY specification. Exceeding OY does not necessarily constitute overfishing. However, even if no overfishing resulted from exceeding OY, continual harvest at a level above OY would violate national standard 1, because OY was not achieved on a continuing basis.

(ii) A stock or stock complex that is below the size that would produce MSY should be harvested at a lower rate or level of fishing mortality than if the stock or stock complex were above the size that would produce MSY.

(iii) Criteria used to set target catch levels should be explicitly risk averse, so that greater uncertainty regarding the status or productive capacity of a stock or stock complex corresponds to greater caution in setting target catch levels. Part of the OY may be held as a reserve to allow for factors such as uncertainties in estimates of stock size and DAH. If an OY reserve is established, an adequate mechanism should be included in the FMP to permit timely release of the reserve to domestic or foreign fishermen, if necessary.

(6) *Analysis*. An FMP must contain an assessment of how its OY specification was determined (section 303(a)(3) of the Magnuson-Stevens Act). It should relate the explanation of overfishing in paragraph (d) of this section to conditions in the particular fishery and explain how its choice of OY and conservation and management measures will prevent overfishing in that fishery. A Council must identify those economic, social, and ecological factors relevant to management of a particular fishery, then evaluate them to determine the amount, if any, by which MSY exceeds OY. The choice of a particular OY must be carefully defined and documented to show that the OY selected will produce the greatest benefit to the Nation. If overfishing is permitted under paragraph (d)(6) of this section, the assessment must contain a justification in terms of overall benefits, including a comparison of benefits under alternative management measures, and an analysis of the risk of any species or ecologically significant unit thereof reaching a threatened or endangered status, as well as the risk of any stock or stock complex falling below its minimum stock size threshold.

(7) *OY and foreign fishing*. Section 201(d) of the Magnuson-Stevens Act provides that fishing by foreign nations is limited to that portion of the OY that will not be harvested by vessels of the United States.

(i) *DAH*. Councils must consider the capacity of, and the extent to which, U.S. vessels will harvest the OY on an annual basis. Estimating the amount that U.S. fishing vessels will actually harvest is required to determine the surplus.

(ii) *DAP*. Each FMP must assess the capacity of U.S. processors. It must also assess the amount of DAP, which is the sum of two estimates: The estimated amount of U.S. harvest that domestic processors will process, which may be based on historical performance or on surveys of the expressed intention of manufacturers to process, supported by evidence of contracts, plant expansion, or other relevant information; and the estimated amount of fish that will be harvested by domestic vessels, but not processed (e.g., marketed as fresh whole fish, used for private consumption, or used for bait).

(iii) *JVP*. When DAH exceeds DAP, the surplus is available for JVP. JVP is derived from DAH.

5. In § 600.315, paragraphs (e)(3) and (e)(4) are redesignated as paragraphs (e)(4) and (e)(5), respectively; new paragraph (e)(3) is added; and paragraphs (c)(2), (c)(3), (e)(1) introductory text, (e)(1)(ii), and newly redesignated (e)(4) are revised to read as follows:

§ 600.315 National Standard 2—Scientific Information.

* * * * *

(c) * * *

(2) An FMP should identify scientific information needed from other sources to improve understanding and management of the resource, marine ecosystem, and the fishery (including fishing communities).

(3) The information submitted by various data suppliers should be comparable and compatible, to the maximum extent possible.

* * * * *

(e) * * *

(1) The SAFE report is a document or set of documents that provides Councils with a summary of information concerning the most recent biological condition of stocks and the marine ecosystems in the FMU and the social and economic condition of the recreational and commercial fishing interests, fishing communities, and the fish processing industries. It summarizes, on a periodic basis, the best available scientific information concerning the past, present, and possible future condition of the stocks, marine ecosystems, and fisheries being managed under Federal regulation.

* * * * *

(ii) The SAFE report provides information to the Councils for determining annual harvest levels from each stock, documenting significant trends or changes in the resource, marine ecosystems, and fishery over time, and assessing the relative success of existing state and Federal fishery management programs. Information on bycatch and safety for each fishery should also be summarized. In addition, the SAFE report may be used to update or expand previous environmental and regulatory impact documents, and ecosystem and habitat descriptions.

* * * * *

(3) Each SAFE report should contain a description of the maximum fishing mortality threshold and the minimum stock size threshold for each stock or stock complex, along with information by which the Council may determine:

(i) Whether overfishing is occurring with respect to any stock or stock complex, whether any stock or stock complex is overfished, whether the rate or level of fishing mortality applied to any stock or stock complex is approaching the maximum fishing mortality threshold, and whether the size of any stock or stock complex is approaching the minimum stock size threshold.

(ii) Any management measures necessary to provide for rebuilding an overfished stock or stock complex (if any) to a level consistent with producing the MSY in such fishery.

(4) Each SAFE report may contain additional economic, social, community, essential fish habitat, and ecological information pertinent to the success of management or the achievement of objectives of each FMP.

* * * * *

6. In § 600.320, the last sentence of paragraph (c) is revised to read as follows:

§ 600.320 National Standard 3—Management Units.

* * * * *

(c) * * * The Secretary designates which Council(s) will prepare the FMP, under section 304(f) of the Magnuson-Stevens Act.

* * * * *

7. In § 600.325, paragraph (c)(3)(ii) is revised to read as follows:

§ 600.325 National Standard 4—Allocations.

* * * * *

(c) * * *

(3) * * *

(ii) *Promotion of conservation*. Numerous methods of allocating fishing privileges are considered ''conservation and management'' measures under section 303 of the Magnuson-Stevens Act. An allocation scheme may promote conservation by encouraging a rational, more easily managed use of the resource. Or, it may promote conservation (in the sense of wise use) by optimizing the yield in terms of size, value, market mix, price, or economic or social benefit of the product. To the extent that rebuilding plans or other conservation and management measures that reduce the overall harvest in a fishery are necessary, any harvest restrictions or recovery benefits must be allocated fairly and equitably among the commercial, recreational, and charter fishing sectors of the fishery.

* * * * *

8. In § 600.330, paragraphs (a) and (b)(1), the first sentence of paragraph (c) introductory text, the last sentence of paragraph (c)(1), and paragraph (c)(2) are revised to read as follows:

§ 600.330 National Standard 5—Efficiency.

(a) *Standard 5*. Conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.

(b) * * *

(1) *General*. The term ''utilization'' encompasses harvesting, processing, marketing, and non-consumptive uses of the resource, since management decisions affect all sectors of the industry. In considering efficient utilization of fishery resources, this standard highlights one way that a fishery can contribute to the Nation's benefit with the least cost to society: Given a set of objectives for the fishery, an FMP should contain management measures that result in as efficient a fishery as is practicable or desirable.

* * * * *

(c) *Limited access*. A ''system for limiting access,'' which is an optional measure under section 303(b) of the Magnuson-Stevens Act, is a type of allocation of fishing privileges that may be considered to contribute to economic efficiency or conservation. * * *

(1) * * * Two forms (i.e., Federal fees for licenses or permits in excess of administrative costs, and taxation) are not permitted under the Magnuson-Stevens Act, except for fees allowed under section 304(d)(2).

(2) *Factors to consider*. The Magnuson-Stevens Act ties the use of limited access to the achievement of OY. An FMP that proposes a limited access system must consider the factors listed in section 303(b)(6) of the Magnuson-Stevens Act and in § 600.325(c)(3). In addition, it should consider the criteria for qualifying for a permit, the nature of the interest created, whether to make the permit transferable, and the Magnuson-Stevens Act's limitations on returning economic rent to the public under section 304(d). The FMP should also discuss the costs of achieving an appropriate distribution of fishing privileges.

* * * * *

9. In § 600.340, paragraph (b)(1) is amended by revising the second sentence to read as follows:

§ 600.340 National Standard 7—Costs and Benefits.

* * * * *

(b) * * *

(1) * * * The Magnuson-Stevens Act requires Councils to prepare FMPs only for overfished fisheries and for other fisheries where regulation would serve some useful purpose and where the present or future benefits of regulation would justify the costs. * * *

* * * * *

10. Sections 600.345, 600.350, and 600.355 are added to subpart D to read as follows:

§ 600.345 National Standard 8—Communities.

(a) *Standard 8*. Conservation and management measures shall, consistent with the conservation requirements of the Magnuson-Stevens Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to:

(1) Provide for the sustained participation of such communities; and

(2) To the extent practicable, minimize adverse economic impacts on such communities.

(b) *General*. (1) This standard requires that an FMP take into account the importance of fishery resources to fishing communities. This consideration, however, is within the context of the conservation requirements of the Magnuson-Stevens Act. Deliberations regarding the importance of fishery resources to affected fishing communities, therefore, must not compromise the achievement of conservation requirements and goals of the FMP. Where the preferred alternative negatively affects the sustained participation of fishing communities, the FMP should discuss the rationale for selecting this alternative over another with a lesser impact on fishing communities. All other things being equal, where two alternatives achieve similar conservation goals, the alternative that provides the greater potential for sustained participation of such communities and minimizes the adverse economic impacts on such communities would be the preferred alternative.

(2) This standard does not constitute a basis for allocating resources to a specific fishing community nor for providing preferential treatment based on residence in a fishing community.

(3) The term ''fishing community'' means a community that is substantially dependent on or substantially engaged in the harvest or processing of fishery resources to meet social and economic

needs, and includes fishing vessel owners, operators, and crew, and fish processors that are based in such communities. A fishing community is a social or economic group whose members reside in a specific location and share a common dependency on commercial, recreational, or subsistence fishing or on directly related fisheries-dependent services and industries (for example, boatyards, ice suppliers, tackle shops).

(4) The term ''sustained participation'' means continued access to the fishery within the constraints of the condition of the resource.

(c) *Analysis.* (1) FMPs must examine the social and economic importance of fisheries to communities potentially affected by management measures. For example, severe reductions of harvests for conservation purposes may decrease employment opportunities for fishermen and processing plant workers, thereby adversely affecting their families and communities. Similarly, a management measure that results in the allocation of fishery resources among competing sectors of a fishery may benefit some communities at the expense of others.

(2) An appropriate vehicle for the analyses under this standard is the fishery impact statement required by section 303(a)(9) of the Magnuson-Stevens Act. Qualitative and quantitative data may be used, including information provided by fishermen, dealers, processors, and fisheries organizations and associations. In cases where data are severely limited, effort should be directed to identifying and gathering needed data.

(3) To address the sustained participation of fishing communities that will be affected by management measures, the analysis should first identify affected fishing communities and then assess their differing levels of dependence on and engagement in the fishery being regulated. The analysis should also specify how that assessment was made. The best available data on the history, extent, and type of participation of these fishing communities in the fishery should be incorporated into the social and economic information presented in the FMP. The analysis does not have to contain an exhaustive listing of all communities that might fit the definition; a judgment can be made as to which are primarily affected. The analysis should discuss each alternative's likely effect on the sustained participation of these fishing communities in the fishery.

(4) The analysis should assess the likely positive and negative social and economic impacts of the alternative management measures, over both the short and the long term, on fishing communities. Any particular management measure may economically benefit some communities while adversely affecting others. Economic impacts should be considered both for individual communities and for the group of all affected communities identified in the FMP. Impacts of both consumptive and non-consumptive uses of fishery resources should be considered.

(5) A discussion of social and economic impacts should identify those alternatives that would minimize adverse impacts on these fishing communities within the constraints of conservation and management goals of the FMP, other national standards, and other applicable law.

§ 600.350 National Standard 9—Bycatch.

(a) *Standard 9.* Conservation and management measures shall, to the extent practicable:

(1) Minimize bycatch; and

(2) To the extent bycatch cannot be avoided, minimize the mortality of such bycatch.

(b) *General.* This national standard requires Councils to consider the bycatch effects of existing and planned conservation and management measures. Bycatch can, in two ways, impede efforts to protect marine ecosystems and achieve sustainable fisheries and the full benefits they can provide to the Nation. First, bycatch can increase substantially the uncertainty concerning total fishing-related mortality, which makes it more difficult to assess the status of stocks, to set the appropriate OY and define overfishing levels, and to ensure that OYs are attained and overfishing levels are not exceeded. Second, bycatch may also preclude other more productive uses of fishery resources.

(c) *Definition—Bycatch.* The term ''bycatch'' means fish that are harvested in a fishery, but that are not sold or kept for personal use. Bycatch includes the discard of whole fish at sea or elsewhere, including economic discards and regulatory discards, and fishing mortality due to an encounter with fishing gear that does not result in capture of fish (i.e., unobserved fishing mortality). Bycatch does not include any fish that legally are retained in a fishery and kept for personal, tribal, or cultural use, or that enter commerce through sale, barter, or trade. Bycatch does not include fish released alive under a recreational catch-and-release fishery management program. A catch-and-release fishery management program is one in which the retention of a particular species is prohibited. In such a program, those fish released alive would not be considered bycatch. Bycatch also does not include Atlantic highly migratory species harvested in a commercial fishery that are not regulatory discards and that are tagged and released alive under a scientific tag-and-release program established by the Secretary.

(d) *Minimizing bycatch and bycatch mortality.* The priority under this standard is first to avoid catching bycatch species where practicable. Fish that are bycatch and cannot be avoided must, to the extent practicable, be returned to the sea alive. Any proposed conservation and management measure that does not give priority to avoiding the capture of bycatch species must be supported by appropriate analyses. In their evaluation, the Councils must consider the net benefits to the Nation, which include, but are not limited to: Negative impacts on affected stocks; incomes accruing to participants in directed fisheries in both the short and long term; incomes accruing to participants in fisheries that target the bycatch species; environmental consequences; non-market values of bycatch species, which include non-consumptive uses of bycatch species and existence values, as well as recreational values; and impacts on other marine organisms. To evaluate conservation and management measures relative to this and other national standards, as well as to evaluate total fishing mortality, Councils must—

(1) *Promote development of a database on bycatch and bycatch mortality in the fishery to the extent practicable.* A review and, where necessary, improvement of data collection methods, data sources, and applications of data must be initiated for each fishery to determine the amount, type, disposition, and other characteristics of bycatch and bycatch mortality in each fishery for purposes of this standard and of section 303(a)(11) and (12) of the Magnuson-Stevens Act. Bycatch should be categorized to focus on management responses necessary to minimize bycatch and bycatch mortality to the extent practicable. When appropriate, management measures, such as at-sea monitoring programs, should be developed to meet these information needs.

(2) *For each management measure, assess the effects on the amount and type of bycatch and bycatch mortality in the fishery.* Most conservation and management measures can affect the amounts of bycatch or bycatch mortality in a fishery, as well as the extent to

which further reductions in bycatch are practicable. In analyzing measures, including the status quo, Councils should assess the impacts of minimizing bycatch and bycatch mortality, as well as consistency of the selected measure with other national standards and applicable laws. The benefits of minimizing bycatch to the extent practicable should be identified and an assessment of the impact of the selected measure on bycatch and bycatch mortality provided. Due to limitations on the information available, fishery managers may not be able to generate precise estimates of bycatch and bycatch mortality or other effects for each alternative. In the absence of quantitative estimates of the impacts of each alternative, Councils may use qualitative measures. Information on the amount and type of bycatch should be summarized in the SAFE reports.

(3) *Select measures that, to the extent practicable, will minimize bycatch and bycatch mortality*. (i) A determination of whether a conservation and management measure minimizes bycatch or bycatch mortality to the extent practicable, consistent with other national standards and maximization of net benefits to the Nation, should consider the following factors:

(A) Population effects for the bycatch species.

(B) Ecological effects due to changes in the bycatch of that species (effects on other species in the ecosystem).

(C) Changes in the bycatch of other species of fish and the resulting population and ecosystem effects.

(D) Effects on marine mammals and birds.

(E) Changes in fishing, processing, disposal, and marketing costs.

(F) Changes in fishing practices and behavior of fishermen.

(G) Changes in research, administration, and enforcement costs and management effectiveness.

(H) Changes in the economic, social, or cultural value of fishing activities and nonconsumptive uses of fishery resources.

(I) Changes in the distribution of benefits and costs.

(J) Social effects.

(ii) The Councils should adhere to the precautionary approach found in the Food and Agriculture Organization of the United Nations (FAO) Code of Conduct for Responsible Fisheries (Article 6.5), which is available from the Director, Publications Division, FAO, Viale delle Terme di Caracalla, 00100 Rome, Italy, when faced with uncertainty concerning any of the factors listed in this paragraph (d)(3).

(4) *Monitor selected management measures*. Effects of implemented measures should be evaluated routinely. Monitoring systems should be established prior to fishing under the selected management measures. Where applicable, plans should be developed and coordinated with industry and other concerned organizations to identify opportunities for cooperative data collection, coordination of data management for cost efficiency, and avoidance of duplicative effort.

(e) *Other considerations*. Other applicable laws, such as the MMPA, the ESA, and the Migratory Bird Treaty Act, require that Councils consider the impact of conservation and management measures on living marine resources other than fish; i.e., marine mammals and birds.

§ 600.355 National Standard 10—Safety of Life at Sea.

(a) *Standard 10*. Conservation and management measures shall, to the extent practicable, promote the safety of human life at sea.

(b) *General*. (1) Fishing is an inherently dangerous occupation where not all hazardous situations can be foreseen or avoided. The standard directs Councils to reduce that risk in crafting their management measures, so long as they can meet the other national standards and the legal and practical requirements of conservation and management. This standard is not meant to give preference to one method of managing a fishery over another.

(2) The qualifying phrase ''to the extent practicable'' recognizes that regulation necessarily puts constraints on fishing that would not otherwise exist. These constraints may create pressures on fishermen to fish under conditions that they would otherwise avoid. This standard instructs the Councils to identify and avoid those situations, if they can do so consistent with the legal and practical requirements of conservation and management of the resource.

(3) For the purposes of this national standard, the safety of the fishing vessel and the protection from injury of persons aboard the vessel are considered the same as ''safety of human life at sea. The safety of a vessel and the people aboard is ultimately the responsibility of the master of that vessel. Each master makes many decisions about vessel maintenance and loading and about the capabilities of the vessel and crew to operate safely in a variety of weather and sea conditions. This national standard does not replace the judgment or relieve the responsibility of the vessel master related to vessel safety. The Councils, the USCG, and NMFS, through the consultation process of paragraph (d) of this section, will review all FMPs, amendments, and regulations during their development to ensure they recognize any impact on the safety of human life at sea and minimize or mitigate that impact where practicable.

(c) *Safety considerations*. The following is a non-inclusive list of safety considerations that should be considered in evaluating management measures under national standard 10.

(1) *Operating environment*. Where and when a fishing vessel operates is partly a function of the general climate and weather patterns of an area. Typically, larger vessels can fish farther offshore and in more adverse weather conditions than smaller vessels. An FMP should try to avoid creating situations that result in vessels going out farther, fishing longer, or fishing in weather worse than they generally would have in the absence of management measures. Where these conditions are unavoidable, management measures should mitigate these effects, consistent with the overall management goals of the fishery.

(2) *Gear and vessel loading requirements*. A fishing vessel operates in a very dynamic environment that can be an extremely dangerous place to work. Moving heavy gear in a seaway creates a dangerous situation on a vessel. Carrying extra gear can also significantly reduce the stability of a fishing vessel, making it prone to capsizing. An FMP should consider the safety and stability of fishing vessels when requiring specific gear or requiring the removal of gear from the water. Management measures should reflect a sensitivity to these issues and provide methods of mitigation of these situations wherever possible.

(3) *Limited season and area fisheries*. Fisheries where time constraints for harvesting are a significant factor and with no flexibility for weather, often called ''derby'' fisheries, can create serious safety problems. To participate fully in such a fishery, fishermen may fish in bad weather and overload their vessel with catch and/or gear. Where these conditions exist, FMPs should attempt to mitigate these effects and avoid them in new management regimes, as discussed in paragraph (e) of this section.

(d) *Consultation*. During preparation of any FMP, FMP amendment, or regulation that might affect safety of human life at sea, the Council should consult with the USCG and the fishing industry as to the nature and extent of any adverse impacts. This consultation may be done through a Council advisory panel, committee, or other review of the

FMP, FMP amendment, or regulations. Mitigation, to the extent practicable, and other safety considerations identified in paragraph (c) of this section should be included in the FMP.

(e) *Mitigation measures*. There are many ways in which an FMP may avoid or provide alternative measures to reduce potential impacts on safety of human life at sea. The following is a list of some factors that could be considered when management measures are developed:

(1) Setting seasons to avoid hazardous weather.

(2) Providing for seasonal or trip flexibility to account for bad weather (weather days).

(3) Allowing for pre- and post-season ''soak time'' to deploy and pick up fixed gear, so as to avoid overloading vessels with fixed gear.

(4) Tailoring gear requirements to provide for smaller or lighter gear for smaller vessels.

(5) Avoiding management measures that require hazardous at-sea inspections or enforcement if other comparable enforcement could be accomplished as effectively.

(6) Limiting the number of participants in the fishery.

(7) Spreading effort over time and area to avoid potential gear and/or vessel conflicts.

(8) Implementing management measures that reduce the race for fish and the resulting incentives for fishermen to take additional risks with respect to vessel safety.

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Part III

Federal Trade Commission

16 CFR Part 260

Guides for the Use of Environmental Marketing Claims; Final Rule

FEDERAL TRADE COMMISSION

16 CFR Part 260

Guides for the Use of Environmental Marketing Claims

AGENCY: Federal Trade Commission.

ACTION: Final revised guides.

SUMMARY: The Federal Trade Commission (''Commission'') issued Guides for the Use of Environmental Marketing Claims (''guides'') on July 28, 1992. The guides included a provision for public comment and review three years after adoption to determine whether there was a need for any modifications. In connection with this review, in July 1995 the Commission sought public comment on a variety of issues, and held a two day public workshop-conference on December 7 and 8, 1995. On October 11, 1996, the Commission issued revised guides, but advised that it had not yet completed its review of the Recyclable and Compostable guides because of ongoing relevant consumer research. One purpose of the research was to examine whether ''recyclable'' and ''compostable'' claims continue to imply that consumers can recycle or compost the marketed product in their own area. Further, the Commission decided to seek additional public comment on the issue of whether product parts that can be reconditioned and/or reused in the manufacture of new products could be considered ''recyclable'' under the guides and whether products made from such reconditioned and/or reused parts could qualify as ''recycled'' under the guides. The Commission has now completed its review of the above issues and is issuing further amendments to the guides, as discussed below.

The Compostable guide is amended to clarify that an unqualified compostable claim can be made if a product is compostable in a home compost pile or device, even if municipal or institutional composting facilities are not locally available. This is because consumers are likely to perceive claims of compostability to mean that a product may be composted in a home compost pile or device. The Recyclable guide is modified to allow the term ''recyclable'' to be used for a package or product that can be recovered from the solid waste stream for reuse or for the manufacture of another package or product, so long as the package or product can be collected through an established recycling program (thus including reused, reconditioned and remanufactured products). The guides retain the provision that, to make an unqualified recyclable claim, recycling collection programs should be available to a substantial majority of consumers or communities, but the Commission is modifying the suggested qualifying statement for when an unqualified claim is not appropriate. Further, a new example illustrates that the phrase ''Please Recycle'' is considered equivalent to a ''recyclable'' claim. In addition, the Recycled Content guide is amended to clarify that recycled content may consist of used, reconditioned or remanufactured components, as well as raw materials. Finally, the Commission is amending the guides to clarify that they apply to all forms of marketing, including digital or electronic media, such as the Internet and electronic mail, and to the marketing of services, as well as products and packages.

EFFECTIVE DATE: May 1, 1998.

FOR FURTHER INFORMATION CONTACT: Janice Podoll Frankle, Attorney, (202) 326–3022, or Pablo Zylberglait, Attorney, (202) 326–3260, Division of Enforcement, Bureau of Consumer Protection, FTC, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION:

I. Background

A. Purpose of the Guides

Like other industry guides issued by the Commission, the Environmental Marketing Guides ''are administrative interpretations of laws administered by the Commission for the guidance of the public in conducting its affairs in conformity with legal requirements.'' 16 CFR 1.5. The guides indicate how the Commission will apply Section 5 of the Federal Trade Commission Act (''FTC Act''), which prohibits unfair or deceptive acts or practices, in the area of environmental marketing claims. 15 U.S.C. 45. The guides apply to all forms of marketing of products and services to the public, whether through advertisements, labels, package inserts, promotional materials, or electronic media.

B. 1995 Federal Register Notice

When the Commission issued the guides in 1992, it included a provision that three years after adoption, it would seek public comment on ''whether and how the guides need to be modified in light of ensuing developments.'' Pursuant to this provision, in a **Federal Register** Notice published on July 31, 1995 (''1995 Notice''), the Commission sought comment on a number of general issues relating to the guides' efficacy and the need, if any, to revise or update the guides. 60 FR 38978. The Commission also sought comment on specific issues related to particular environmental claims addressed by the guides. In addition, the 1995 Notice announced that Commission staff would be conducting a public workshop-conference at the conclusion of the comment period to discuss issues raised by the written comments. The workshop was held on December 7 and 8, 1995.

The Commission received 99 comments in response to the 1995 Notice.[1] Some of those comments are relevant to the issues presented in the October 11, 1996 **Federal Register** Notice (''1996 Notice''), discussed below.[2]

C. 1996 Federal Register Notice

On October 11, 1996, the Commission published revised guides (1996 Notice), which included revisions to the prefatory sections, as well as the following sections: General Environmental Benefits, Degradable/Biodegradable/Photodegradable, Recycled Content, Source Reduction, Refillable, and Ozone Safe and Ozone Friendly. 61 FR 53311. At that time, the Commission advised that it was still in the process of reviewing the Recyclable and Compostable guides and wanted to evaluate the results of ongoing consumer research. The Commission also stated that it was seeking further public comment on the issue of whether product parts that can be reconditioned and/or reused in the manufacture of new products could be considered ''recyclable'' under the guides and whether products manufactured from such reconditioned and/or reused parts could qualify as ''recycled'' under the guides. In addition, the Commission reiterated its request for consumer

[1] The comments came from 45 trade associations or trade association coalitions; 28 manufacturers, distributors or retailers; 12 consumer, environmental or public advocacy organizations; 4 state government officials or bodies; 2 federal government agencies or officials; 2 certification organizations; 1 standards organization; 1 city government official; 1 individual; 1 educational institution; 1 consulting company; and 1 public-private recycling coalition.

[2] The comments are on the Commission's public record as Document Nos. B17512400001–B17512400099 for the 1995 Notice and B20818700001–B2081870227 for the 1996 Notice. The comments are cited in this Notice by the name of the commenter, reference to either the 1995 Notice or the 1996 Notice, depending on which notice(s) was responded to by the commenter, a shortened version of the comment number, and the relevant page(s) of the comment, e.g., Virginia Automotive Recyclers Ass'n, 1996 Notice, #1 at 1. The transcript of the public workshop is on the Commission's public record as Document No. P954501. A complete list of commenters, the comments, a transcript of the workshop proceedings, and consumer perception studies conducted are available for inspection and copying in the Consumer Response Center, Room 130, Federal Trade Commission, 6th & Pennsylvania Ave., N.W., Washington, D.C. 20580.

perception data for ''recyclable'' and ''compostable'' claims.[3]

In response to the 1996 Notice, 227 comments were received.[4] Part II summarizes the comments on the 1996 Notice, and comments on the 1995 Notice that are relevant to the issues raised in the 1996 Notice.

D. Consumer Survey Evidence

The consumer perception survey evidence received by the Commission is relevant to the issues raised in the 1996 Notice. The Council on Packaging in the Environment (''COPE'') conducted a national telephone survey in April 1996, providing evidence on whether consumers consider products made from reconditioned parts to be ''recycled.'' COPE surveys from March 1993, September 1993, and December 1994 provide empirical data concerning consumers' interpretations of ''recyclable'' and ''Please Recycle'' claims. A Roper Starch Worldwide, Inc. (''Roper Starch'') survey of consumers conducted through personal, in-home interviews during December 1996, provides information on how recyclable claims are interpreted. Research performed by professors from American University, through mall-intercept interviews, provides empirical data on consumer interpretation of recyclable claims and certain disclosures.[5]

II. Summary of Comments and Modifications to the Guides

A. The Compostable Guide

1. Summary of Comments Regarding the Compostable Guide

Only a few comments directly addressed the Compostable guide, which states that an unqualified compostable claim might be deceptive unless a product can be safely composted at home and in a municipal composting facility. The Society of the Plastics Industry, Inc. (''SPI'') stated that home composting appears to be the primary means of composting practiced by consumers and thus asked the Commission to clarify that an unqualified compostable claim can be made for an item that can be safely composted in a home compost pile or device.[6] SPI stated that it was unaware of any data indicating that a product compostable in a home compost pile or device would not be compostable in a municipal composting facility. SPI stated further that the lack of municipal composting facilities near the consumer is irrelevant to the validity of an unqualified compostable claim. SPI noted, however, that if a product is only compostable in a municipal facility, then that fact should be disclosed and a qualifier regarding local availability should be used. Another commenter recommended modifying the definition of ''compostable'' to indicate that the advertised product ''must break down in approximately the same time as the materials it is generally composted with.''[7]

2. Modifications to the Compostable Guide

Because there are fewer than 20 municipal solid waste composting facilities in the United States, the Commission now believes that few consumers are likely to know about and associate a compostable claim with municipal solid waste composting facilities.[8] Moreover, the Commission agrees with SPI that a product technically capable of being composted in a home compost pile or device would also be compostable in a municipal composting facility. Thus, the Compostable guide and Example 1 have been revised to clarify that an unqualified compostable claim can be made if a product is compostable in a home compost pile or device even if municipal or institutional[9] composting facilities are not locally available.[10] The guide still states, however, that if a claim is made that a product is compostable in a municipal or institutional composting facility, then the claim may need to be qualified to the extent necessary to avoid deception about the limited availability of composting facilities.

B. The Recyclable and Recycled Content Guides

1. Claims Regarding Local Availability of Recycling Facilities

a. Background. The Recyclable guide states that consumers are likely to interpret unqualified recyclable claims to imply that facilities are available in their community to recycle the product, and that if facilities are not available to a substantial majority of consumers or in a substantial majority of communities, then such claims should be qualified. An important issue that arose in the review of the Recyclable guide concerned whether this interpretation of an unqualified claim is still correct. Closely related to this issue is how consumers interpret the increasing number of claims such as ''Please Recycle'' in the marketplace, and if these claims also need qualification when available facilities are limited.

b. Summary of Comments Regarding the Local Availability Standard and ''Please Recycle'' Claims. The issue of how consumers interpret unqualified recyclable claims and whether the term implies anything about the availability of local recycling facilities provoked a wide range of comments. A few commenters contended that no qualifications about limited availability were necessary.[11] Most of the

[3] For example, the 1995 Notice requested any empirical data relevant to whether consumers perceive that products made from reconditioned parts that would otherwise have been discarded should qualify as ''recycled'' products. Further, the 1995 Notice sought comment on certain issues relating to the Recyclable and Compostable guides and requested any empirical data regarding whether an unqualified recyclable or an unqualified compostable claim conveys a claim concerning local availability of recycling or composting programs and whether any evidence indicates that those guides should be modified, and if so, in what manner. In addition, the 1995 Notice stated that the available evidence suggested that certain qualifying disclosures outlined in the Recyclable and Compostable guides may be more effective than others in conveying to consumers that facilities may not be available in their community to recycle or compost the product. Thus, the Commission asked for any evidence indicating that certain of those qualifying disclosures should be modified, and if so, in what manner.

[4] These came from 201 automotive parts dealers, ''automotive recyclers,'' automotive salvage companies, dismantlers, wreckers and rebuilders; 17 trade associations (11 of which represent ''automotive recyclers,'' rebuilders, and dismantlers); 2 manufacturers; 1 federal government agency; 1 public-private recycling hotline; 1 municipal recycling and solid waste commission; 1 association of recycling managers; 1 state office of environmental assistance; 1 non-profit public service corporation; and 1 individual.

[5] Although the revised guides are effective immediately, the Commission will take into consideration the date when materials were authorized to be printed in conformance with the former guides.

[6] SPI, 1995 Notice, #53 at 25; 1996 Notice, #70 at 2.

[7] Mobil Chemical Co. (''Mobil''), 1995 Notice, #38 at 4. The guide currently states that a compostable claim means that a product will break down in a ''safe and timely manner.'' The Commission interprets the ''timely manner'' language to mean that the product or package will break down in approximately the same time as the materials with which it is composted.

[8] This view is supported by a 1991 University of Illinois study about consumer perceptions of such terms as ''degradable/biodegradable,'' ''compostable,'' ''recyclable,'' and ''environmentally friendly.'' When consumers were asked the open-ended question, ''What does the term compostable mean?,'' 44.2% of respondents defined compostable in terms of a home compost pile. The study reported that consumers did not mention municipal composting programs in their definitions of ''compostable.''

[9] The word ''institutional'' has been added because there are also privately operated composting facilities.

[10] Example 3 has been deleted because revised Example 1 now illustrates the same concept. In addition, references to ''yard waste'' have been changed to ''yard trimmings'' because the Environmental Protection Agency (''EPA'') advised that the latter term is becoming more prevalent.

[11] International Dairy Foods Ass'n (''IDFA''), 1995 Notice, #13 at 2–3; American Bakers Ass'n, 1995

Continued

approximately 40 commenters who specifically discussed recyclable claims, however, only favored a less restrictive approach to when the term ''recyclable'' should be qualified. One commenter stated that the assertion that some consumers may not understand that ''recyclable'' means that the package is recyclable only if there is a recycling program in the community, seems to unnecessarily question the intelligence of consumers.[12] Another commenter recommended that the Commission indicate that only claims of recyclability that imply availability of programs (rather than recyclable claims in general) may require qualification to the extent necessary to avoid consumer deception about limited availability of recycling programs and collection sites.[13] Another commenter stated that the Commission would promote dissemination of information and spur demand for increased recycling facilities by modifying the recyclability standards to allow claims of recyclability where a material can be recycled by an accepted, practical method, whether or not facilities to do so are widely available.[14]

Commenters also recommended that the threshold for making unqualified ''recyclable'' claims be lowered to permit such claims if facilities are available to a significant percentage of the population nationwide, or to a reasonable portion of the population (rather than the current threshold of substantial majority).[15] Several commenters suggested that the Commission harmonize its guides with the draft standards being developed within the International Organization for Standardization (''ISO''), which would require that collection facilities be available to a ''reasonable portion'' of the population.[16] One commenter contended that the ''reasonable portion'' language is more manageable than the ''substantial majority'' wording in the guides and would require less cumbersome data collection.[17]

In contrast, several commenters urged the Commission to retain the current recyclable qualifications.[18] EPA stated that claims of recyclability need to be qualified as recommended in the guides because there is no real benefit to consumers in being informed that a product or package is technically recyclable if a program is not available enabling them to recycle the material after use.[19] EPA also stated that it would strongly oppose allowing the unqualified use of the term ''recyclable'' unless it can be definitely proven that such usage would not contribute to the placement of improper materials into recycling bins.

Another commenter maintained that the substantial increase in curbside collection programs over the past few years does not obviate the problem because the availability of curbside collection can itself mislead consumers about the recycling properties of certain materials.[20] A recycling association noted that false claims of recyclability waste consumers' time both in preparing materials to be recycled and in sorting through material not picked up because of contamination with non-recyclables.[21] The commenter stated, for example, that its members had to explain to consumers why the recycling crew did not take the corrugated takeout pizza boxes labeled ''recyclable,'' but which, in fact, were not recycled in the community where the pizza was sold.

Another commenter urged the Commission to modify the guides to limit the use of the unqualified claim ''recyclable'' to only those products and materials that are accepted for recycling in the majority of curbside recycling programs across the country or in the communities where the product is sold or distributed, or are accepted for recycling at the point of purchase or distribution, or have demonstrated a recycling rate of 50% or better nationally or in the communities where the product is sold or distributed.[22] The Environmental Defense Fund (''EDF'') stated that, to avoid consumer deception at the point of purchase, the qualifying language accompanying a claim should explicitly state the current extent of availability of facilities and programs required to fulfill the claim, and therefore avoid placing the burden on consumers to determine local availability.[23] Two university professors who conducted research on recycling claims also suggested stronger qualifications.[24]

The comments on statements such as ''Please Recycle'' also were mixed. Several industry commenters stated that statements like ''Please Recycle'' are exhortations to encourage consumers to recycle and not claims about whether a particular product is widely recyclable.[25] NSDA explained that in the soft drink industry, the three-chasing-arrows logo is almost always displayed in conjunction with the ''Please Recycle'' message, and the industry does not want any special meaning to be attached to the logo or the adjoining ''Please Recycle'' phrase, which simply asks the consumer to consider recycling.[26]

In contrast, EPA stated that it viewed ''Please Recycle'' as similar to an unqualified claim of recyclability.[27] EPA also expressed concern that the phrase ''Please Recycle'' accompanied by the chasing-arrows symbol may simply be an effort by marketers to display that symbol without having to make a qualified recyclable claim. EPA stated that such messages are so similar to a claim of recyclability that when unqualified, they may be deceptive. University researchers Mayer & Cude suggested revising the guides to clarify that the phrase ''Please Recycle'' is not adequate to inform consumers about a product's recyclability.[28] Several Attorneys General recommended modifying the guides to state that the exhortation to recycle be expressly qualified whenever collection facilities are limited for the material in question by stating the percentage of the population that cannot recycle the material, followed by information on how to find out whether the material is recyclable in the consumer's area.[29]

Notice, #23 at 1–2; Paperboard Packaging Council (''PPC''), 1995 Notice, #67 at 1–6.

[12] IDFA, 1995 Notice, #13 at 2.

[13] Grocery Manufacturers of America (''GMA''), 1995 Notice, #59 at 10, 20.

[14] Soap and Detergent Ass'n (''SDA''), 1995 Notice, #65 at 9. *See also* Paper Recycling Coalition (''PRC''), 1995 Notice, #91 at 6 (the Commission's recyclable standard may hinder the growth of recycling markets by limiting the recovery of materials for which there is a demand, but for which the threshold to use an unqualified ''recyclable'' claim has not been met).

[15] 3M, U.S. Sub-TAG to ISO, National Ass'n of Manufacturers, Chemical Manufacturers Ass'n (''3M''), 1995 Notice, #32 at 2 (reasonable portion); Eastman Kodak Co. (''Kodak''), 1995 Notice, #42 at 3 (reasonable portion); American Plastics Council, 1995 Notice, #64 at 15 (significant portion); National Ass'n of Photographic Manufacturers, Inc. (''NAPM''), 1995 Notice, #83 at 2 (reasonable portion).

[16] 3M, 1995 Notice, #32 at 2; Kodak, 1995 Notice, #42 at 3; NAPM, 1995 Notice, #83 at 2.

[17] Kodak, 1995 Notice, #42 at 3.

[18] Helene Curtis, Inc., 1995 Notice #8 at 3; National Recycling Coalition Inc., 1995 Notice, #73 at 1.

[19] EPA, 1995 Notice, #22 at 2, 5; 1996 Notice, #215 at 1–2.

[20] Aluminum Ass'n, Inc., 1995 Notice, #66 at 3–5.

[21] Ass'n of Recycling Managers, Inc., 1995 Notice, #77 at 2, 5.

[22] Californians Against Waste Foundation, 1995 Notice, #81 αt 3.

[23] EDF, 1995 Notice, #93 at 4.

[24] Professors Robert N. Mayer and Brenda J. Cude (''Mayer & Cude''), 1995 Notice, #20 at 3.

[25] GMA, 1995 Notice, #59 at 19 (such claims energize consumers to recycle items that can be recycled; curbing the use of ''Please Recycle'' might threaten upward trend of recycling rates); National Soft Drink Ass'n (''NSDA''), 1995 Notice, #62 at 6; SDA, 1995 Notice, #65 at 9; Chemical Specialties Manufacturers Ass'n, 1995 Notice, #72 at 15.

[26] NSDA, 1995 Notice, #62 at 6.

[27] EPA, 1995 Notice, #22 at 2.

[28] Mayer & Cude, 1995 Notice, #20 at 5.

[29] Attorneys General of the States of Arizona, California, Connecticut, Florida, Massachusetts, Minnesota, Missouri, New York, Pennsylvania,

c. *Consumer Perception Data Regarding the Local Availability Standard and ''Please Recycle'' Claims.* In the December 1994 COPE survey, respondents were asked if a ''Please Recycle'' claim on a package meant that collection programs existed in their community to recycle that package. Approximately one-third of consumers stated that the ''Please Recycle'' label meant that they could recycle the product in their community. When consumers were asked if the ''Please Recycle'' label on a package meant that the package can be recycled by consumers in all, most, some, a few or no communities, over one-half responded that the claim meant that the product could be recycled by consumers in ''all'' or ''most'' communities nationwide.

One question in the Roper Starch survey asked consumers if the claim of ''recyclable package'' on a cereal box meant that there *definitely* is a recycling facility for such packages in the consumers' communities. Of the respondents, 37% thought that the ''recyclable'' claim meant that there definitely was a recycling facility in their community, while 50% thought that there definitely was not a recycling facility in their community.

Although the research described above provides some consumer survey data regarding ''Please Recycle'' and local availability claims, in the 1996 Notice the Commission stated that it also wanted to evaluate the results of ongoing consumer research related to the Recyclable and Compostable guides. In July 1997, the Commission received the results of that research, which was conducted by Professors Manoj Hastak and Michael Mazis and funded by American University. Using a mall-intercept approach, respondents were exposed to one of two product packages (cardboard milk carton or plastic petroleum jelly jar) with one of three different labels on the package (''Recyclable,'' ''Please Recycle,'' or no environmental claim).

After examining one package (either milk or petroleum jelly), respondents were asked a series of questions designed to measure their perceptions of the package's recyclability. Consumers were asked how likely or unlikely it is that the package can be recycled in their community.[30] Of the respondents exposed to the package without any environmental claim, between 46% and 54% (for milk and petroleum jelly, respectively) indicated that it was likely or extremely likely that the package was recyclable in their community. Over 72% of the respondents exposed to the ''recyclable'' label indicated that it was likely or extremely likely that the package was recyclable in their community. Over 75% of the respondents who were shown the ''Please Recycle'' label indicated that it was likely or extremely likely that the package was recyclable in their community.

Then, the respondents were asked how likely or unlikely it is that the package can be recycled in most communities in the United States. Of the respondents exposed to the package without any environmental claim, between 40% and 46% (for milk and petroleum jelly, respectively) indicated that it was likely or extremely likely that the package can be recycled in most communities in the United States. Approximately 70% of the respondents who were shown the ''recyclable'' or ''Please Recycle'' label indicated that it was likely or extremely likely that the package can be recycled in most communities in the United States.

d. Retention of the Local Availability Standard; Amendment of the Recyclable Guide Regarding ''Please Recycle'' Claims. As discussed above, recent survey data confirm that the presence of either the ''recyclable'' claim or the ''Please Recycle'' claim significantly increased the percentage of consumers who believed the package to be recyclable in their community and in most communities in the United States. The large increase in responses to the ''recyclable'' and ''Please Recycle'' labels over where no claim is made shows that the claims make a difference in consumer perception of the availability of recycling facilities in their communities and in most United States communities. Further, there were no statistically significant differences in response to the two questions between the ''recyclable'' and ''Please Recycle'' groups. The Commission concludes that these results indicate that a local availability claim is conveyed to consumers by an unqualified ''recyclable'' claim.[31] The study further indicates that packages with the claim ''Please Recycle'' are just as likely to be perceived as recyclable as packages with the claim ''recyclable,'' and also to convey a local availability claim.

Further, some commenters indicated that unqualified claims of recyclability where there is no local availability of recycling programs, mislead consumers into placing improper materials into recycling bins and thus the claims can increase the costs of recycling programs. It also was pointed out that while a product may be technically recyclable, if a program is not available allowing consumers to recycle the product, there is no real value to consumers. Thus, the Commission has decided to retain the current disclosure system for ''recyclable'' claims. Unqualified ''recyclable'' claims should only be made when a package or product is recyclable for a substantial majority of consumers or communities; in all other instances, an appropriate disclosure should accompany such claims.[32]

In addition, recent survey data reveal that a significant majority of consumers equate the claim ''Please Recycle'' with unqualified ''recyclable'' claims. Accordingly, new Example 11 to the Recyclable guide illustrates that the phrase ''Please Recycle'' is equivalent to a ''recyclable'' claim and, thus, that unqualified usage should be limited to products that can be recycled locally by a substantial majority of consumers or communities.

2. Safe Harbor Disclosures for Products or Packages That Are Not Recyclable in a Substantial Majority of Communities

a. Summary of Comments Regarding Disclosures. Under the Recyclable guide, the Commission adopted a three-tiered disclaimer approach, depending on the availability of recycling facilities for a package or product. The first tier is when recycling facilities are available to a substantial majority of consumers or communities nationwide; in such cases,

Tennessee, Washington, and Wisconsin (''Attorneys General''), 1995 Notice, #45 at 3.

[30] The communities that were selected for this study were chosen because neither of the product packages used in the study could be recycled curbside in these areas; there were no known drop off facilities in these communities that would accept either the milk carton or the petroleum jelly jar; and the brand names of the products were not sold locally.

[31] This conclusion is also supported by the December 1994 COPE survey. The Roper Starch data also shows that a significant percentage of consumers take a local availability claim from an unqualified ''recyclable'' claim, although a greater percentage did not. This result may be due, at least in part, to the survey's emphasis on the word ''definitely.''

[32] The Commission is cognizant that ISO's ''reasonable portion'' environmental labeling standard went out in April 1998 for comments and balloting and will go out for final balloting toward the end of 1998. The Trade Agreements Act of 1979 states that any federal agency must, in developing standards, ''take into consideration international standards and shall, if appropriate, base the standards on international standards.'' Trade Agreements Act of 1979, title IV, section 402, 93 Stat. 242 (1979) (codified as amended at 19 U.S.C. 2532(2)(A) (Supp. 1995)). Since the reasonable portion standard has not been formally adopted (or defined) by ISO, the Commission believes that it would be premature to contemplate revising the substantial majority standard at this time. Of course, at any time the Commission may alter or revise the guides based on international developments or other relevant changes.

unqualified recyclable claims can be made. The second tier is when facilities are available to a significant percentage of the population or communities, but not yet to a substantial majority of consumers or communities. In that situation, a suggested qualification is ''Check to see if recycling facilities exist in your area.'' The third tier is when facilities are available to less than a significant percentage of communities or the population. Then, a recommended disclosure would be to state that the product is only recyclable in a few communities nationwide. Also, the guide provides that an alternative approach to qualifications would be to disclose the approximate percentage of communities or the population to whom recycling programs are available for the product.

Almost half of the commenters on recyclable claims urged the Commission to adopt different qualifiers, contending that the current ''check to see'' qualifier is too stringent. Several commenters suggested that the Commission revise the guides to allow for the qualifier ''recyclable—where facilities exist,'' in addition to the ''Check to see if recycling facilities exist in your area'' qualifier.[33] Several commenters stated that the qualifier ''recyclable where facilities exist'' was sufficient to advise a consumer that the product might not be recyclable in the consumer's area.[34] Commenters also favored claims such as ''recyclable through participating photofinishers'' and ''recyclable through participating dealers.''[35] Another commenter urged the Commission to streamline the lengthy qualifications for ''recyclable'' claims offered as examples in the guides.[36]

The Ford Motor Company (''Ford'') contended that the current guides do not adequately address the recyclability of durable goods such as automobiles, because the guides' contemplate situations involving only curbside or drop off recycling programs.[37] Ford noted that vehicle owners have no difficulty availing themselves of various automotive disposal and recycling services, and therefore, recommended that automobile manufacturers be permitted to make unqualified claims of recyclability, even though their collection sites are not those contemplated by the guides.

The U.S. Environmental Recycling Hotline (''Hotline'') suggested that product labels using its 1–800–CLEANUP telephone number in conjunction with a ''recyclable'' claim could be a ''safe harbor,'' if used appropriately.[38] Another commenter maintained that companies using such terms as ''recyclable,'' ''compostable,'' ''degradable,'' and ''refillable'' should be required to print a telephone number near the claim so that confused consumers can have their questions answered.[39]

Several State Attorneys General stated that the ''check to see'' qualifier incorrectly implies that the most likely problem with an unqualified recyclable claim is the possibility of there not being *any recycling facilities in the consumer's locality*.[40] The Attorneys General suggested that the problem consumers are more likely to encounter is that the recycling facilities do not collect the material in question. They suggested that a clear, easily understood qualification be used when collection sites for the material in question are available to some but not all consumers or communities, for instance, ''Not recyclable in 75% of U.S. communities. Check to see if recyclable in your area.''

b. Consumer Perception Data Regarding Recyclable Disclosures. In the March 1993 COPE survey, half of those interviewed were asked whether an unqualified ''recyclable'' claim meant that collection programs existed in their community to recycle the product, and the other half were asked the same question with the qualified ''Recyclable—check to see if recycling facilities exist in your area'' disclosure. In each case, more than 40% of respondents answered ''yes'' (i.e., the claim meant that collection programs existed in their community to recycle the product), regardless of whether they were exposed to the unqualified or qualified claim. There was no statistically significant difference between the two responses (46% for the unqualified claim; 43% for the qualified claim). The Commission believes that these results indicate that the ''check to see'' disclosure may not be effective in conveying to consumers that local facilities may not be available to recycle the product.

In the September 1993 survey, COPE tested a qualification similar to that recommended in the Compostable guide when facilities are available to a significant percentage, but not a substantial majority of the population (*i.e.*, ''Appropriate facilities may not exist in your area''). Half of those questioned were asked whether an unqualified ''recyclable'' claim meant that recycling programs for the product existed in their community and the other half were asked the same question when exposed to the claim: ''Recyclable—recycling programs for this bottle may not exist in your area.'' Of those exposed to the unqualified claim, 45% responded that the claim meant that facilities existed in their area, and 48% responded that it did not. Of consumers exposed to the qualified claim, ''Recyclable—recycling programs for this bottle may not exist in your area,'' 29% responded that it meant that recycling programs for that bottle existed in their area, and 59% responded that the claim did not mean that recycling programs existed in their area. The Commission believes that these results indicate that the more cautionary disclosure, *i.e.*, ''Recycling programs [for this product] may not exist in your area,'' is more successful in conveying to consumers that facilities may not be available locally, than the ''Check to see if recycling facilities exist in your area'' disclosure.

c. Amendments Regarding Safe Harbor Recyclable Disclosures. Based on the comments and the consumer perception data discussed above that found that the ''check to see'' qualification did not significantly change consumers'' perceptions of local availability of collection sites when compared with an unqualified ''recyclable'' claim, the Commission is withdrawing the safe harbor ''Check to see if recycling facilities exist in your area.'' The Commission also concludes that the alternatives suggested by some commenters, such as ''recyclable where facilities exist'' would be inadequate to change consumer perception. In

[33] Foodservice & Packaging Institute, Inc., 1995 Notice, #63 at 8–9 (if the claims are qualified in a positive manner, the consumer may be encouraged to seek out recycling opportunities that exist in the community, or by requesting information, create demand for expansion of recycling programs); Amoco Chemical Co., 1995 Notice, #35 at 2–3 (it is necessary to balance the need to inform the consumer about recyclable products with the need to avoid overstating the consumer's ability to recycle those products); Mobil, 1995 Notice, #38 at 3–4 (negative qualifiers such as ''recycling programs may not exist in your area'' are counterproductive, while positive qualifiers encourage the consumer to seek out recycling opportunities).

[34] Washington Legal Foundation, 1995 Notice, #84 at 3 (manufacturers may reasonably conclude that exhorting consumers to ''check to see if recycling facilities exist in your area'' is a misuse of label and advertising space); SPI, 1996 Notice, #70 at 3.

[35] Kodak, 1995 Notice, #42 at 3; NAPM, 1995 Notice, #83 at 2.

[36] American Frozen Foods Institute, 1995 Notice, #85 at 3 (suggesting that manufacturers must be confident that qualifications that use fewer words and provide less detailed information than the Commission has suggested may be viewed as appropriate by the agency).

[37] Ford, 1995 Comment, #29 at 4–5.

[38] Hotline, 1996 Notice, #216 at 2. The Hotline explained that its telephone number provides recycling drop off center location information and community-specific recycling education information in all 50 states.

[39] California Integrated Waste Management Board, 1995 Notice, #74 at 2.

[40] Attorneys General, 1995 Notice, #45 at 4.

particular, this alternative would suffer from the problem identified by the Attorneys General in that such a claim could imply that if any facility exists in a consumer's community, then the item is recyclable, when, in fact, that facility may not recycle the product. Example 4 of the Recyclable guide (where this issue is presented) has been revised to suggest the following types of disclosures: ''Recycling programs for this bottle [product or packaging] may not exist in your area'' or ''This bottle [product or packaging] may not be recyclable in your area.'' [41] Because the new safe harbors are tied to the marketed product as opposed to recycling programs generally, they reduce the possibility that consumers may infer that because a recycling program exists in their area, that any product represented as ''recyclable'' can, in fact, be recycled in their local program.

3. Reused and/or Reconditioned Parts Marketed as ''Recycled'' or ''Recyclable''

a. Background. In the 1995 Notice, the Commission specifically sought comment as to whether consumers perceive that products made from reconditioned parts that would otherwise have been thrown away are ''recycled'' products, and what modifications, if any, should be made to the guides to address these consumer perceptions. The Commission received no empirical evidence in response to that request, but did receive several comments that discussed the issue. In the 1996 Notice, the Commission stated that it had determined to give further consideration to the question, as well as to the related issue of whether product parts that can be reconditioned and/or reused in the manufacture of new products should be considered ''recyclable'' if adequate infrastructures for collecting the parts are available.

At that time, the Recycled Content guide defined ''recycled content'' as material that a marketer can substantiate has been recovered or otherwise diverted from the waste stream. This definition could be interpreted to include products made from reconditioned and/or reused parts, as well as products made from products converted into raw materials, such as steel made from melted down cans. The 1996 Notice pointed out, however, that the Recyclable guide stated that for something to be recyclable it must be diverted from the solid waste stream for use as ''raw materials in the manufacture or assembly of a new product or package.'' Thus, the 1996 Notice concluded that product parts that are capable of being reconditioned and/or reused in the manufacture of new products are not considered ''recyclable'' under the guides, because the parts are not actually reprocessed into raw materials before reuse.

b. Summary of Comments Regarding Reused and/or Reconditioned Parts as ''Recycled'' or ''Recyclable''. There was a consensus among those commenting that reused and/or reconditioned automotive parts should be permitted to be called ''recycled.'' Approximately 207 comments to the 1996 Notice were patterned after, or similar to, a form letter from the Automotive Recyclers Association (''ARA''), a trade association representing automotive parts dealers, ''automotive recyclers,'' automotive salvage companies, dismantlers, and wreckers.[42] These commenters stated that the automotive recycling industry has been a pioneer in the recycling movement for over 50 years and that the products they sell have been and must continue to be described as ''recycled.'' They contended that by using viable parts removed from vehicles bound for the waste stream, their products are reintroduced into commerce without wasting additional natural resources. The used automotive parts dealers, dismantlers, and salvage companies commented that they consider themselves to be ''professional automotive recyclers'' [43] and one stated that ''recycled'' was the automotive industry's term first, before everyone else ''jumped on the environmental bandwagon.'' [44]

Several commenters said that customers are not confused when they buy a ''recycled'' automotive part because they realize that they are getting a used part for less money, i.e., used automotive parts cost 30–90% of the price of new parts.[45] Other commenters said recycled parts give consumers an alternative repair option and help reduce the unnecessary production of new parts.[46] Some commenters noted that recycling automotive parts also helps keep vehicle insurance affordable because automotive recyclers buy damaged vehicles from insurance companies and resell the recycled parts (indirectly) to insurance companies to repair other damaged vehicles.[47] Another commenter suggested that the sale of many used parts as component assemblies, such as complete engine assemblies, reduces installation time and thus saves labor costs.[48] That commenter also pointed out that the automotive dismantler may be the only source of parts for the consumer who owns an older vehicle.

ARA stated that the Commission should consider the impact on the used automotive parts industry if it does not permit reused parts to be labeled as ''recycled,'' and suggested that failure to do so would provide an unfair competitive advantage for products made from recycled raw materials.[49] ARA therefore recommended revising the Recyclable guide to incorporate reused automotive components as a qualifying use for the term ''recyclable.'' [50] ARA further suggested that reused automotive parts should be included in the guidance regarding the Recycled Content guide.

In contrast, PRC expressed concern that any expansion of the term ''recycling'' would confuse consumers because they would have no means of distinguishing between used or remanufactured products and newly manufactured products made from raw

[41] The new qualifications also are consistent with the one suggested in the Compostable guide: ''Appropriate facilities may not exist in your area.''

[42] Attached to many of these letters were petitions containing the names and addresses of customers who stated: ''[I] support reused parts being described as ''recycled.'' I understand the quality of the product I am buying when it is advertised as ''recycled'' and believe the service this company provides should continue to be recognized as recycling.'' Approximately 2,190 names of customers were on the petitions. *See, e.g.,* Branch Auto Parts, 1996 Notice, #38 at 2; Alliance Auto Parts Inc., 1996 Notice, #48 at 2.

[43] See, e.g., B & K Auto Salvage, 1996 Notice, #124 at 1; Greensboro Auto Parts Co., Inc., 1996 Notice, #128 at 1; EL & M Auto Recycling, Inc., 1996 Notice, #161 at 1; Automotive Parts Rebuilders Ass'n (''APRA''), 1996 Notice, #102 at 4 (noting also that many used automotive parts dealers have the word ''recycling,'' or some variation of it, in their names).

[44] BIG Truck Salvage, Inc., 1996 Notice, #77 at 1.

[45] Georgia Automotive Recyclers Ass'n, 1996 Notice, #117 at 1; Bliss Auto Wreckers, 1996 Notice, #118 at 1. *See also* Michael W. Gibson, Ft. Worth, TX, Controller of the following companies: AAA Small Car World, Auto Recyclers of Houston, Budget American & Import Auto Parts, All Auto Recyclers of San Antonio, Auto Recyclers of Austin and Auto Recyclers of Ft. Worth (''Michael W. Gibson''), 1996 Notice, #78 at 1 (customers are not generally confused when products are described as ''recycled,'' because they are almost always referred to as ''recycled used parts''; these parts cost 50% or less, of the cost of a new or rebuilt/remanufactured part); Palmer's Auto Salvage (''Palmer's''), 1996 Notice, #43 at 3 (30–60%); Arizona Automotive Recyclers Ass'n (''Arizona Recyclers''), 1996 Notice, #99 at 2 (50%).

[46] See, e.g., Midway Auto Parts, 1996 Notice, #2 at 1; Autosalvage of Ithaca Inc., 1996 Notice, #40 at 1; Cousineau Auto Inc., 1996 Notice, #85 at 1.

[47] Route 19 Auto Salvage Inc., 1996 Notice, #39 at 1; Lynnwood Auto Wreckers Incorporated, 1996 Notice, #59 at 1. *See also* Pennsylvania Automotive Recycling Trade Society, 1996 Notice, #15 at 1; Palmer's, 1996 Notice, #43 at 11; Don's Automotive Mall, Inc. (''Don's''), 1996 Notice, #92 at 10; Arizona Recyclers, 1996 Notice, #99 at 2.

[48] Don's, 1996 Notice, #92 at 4.

[49] ARA, 1996 Notice, #101 at 8.

[50] ARA, 1995 Notice, #71 at 2, 6. *See also* ARA, 1996 Notice, #101 at 1–9.

materials.[51] Similarly, Pitney Bowes, while favoring an expansion of the use of ''recycled'' and ''recyclable,'' urged the Commission to distinguish among products that are made from reconditioned parts, reused parts, and remanufactured parts because they differ in specifications, product disclosures to the consumer, warranties, and manufacturing processes.[52] Ford pointed out that in the automotive industry, the use of the term ''recycled'' generally means that a part has been removed from a scrap vehicle and resold with little or no work performed on it.[53] A ''remanufactured'' part, in contrast, has undergone substantial cleaning, repair and reworking and under industry practice this part would not be considered ''recycled.'' Because restoration work has been performed on rebuilt and remanufactured parts, while recycled vehicle parts are often sold ''as is,'' APRA noted that some rebuilders may not desire to use the term ''recycled,'' but they should not be precluded from doing so.[54]

Several commenters urged the Commission to allow the application of ''recycled'' and ''recyclable'' to other remanufactured and reused products that are not broken down to raw materials before being reused. These commenters noted that reused, reconditioned and remanufactured parts are important components of many products, such as office copiers, one-time use cameras and mailing machines.[55] Kodak noted that it has developed a reuse program for its one-time use cameras in which it reconditions and reuses, or breaks down into raw materials, 86% of a used camera by weight for use in the manufacture of new one-time use cameras.[56] Kodak contended that because collection of this sort of reused material diverts products from the waste stream, those products should qualify as ''recyclable.''[57]

ARA pointed out that many states, including New Jersey, Missouri, Minnesota, Maine, Louisiana, Kentucky, Georgia, and Florida, have acknowledged in their statutes that recycling encompasses all efforts, including reuse, to remove solid waste from the waste stream.[58] ARA stated that the Commission should provide incentives for all methods of recycling, as long as the goal of conserving natural resources and diverting waste is achieved. Other commenters noted that the draft ISO standard allows products that are diverted from the waste stream and returned to use in the form of raw materials or products to be considered ''recyclable,'' and urged the Commission to adopt a similar approach.[59]

c. Quality Standards for Reused and Remanufactured Parts. The 1996 Notice asked whether consumers generally perceive that the term ''recycled'' conveys information about the quality of a product, and whether consumers' concerns about product quality differ depending on whether a product is made from reconditioned and/or reused parts recovered from the solid waste stream versus from materials recovered from the solid waste stream and converted into raw materials. The 1996 Notice also asked if consumer perception about whether a product is or is not ''recycled'' would be affected if marketers of products made from reconditioned and/or reused parts could prove that those products are ''substantially equivalent'' in quality to comparable products made from recycled raw materials. The notice further asked what evidence should be required to show ''substantial equivalency,'' and if consumers are likely to be deceived about the quality of products made from reconditioned and/or reused parts if they are advertised as ''recycled.''

Several commenters discussed the quality of reused or reconditioned products as it relates to recyclability and recycled content.[60] SPI suggested that substantial quality equivalency should be required, and that reliance on applicable government or industry standards for such products might be a way to demonstrate such equivalency.

By contrast, APRA noted that the sections of the guides relating to recyclability and recycled content currently do not mention quality and stated there is no reason why a product should have to demonstrate a particular quality, much less a comparability to new products, before being allowed to use the designation ''recycled'' or ''recyclable.''[61] APRA contended that those designations describe environmental attributes and not the quality of a product, and should not be used to denote quality. APRA noted that quality standards for rebuilt and remanufactured motor vehicle parts are already reflected in the Commission's Guides for the Rebuilt, Reconditioned and Other Used Automotive Parts Industry, 16 CFR Part 20. Kodak suggested that any concerns about product quality could be addressed through the responsible use of product warranties extended by manufacturers.[62]

d. Consumer Perception Data Regarding Reconditioned Products as ''Recycled''. The 1995 Notice requested empirical evidence addressing the issue of whether consumers perceive that products made from reconditioned parts that would otherwise have been discarded should qualify as ''recycled'' products. In the April 1996 COPE survey, consumers were asked whether they considered products made from certain materials to be ''recycled.'' Seventy-one percent stated that a television set made from reconditioned parts taken from used televisions is ''recycled,'' while 25% said the reconditioned television set was ''not recycled.'' The Commission believes that these results suggest that a large majority of consumers consider reconditioning to be a form of ''recycling.''

e. Expansion of the Recyclable Guide to Include Reused and/or Reconditioned Products. The majority of those commenting on the Recyclable guide supported its relaxation, and it was pointed out that such relaxation would be consistent with the laws of various states. Commenters pointed out that because the breakdown of a product into raw materials consumes more energy than reuse of that product, reused, reconditioned and remanufactured components diverted from the solid waste stream are even more beneficial to the environment than diverted components that are broken down into raw materials.

The Commission has therefore expanded the ''recyclable'' definition to include any package or product that can be collected, separated or otherwise recovered from the solid waste stream for ''reuse,'' or for the manufacture or assembly of ''another'' (not necessarily new) package or product, so long as the package or product can be collected ''through an established recycling program.'' The phrase ''through an

[51] PRC, 1996 Notice, #100 at 1–2.

[52] Pitney Bowes, 1996 Notice, #218 at 3.

[53] Ford, 1995 Notice, #29 at 6. *See also* Michael W. Gibson, 1996 Notice, #78 at 1 (a recycled part is a used part placed back in service, but rebuilt or remanufactured parts are not referred to as ''recycled'' in the automotive industry).

[54] APRA, 1996 Notice, #102 at 7.

[55] Kodak, 1995 Notice, #42 at 2; 1996 Notice, #95 at 2; Pitney Bowes, 1996 Notice, #218 at 4–7.

[56] Kodak, 1995 Notice, #42 at 2. Kodak stated that statistics show that at least half of all cameras it distributes are returned to the company for this recycling. See also Kodak, 1996 Notice, #95 at 2.

[57] Kodak, 1995 Notice, #42 at 2. See also Kodak, 1996 Notice, #95 at 2 (noting that other products, such as the so-called ''end of life'' office equipment products, are also recovered and converted into equivalent salable products).

[58] ARA, 1996 Notice, #101 at 8.

[59] 3M, 1995 Notice, # 32 at 9; Kodak, 1995 Notice, #42 at 3.

[60] See, e.g., SPI, 1996 Notice, #70 at 3; APRA, 1996 Notice, #102 at 3–5.

[61] APRA, 1996 Notice, #102 at 3–5.

[62] Kodak, 1996 Notice, #95 at 3.

established recycling program'' has been added to the recyclable definition to indicate that the expanded definition does not encompass all goods with a potential for reuse of any kind. For a product to be called ''recyclable,'' there must be an established recycling program, municipal or private, through which the product will be converted into, or used in, another product or package.

New Examples 9 and 10 illustrate the expansion of the Recyclable guide. Example 9 deals with manufacturers or retailers that collect and recycle their own products. The example allows a ''recyclable'' claim, even if no municipal recycling program exists, if the manufacturer or retailer: (a) sets up a collection and recycling program for that product, and (b) explains that the product is recyclable through that non-municipal (or private) program. Example 10 indicates that the disclosure requirements regarding local availability of municipal recycling facilities also apply to non-municipal recycling programs.

f. *Clarification of the Term ''Recycled Content''.* The 1996 Notice explained that the term ''recycled content'' referred to material that a marketer can substantiate has been recovered or otherwise diverted from the waste stream. Although this could be interpreted to include products made from reconditioned and/or reused parts, as well as products made from products converted into raw materials, such as steel from melted down cans, the Commission did not endorse this interpretation because the Recyclable guide unambiguously stated that for something to be ''recyclable'' it must be diverted from the solid waste stream and actually reprocessed into raw materials before reuse. This has now been changed.

For the reasons discussed in this section, the Recycled Content guide has been clarified to expressly encompass used, reconditioned, and remanufactured components, as well as raw materials. The revised Recycled Content guide now also states that manufacturers and retailers must disclose the nature of the recycled content, unless such content consists solely of raw materials, or it would be clear to consumers from the context that a product contains used, reconditioned, or remanufactured components. The Commission believes that whether the product being purchased is new (including a product made from recycled raw materials) or is made from used, reconditioned, or remanufactured components is a fact material to consumers' purchasing decisions. In certain instances, it will be evident to consumers that the product is not new (e.g., if the product is purchased from a secondhand store, or if the product is an automotive part that has been purchased from an automotive dismantler). In those cases, no disclosure of the used nature of the product's recycled content would be necessary because it is clear from the context of the claim that the recycled content consists of used, reconditioned, or remanufactured components. In cases where it is not apparent from the context that the product is not new, however, to avoid consumer deception, the marketer should disclose the used, reconditioned, or remanufactured nature of the product's recycled content. Although the prior use of a product might be less important to consumers' purchasing decisions where substantial equivalency to a new item or an item made from recycled raw materials could be established, at the present time the record does not contain evidence that objective standards for determining substantial equivalency exist for many products. Moreover, in certain cases, there may not even be a comparable item made from recycled raw materials.

New Example 11 illustrates the use of an appropriate qualifier for a product that contains both recycled raw materials and reconditioned parts. Under that example, the percentage of materials composed of reconditioned parts should be disclosed. A consumer could then correctly assume that the remaining percentage consists of recycled raw materials.

New Example 12 deals with the use of a ''recycled'' label when it would not be clear to a consumer that the product at issue was used. In such a case, the product should be labeled to convey to a consumer that the product was used in order to avoid consumer deception.

New Example 13 illustrates the deceptive use of a ''recycled'' label when it would not be clear to a consumer that the product at issue contains recycled reconditioned parts. Such a label should clearly convey that the product contains recycled reconditioned parts to avoid deceiving consumers about the nature of that product's recycled content.

New Examples 14 and 15 concern the automotive parts market. As discussed above, in the used automotive parts market, consumers understand that certain recycled automotive parts are used parts that have not undergone any type of repair, rebuilding, or remanufacturing. Example 14, which involves a used automotive part, illustrates that in such a situation the unqualified use of the word ''recycled'' would not be deceptive. Example 15 deals with rebuilt, reconditioned, or remanufactured automotive parts that are labeled as ''recycled.'' Some commenters pointed out that because reconditioned, rebuilt, and remanufactured parts have had restorative work performed on them, some dealers may not want to use the ''recycled'' label (as it connotes to some consumers that the part is used and has not undergone any restoration). The Commission believes that dealers of reconditioned, rebuilt, and remanufactured parts should nevertheless be permitted to use the ''recycled'' label if they so desire. Example 15 illustrates the types of disclosures that are appropriate for use with those parts that bear a ''recycled'' label.

4. Additional Amendments to the Recyclable Guide

a. The Mercury-Containing and Rechargeable Battery Management Act. The Mercury-Containing and Rechargeable Battery Management Act of 1996 (''Battery Act'') establishes uniform national labeling requirements regarding rechargeable nickel-cadmium and some lead-acid batteries, to aid in battery collection recycling. 42 U.S.C. 14301 et seq. Under the Battery Act, rechargeable nickel-cadmium and some lead-acid rechargeable batteries must be labeled with the three-chasing-arrows symbol or a comparable symbol. Additionally, rechargeable nickel-cadmium batteries must contain the phrase: ''BATTERY MUST BE RECYCLED OR DISPOSED OF PROPERLY.'' 42 U.S.C. 14322(b). Each regulated lead-acid battery must contain the words: ''LEAD,'' ''RETURN,'' and ''RECYCLE.'' If the regulated battery is sealed, it must contain the phrase: ''BATTERY MUST BE RECYCLED.'' 42 U.S.C. 14322(b). The Commission believes that batteries labeled in accordance with the statute's requirements satisfy the guides' disclosure provisions and therefore the Recyclable guide now includes a footnote stating that batteries labeled in accordance with the Battery Act are deemed to be in compliance with the guides.

b. Example Regarding Use of the SPI Code. Example 2 of the Recyclable guide states that the placement of the SPI code in an inconspicuous part of a package or product does not constitute a recyclability claim. That example has been clarified to emphasize that the placement of an SPI code in a conspicuous location may constitute a claim of recyclability, and thus, may have to be qualified to disclose the

limited availability of recycling programs for that package or product.

c. Update of Examples 5 and 6. Examples 5 and 6 have been updated by including products that better illustrate the current level of local recyclability described in each example.

C. Clarification Regarding Applicability of the Guides to the Marketing of Services, and to All Forms of Electronic Advertising

The Commission has determined to make minor amendments to the language in Sections 260.2, 260.5, 260.6(b) and 260.7(a) to clarify that the guides apply to the marketing of services because environmental claims also are being made in the marketing of services and there is no reason to limit the applicability of the guides to only products or packages. Furthermore, the Commission has made a minor amendment to Section 260.2 to clarify that the guides apply to all forms of electronic advertising, including marketing through digital or electronic means, such as the Internet or electronic mail.

III. Text of Modified Guides

List of Subjects in 16 CFR Part 260

Advertising, Environmental claims, Labeling, Trade practices.

For the reasons set forth in the preamble, 16 CFR Part 260 is amended as follows:

PART 260—GUIDES FOR THE USE OF ENVIRONMENTAL MARKETING CLAIMS

1. The authority citation for Part 260 continues to read as follows:

Authority: 15 U.S.C. 41–58.

2. Section 260.2 is revised to read as follows:

§ 260.2 Scope of guides.

(a) These guides apply to environmental claims included in labeling, advertising, promotional materials and all other forms of marketing, whether asserted directly or by implication, through words, symbols, emblems, logos, depictions, product brand names, or through any other means, including marketing through digital or electronic means, such as the Internet or electronic mail. The guides apply to any claim about the environmental attributes of a product, package or service in connection with the sale, offering for sale, or marketing of such product, package or service for personal, family or household use, or for commercial, institutional or industrial use.

(b) Because the guides are not legislative rules under Section 18 of the FTC Act, they are not themselves enforceable regulations, nor do they have the force and effect of law. The guides themselves do not preempt regulation of other federal agencies or of state and local bodies governing the use of environmental marketing claims. Compliance with federal, state or local law and regulations concerning such claims, however, will not necessarily preclude Commission law enforcement action under Section 5.

3. Section 260.5 is revised to read as follows:

§ 260.5 Interpretation and substantiation of environmental marketing claims.

Section 5 of the FTC Act makes unlawful deceptive acts and practices in or affecting commerce. The Commission's criteria for determining whether an express or implied claim has been made are enunciated in the Commission's Policy Statement on Deception.[1] In addition, any party making an express or implied claim that presents an objective assertion about the environmental attribute of a product, package or service must, at the time the claim is made, possess and rely upon a reasonable basis substantiating the claim. A reasonable basis consists of competent and reliable evidence. In the context of environmental marketing claims, such substantiation will often require competent and reliable scientific evidence, defined as tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results. Further guidance on the reasonable basis standard is set forth in the Commission's 1983 Policy Statement on the Advertising Substantiation Doctrine. 49 FR 30999 (1984); *appended to Thompson Medical Co.*, 104 F.T.C. 648 (1984). The Commission has also taken action in a number of cases involving alleged deceptive or unsubstantiated environmental advertising claims. A current list of environmental marketing cases and/or copies of individual cases can be obtained by calling the FTC Consumer Response Center at (202) 326–2222.

[1] *Cliffdale Associates, Inc.*, 103 F.T.C. 110, at 176, 176 n.7, n.8, Appendix, *reprinting* letter dated Oct. 14, 1983, from the Commission to The Honorable John D. Dingell, Chairman, Committee on Energy and Commerce, U.S. House of Representatives (1984) (''Deception Statement'').

4. Section 260.6 is amended by revising paragraphs (a) and (b) (the examples are unchanged) to read as follows:

§ 260.6 General principles.

* * * * *

(a) *Qualifications and disclosures.* The Commission traditionally has held that in order to be effective, any qualifications or disclosures such as those described in these guides should be sufficiently clear, prominent and understandable to prevent deception. Clarity of language, relative type size and proximity to the claim being qualified, and an absence of contrary claims that could undercut effectiveness, will maximize the likelihood that the qualifications and disclosures are appropriately clear and prominent.

(b) *Distinction between benefits of product, package and service.* An environmental marketing claim should be presented in a way that makes clear whether the environmental attribute or benefit being asserted refers to the product, the product's packaging, a service or to a portion or component of the product, package or service. In general, if the environmental attribute or benefit applies to all but minor, incidental components of a product or package, the claim need not be qualified to identify that fact. There may be exceptions to this general principle. For example, if an unqualified ''recyclable'' claim is made and the presence of the incidental component significantly limits the ability to recycle the product, then the claim would be deceptive.

* * * * *

5. Footnotes 4, 5 and 6 of § 260.8 are redesignated as footnotes 7, 8 and 9 and § 260.7 is amended by revising the introductory text, paragraph (a) (the examples are unchanged), paragraphs (c) and (d), and paragraph (e) and its example 10, and by adding examples 11 through 15 for paragraph (e), to read as follows:

§ 260.7 Environmental marketing claims.

Guidance about the use of environmental marketing claims is set forth in this section. Each guide is followed by several examples that illustrate, but do not provide an exhaustive list of, claims that do and do not comport with the guides. In each case, the general principles set forth in § 260.6 should also be followed.[2]

[2] These guides do not currently address claims based on a ''lifecycle'' theory of environmental benefit. The Commission lacks sufficient information on which to base guidance on such claims.

(a) *General environmental benefit claims.* It is deceptive to misrepresent, directly or by implication, that a product, package or service offers a general environmental benefit. Unqualified general claims of environmental benefit are difficult to interpret, and depending on their context, may convey a wide range of meanings to consumers. In many cases, such claims may convey that the product, package or service has specific and far-reaching environmental benefits. As explained in the Commission's Advertising Substantiation Statement, every express and material implied claim that the general assertion conveys to reasonable consumers about an objective quality, feature or attribute of a product or service must be substantiated. Unless this substantiation duty can be met, broad environmental claims should either be avoided or qualified, as necessary, to prevent deception about the specific nature of the environmental benefit being asserted.

* * * * *

(c) *Compostable.* (1) It is deceptive to misrepresent, directly or by implication, that a product or package is compostable. A claim that a product or package is compostable should be substantiated by competent and reliable scientific evidence that all the materials in the product or package will break down into, or otherwise become part of, usable compost (*e.g.*, soil-conditioning material, mulch) in a safe and timely manner in an appropriate composting program or facility, or in a home compost pile or device. Claims of compostability should be qualified to the extent necessary to avoid consumer deception. An unqualified claim may be deceptive if:

(i) The package cannot be safely composted in a home compost pile or device; or

(ii) The claim misleads consumers about the environmental benefit provided when the product is disposed of in a landfill.

(2) A claim that a product is compostable in a municipal or institutional composting facility may need to be qualified to the extent necessary to avoid deception about the limited availability of such composting facilities.

Example 1: A manufacturer indicates that its unbleached coffee filter is compostable. The unqualified claim is not deceptive provided the manufacturer can substantiate that the filter can be converted safely to usable compost in a timely manner in a home compost pile or device. If this is the case, it is not relevant that no local municipal or institutional composting facilities exist.

Example 2: A lawn and leaf bag is labeled as ''Compostable in California Municipal Yard Trimmings Composting Facilities.'' The bag contains toxic ingredients that are released into the compost material as the bag breaks down. The claim is deceptive if the presence of these toxic ingredients prevents the compost from being usable.

Example 3: A manufacturer makes an unqualified claim that its package is compostable. Although municipal or institutional composting facilities exist where the product is sold, the package will not break down into usable compost in a home compost pile or device. To avoid deception, the manufacturer should disclose that the package is not suitable for home composting.

Example 4: A nationally marketed lawn and leaf bag is labeled ''compostable.'' Also printed on the bag is a disclosure that the bag is not designed for use in home compost piles. The bags are in fact composted in yard trimmings composting programs in many communities around the country, but such programs are not available to a substantial majority of consumers or communities where the bag is sold. The claim is deceptive because reasonable consumers living in areas not served by yard trimmings programs may understand the reference to mean that composting facilities accepting the bags are available in their area. To avoid deception, the claim should be qualified to indicate the limited availability of such programs, for example, by stating, ''Appropriate facilities may not exist in your area.'' Other examples of adequate qualification of the claim include providing the approximate percentage of communities or the population for which such programs are available.

Example 5: A manufacturer sells a disposable diaper that bears the legend, ''This diaper can be composted where solid waste composting facilities exist. There are currently [X number of] solid waste composting facilities across the country.'' The claim is not deceptive, assuming that composting facilities are available as claimed and the manufacturer can substantiate that the diaper can be converted safely to usable compost in solid waste composting facilities.

Example 6: A manufacturer markets yard trimmings bags only to consumers residing in particular geographic areas served by county yard trimmings composting programs. The bags meet specifications for these programs and are labeled, ''Compostable Yard Trimmings Bag for County Composting Programs.'' The claim is not deceptive. Because the bags are compostable where they are sold, no qualification is required to indicate the limited availability of composting facilities.

(d) *Recyclable.* It is deceptive to misrepresent, directly or by implication, that a product or package is recyclable. A product or package should not be marketed as recyclable unless it can be collected, separated or otherwise recovered from the solid waste stream for reuse, or in the manufacture or assembly of another package or product, through an established recycling program. Unqualified claims of recyclability for a product or package may be made if the entire product or package, excluding minor incidental components, is recyclable. For products or packages that are made of both recyclable and non-recyclable components, the recyclable claim should be adequately qualified to avoid consumer deception about which portions or components of the product or package are recyclable. Claims of recyclability should be qualified to the extent necessary to avoid consumer deception about any limited availability of recycling programs and collection sites. If an incidental component significantly limits the ability to recycle a product or package, a claim of recyclability would be deceptive. A product or package that is made from recyclable material, but, because of its shape, size or some other attribute, is not accepted in recycling programs for such material, should not be marketed as recyclable.[4]

Example 1: A packaged product is labeled with an unqualified claim, ''recyclable.'' It is unclear from the type of product and other context whether the claim refers to the product or its package. The unqualified claim is likely to convey to reasonable consumers that all of both the product and its packaging that remain after normal use of the product, except for minor, incidental components, can be recycled. Unless each such message can be substantiated, the claim should be qualified to indicate what portions are recyclable.

Example 2: A nationally marketed 8 oz. plastic cottage-cheese container displays the Society of the Plastics Industry (SPI) code (which consists of a design of arrows in a triangular shape containing a number and abbreviation identifying the component plastic resin) on the front label of the container, in close proximity to the product name and logo. The manufacturer's conspicuous use of the SPI code in this manner constitutes a recyclability claim. Unless recycling facilities for this container are available to a substantial majority of consumers or communities, the claim should be qualified to disclose the limited availability of recycling programs for the container. If the SPI code, without more, had been placed in an inconspicuous location on the container (*e.g.*, embedded in the bottom of the container) it would not constitute a claim of recyclability.

Example 3: A container can be burned in incinerator facilities to produce heat and power. It cannot, however, be recycled into

[4] The Mercury-Containing and Rechargeable Battery Management Act establishes uniform national labeling requirements regarding certain types of nickel-cadmium rechargeable and small lead-acid rechargeable batteries to aid in battery collection and recycling. The Battery Act requires, in general, that the batteries must be labeled with the three-chasing-arrows symbol or a comparable recycling symbol, and the statement ''Battery Must Be Recycled Or Disposed Of Properly.'' 42 U.S.C. 14322(b). Batteries labeled in accordance with this federal statute are deemed to be in compliance with these guides.

another product or package. Any claim that the container is recyclable would be deceptive.

Example 4: A nationally marketed bottle bears the unqualified statement that it is ''recyclable.'' Collection sites for recycling the material in question are not available to a substantial majority of consumers or communities, although collection sites are established in a significant percentage of communities or available to a significant percentage of the population. The unqualified claim is deceptive because, unless evidence shows otherwise, reasonable consumers living in communities not served by programs may conclude that recycling programs for the material are available in their area. To avoid deception, the claim should be qualified to indicate the limited availability of programs, for example, by stating ''This bottle may not be recyclable in your area,'' or ''Recycling programs for this bottle may not exist in your area.'' Other examples of adequate qualifications of the claim include providing the approximate percentage of communities or the population to whom programs are available.

Example 5: A paperboard package is marketed nationally and labeled, ''Recyclable where facilities exist.'' Recycling programs for this package are available in a significant percentage of communities or to a significant percentage of the population, but are not available to a substantial majority of consumers. The claim is deceptive because, unless evidence shows otherwise, reasonable consumers living in communities not served by programs that recycle paperboard packaging may understand this phrase to mean that such programs are available in their area. To avoid deception, the claim should be further qualified to indicate the limited availability of programs, for example, by using any of the approaches set forth in Example 4 above.

Example 6: A foam polystyrene cup is marketed as follows: ''Recyclable in the few communities with facilities for foam polystyrene cups.'' Collection sites for recycling the cup have been established in a half-dozen major metropolitan areas. This disclosure illustrates one approach to qualifying a claim adequately to prevent deception about the limited availability of recycling programs where collection facilities are not established in a significant percentage of communities or available to a significant percentage of the population. Other examples of adequate qualification of the claim include providing the number of communities with programs, or the percentage of communities or the population to which programs are available.

Example 7: A label claims that the package ''includes some recyclable material.'' The package is composed of four layers of different materials, bonded together. One of the layers is made from the recyclable material, but the others are not. While programs for recycling this type of material are available to a substantial majority of consumers, only a few of those programs have the capability to separate the recyclable layer from the non-recyclable layers. Even though it is technologically possible to separate the layers, the claim is not adequately qualified to avoid consumer deception. An appropriately qualified claim would be, ''includes material recyclable in the few communities that collect multi-layer products.'' Other examples of adequate qualification of the claim include providing the number of communities with programs, or the percentage of communities or the population to which programs are available.

Example 8: A product is marketed as having a ''recyclable'' container. The product is distributed and advertised only in Missouri. Collection sites for recycling the container are available to a substantial majority of Missouri residents, but are not yet available nationally. Because programs are generally available where the product is marketed, the unqualified claim does not deceive consumers about the limited availability of recycling programs.

Example 9: A manufacturer of one-time use photographic cameras, with dealers in a substantial majority of communities, collects those cameras through all of its dealers. After the exposed film is removed for processing, the manufacturer reconditions the cameras for resale and labels them as follows: ''Recyclable through our dealership network.'' This claim is not deceptive, even though the cameras are not recyclable through conventional curbside or drop off recycling programs.

Example 10: A manufacturer of toner cartridges for laser printers has established a recycling program to recover its cartridges exclusively through its nationwide dealership network. The company advertises its cartridges nationally as ''Recyclable. Contact your local dealer for details.'' The company's dealers participating in the recovery program are located in a significant number—but not a substantial majority—of communities. The ''recyclable'' claim is deceptive unless it contains one of the qualifiers set forth in Example 4. If participating dealers are located in only a few communities, the claim should be qualified as indicated in Example 6.

Example 11: An aluminum beverage can bears the statement ''Please Recycle.'' This statement is likely to convey to consumers that the package is recyclable. Because collection sites for recycling aluminum beverage cans are available to a substantial majority of consumers or communities, the claim does not need to be qualified to indicate the limited availability of recycling programs.

(e) *Recycled content.* (1) A recycled content claim may be made only for materials that have been recovered or otherwise diverted from the solid waste stream, either during the manufacturing process (pre-consumer), or after consumer use (post-consumer). To the extent the source of recycled content includes pre-consumer material, the manufacturer or advertiser must have substantiation for concluding that the pre-consumer material would otherwise have entered the solid waste stream. In asserting a recycled content claim, distinctions may be made between pre-consumer and post-consumer materials. Where such distinctions are asserted, any express or implied claim about the specific pre-consumer or post-consumer content of a product or package must be substantiated.

(2) It is deceptive to misrepresent, directly or by implication, that a product or package is made of recycled material, which includes recycled raw material, as well as used,[5] reconditioned and remanufactured components. Unqualified claims of recycled content may be made if the entire product or package, excluding minor, incidental components, is made from recycled material. For products or packages that are only partially made of recycled material, a recycled claim should be adequately qualified to avoid consumer deception about the amount, by weight, of recycled content in the finished product or package. Additionally, for products that contain used, reconditioned or remanufactured components, a recycled claim should be adequately qualified to avoid consumer deception about the nature of such components. No such qualification would be necessary in cases where it would be clear to consumers from the context that a product's recycled content consists of used, reconditioned or remanufactured components.

* * * * *

Example 10: A packaged food product is labeled with a three-chasing-arrows symbol without any further explanatory text as to its meaning. By itself, the symbol is likely to convey that the packaging is both ''recyclable'' and is made entirely from recycled material. Unless both messages can be substantiated, the claim should be qualified as to whether it refers to the package's recyclability and/or its recycled content. If a ''recyclable'' claim is being made, the label may need to disclose the limited availability of recycling programs for the package. If a recycled content claim is being made and the packaging is not made entirely from recycled material, the label should disclose the percentage of recycled content.

Example 11: A laser printer toner cartridge containing 25% recycled raw materials and 40% reconditioned parts is labeled ''65% recycled content; 40% from reconditioned parts.'' This claim is not deceptive.

Example 12: A store sells both new and used sporting goods. One of the items for sale in the store is a baseball helmet that, although used, is no different in appearance than a brand new item. The helmet bears an unqualified ''Recycled'' label. This claim is deceptive because, unless evidence shows otherwise, consumers could reasonably believe that the helmet is made of recycled raw materials, when it is in fact a used item. An acceptable claim would bear a disclosure clearly stating that the helmet is used.

[5] The term ''used'' refers to parts that are not new and that have not undergone any type of remanufacturing and/or reconditioning.

Example 13: A manufacturer of home electronics labels its video cassette recorders (''VCRs'') as ''40% recycled.'' In fact, each VCR contains 40% reconditioned parts. This claim is deceptive because consumers are unlikely to know that the VCR's recycled content consists of reconditioned parts.

Example 14: A dealer of used automotive parts recovers a serviceable engine from a vehicle that has been totaled. Without repairing, rebuilding, remanufacturing, or in any way altering the engine or its components, the dealer attaches a ''Recycled'' label to the engine, and offers it for resale in its used auto parts store. In this situation, an unqualified recycled content claim is not likely to be deceptive because consumers are likely to understand that the engine is used and has not undergone any rebuilding.

Example 15: An automobile parts dealer purchases a transmission that has been recovered from a junked vehicle. Eighty-five percent by weight of the transmission was rebuilt and 15% constitutes new materials. After rebuilding[6] the transmission in accordance with industry practices, the dealer packages it for resale in a box labeled ''Rebuilt Transmission,'' or ''Rebuilt Transmission (85% recycled content from rebuilt parts),'' or ''Recycled Transmission (85% recycled content from rebuilt parts).'' These claims are not likely to be deceptive.

* * * * *

6. Section 260.8 is revised to read as follows:

§ 260.8 Environmental assessment.

(a) National Environmental Policy Act. In accordance with section 1.83 of the FTC's Procedures and Rules of Practice[7] and section 1501.3 of the Council on Environmental Quality's regulations for implementing the procedural provisions of National Environmental Policy Act, 42 U.S.C. 4321 *et seq.* (1969),[8] the Commission prepared an environmental assessment when the guides were issued in July 1992 for purposes of providing sufficient evidence and analysis to determine whether issuing the Guides for the Use of Environmental Marketing Claims required preparation of an environmental impact statement or a finding of no significant impact. After careful study, the Commission concluded that issuance of the Guides would not have a significant impact on the environment and that any such impact ''would be so uncertain that environmental analysis would be based on speculation.''[9] The Commission concluded that an environmental impact statement was therefore not required. The Commission based its conclusions on the findings in the environmental assessment that issuance of the guides would have no quantifiable environmental impact because the guides are voluntary in nature, do not preempt inconsistent state laws, are based on the FTC's deception policy, and, when used in conjunction with the Commission's policy of case-by-case enforcement, are intended to aid compliance with section 5(a) of the FTC Act as that Act applies to environmental marketing claims.

(b) The Commission has concluded that the modifications to the guides in this part will not have a significant effect on the environment, for the same reasons that the issuance of the original guides in 1992 and the modifications to the guides in 1996 were deemed not to have a significant effect on the environment. Therefore, the Commission concludes that an environmental impact statement is not required in conjunction with the issuance of the 1998 modifications to the Guides for the Use of Environmental Marketing Claims.

By direction of the Commission.

Donald S. Clark,

Secretary.

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BILLING CODE 6750–01–P

[6] The term ''rebuilding'' means that the dealer dismantled and reconstructed the transmission as necessary, cleaned all of its internal and external parts and eliminated rust and corrosion, restored all impaired, defective or substantially worn parts to a sound condition (or replaced them if necessary), and performed any operations required to put the transmission in sound working condition.

[7] 16 CFR 1.83.

[8] 40 CFR 1501.3.

[9] 16 CFR 1.83(a).

federal register

Friday
May 1, 1998

Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 101 and 120

Preliminary Regulatory Impact Analysis and Initial Regulatory Flexibility Analysis of the Proposed Rules to Ensure the Safety of Juice and Juice Products; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 101 and 120

[Docket Nos. 93N–0325 and 97N–0296]

RIN 0910–AA43

Preliminary Regulatory Impact Analysis and Initial Regulatory Flexibility Analysis of the Proposed Rules to Ensure the Safety of Juice and Juice Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Preliminary regulatory impact analysis.

SUMMARY: The Food and Drug Administration (FDA) is publishing the preliminary regulatory impact analysis (PRIA) that it has prepared under Executive Order 12866 and initial regulatory flexibility analysis (IRFA) that it has prepared under the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement and Fairness Act (SBREFA), on the costs and benefits of FDA's proposed regulations regarding the Hazard Analysis Critical Control Points (HACCP) and labeling for juice and juice products. FDA is issuing those proposals because of recent outbreaks of foodborne illness and deaths caused by consumption of juice products that were not pasteurized or otherwise processed to control pathogenic microorganisms. Those proposals are intended to ensure that juice and juice products are safe.

DATES: Submit written comments by May 26, 1998 on aspects of this analysis related to labeling for juice and juice products and by July 8, 1998 on aspects of this analysis related to HACCP for juice and juice products.

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 numbers found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: David J. Zorn, Center for Food Safety and Applied Nutrition (HFS–726), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4729.

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I. Background

This document constitutes FDA's PRIA and IRFA of the proposed rules to amend the food labeling regulations and to require HACCP for juice and juice products. Because the industries affected by both proposed rules substantially overlap and because both proposals address the same public health problem, the safety of juice and products containing juice, the agency has chosen to analyze the economic impact of both proposed rules in a single PRIA and IRFA. These documents analyze both the costs and benefits of the proposed rules as well as the expected impacts on the affected small entities. FDA has found that these rules may constitute significant rules under Executive Order 12866 because they could have a significant impact on one sector of the economy (producers of minimally processed juice). In addition, FDA has determined under the RFA that each proposal would present a significant impact on a substantial number of small entities.

II. Introduction

FDA has examined the impacts of these proposed rules under Executive Order 12866. Executive Order 12866 directs Federal agencies to assess the benefits and costs of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). Under the Executive Order, a regulatory action is ''significant'' if it meets any one of a number of specified conditions, including having an annual effect on the economy, competition, or jobs, or if it raises novel legal or policy issues. FDA finds that each of these proposed rules may constitute a significant regulatory action as defined by Executive Order 12866, as discussed as follows.

In addition, FDA has determined that these rules are not significant rules under the Unfunded Mandates Reform Act of 1995 (UMRA) requiring benefit-cost and other analyses. Under UMRA significant rule is defined as ''a Federal mandate that may result in the expenditure by State, local and tribal governments in the aggregate, or by the private sector, of $100,000,000 (adjusted annually for inflation) in any 1 year''.

Finally, in accordance with the SBREFA, the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget (the Administrator) has determined that these proposed rules are major rules for the purpose of congressional review. A major rule for this purpose is defined as one that the Administrator has determined has resulted or is likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

III. Factors Considered in Developing This Analysis

This analysis estimates costs and benefits for two proposed regulations, published in the **Federal Register** of April 24, 1998 (63 FR 20450 and 20486), that would affect the safety of juice products. The first rule requires warning statements on minimally processed packaged juice. That is, juice that has not been processed in a manner that will produce, at a minimum, a 5-log reduction, for a period at least as long as the shelf life of the product when stored under normal and moderate abuse conditions, in the pertinent microorganism. The ''pertinent microorganism'' is the most resistant microorganism of public health significance that is likely to occur in the juice. In the remainder of this analysis, this will be referred to as the ''5-log reduction.''[1] The second rule requires manufacturers of most juice to implement a HACCP program with the same 5-log reduction performance criteria. However, FDA is proposing to exempt retailers who, for the purposes of this rule, the agency has tentatively decided will include very small businesses that make juice on their premises and whose total sales of juice and juice products do not exceed 40,000 gallons per year and who sell directly to consumers or directly to consumers and other retailers.

The effective date for the labeling rule is proposed to be 60 days following publication of the final rule with

[1] That is, the total combined effect of all controls have the effect of reducing the number of colony forming units (cfu's) by a factor of 100,000. This implies that even if the product should contain 1,000 cfu's per gallon (gal.) prior to processing, the final product after processing would contain only .01 cfu's per gal.

warning statements required either on the labels or, in the case of products which do not bear the warning statement on the label, on labeling (e.g., on signs or placards at the point of sale) on juices that have not been processed in a manner that will produce, at a minimum, a 5-log reduction. Packaged juices produced by large firms are required to bear warning labels beginning on January 1, 2000, and packaged juices produced by small and very small firms[2] are required to bear warning labels beginning on January 1, 2001. The agency expects that the HACCP rule, because of its complexity, will not be finalized for at least 1 year following finalization of the juice labeling rule. The HACCP rule is proposed to be effective for large firms, 12 months following publication of the final HACCP rule; for small firms, 24 months following publication of the final HACCP rule; and for very small firms, 36 months following publication of the final HACCP rule. For purposes of this rule, the agency is proposing to define large processors as those who have more than 500 employees, small processors as those who have less than 500 employees and very small processors as those who have either: (1) Total annual sales of less than $500,000, or (2) that have total annual sales of greater than $500,000 but total annual food sales of less than $50,000, or (3) that employ fewer than 100 full-time equivalent employees and annually sell less than 100,000 units of the juice in the United States.

To a large extent, benefits and costs will depend on how processors of juice who do not currently implement controls sufficient to achieve a 5-log reduction respond to the warning label regulation. That is, firms will choose whether to display the warning statement or to comply early with the 5-log reduction. The agency has no information to indicate the choices that specific processors will make.

The actual choice that each processor will make depends on several factors: (1) The revenue that processors expect to lose because of consumers' responses to the Government's announcement of the rules and the warning label, (2) the costs of and length of time allowed to make label changes, (3) the costs of achieving a 5-log reduction in pathogens, and (4) the revenue that processors expect to lose if consumers respond negatively to the changes in product characteristics caused by processing the juice.

Processors will choose to discontinue juice production if they perceive that either labeling or a change in processing practices will lower profits below a ''normal'' return.[3] In other words, processors will go out of the juice business rather than comply with these regulations only if one of the two following conditions is satisfied: (1) The combination of the cost of displaying the warning labeling and the reduction in revenue caused by the negative response of consumers to the warning results in below normal profits; or (2) a combination of increased costs from processing and a reduction in revenue caused by the negative response of consumers to the changes in product quality results in below normal profits.

For the purposes of this analysis, the agency has assumed that, in order to avoid having their products associated with the warning to consumers, all establishments that will eventually be covered by the HACCP rule will implement controls sufficient to achieve a 5-log reduction when the labeling rule takes effect. The agency has also assumed for the purposes of this analysis that those establishments not covered by the HACCP rule will display the warning statement for packaged juice products. However, in order to avoid displaying the warning statement, these establishments may choose to process their juice in a manner sufficient to achieve a 5-log reduction in pathogens or under an adequate voluntary HACCP plan.

IV. Regulatory Options

The preambles in the accompanying proposed regulations describe the compelling public need for these regulations. For example, in recent years, pathogens have been discovered in fresh juices after having caused severe illness in humans. These products were previously not known to be vehicles for such hazards, given their low pH. Because these events have occurred, the agency tentatively finds that it is prudent to require the adoption of preventative controls for hazards now associated with juice where controls may not have been previously thought to be necessary.

There are a number of regulatory options that FDA has preliminarily considered to reduce the risks associated with consuming juice products. FDA requests comments on benefits, costs, and any other aspect of these options.

A. Take No New Regulatory Action

Choosing this option would imply either reliance on: (1) Existing Federal regulation, (2) State and local regulatory activity, (3) business interests, (4) consumer demands, and (5) product liability pressures to reduce risks incurred by consumers of juice products or acceptance that the risks that juice currently presents are risks that consumers are unwilling to pay to reduce. In the first case, it is unlikely that the market will adjust to eliminate the risks present in juice because of the difficulty of establishing the link between the various kinds of illnesses, whether acute or chronic, to consumption of juice. Generally, this link may only be established when there are large, geographically focused outbreaks of acute illness. However, research indicates that most cases of foodborne illness are sporadic and geographically dispersed and not associated with any identifiable and focused outbreaks (Ref. 1). In the second case, it is presumed that consumers are willing to pay to reduce these risks given the sizeable estimated benefits of the proposed rules. Finally, while industry and State governments have undertaken steps in many areas to reduce risks associated with juice, FDA believes that the changes have been made with the expectations of Federal regulation. It is unlikely that the market would fully adjust to reduce the risk without additional Federal action.

B. Regulate Only High-Risk Juice Products or High-Risk Hazards

FDA could choose to make these rules applicable only to juice products that have been associated by epidemiology or by inspection history with health hazards. This option is discussed in the appendix supporting this analysis (Ref. 9). In the appendix, the agency concluded that unpasteurized or otherwise nonheat treated juices present the largest risk to consumers because pathogens pose the highest risk of the several categories of hazards. FDA is proposing that all chemical, physical, and biological hazards be included under HACCP, despite the differences in relative risk posed by different types of hazards. It is important to note that processors may, under the umbrella of

[2] The labeling rule does not define ''very small firms'' but the HACCP rule does give a separate definition of ''very small firms'' as a subset of ''small firms'' as defined in the labeling and HACCP rules. Therefore, the term ''very small firms'' has been used here in relationship to the labeling rule to make clear where this subset fits in the context of both of these rules. The HACCP rule defines small businesses as those with fewer than 500 employees. It defines very small businesses as those with total annual sales of less than $500,000 or those with total annual food sales of less than $50,000 or those with fewer than 100 employees and less than 100,000 units of juice sold annually.

[3] A normal return on profits is the average market return on capital that a processor could receive, for example, by investing in the stock market.

HACCP, adjust for the probability and severity of hazards by adjusting critical limits, the frequency of monitoring, intensity of corrective action, or any number of other margins. FDA has not evaluated the benefits and costs of structuring HACCP based on this option, and seeks comments on it, especially on the option of covering only some types of juice.

C. Do Either One of the Proposed Rules but Not Both

One option would be to eliminate the HACCP requirement for juices, one of the two proposed actions, and only require that juices that are not processed to achieve a 5-log reduction be labeled with a warning to consumers. The purpose of this labeling is to alert consumers who are at increased risk to avoid these products and to inform all consumers of the risk of these products relative to other juices. However, it is difficult to predict what products consumers would switch to once they encounter the warnings. It is possible that some consumers may reduce their health status by choosing less nutritious substitutes in order to avoid the products with the warning labels. Although labeling may be effective for changing both producer behavior (particularly to avoid displaying the warning) and consumer behavior, the agency believes that labeling alone is unlikely to be sufficient to address all health hazards associated with consumption of juice products.

Another option would be to eliminate the labeling rule and only require that juice processors implement HACCP. This option would reduce the possibility that some consumers might overreact and avoid all juice. This option would also allow fresh juice to be marketed without warnings and would result in some cost savings for products that will not need to pay for labeling costs. However, it would also result in some reduction in benefits because the HACCP rule will take longer to implement than the labeling rule and because the proposed labeling rule covers juice made at the point of sale and the proposed HACCP rule does not cover retailers.

D. Require New Current Good Manufacturing Practices

FDA could develop and require current good manufacturing practices (CGMP's) or sanitation standards specific to juice products to improve the safety of juices. The use of CGMP's would assist processors in ensuring the safety of their juices by providing guidance on how to reduce insanitary manufacturing practices and on how to protect against food becoming contaminated. While FDA currently has general CGMP's that provide guidance to all food processing industries, it does not have specific CGMP's for the juice industry.

There are three reasons that this alternative alone may be undesirable. First, CGMP's by themselves are unlikely to have a sufficient impact on the safety of juice, particularly relative to HACCP. That is, CGMP's do not provide: (1) A structure for each processor to align specific hazards unique to the processor's operations with specific control measures; (2) assurance that the processor will establish specific performance standards appropriate to the processor's unique operation; (3) records that document that the performance standards are met; and (4) records of frequent audits to verify that controls are being applied, all of which are associated with HACCP. Identifying specific hazards, designing controls that are specific and unique to each operation, and verifying that these controls are being applied as specified are essential elements of a control program that will provide an improved level of food safety.

Secondly, under the HACCP approach being proposed, the industry is required to use FDA's general CGMP's in part 110 (21 CFR part 110) and to develop and adopt sanitation standard operating procedures (SOP's) as part of their prerequisite programs for their HACCP plan. Therefore, the HACCP approach builds on the foundation of CGMP's at the same time it avoids the limitations of this alternative.

HACCP is designed for use in all segments of the food industry from growing, harvesting, processing, manufacturing, distributing, and merchandising to preparing food for consumption. Prerequisite programs such as current good manufacturing practices (CGMP's) are an essential foundation for the development and implementation of successful HACCP plans.

The production of safe food products requires that the HACCP system be built upon a solid foundation of prerequisite programs. Each segment of the food industry must provide the conditions necessary to protect food while it is under their control. This has traditionally been accomplished through the application of CGMP's. These conditions and practices are now considered to be prerequisite to the development and implementation of effective HACCP plans. Prerequisite programs provide the basic environmental and operating conditions that are necessary for the production of safe, wholesome food.

E. Require Pasteurization

FDA could require that all juice be pasteurized rather than requiring HACCP with a specified 5-log reduction. Although FDA is not currently aware of other practical methods to achieve this level of control, solely requiring pasteurization would inhibit new technological innovation and it would only address one type of hazard (pathogens that are not heat resistant). In this analysis, the agency has, in fact, evaluated the costs of pasteurization for those juices not now pasteurized. It should be pointed out that, by volume, the vast majority of juices are now pasteurized or otherwise equivalently treated. Thus, the marginal costs and benefits of requiring pasteurization only apply to the small fraction of juice that is not heat treated.

The agency requests comment on the appropriateness of the 5-log reduction performance standard and if other approaches, such as establishing a minimal acceptable risk standard for juices, could be used that would ensure the safety of the juice. The agency requests comments on what such a minimal acceptable risk standard should be and how it would be implemented. The agency also invites interested persons to submit scientific data concerning the acceptability of a 5-log reduction requirement or whether a more or less stringent performance standard (e.g., 3- or 7-log reduction) for specific juices would be more appropriate or whether different approaches consistent with a minimal acceptable risk standard for juices might be appropriate for specific juices based on their unique characteristics.

F. Set Different Performance Standards for Processing of Different Products

One regulatory option would be to establish different performance standards for processing different types of juice products to decrease the number of pathogens. In the proposal, the agency has tentatively proposed that any combination of processing steps which cumulatively result in a 5-log (a 100,000-fold) reduction in pathogens should be applied to the production of all types of juice. However, different products may warrant different processing stringencies because of a number of factors, including: (1) The initial microbial counts on raw produce are likely to vary, (2) different types of produce are likely to harbor different kinds of pathogens, and (3) different products provide different environments for microbial growth. This

option could either be exercised as part of the final rule in response to comments or the proposed standards could remain with the option to further petition the agency for a different standard. The benefits and costs of the standard will vary directly with the stringency of different performance standards. However, FDA does not have data to estimate preliminarily the costs and benefits of this option.

G. Expand HACCP Rule Coverage

FDA has tentatively concluded that the retail sector should not be included in the HACCP rule and has asked for comments on the appropriateness of this conclusion. The expansion of coverage of the HACCP rule to include retailers that process juice at the point of sale would add an estimated additional 14,300 restaurants and 1,300 grocery stores and supermarkets for a total of approximately 16,000 establishments. If the cost for these establishments to implement HACCP was equivalent to that of very small processors who would be required to initiate pasteurization ($26,000 in the first year and $11,900 in subsequent years), then the total additional cost of this option would be approximately $416 million in the first year and approximately $190 million in subsequent years. However, the agency does not have direct information about the cost of implementing HACCP in a retail setting for juice and the actual costs may vary significantly from these estimates.

H. Use of One of Various Alternatives

An alternative approach to mandating HACCP would be to provide a more flexible array of options tailored to the microbial risk present in the particular juice. Manufacturers of apple cider would be provided a permanent option choosing between labeling or implementing a HACCP program with a 5-log pathogen reduction. All juices other than untreated apple cider would be provided a permanent option of choosing between labeling, implementing a HACCP system, or achieving a 5-log pathogen reduction. However, FDA believes that this option provides only weak incentives for processors to implement a HACCP system. Processors could label hazardous products without taking steps to improve the safety of juice or choose to achieve a 5-log reduction for microbial pathogens without addressing other hazards. The agency believes that labeling would not achieve the same level of product safety. Additionally, there would be less incentive for processors to implement a HACCP system, which includes, among other things, developing and implementing sanitation SOP's and recordkeeping at critical control points in addition to achieving a 5-log reduction. Other hazards that would not be addressed include chemical contaminants, hazardous metals, including lead and tin, mycotoxins, pesticides, and physical hazards, such as glass.

Another regulatory option would be to include labeling for unpackaged juice products for all retail outlets, such as restaurants. This option would also require any very small retailer (as defined for the purposes of this rulemaking) who is manufacturing less than 40,000 gallons of juice per year and selling it directly to consumers and other retailers to either label or achieve a 5-log kill until a requirement for HACCP would become effective 36 months from the date of publication of the final rule.

If this option is combined with both proposed rules, FDA has estimated the benefits to be $383 to $478 million annually and estimated the costs in the first year to be $54 million and the costs in subsequent years to be $28 million.

V. Benefits

This analysis provides estimates of three additive, independent benefits of these two proposed rules: (1) Reduced expenditures related to regulatory enforcement, (2) reduced adverse health effects, and (3) other benefits. To some extent, the benefits of the two rules are intertwined. Because of the earlier compliance dates, the impact of the labeling rule will be to achieve some of the benefits faster. That is, if firms choose to achieve a 5-log reduction through their processing practices to avoid labeling, then some of the future benefits that would be otherwise achieved under HACCP will be achieved sooner because of the incentive provided by the labeling rule. Also, if at-risk consumers avoid unpasteurized juices as a result of the labeling, there will be reduced adverse-health effects prior to the introduction of HACCP. On average, the labeling rule will achieve some of the benefits 2 years faster than the HACCP rule.

A. Enforcement Benefits

To the extent that these proposed rules are effective at reducing contaminated juice, they should reduce the number of safety-related enforcement actions (for both domestic and imported products) taken by the agency for juice products. The enforcement activities chosen as a baseline for juice products fall between the period 1992 and 1996 (inclusive) and involve import detentions and domestic recalls.

In the final regulatory impact analysis for FDA's seafood HACCP rule, FDA used an assumption that the rule would prevent 50 percent of the current number of annual enforcement actions. The agency did not receive comments on this assumption in that rule and does not yet have data from implementation of the rule to validate it. However, this may be a conservative assumption. If HACCP plans are properly conceived, implemented and validated, it is likely that the vast majority of problems will be caught and corrected in the plant, rather than result in foodborne disease outbreaks or be caught through Federal sampling of the final product. Thus, the agency will continue to make this assumption but requests comment on it.

1. Import Enforcement

Over the period 1992 through 1996, there were a number of imported juice products detained for various violations of the Federal Food, Drug, and Cosmetic Act (the act). A detention is a procedure for preventing violative products from entering the United States. Following a determination that a sample of a product is violative, three steps occur: (1) FDA sends a detention notice to the importer providing an opportunity to introduce testimony as to the condition of the product; (2) the importer may contact an attorney, submits a response application, and introduces evidence regarding the product; and (3) FDA makes a determination about what should be done with the shipment. There are three actions that FDA can specify for a detained shipment: (1) The product is allowed to be ''reshipped'' out of the country, (2) the product is reconditioned so as to bring it into compliance with U.S. law, or (3) the product is destroyed under Federal supervision. Assume that the cost per shipment of the three steps to all parties involved is $5,000. Then the remaining cost of detention is the cost per shipment of the three actions which is related to the value of the shipment.

Table 1 gives the number of shipments detained and the total dollar value of juice products detained for violations of the act for the entire period 1992 through 1996.

The average value per shipment of imported juice products refused entry is approximately $10,000. The average number of imported juice product shipments detained annually is 23.

TABLE 1.—TOTALS OF JUICE IMPORT DETENTIONS FOR 1992 THROUGH 1996 BY REASON FOR DETENTION

Reason for Detention	Food Additive Issues	Poisonous or Deleterious Substances	Violative Pesticide Residues	Chemical Contamination	New Drug Residues	Microbial Hazards	Total
Number of Shipments	44	17	53	1	1	1	117
Value of Shipments	$122,000	$112,000	$802,000	$79,000	$20,000	$2,000	$1,137,000

If, on an annual basis, 23 imported juice product shipments are detained at an average Federal enforcement and industry negotiation cost of $5,000 per shipment (60 FR 65189), and if all 23 shipments (with an average value of $10,000 per shipment) are destroyed so that the entire $10,000 value of the shipment is lost, then the total annual cost of all juice detentions is approximately $345,000 (23 shipments x ($10,000 value of shipment + $5,000 enforcement and negotiation cost)). If 50 percent of these enforcement costs are prevented, then the benefits related to import enforcement are approximately $175,000.

2. Recalls

Recalls tracked by FDA for pathogens or pesticides in juice products are infrequent. For the period 1992 through 1996 there was one class 1 recall and there were seven class 2 recalls[4] for such hazards, or about two recalls per year. A class 1 recall may cost as much as $3 to $5 million between expenditures by the manufacturer, retailers and State, local, and Federal authorities. However, the typical juice recall is smaller and less costly than this. If the combination of industry and government costs per recall on average is $1 million, then the total annual cost of juice recalls is approximately $2 million (2 recalls per year at $1 million each). This assumption is based on FDA conversations with industry for both large and small recalls. FDA acknowledges that this may not be the true average cost of a recall and requests comment on this assumption. If 50 percent of these enforcement costs are prevented, then the benefits related to recalls tracked by FDA are $1 million. However, FDA may not be aware of all recalls that take place, particularly for less hazardous reasons. Assuming that the recalls that FDA is not aware of are considerably smaller, perhaps costing $100,000, and that FDA may only hear about 10 percent of such recalls, then the total annual cost of such recalls could be $1 million. If 50 percent of these enforcement costs are prevented, then the benefits related to recalls not tracked by FDA would be $500,000. Thus, the total annual benefits of the HACCP rule related to recalls is estimated to be $1.5 million.

In addition to those benefits, when firms have recalls that are made public they will generally suffer a loss of sales, at least temporarily, from lost ''goodwill.'' This alone does not result in a social cost but rather a social transfer as other firms will step forward to capture sales lost from the recalling firm. However, in addition to the resources invested in recalling the product, the recalling firm may invest real resources in advertising to recapture lost goodwill, a social cost. FDA cannot quantify this cost.

B. Health Benefits

This section presents quantitative estimates of health benefits from this rule. This is accomplished by the following steps:

1. The most significant hazards in juice are described in terms of severity and duration;
2. The hazards are described in terms of resulting health effects and symptoms when they cause illness;
3. The health effects and symptoms are translated into consumer utility losses;
4. The utility losses are translated into values in terms of lost dollars (this gives the cost per case for every combination of level of severity and for the specified duration for each hazard);
5. The average annual number of reported cases associated with juice are distributed according to the percentages associated with each level of severity;
6. The factors used to account for under reporting of foodborne illness are estimated;
7. The reported cases are multiplied by the under reporting factors to get the estimated average annual number of cases;
8. The percentages of each type of hazard expected to be prevented by the proposal are listed; and
9. The total health benefits of the proposal are derived by multiplying numbers 4, 7, and 8.

That is, TB = RC x CF x CR x V, where
TB = total health benefits in dollars,
RC = number of reported cases,
CF = under reporting correction factor,
CR = percent of cases reduced,
V = dollar value per case averted (medical costs + value of pain and lost function).

1. Description of Microbial Hazards in Juice

Most of the significant health risks associated with juice products are microbial. In the last 5 years the hazards associated with commercially processed, packaged juice produced by nonretail establishments include *Bacillus cereus*, *Escherichia coli* O157:H7, and *Salmonella* non *typhi*.[5] Table 2 lists these hazards with associated severities and duration of severities. These hazards have been directly linked to orange and apple juice products. However, all juices take farm produce as an input; all use similar types of processing steps; and all are distributed in similar ways. Therefore, although other types of juices are less likely to be associated with foodborne disease outbreaks primarily because consumption of orange and apple juice greatly exceeds consumption of all other types of juice combined, all juices are similarly vulnerable to microbial contamination. All juices are sensitive to potential contamination by pathogenic microorganisms due to the way fruits and vegetables are grown and harvested.

Based on current scientific understanding, potential vehicles or mechanisms for pathogenic cross contamination common to most fruit and vegetable harvesting and juicing operations include water; manure fertilizer; worker, field, and facility sanitation and transportation, handling and processing. While most of the potential for contamination would appear on the surface of the fruit or vegetable, the process of juicing this

[4] Class 1 recalls are for dangerous or defective products that predictably could cause serious health problems or death. Class 2 recalls are for products that might cause a temporary health problem, or pose only a slight threat of a serious nature.

[5] Most of the information in section V of this document (Benefits) is taken from Ref. 9. It includes hazards other than those for which benefits have been estimated in this analysis. The hazards considered in section V of this document are those for which the risk is highest. That is to say they are the most significant in terms of probability of occurrence and severity.

fruit or vegetable would potentially incorporate the pathogenic microorganisms into the final juice product. Ref. 10, page 31, lists the pH of some fruit and vegetable juices.

TABLE 2.—DESCRIPTION OF MICROBIAL HAZARDS IN JUICE

Hazard	Severity	Percent[3]	Duration of Illness (days)
E. coli O157:H7			
	Mild	50	5
	Moderate	32	9
	Severe-acute	18	32
	Severe-chronic	2	26,645[1]
	Death	1	
Salmonella (non *typhi*)			
	Mild	65	2
	Moderate	30	5
	Severe	5	17
	Reactive arthritis-short term	2	25
	Reactive arthritis-long term	5	18,250[2]
	Death	.1	
B. cereus			
	Mild	99	.75
	Moderate	1	1
	Severe	0	NA
	Death	0	NA

[1] Symptoms lasting 26,645 days, or 73 years, implies that it is generally very young children who experience these severe chronic effects (Ref. 2–3).
[2] Symptoms lasting 18,250 days, or 50 years. This estimate and other information in section V of this document (Benefits) relating to reactive arthritis are taken from Ref. 10.
[3] Percentages are taken from Ref. 10.

Symptoms of illness that results from exposure to each hazard may be classified as mild, moderate, or severe. In general, mild cases are not brought to the attention of a medical professional. Moderate cases receive medical attention but do not require hospitalization. Severe cases involve hospitalization and some of these result in death. The ''Percent'' column in Table 2 gives an estimate of the percentage of the total number of cases that are classified in these four categories of severity for each hazard. Note that the categories are not necessarily mutually exclusive, for example, severe-chronic cases of *E. coli* O157:H7 follow only after severe-acute cases of *E. coli* O157:H7, and deaths follow only after severe cases. However, the ''Percent'' column reports each category of severity as a percentage of total cases so that there is no double counting. Another factor that tends to distinguish the categories of severity is the duration of time that symptoms are experienced. The ''Duration'' column gives the general duration of symptoms (in days) that are associated with the categories of severity for each hazard.

2. Description of Health Effects and Symptoms of Microbial Hazards in Juice

In order to quantify the loss (disutility) that individuals experience from becoming ill, the pain, suffering, and mobility loss must be scaled. Tables 3, 4, and 5 represent the outcome of one type of scaling of these effects. Individuals who become ill experience different levels of functional status in terms of mobility, ability to do other physical activity, and ability to engage in social activities. The ''Functional Status Code'' column in Table 3 represents the status code which correlates with the categories of severity for each hazard. Individuals who become ill also experience additional disutility due to the symptoms of the illness. The ''Symptom/Problem Complex Code'' column represents the symptom/problem complex codes which correlate with the categories of severity for each hazard. Descriptions of the functional status and symptom/problem complex codes are given in Tables 4 and 5. FDA requests comment on this scaling model.

TABLE 3.—DESCRIPTION OF HEALTH EFFECTS AND SYMPTOMS OF MICROBIALLY RELATED ILLNESSES IN JUICE

Hazard	Severity	Functional Status Code[1]	Symptom/Problem Complex Code[2]
E. coli O157:H7			
	Mild	L20	8, 12, 13, 29
	Moderate	L19	8, 12, 13, 16, 19, 29, 32
	Severe-acute	(L1 x .2) + (L6 x .8)[3]	8, 12, 13, 16, 19, 29, 32
	Severe-chronic	L31	9
Salmonella (non *typhi*)			
	Mild	L20	12, 13, 29
	Moderate	L20	12, 13, 29
	Severe	L6	12, 13, 16, 29
	Reactive arthritis	L35, L41, L42, L43[4]	19
B. cereus			
	Mild	L19	12, 13, 29
	Moderate	L19	12, 13, 29

TABLE 3.—DESCRIPTION OF HEALTH EFFECTS AND SYMPTOMS OF MICROBIALLY RELATED ILLNESSES IN JUICE—Continued

Hazard	Severity	Functional Status Code[1]	Symptom/Problem Complex Code[2]
	Severe	NA	NA

[1] Functional Status Codes are described in Table 4.
[2] Symptom/Problem Complex Codes are described in Table 5.
[3] The disutilities for two functional status codes were taken for severe cases of *E. coli* O157:H7 because functional status varies among severe cases of this hazard.
[4] Functional Status Code varies, Ref. 10.

In Table 4, the last column, ''Level of Disutility,'' represents the degree of departure from perfect functionality. Thus, a person would be functioning at about half capacity if the level was .5 and would be even more diminished at .75. Code L42 is used whenever the mobility, physical activity, and social activity conditions apply and a person is experiencing a symptom described in Table 5. Code L43 is used whenever the mobility, physical activity, and social activity conditions apply and a person is experiencing no symptoms. In Table 5, ''Level of Disutility'' refers to the amount of pain and suffering such that .03 would be minor pain and suffering relative to .3.

TABLE 4.—DESCRIPTION OF FUNCTIONAL STATUS CODES[1]

Function Status Levels	Mobility	Physical Activity	Social Activity	Level of Disutility
L1	In special care unit	In bed or chair	Had help with self-care	.5626
L6	In hospital	In bed or chair	Had help with self-care	.5301
L19	In house	Walked with physical limitations	Performed self-care but not work, school, or housework	.4176
L20	In house	Walked with physical limitations	Limited in work, school, or housework	.4448
L23	In house	Walked without physical limitations	Performed self-care, but not work, school, or housework	.3512
L31	Did not drive, needed help with transportation	Walked without physical limitations	Limited in work, school, or housework	.4087
L35	Drove car and used transportation without help	Walked with physical limitations	Limited in work, school, or housework	.3980
L41	Drove car and used transportation without help	Walked without physical limitations	Did work, school, or housework, but other activities limited	.3145
L42	Drove car and used transportation without help	Walked without physical limitations	Did work, school, or household, and other activities	.2567
L43	Drove car and used transportation without help	Walked without physical limitations	Did work, school, or household, and other activities	.0000

[1] Ref. 4.

TABLE 5.—DESCRIPTION OF SYMPTOM/PROBLEM COMPLEX CODES[1]

Symptom/Problem Complex	Description	Level of Disutility
8	Itching, bleeding or pain in rectum	.0379
9	Pain in chest, stomach, side, back, or hips	.0382
12	Sick or upset stomach, vomiting, or diarrhea (watery bowel movements)	.0065
13	Fever chills with aching all over and vomiting or diarrhea	.0722
16	Headache, dizziness, or ringing in ears	.0131
19	Pain, stiffness, numbness, or discomfort of neck, hands, feet, arms, legs ankles, or several joints together	.0344
29	General tiredness, weakness, or weight loss	.0027
32	Loss of consciousness such as seizures (fits), fainting, or coma (out cold or knocked out)	.1507

[1] Ref. 4, p. D–14.

3. Utility Losses From Microbial Hazards in Juice

The ''Functional Status Code'' translates into values of disutility given in the ''Functional Disutility'' column in Table 6. The symptom/problem complex code translates into values of disutility given in the ''Symptom/Problem Disutility'' column in Table 6. The ''Total Disutility'' column is the sum of the ''Functional Disutility'' and the ''Symptom/Problem Disutility'' columns. The ''Utility Losses for Survivors'' column is derived by multiplying the total disutility per day by the number of days that symptoms of the illness persists. This gives the utility loss for survivors in terms of the number of quality adjusted life days (QALD's) for each case of the categories of severity for each hazard.[6] FDA requests comment on this estimation of utility loss.

[6] A QALD is a day of perfect health.

TABLE 6.—UTILITY LOSSES FROM MICROBIAL HAZARDS IN JUICE

Hazard	Severity	Functional Disutility (per day)	Symptom/Problem Disutility (per day)	Total Disutility (per day)	Utility Losses for Survivors (QALD's)
E. coli O157:H7					
	Mild	.4448	.1193	.5641	2.8
	Moderate	.4176	.1668	.5844	5.3
	Severe-acute	.5464	.3175	.8639	27.8
	Severe-chronic	.4087	.0382	.4469	11,907.7
Salmonella (non *typhi*)					
	Mild	.4448	.0814	.5262	1.1
	Moderate	.4448	.0814	.5262	2.6
	Severe	.5301	.0945	.6246	10.6
	Reactive arthritis-short term	.3980	.0344	.4324	10.8
	Reactive arthritis-long term	.2582	.0280	.2862	5,223.2
B. cereus					
	Mild	.4176	.0814	.4990	.4
	Moderate	.4176	.0814	.4990	.5
	Severe	0	0	0	0

4. Value of Losses From Microbial Hazards in Juice

FDA values a QALD at $630. This value derives from the statistical estimate of a unit-risk reduction (commonly referred to as the value of a statistical life (VSL)) which the Department of Health and Human Services assigns the value of $5 million. Using $5 million for a full lifetime yields a value for a quality adjusted life year (QALY) of approximately $230,000, when discounted at 7 percent. (A QALY is the estimated value of a year spent in perfect health. These values are discounted to reflect time preferences for investments in health. That is, as with any other commodity, people have a stronger preference for good health now than they have for good health in the future. Costs or benefits realized in the future are ''discounted'' to make them comparable to today. Essentially, discounting is the inverse of the interest rate. Thus, if a benefit of $1.10 were to be realized 1 year in the future, this would be equivalent, at approximately a 10 percent discount rate, to a benefit of $1 realized today. This is the reverse of saying that $1 invested today at a 10 percent annual interest rate is worth $1.10 1 year from now.) Dividing this value by 365 days per year yields a value for a QALD of approximately $630. The ''Value of Utility Losses for Survivors'' column in Table 7 comes from multiplying the number of QALD's lost due to the illness (see ''Utility Losses for Survivors'' in Table 6) by the value of a QALD, $630. This represents the value of pain and mobility losses that individuals experience. Additionally, there are the societal costs of medical treatment. These costs are shared generally between insurance companies and individuals. They include all aspects of medical expenses (e.g., physician visits, laboratory tests, prescriptions and therapies, hospital stays). These are estimated in the ''Medical Costs'' column in Table 7 (Ref. 2–3, pp. 19 and 40 and Ref. 10). The ''Value of Losses per Case'' column in Table 7 is the sum of the ''Value of Utility Losses for Survivors'' column and the ''Medical Costs'' column for the categories of severity for each hazard. FDA requests comment on these valuations.

TABLE 7.—VALUE OF LOSSES FROM MICROBIAL HAZARDS IN JUICE

Hazard	Severity	Value of Utility Losses for Survivors (QALD=$630)	Medical Costs	Value of Losses per Case (VSL=$5,000,000) (QALD=$630)
E. coli O157:H7				
	Mild	$1,800	$0[1]	$2,000
	Moderate	$3,300	$200[1]	$4,000
	Severe-acute	$17,200	$16,000[2]	$33,000
	Severe-chronic	$995,700	$225,000[3]	$1,221,000
	Death	NA	NA	$5,000,000
Salmonella (non *typhi*)				
	Mild	$700	$200[4]	$1,000
	Moderate	$1,600	$800[4]	$2,000
	Severe	$6,700	$9,100[4]	$16,000
	Reactive arthritis-short term	$6,800	$100[5]	$7,000
	Reactive arthritis-long term	$970,000[5]	$5,860[5]	$976,000
	Death	NA	NA	$5,000,000
B. cereus				
	Mild	$300	$0[6]	$300
	Moderate	$300	$100[6]	$400
	Severe	$0	$0	$0

TABLE 7.—VALUE OF LOSSES FROM MICROBIAL HAZARDS IN JUICE—Continued

Hazard	Severity	Value of Utility Losses for Survivors (QALD=$630)	Medical Costs	Value of Losses per Case (VSL=$5,000,000) (QALD=$630)
	Death	NA	NA	$5,000,000

[1] Ref. 2–3, p. 40.
[2] Explained in Table 8.
[3] Recalculated from data in Buzby et al., pp. 41–45 in order to arrive at the present value of the cost per case using a 7 percent discount rate.
[4] Buzby et al., pp. 18–19. Mild Salmonella medical costs are recalculated from data in Cohen, M. L. et al. so as not to include productivity in medical costs.
[5] Ref. 10.
[6] The medical cost estimates for *B. cereus* were made by FDA for this analysis. The extremely brief duration of mild cases suggests that there would be no medical costs for this level of severity. For moderate cases one visit to a doctor with medical tests are estimated to cost approximately $100.

TABLE 8.—MEDICAL COSTS FOR SEVERE-ACUTE CASES ASSOCIATED WITH *E. coli* O157:H7[1]

Factors	Acute Hemorrhagic Colitis	Acute HUS	Average Severe-Acute Case
Percent of Severe Cases	80%	20%	
Present Value per Case	$11,000	$36,000	
Weighted Present Value per Case	$8,800	$7,200	$16,000

[1] Ref. 2–3, p. 40.

5. Distribution of the Reported Cases per Year for Microbial Hazards in Juice

Table 9 estimates the number of cases associated with each hazard by severity. The ''Average Total No. of Cases Reported per Year'' column represents the average number of reported cases for each hazard from 1992 through 1996. Cases for each hazard are divided among the four categories of severity according to the percentages described in Table 8. Only those reported cases associated with commercially-produced juices sold in interstate commerce as beverages or used as ingredients in beverages are included in the averages presented.

TABLE 9.—DISTRIBUTION OF THE REPORTED CASES PER YEAR FOR MICROBIAL HAZARDS IN JUICE

Hazard	Severity	Percent	Average No. of Cases Reported per Year
	Mild	50	8
	Moderate	32	5
	Severe-acute	18	3
	Severe-chronic	2	.3
	Death	1	.2
E. coli O157:H7	Total cases		16[1]
	Mild	65	8
	Moderate	30	4
	Severe	5	1
	Reactive arthritis-short term	2	.2
	Reactive arthritis-long term	5	1
	Death	.1	.01
Salmonella (non *typhi*)	Total cases		12
	Mild	99	17
	Moderate	1	.2
	Severe	0	0
	Death	0	0
B. cereus	Total cases		17

[1] Total cases per pathogen are accurate. The sum of the number of cases for all levels of severity per pathogen may not equal the total number of cases per pathogen due to rounding.

6. Estimates of Factors Needed to Offset Underreporting of Foodborne Illness

The cases reported in column 4 in Table 10 are the lower bound of the likely total number of these cases. The total number of foodborne illness is much greater than those numbers reported to the Centers for Disease Control and Prevention (CDC) for several reasons. First, individuals who become ill do not always go to doctors. This is particularly true for milder cases of foodborne disease. Obviously, if people do not go to health care professionals, the illnesses will not be captured in any data base and will not be picked up by CDC. Second, even when people go to health care professionals, they are not necessarily diagnosed as having foodborne disease as the symptoms for many types of

foodborne disease are common to influenza and other diseases. There is often little incentive to culture stools to definitively identify a pathogen if the disease is thought to be of short duration and not requiring treatment. Even where a pathogen is identified, there is even less incentive to identify the food or other vehicle which carried it. Third, even when a correct diagnosis is made, State and local health professionals do not always report these cases upwards, particularly going as far as CDC. Again, milder cases are less likely to be reported than more severe cases.[7] To complicate matters, the rate of under reporting is not observable, and, even if it were known in any 1 year, it may fluctuate dramatically from year to year. Nevertheless, in order to compensate for the rate of under reporting, the number of known cases associated with a hazard (i.e., reported to CDC) is multiplied by factors which are estimated to account for underreporting.

In *Foodborne Pathogens: Risks and Consequences* (the CAST Report) there are two estimates given of the actual number of foodborne illnesses: One estimate made by Bennett et al., and one made by Todd (Ref. 6, p. 46). Both Bennett et al. and Todd estimate the total number of cases and the total number of deaths for each hazard. By dividing Bennett's et al. and Todd's estimates of the actual number of cases and deaths by the number of reported cases and deaths (Ref. 6, p. 42), the respective implicit factors needed to correct for underreporting of these categories for each hazard are derived. Based on these correction factors, FDA has estimated correction factors for each category of severity. The agency has taken the correction factor for the number of cases as the correction factor for mild cases and the correction factor for the number of deaths as the correction factor for severe cases. For moderate cases, the agency has interpolated between the factors for mild and severe cases. *E. coli* O157:H7 was not a recognized food-safety hazard at the time that Bennett's et al. work was done. For a more complete description of how these estimates were derived see the Appendix attached to this document (Ref. 9).

In Table 10, the third column, ''Estimate of Underreporting Correction Factor (Bennett),'' and the fifth column, ''Estimate of Underreporting Correction Factor (FDA based on Todd),'' give the exact implicit correction factors that can be derived from the work of Bennett and Todd et al. The fourth column, ''Estimate of Underreporting Correction Factor (FDA based on Bennett),'' and the sixth column, ''Estimate of Underreporting Correction Factor (FDA based on Todd),'' give FDA's interpolations of the work of Bennett and Todd et al. for each of the identified categories of severity. In general, each researcher's estimate of the underreporting correction factor for total cases was used as the estimate for mild cases, and each researcher's estimate of the underreporting correction factor for deaths was used as the estimate for deaths and severe cases. FDA interpolated between each researcher's estimates of underreporting for total cases and deaths to derive under reporting rates for moderate cases. FDA requests comment on these estimates of underreporting.

TABLE 10.—ESTIMATES OF FACTORS NEEDED TO OFFSET UNDERREPORTING OF FOODBORNE ILLNESS

Hazard	Severity	Estimate of Underreporting Correction Factor (Bennett)	Estimate of Underreporting Correction Factor (FDA based on Bennett)	Estimate of Underreporting Correction Factor (Todd)	Estimate of Underreporting Correction Factor (FDA based on Todd)
	Mild				195
	Moderate				20
	Severe				7
	Death			7	7
E. coli O157:H7	Total cases	ND[1]		195	
	Mild		307		474
	Moderate		307		45
	Severe		246		4
	Reactive arthritis-short term		307		474
	Reactive arthritis-long term		307		474
	Death	246	246	4	4
Salmonella (non *typhi*)	Total cases	307		474	
	Mild		96		1,615
	Moderate		96		1,615
	Severe	NA	NA	NA	NA
	Death	NA	NA	NA	NA
B. cereus	Total cases	96		1,615	

7. Estimates of Juice-Associated Cases per Year

In Table 11, FDA has estimated ranges of the likely annual number of cases that occur for each of the four pathogens studied. The column ''Estimate of Actual No. of Juice Associated Cases per Year (FDA based on Bennett)'' in Table 11 is derived by multiplying the ''Average Total No. of Reported Cases per Year'' column in Table 9 by the ''Estimate of Underreporting Correction Factor (FDA based on Bennett)'' column in Table 11. The column ''Estimate of Actual No. of Juice Associated Cases per Year (FDA based on Todd)'' in Table 11 is calculated in a similar manner.

[7] The CAST Report expands these three categories of reasons that a case of illness may not be recognized as foodborne into six reasons (Ref. 6).

TABLE 11.—ESTIMATES OF JUICE-ASSOCIATED CASES PER YEAR

Hazard	Severity	Estimate of Under-reporting Correction Factor (FDA based on Bennett)	Estimate of Under-reporting Correction Factor (FDA based on Todd)	Estimate of Actual No. of Juice-Associated Cases per Year (FDA based on Bennett)	Estimate of Actual No. of Juice-Associated Cases per Year (FDA based on Todd)
	Mild	ND	195	ND	1,560
	Moderate	ND	20	ND	100
	Severe-acute	ND	7	ND	20
	Severe-chronic	ND	7	ND	2
	Death	ND	7	ND	1
E. coli O157:H7	Total cases			ND	1,700
	Mild	307	474	2,460	3,790
	Moderate	307	45	1,230	180
	Severe	246	4	150	2
	Reactive arthritis-short term	307	474	60	100
	Reactive arthritis-long term	307	474	180	280
	Death	246	4	2	.04
Salmonella (non *typhi*)	Total cases			3,800	4,000
	Mild	96	1,615	160	2,750
	Moderate	96	1,615	2	30
	Severe	0	0	0	0
	Death	0	0	0	0
B. cereus	Total cases			200	2,800

8. Percent of Cases Preventable by HACCP Proposal

In general, most pathogens will be eliminated when juice is heat-treated. For example, *E. coli* O157:H7, and *Salmonella* should all be completely eliminated from juice by standard methods of flash pasteurization (absent extraordinarily high counts, detrimental human intervention, or equipment failure). However, hazards associated with *B. cereus* will not necessarily be eliminated by heat treatment. This bacterium forms spores which are more difficult to kill by heat. After heat treatment, if the spores survive, they may grow out and produce a toxin which causes illness. Ideally, the best way to reduce illness associated with *B. cereus* is by killing the bacterium in its nonspore state before any toxin has been produced. For most types of heat-treated juice, there is a small probability that the heat treatment will take place when *B. cereus* is in its nonspore state. To the extent that processors adopt controls for these hazards other than flash pasteurization which are less effective, the percentage of cases prevented may be smaller than those estimated here. FDA requests comment on these estimates. Based on information from USAA, FDA estimates that the exemption from the HACCP rule for retailers and small retail processors will affect 14 percent of the volume of unpasteurized juice. Therefore, the agency estimates that though pathogen controls may be 100 percent effective in controlling some hazards, such controls will only prevent 86 percent of the cases of illness from these hazards.

TABLE 12.—PERCENT OF CASES PREVENTABLE BY HACCP PROPOSAL

Hazard	Percent of Cases Preventable by HACCP Proposal
E. coli O157:H7	86

TABLE 12.—PERCENT OF CASES PREVENTABLE BY HACCP PROPOSAL—Continued

Hazard	Percent of Cases Preventable by HACCP Proposal
Salmonella (non *typhi*)	86
B. cereus	9

9. Estimates of Annual Benefits for HACCP Proposal

The total benefits for the categories of severity for each hazard are derived by multiplying the percentage of cases preventable by the HACCP proposal by the estimates of the number of actual cases. The sum of those benefits for each hazard is the total benefits of the HACCP proposal for pathogen control. Table 13 gives the estimate of benefits for each hazard using each source of information on the appropriate correction factor for underreporting.

TABLE 13.—ESTIMATES OF ANNUAL BENEFITS FOR HACCP PROPOSAL

Hazard	Severity	FDA Estimate of Annual Benefits Based on Bennett	FDA Estimate of Annual Benefits Based on Todd
	Mild		$2,680,000
	Moderate		$360,000
	Severe-acute		$660,000
	Severe-chronic		$2,442,000
	Death		$5,000,000
E. coli O157:H7	Total		$11,142,000
	Mild	$2,120,000	$3,260,000

TABLE 13.—ESTIMATES OF ANNUAL BENEFITS FOR HACCP PROPOSAL—Continued

Hazard	Severity	FDA Estimate of Annual Benefits Based on Bennett	FDA Estimate of Annual Benefits Based on Todd
	Moderate	$2,120,000	$300,000
	Severe	$2,080,000	$32,000
	Reactive arthritis-short term	$350,000	$630,000
	Reactive arthritis-long term	$146,400,000	$234,240,000
	Death	$10,000,000	$200,000
Salmonella (non *typhi*)	Total	$163,070,000	$238,662,000
	Mild	$42,000	$711,000
	Moderate	$1,000	$12,000
	Severe	0	0
	Death	0	0
B. cereus	Total	$43,000	$725,000

Table 14 presents a range of estimates of annual benefits based on the estimates in Table 13. The low and high estimates do not represent lower and upper bounds of benefits, but only a range of potentially likely estimates.

TABLE 14.—RANGE ESTIMATES OF ANNUAL MICROBIALLY RELATED BENEFITS FOR HACCP PROPOSAL

Hazard	Low Estimate of Annual Benefits	High Estimate of Annual Benefits
E. coli O157:H7	$11,142,000	$11,142,000
Salmonella (non *typhi*)[1]	$163,070,000	$238,662,000
B. cereus[1]	$43,000	$725,000
Totals	$174,000,000	$251,000,000

[1] Ranges for these two pathogens are taken from two different estimates that exist in the public health literature. The estimates for the other pathogen was made by FDA, alone.

10. Percent of Cases Preventable by Labeling Proposal

FDA does not have direct estimates of the effects of a warning label on the incidence of illness from juice consumption. FDA indirectly estimates the effects by estimating how warning labels will change consumption, assuming that changes in the number of illnesses are proportional to changes in consumption. FDA believes that the labeling rule will cause a reduction in the consumption of unpasteurized juice, but the size of the reduction is uncertain. As a likely value, FDA estimates that consumption and illnesses will decline by 5 percent in response to the warning label. The 5 percent reduction is the estimated effect on cooking practices of the USDA meat safe handling label, as found in a recent survey (Ref. 11). However, there are some dissimilarities between the meat and juice labels, most particularly that the juice label is targeted at sensitive consumers. If, for example, parents redirect children away from nonheat-treated juice, then consumption and illness will decline by 16 percent, which is the proportion of apple cider consumed by children under the age of 6 (Ref. 12). This estimate embodies the assumptions that cider consumption is a good proxy for unpasteurized juice consumption, and that parents will not let their children consume unpasteurized juices.

11. Estimates of Annual Benefits for Labeling Proposal

Table 11 shows FDA's estimate that there are approximately 5,600 cases of foodborne illness associated with commercially processed, package juice produced by nonretail establishments. In addition to these cases, an average of 6 cases annually of *Cryptosporidium parvum* have been associated with commercially processed, packaged juice produced by retail establishments exempted from the HACCP rule. Table 15 shows the agency's estimate of the actual number of cases per year by severity.

TABLE 15.—ESTIMATES OF JUICE-ASSOCIATED *C. parvum* CASES PER YEAR

Severity	Average No. of Cases Reported per Year (1992–1996)	FDA Estimate of Underreporting Correction Factor[1]	FDA Estimate of Actual No. of Juice-Associated Cases per Year
Mild	5	100	500
Moderate	1	10	10
Severe	.06	5	.3
Death	.001	5	.005
Total	6		500

[1]Because *C. parvum* was not a recognized food safety hazard at the time that Bennett et al. and Todd's work was done, FDA has made its own estimates of the factors needed to correct for underreporting of this hazard.

Table 16 gives the agency's estimate of the value of the loss per case of *C. parvum*.

TABLE 16.—ESTIMATE OF VALUE OF LOSSES ASSOCIATED WITH CASE OF *C. parvum*

Severity	Percent	Duration of Illness (in days)	Function Status Code[1]	Symptom/Problem Complex Code[2]	Total Disutility (per day)	Utility Losses for Survivors (QALD's)	Value of Utility Losses for Survivors (QALD=$630)	Medical Costs	Value of Losses per Case (VSL=$5,000,000) (QALD=$630)
Mild	90	9	L41	12, 13, 29	.3959	3.6	2,300	$0[3]	$2,000
Moderate	9	17	L41	12, 13, 29	.3959	6.7	$4,200	$400[3]	$5,000
Severe	1	24	L6	12, 13, 29	.6115	14.7	$9,300	$8,300[4]	$18,000
Death	.02						NA	NA	$5,000,000

[1]Functional Status Codes are described in Table 4.

[2]Symptom/Problem Complex Codes are described in Table 5.

[3]Medical Costs for mild and moderate cases of *C. parvum* were calculated by multiplying the per day medical costs for *E. coli* 0157:H7 for these levels of severity by the duration of illness of *C. parvum*. The symptoms of *C. parvum* for these levels of severity are similar to those of *E. coli* 0157:H7.

[4]Medical Costs for severe cases of *C. parvum* were calculated by multiplying the per day medical costs for severe cases of acute hemorrhagic colitis by the duration of illness of *C. parvum*. The implicit assumption is that the medical costs for acute hemorrhagic colitis (bloody diarrhea) are equivalent to the medical costs for watery diarrhea associated with *C. parvum*.

The labeling rule is expected to prevent some cases of foodborne illness as people avoid juice that is labeled. Because *B. cereus* is, in general, not disproportionately associated with minimally processed juice, cases of *B. cereus* are not expected to be prevented by the labeling. However, to the extent that the label is effective and to the extent of the volume of juice that is labeled, the labeling rule will reduce the number of cases associated with *E. coli* 0157:H7, *Salmonella* and *C. parvum*.

Combining the estimates of the number of illnesses in Tables 11 and 15, the total number of estimated cases associated with minimally processed juice for these 3 hazards is 6,100 per year associated with consumption of the 70 million gallons of minimally processed juice produced annually. FDA has estimated that 14 percent of minimally processed juice (10 million gallons) will be exempt from the HACCP rule but will be covered by the labeling rule. Therefore, the number of illnesses that may be associated with this volume of juice (10 million gallons) will be exempt from the HACCP rule but will be covered by the labeling rule. Therefore, the number of illnesses which may be associated with this volume of juice (10 million gallons) is approximately 900 and 5,200 illnesses are associated with minimally processed juice covered by the HACCP rule.

As stated earlier, FDA estimates that consumption of labeled, minimally processed juice will decline by 5 percent in response to the warning label. This leads to the conclusion that the labeling rule is expected to prevent approximately 50 illnesses annually (900 x .05). If juice consumption decreases by as much as 16 percent in response to the warning label, then the labeling rule may prevent as many as 140 illnesses per year.

The value of this reduction in illness depends on the type of cases prevented. FDA assumes that these cases will be distributed according to the share of illnesses associated with each of these hazards. Table 17 shows the expected distribution of cases prevented by labeling across the hazards and severities.

TABLE 17.—DISTRIBUTION OF CASES PREVENTED BY LABELING PROPOSAL

Hazard	Severity	Low Estimate of Actual No. of Juice-Associated Cases per Year	High Estimate of Actual No. of Juice-Associated Cases per Year	Low Estimate of No. of Cases Prevented by a 5% Consumer Response to Labeling	High Estimate of No. of Cases Prevented by a 5% Consumer Response to Labeling	Low Estimate of No. of Cases Prevented by a 16% Consumer Response to Labeling	High Estimate of No. of Cases Prevented by a 16% Consumer Response to Labeling
	Mild	1,560	1,560	13	13	36	35
	Moderate	100	100	1	1	2	2
	Severe-acute	20	20	.2	.2	.5	.5
	Severe-chronic	2	2	.02	.02	.05	.05
	Death	1	1	.008	.008	.02	.02
E. coli 0157:H7	Total	1,700	1,700	14	14	39	38
	Mild	2,460	3,790	20	31	58	87
	Moderate	1,230	180	10	1	29	4
	Severe	150	2	1	.02	4	.05
	Reactive arthritis-short term	60	100	.5	.8	1	2
	Reactive arthritis-long term	180	280	1	2	4	6
	Death	2	.04	.02	.0003	.05	.0009
Salmonella (non typhi)	Total	3,800	4,000	32	32	90	91
	Mild	500	500	4	4	11	11
	Moderate	10	10	.08	.08	.2	.2
	Severe	.3	.3	.002	.002	.006	.006
	Death	.005	.005	.00004	.00004	.0001	.0001
C. parvum	Total	500	500	4	4	11	11
Total		6,000	6,200	50	50	140	140

TABLE 18.—VALUE OF LOSSES PREVENTED BY THE LABELING PROPOSAL

Hazard	Severity	Low Estimate of Value of Losses Prevented by a 5% Consumer Response to Labeling	High Estimate of Value of Losses Prevented by a 5% Consumer Response to Labeling	Low Estimate of Value of Losses Prevented by a 16% Consumer Response to Labeling	High Estimate of Value of Losses Prevented by a 16% Consumer Response to Labeling
	Mild	26,000	26,000	72,000	70,000
	Moderate	4,000	4,000	8,000	8,000
	Severe-acute	7,000	7,000	17,000	17,000
	Severe-chronic	24,000	24,000	61,000	61,000
	Death	40,000	40,000	100,000	100,000
E. coli 0157:H7	Total	101,000	101,000	258,000	258,000
	Mild	20,000	31,000	58,000	87,000
	Moderate	20,000	2,000	58,000	8,000
	Severe	16,000	300	64,000	1,000
	Reactive arthritis-short term	4,000	6,000	7,000	14,000
	Reactive arthritis-long term	976,000	1,952,000	3,904,000	5,856,000
	Death	100,000	2,000	250,000	5,000
Salmonella (non typhi)	Total	1,136,000	1,993,000	4,341,000	5,971,000
	Mild	8,000	8,000	22,000	22,000
	Moderate	400	400	1,000	1,000
	Severe	0	0	100	100
	Death	200	200	500	500
C. parvum	Total	9,000	9,000	24,000	24,000
Total		1,000,000	2,000,000	5,000,000	6,000,000

12. Pesticide Residues

Tolerances for pesticides in foods are established by the Environmental Protection Agency (EPA) and enforced by FDA. FDA collects samples for both surveillance and compliance purposes. Since the incidence of violative pesticide residues in fruit and vegetable juices is relatively low, few compliance samples are taken.

This discussion pertains to surveillance samples of fruit and vegetable juices from 1991 through 1997 (see Table 15). The lab classification scheme used for pesticide residues is:

1 = in compliance;

2 = not in compliance, but not of regulatory concern; and

3 = not in compliance, and of regulatory concern.

The class 2 and 3 violative sample data are summarized in Table 15. Of the 1,196 surveillance samples of juice taken and analyzed during this period, only three (approximately one quarter of one percent) were class 3 violative. One was apple cider and the other two were apple juice, and the violative pesticide residue was acephate in each case. There were also five class 2 violations, in which trace quantities of a pesticide with no tolerance (i.e., the pesticide was not approved for use in the commodity) were found. The products with class 2 violations were grape juice, watermelon juice concentrate, strawberry/nectarine juice (2 samples), and apple juice concentrate; the pesticides were chlorpyrifos, acephate, and methamidophos.

Pesticides present some potential chronic risks to humans at very low levels of exposure. There is a small background risk associated even with nonviolative pesticide residues and, in the case of products with violative levels, an added risk from the violative residues. (Violative residues are residues above tolerance or residues of pesticides with no tolerance.)

TABLE 19.—VIOLATIVE PESTICIDE RESIDUES IN FRUIT AND VEGETABLE JUICES, 1991 THROUGH 1997

Commodity	Fiscal Year	Pesticide	Amount Found, ppm	Tolerance, ppm	Class Violation
Grape juice	1993	Chlorpyrifos	Trace	None	2
Apple cider	1995	Acephate	0.075	None	3
Apple juice	1995	Acephate	0.052	None	3
Apple juice	1995	Acephate	0.040	None	3
Watermelon juice, concentrate	1995	Acephate	Trace	None	2
Strawberry/nectarine juice	1996	Methamidophos	Trace	None	2
Strawberry/nectarine juice	1996	Methamidophos	Trace	None	2
Apple juice, concentrate	1997	Methamidophos	Trace	None	2

There are two potential benefits associated with the regulation of pesticides: (1) Decreases in cancer and other illness caused by chronic consumption of pesticide residues and, (2) social benefits associated with reductions in the costs of recapturing firm goodwill. The U.S. EPA is responsible for determining the benefits of reducing exposure to pesticide residues and, it is assumed, that the health benefits of the enforcement actions proposed here are already accounted for when regulatory tolerances are established. As to the

latter benefit, when firms have products with violative residues either over tolerance for legal pesticides or any residue of an illegal pesticide and a recall of the violative product becomes publicly known, the sales of those firms are reduced, at least temporarily. Because other firms will step in to supply the product, that loss of sales alone does not constitute a social cost. However, it is likely that real resources will be expended to recapture the lost ''goodwill'' that would be in addition to the real expenditures made to actually recall the product. FDA cannot quantify the cost savings that will occur because of more vigilant monitoring of pesticide residues by firms under a HACCP rule.

C. Other, Nonquantified Benefits

1. Firm Efficiency

The principle benefits from HACCP reported by the pilot firms are more effective and efficient operations, a higher level of confidence in the safety of the product, and greater customer satisfaction. The pilot firms attributed these benefits to HACCP because of the following results.

(1) Training makes the employees more aware of safety and needed control measures, and empowers employees to prevent problems and respond properly when deviations occur. Improvement in employee performance was perhaps the most significant benefit from HACCP expressed to FDA by the pilot firms. One firm reported that ''due to increased HACCP awareness, employees have been instrumental in designing new processes/procedures for monitoring and control.'' The firm gave an example of a processing step that was changed to reduce the likelihood of occurrence of a physical hazard. FDA is unable to estimate the societal cost savings in terms of reduced product costs which will, ultimately, affect the cost of implementing HACCP.

(2) SOP's and other documented procedures enable employees to implement their tasks more consistently and effectively, and result in smoother operations.

(3) Prerequisite programs and incoming ingredient controls prevent hazards from being introduced into the process; continuous monitoring reveals problems quickly and enables prompt correction and continuation of production with less waste.

(4) Recordkeeping and review makes employees more accountable and conscientious about safety.

(5) Validation and verification activities provide management with greater control over their operations and documentation of the safety of their product.

Perhaps the most significant benefit in terms of firm efficiency will be cost savings from greater awareness by firms of violative product runs, and the resulting increase in response to such violative runs. Although the benefits of formal recalls have already been accounted for, many pilot plant managers suggested that the continuous monitoring required by HACCP enabled them to decrease the amount of waste associated with production-line problems. For example, one manufacturer noted that glass breakage was a constant problem on the line and that, prior to HACCP, almost an entire lot would have to be discarded because the manager could not be sure exactly when a problem had started. With continuous HACCP monitoring, problems were caught more quickly and the problem corrected more promptly, thereby minimizing the amount of lost product.

The cost savings may be substantial from this source of benefits but FDA is unable to quantify them. FDA requests comments on these and other potential benefits.

2. Increased Shelf Life

Nonheat-treated juices have a limited shelf life. Heat-treated juices have longer shelf lives. Depending upon temperature used, increases of 7 days or more have been reported. Longer shelf life allows more flexibility in the conditions of distribution and sale of products. The agency requests comments on how this potential benefit may be quantified.

D. Summary of Benefits

Table 20 summarizes the benefits of these two rules.

TABLE 20.—BENEFITS OF JUICE PROPOSALS

Type of Benefit	Description	Annual Value
Enforcement: Import Detentions	Reduced waste and Federal activity from detaining violative juice imports	$175,000
Enforcement:Product Recalls	Reduced numbers of domestic recalls of violative juice products	$1,500,000
Health Benefits: HACCP	Reduced illness and death from controlling pathogens in juice	$174 to 251 million
Health Benefits: Labeling	Reduced illness and death from avoidance of minimally processed juice	$1 to $6 million
Health Benefits: Pesticides	Reduction of consumption of violative pesticide residues in juice and social losses from lost goodwill	Not quantified but small
Other Benefits: Firm Efficiency	Some offsetting reductions in manufacturing costs due to increased worker productivity and less product waste	Not quantified but potentially large
Other Benefits: Increased Shelf Life	Product Shelf life may be increased for products achieving a 5-log reduction of pathogens	Not quantified but potentially large
Total Quantified Benefits		$180 to 260 million

VI. Costs

A. General Industry Information Used Throughout This Analysis

The costs of these rules have been estimated by analyzing the costs for each proposed requirement on a per-plant basis and multiplying these costs by the number of plants affected by each requirement. Cost per plant will vary by current practice, product, and size. In order to determine the number of plants covered, the analysis will first analyze coverage qualitatively.

1. Types of Plants Covered

The labeling rule and the HACCP rule do not equally affect an identical subset of the food industry.

2. HACCP Rule Coverage

For the purpose of this rule, FDA has tentatively decided that retailers will include processors who are very small businesses and who make juice on their premises and directly sell juice or juice products to consumers and other retailers provided that retail sales of juice and juice products do not exceed 40,000 gallons per year. The HACCP rule covers all processors of juice except those who are retailers. Retailers may include grocery stores, supermarkets, farms, roadside stands, restaurants and eating places.

3. Labeling Rule Coverage

The labeling rule covers processors and retailers of packaged minimally processed juice. The labeling rule is also applicable to packaged beverages that have not received further processing to control microbial hazards and that contain minimally processed juice. Such beverages include diluted juice beverages, ''smoothies,'' sports drinks, flavored bottled waters, and carbonated beverages that contain juice that was not processed to control pathogens.

Table 21 provides examples of the types of products and processors covered and not covered by the two rules.

TABLE 21.—COVERAGE OF JUICE PROPOSALS

Processor Type	Covered by Labeling Rule	Covered by HACCP Rule[3]
Processors of packaged beverages sold as juice[1]	Yes	Yes
Processors of packaged purees sold as juice	Yes	Yes
Processors of juice used as an ingredient in a beverage (e.g., the cranberry juice in cranberry juice cocktail)	Yes	Yes
Processors of juice which retail the juice at a different location from which it is produced	Yes	Yes
Processors of beverage concentrates sold as juice	Yes	Yes
Processors of beverage bases of a fruit origin or other beverage bases including dried or powdered juice mixes[2]	Yes	Yes
Processors of packaged baby (infant and junior) fruit juices and drinks	Yes	Yes
Processors of juice that ship to a different location (e.g., the juice processing plant owned by a supermarket chain that then ships the juice to the chain's stores or very small processors that sell juice from their own roadside stand and to other retailers)	Yes	Yes
Retailers of packaged juice processed by other establishments (e.g., supermarkets, restaurants and roadside stands that sell juice produced by another processor) Note: the juice sold by these retailers is covered by the HACCP rule but the retailer is not covered by the HACCP rule.	Yes	No
Processors of packaged juice that do not ship juice to different locations but retail the entire production on the premises (e.g., supermarkets, and roadside stands that produce juice at the point of sale)	Yes	No
Processors of beverages that include juice as an ingredient but which do not produce the juice itself	Yes	No
Retailers of juice processed for immediate consumption	No	No
Processors of non-beverage products that include juice as an ingredient	No	No
Processors of hard cider or other alcoholic beverages	No	No
Processors of oils	No	No
Processors of purees not sold as beverages (e.g., tomato puree)	No	No
Processors of juices not sold as beverages (e.g., vinegar or borscht)	No	No
Processors of imitation juice flavorings	No	No
Processors of coffees, teas, or cocoa products	No	No

[1] Juice types are berry; citrus; core fruit; mixed fruit; pit fruit; subtropical and tropical fruit; vine fruit; other fruit; beans, peas and corn; fruits used as vegetables; leaf and stem vegetables; mixed vegetables; root and tuber vegetables; and other vegetables.

[2] Beverage bases of fruit origin are berry, citrus, core fruit, mixed fruit, pit fruit, subtropical and tropical fruit, vine fruit, and other fruit.

[3] A ''yes'' in this column applies only to processors producing in excess of 40,000 gallons of packaged juice per year. Very small businesses processing packaged juice, producing 40,000 gallons of juice or less annually are classified as retailers for the purpose of the HACCP rule and are therefore exempt from it.

4. Number of Establishments Covered

FDA's own Official Establishment Inventory (OEI, FDA's list of food establishments under its jurisdication) lists approximately 900 juice manufacturers. However, recent information from the U.S. Apple Association (USAA) indicates that there are about 1,800 apple juice plants, most of which are very small processors. A typical description of these very small processors is an apple grower who operates a small apple press and bottling operation on the same property. In general these processors market their products in more than one way. The channels of distribution include: Roadside stands owned by the processors and stands owned by others, farmers' markets, grocery stores, and restaurants. FDA has proposed to exempt retail establishments from the HACCP rule. For the purposes of this rule, the agency has tentatively decided that retailers will include very small businesses that make juice on their premises and whose total sales of juice and juice products do not exceed 40,000 gallons per year and who sell directly to consumers or directly to consumers and other retailers. Based on data supplied by the USAA, this exemption would exempt from the HACCP rule 80 percent of apple juice processors. (Ref. 13). Such an exemption would leave approximately 360 apple juice processors covered by both of these regulations, and all 1,800 would be covered by the labeling rule.

The OEI lists about 200 plants in the United States that produce core fruit (apple, crab apple, pear, quince, etc.) juice. If all of the 200 core fruit plants in the OEI are included in the USAA list and are not exempt, then there would still be an excess of 160 apple juice processing plants in the USAA list not exempt from the HACCP rule and an excess of 1,600 (1,800-2000) plants in the USAA list not exempt from the labeling rule. (Information from FDA's field inspections indicates that very few of these 160 plants will be exempted from the HACCP rule under the exemption for retailers of juice for immediate consumption. Almost none of the very small apple juice processing plants recently inspected by FDA retailed all of the juice that they produced at the same location that it was processed. See Table 21 for a description of the types of products and processors not covered.)

The agency is aware that there are also many very small orange juice processors who grow oranges and who also operate a juicing and bottling operation on the same property. However, the agency has no direct information on the number of such orange juice processors. The OEI lists about 300 plants in the United States that produce citrus fruit juice. In this analysis, the agency has assumed that there is an equivalent number (300) of very small processors who are not listed in the OEI. It is likely that the proportion of very small orange juice

processors to OEI citrus juice makers is lower than the proportion of very small apple juice processors to OEI apple juice makers because the growing region for oranges in the United States is far smaller than the region for growing apples.

FDA assumes for the purpose of this analysis, that 80 percent of these very small orange juice processors will be exempt from the HACCP rule based on their classification as retail establishments. This would leave 60 very small orange juice processors covered by both of these regulations, and all 300 covered by the labeling rule. FDA has assumed that there are no vegetable juice processors which are not in the OEI or which are not also very small processors of apple or orange juice as estimated above. FDA requests comments on these assumptions.

FDA has assumed that 5 percent (about 50 plants (900 x .05)) of all juice plants in the OEI would have implemented HACCP substantially in the form required by this regulation by the time that this proposed HACCP rule is finalized regardless of this regulatory action. Therefore, approximately a total of 1,070 plants (850 plants in the OEI plus 60 very small orange and 160 apple juice retailers) will be affected by the HACCP rule.

The labeling rule will cover retailers (roadside stands and grocery stores) of packaged minimally processed juice.

The agency does not have direct information on the number of supermarkets and grocery stores that produce and package at the point of sale and sell minimally processed juice. The agency believes that only a portion of chain supermarkets and grocery stores do so. Duns Market Identifier (DMI) lists approximately 9,400 chain supermarkets (SIC 54110101) and approximately 3,800 chain grocery stores (SIC 54119904) making a total of approximately 13,000 chain supermarkets and grocery stores. If 10 percent of these stores produce at the point of sale and sell packaged minimally processed juice, then approximately 1,300 chain grocery stores and supermarkets will be affected by the labeling rule. (In addition to these processors, there are other retailers that do not process juice but which offer for sale the juice produced by other processors, which should be labeled by the manufacturer.)

Due to publicity about the hazards associated with minimally processed juice, the agency believes that relatively few retailers are offering such products for sale. DMI lists approximately 3,100 independent supermarkets (SIC 54110103) and approximately 31,000 independent grocery stores (SIC 54119905) making a total of approximately 34,100 chain supermarkets and grocery stores. If 5 percent of these stores sell minimally processed packaged juice, then approximately 1,700 independent grocery stores and supermarkets will be affected by the labeling rule. The labeling rule will also affect roadside markets and stands that retail packaged minimally processed juice. For the purpose of this analysis, the agency assumes that there are 1,000 such roadside markets and stands. However, the assumptions that go into these calculations may be incorrect, and the agency specifically requests comments on them.

Table 22 shows the estimated number of establishments affected by each rule.

TABLE 22.—NUMBER OF PLANTS AFFECTED BY THE HACCP AND LABELING RULES

Plant Type	No. of Establishments Affected by HACCP Rule	No. of Establishments Affected by Labeling Rule
Juice manufacturers in the OEI	850	20[1]
Very small apple juice makers	160	1,600
Very small orange juice makers	60	300
Roadside retailers		1,000
Grocery stores and supermarkets processing and packaging at the point of sale		1,300
Total	1,070	4,220

[1] The number of juice manufacturers listed in the OEI affected by the labeling rule is small (20) because most of these manufacturers are already achieving a 5-log reduction. See Table 24.

5. Hourly Price of Labor

Throughout this analysis the hourly price of labor is taken to be approximately $13. This is estimated by taking the 1996 average hourly rural wage of $9.20 (Ref. 7) and increasing it by 40 percent (the average amount for benefit costs paid by employers) (Ref. 8), or $3.70 to account for such costs in addition to wages, such as Social Security, workers' compensation, unemployment insurance, paid leave, retirement and savings, health insurance, and supplemental pay.

6. Length of Production Period

The agency is aware that many juice processors operate on a seasonal basis. Information supplied by USAA indicates that 94 percent of the apple cider producers process only seasonally. The season for apple cider production runs primarily from September through December. The other 6 percent operate year round. Many other processors covered by the proposed HACCP rule (e.g., makers of beverage bases) may process year round. The agency has assumed that 50 percent of the 850 plants in the OEI plus all of the 220 very small juice makers affected by the HACCP rule produce seasonally. Table 23 shows the length of the production period for plants producing seasonally and year round.

TABLE 23.—PLANTS' PRODUCTION PERIOD

Production	Weeks of Operation per Year	Hours of Operation per Day	No. of Plants
Seasonal	16	12	645
Year Round	52	24	425
Total			1,070

B. Cost Estimates by Requirement

1. Costs have been estimated for the following sections of the labeling regulation:

(1) Signs or Placards (§ 101.17(f)(3)(i) (part 101 (21 CFR part 101))

(2) Container Labels (§ 101.17(f)(3)(ii))

2. Costs have been estimated for the following sections of the HACCP regulation:

(1) CGMP's (§ 120.5 (part 120 (21 CFR part 120))

(2) Prerequisite Program SOP's (§ 120.6)

(3) Hazard Analysis and HACCP Plan (§§ 120.7 and 120.8)

(4) Corrective Actions (§ 120.10)

(5) Validation and Verification (§ 120.11)

(6) Records (§ 120.12)

(7) Training (§ 120.13)

(8) Imports and Foreign Processors (§ 120.14)

1. Labeling Costs

This cost depends strongly upon producers' responses to the labeling requirements. Some producers may elect to comply early with the HACCP rule and avoid the warning labels or labeling. Others may choose to label until they are required to implement HACCP. Finally, some firms may choose not to produce juice products because they believe that either the cost of HACCP implementation or the negative effect on revenue generated by consumer response to labels may depress profits below a normal return for a substantial time period. Such producers will be better served by reinvesting their capital into more profitable ventures.

a. *Signs or placards (§ 101.17(f)(3)(i)).* The costs of signs and placards may be estimated by multiplying the number of establishments that must post placards by the cost per placard. As shown in Table 22 the agency estimates that the labeling rule covers approximately 4,220 plants. However, for the purpose of this analysis, the agency has assumed that all those processors that will at some point be required to implement HACCP will do so at the earliest possible date to avoid the warning labeling, or delay operation until they implement a 5-log pathogen reduction process.

The following analysis underlies this assumption. If displaying the warning can be avoided by beginning pasteurization (or an equivalent 5-log pathogen reduction process) sooner, some firms may marshal the resources to do so. FDA does not have data, however, that will allow it to predict how many firms will respond to this labeling regulation in this fashion. However, one way to examine this choice is examine the additional discounted costs of pasteurizing sooner. For example, if a small firm's cost of initiating pasteurization is about $18,000, with recurring costs of about $8,000, and the firm has an annual juice revenue of $200,000, then a total sales decline caused by the warning of 8 percent (a loss of approximately $16,000 discounted at a rate of 7 percent) or more spread over the course of 2 years (or approximately 4 percent for 2 years) would cause the firm to attempt to borrow the funds needed to initiate pasteurization 2 years early or to delay operation until it implements a 5-log pathogen reduction process. FDA's predictions of consumer reactions to the labeling (for the purposes of benefit estimations) are an expected loss of revenue of about 5 percent. Thus, there is a tentative conclusion that most firms that are not exempt from the HACCP rule will choose to implement a 5 log reduction in pathogens immediately rather than label and to delay operation until such processes have been implemented.

However, there are many uncertainties contained in this simple example. Because of the short time frame for labeling to begin, 60 days from publication of the final rule, many firms may not be able to purchase and install pasteurization equipment or find other means of validating a 5 log reduction in the target organism. It is unclear how manufacturers think that consumers will react to the warning signs, they may believe that their customers will not reduce their purchases of juice. Also, firms with larger sales or smaller pathogen reduction costs will need a smaller percentage sales decline from labeling in order to be induced to initiate 5 log pathogen controls early. Finally, it is unclear how many firms will have immediate access to the capital requirements imposed by this rule.

If, therefore, all processors which will eventually be covered by the HACCP rule do not label, then they have no direct labeling cost. The cost of the labeling rule to these processors is the extra expense that results from implementing HACCP 2 years earlier than would be required by the HACCP rule alone. This cost, as stated above, is $16,000 (discounted for 2 years at 7 percent). Of the 1,070 establishments covered by the HACCP rule, all of the 20 firms in the OEI which are also affected by the labeling rule (those estimated to be producing minimally processed juice) plus all of the 220 very small orange and apple juice processors covered by the HACCP rule are affected in this way (240 plants in all). The agency assumes, based on information from industry sources, that 30 percent of this set of processors (72 plants) have already initiated or are in the process of initiating pasteurization. Therefore, the total cost of the labeling rule for this set of processors is $2,688,000 ($16,000 x 168 plants).

The establishments that will need to display warning labeling are those 3,980 establishments covered by the labeling rule but not by the HACCP rule. Based on information learned from FDA's nutrition labeling rules, the average cost per placard (and periodic replacement) is estimated to be $100. This estimate will encompass the possibility that some firms may have to supply multiple signs to meet the requirement that it will be available at the point of purchase. Therefore, the total one-time cost for this set of processors is $398,000.

b. *Container labels (§ 101.17(f)(3)(ii)).* The cost of labeling is estimated by multiplying the number of affected separable labels on packaged products, normally referred to as stock keeping units (SKU's), by the cost of changing the label to add the warning. Table 24 shows FDA's estimate of the cost per SKU of placing a warning label on the information panel for different lengths of the compliance period. These costs decrease over time for several reasons. The primary reason is that manufacturers change labels or, at least, reorder them at regular intervals and a larger length of compliance period allows manufacturers to incorporate regulatory changes into planned changes.

TABLE 24.—LABEL CHANGE COSTS PER SKU FOR DIFFERENT LENGTHS OF THE COMPLIANCE PERIOD

	2 months	6 Months	1 Year	2 Years	3 Years
Administrative costs	$6,000	$1,800	$900	$450	$350
Redesign costs	$1,500	$450	$450	$50	$50
Inventory loss	$800	$250	$0	$0	$0

TABLE 24.—LABEL CHANGE COSTS PER SKU FOR DIFFERENT LENGTHS OF THE COMPLIANCE PERIOD—Continued

	2 months	6 Months	1 Year	2 Years	3 Years
Totals	$8,300	$2,500	$1,350	$500	$400

Processors of minimally processed packaged juice which are not covered by HACCP will need to add the warning to their package labels at the end of the 2-year compliance period. FDA estimates that 2,980 processors will be subject to this provision (1,440 very small apple juice retailers and 240 very small orange juice retailers exempted from the HACCP rule plus 1,300 grocery stores producing packaged juice). The total cost for this provision is $1,490,000 (2,980 x $500) at the end of the 2-year compliance period. For simplicity of reporting and calculation with the other labeling costs, this cost will be added as $1,301,000 (the present value of $1,490,000 discounted 2 years at 7 percent).

c. *Summary of likely labeling costs.* The agency estimates that the likely total cost of the labeling rule is a one-time cost of $4,387,000 ($2,688,000 + $398,000 + $1,301,000).

2. HACCP Costs

a. *CGMP's (§ 120.5).* This section of the proposal reaffirms the applicability of the CGMP's in part 110 in determining whether facility design, materials, personnel practices, and cleaning and sanitation procedures are safe.

No costs are attributed to this section for this rulemaking. The overwhelming majority of juice plants are in compliance with the CGMP's. In 1996 only 6 percent of the plants inspected were cited for official action. Therefore it is assumed that these rules will not have any effect on the enforcement of the CGMP's for juice products.

b. *Prerequisite program SOP's (§ 120.6).* FDA is proposing to require that processors control and document specific SOP's that provide a foundation for the HACCP system and to have and implement SOP's for prerequisite programs. In general, there are three activities that are part of prerequisite program SOP's: (1) Developing SOP's, (2) implementing sanitation controls with corrections of deviations from SOP's, and (3) monitoring and documenting for SOP's.

i. *Developing SOP's.* Each processor must have a sanitation SOP. FDA estimates that SOP's for juice plants could be developed with 20 hours of labor. At the rural hourly cost of labor ($13), the cost per plant of developing SOP's is approximately $260. If one half of the 900 domestic plants in the OEI and all of the 220 very small juice processors do not currently have SOP's, then they will have to develop them to comply with this regulation, if it is adopted. Under those assumptions, the total cost for the industry to develop SOP's would be approximately $174,200 ($260 x 670 plants).

ii. *Implementing sanitation controls with corrections of deviations from SOP's.* Each processor must implement a sanitation SOP and correct deviations from the prerequisite program SOP's in a timely fashion.

In 1996, 39 percent of the juice plants inspected were cited as VAI (voluntary action indicated). This citation usually indicates that an investigator noted deficiencies that were not significant enough to warrant an administrative or regulatory action but which should be corrected on a voluntary basis. Information from the inspection reports indicates that approximately 30 percent of the juice plants inspected had sanitation and food safety related deficiencies, 4 percent had deficiencies which were related to low-acid canned food regulations, and 4 percent had deficiencies for misbranding or mislabeling. Also in 1996, 6 percent of the juice plants inspected were cited as OAI (official action indicated). This citation indicates that an investigator noted deficiencies significant enough to recommend regulatory or administrative sanctions. Information from the inspection reports indicates that 3 percent of the juice plants had significant deficiencies that could be related to food safety or low-acid canned food regulations, 2 percent had significant deficiencies for misbranding or mislabeling.

On a few of the VAI inspection reports, FDA investigators indicated an estimate of the cost of correcting sanitation and food safety related deficiencies indicated. Two-thirds of the reports estimated costs of corrections at $0 to $99, and one-third of the reports estimated costs of corrections at $1,000 to $4,999.[8] Taking the middle of these ranges gives an average estimated cost of corrections of approximately $1,000 (($50 x 67 percent) + ($3,000 x 33 percent)) per plant for correcting sanitation and food safety related deficiencies.

The HACCP rule will mandate the implementation of daily monitoring of sanitation controls. This should make the correction of sanitation and food safety related deficiencies happen on the day that they occur rather than months later. Regulatory inspections of juice plants are made approximately once every 5 years. If food safety and sanitation related deficiencies occur on average approximately once every 5 years midway between inspections (to facilitate calculation), then the HACCP rule should cause corrections to be taken an average of 2.5 years earlier than would be the case without the rule. The cost of the rule, then, is not the full cost of taking the corrections. Those corrections would be taken even without the HACCP rule after the plant was inspected and the deficiencies noted. The cost of the HACCP rule is the present value of making the expenditures to correct the deficiencies at an earlier date than would take place otherwise. The present value of making an infinite series of $1,000 expenditures once every 5 years and 2.5 years earlier than they would otherwise occur is $500 when discounted at 7 percent.

Based on information from inspection reports, FDA assumes that about 30 percent of all 1,070 covered juice plants (about 320 plants) are not likely to have sanitation controls that are sufficiently implemented, but which do not warrant administrative or regulatory action. If it costs each of these 320 plants $500 to implement sanitation controls and to correct deviations from SOP's, then the total cost borne by the industry for this requirement is $160,000, which, because it is discounted, will be added as a one-time expenditure in the total costs.

iii. *Monitoring and documenting of SOP's.* All procedures in the prerequisite program SOP's are required to be conducted at the frequencies specified and implementation of these procedures will have to be monitored and documented.

FDA estimates that monitoring and documenting of SOP's will require one-half hour of labor per operating week. The cost per plant of SOP monitoring and documenting is given in Table 25.

[8] No reports estimated costs of $100 to $999.

TABLE 25.—ANNUAL PER PLANT COST OF SOP MONITORING AND DOCUMENTING

Production	Weeks of Operation per Year	Estimate Hrs. per Week for SOP Monitoring and Documenting	Wage ($/hour)	Estimate Annual SOP Monitoring and Documenting Cost per Plant
Seasonal	16	.5	$13	$100
Year round	52	.5	$13	$340

Table 26 shows the distribution of per plant and total industry costs based on the estimate in Table 25 for SOP monitoring and documenting needed to comply with this rule, if it is adopted. These estimates assume that no plants are currently in compliance with these particular requirements.

TABLE 26.—TOTAL ANNUAL COST OF SOP MONITORING AND DOCUMENTING

Production	Estimate Annual SOP Monitoring and Documenting Cost per Plant	No. of Plants	Estimate Annual SOP Monitoring and Documenting
Seasonal	$100	645	$64,500
Year round	$340	450	$153,000
Totals		1,095	$218,000

c. *Hazard Analysis and HACCP Plan (§§ 120.7 and 120.8).* Under the proposal, processors are required to have a written hazard analysis and to have and implement a written HACCP plan whenever a hazard analysis reveals a food hazard that is reasonably likely to occur. Requirements are set forth for the minimum contents of the plan and for the signing and dating of the HACCP plan by specified personnel. Failure of a processor to have and implement a HACCP system in compliance with this rule, if adopted, will render the food products of that processor adulterated.

i. *Hazard analysis and HACCP plan development.* Under the proposal, each plant is responsible for developing a written hazard analysis of hazards that are reasonably likely to occur in the product that a processor can control. The hazards to be considered are any chemical, physical, and biological hazards that may cause illness, injury, or death in humans. Plant management must determine the likelihood of occurrence of these hazards, either due to their introduction through material inputs or processing or a possible failure to eliminate them or to reduce them to acceptable levels in processing. Some Federal Government sampling and illness outbreak data are available to provide firms with a set of possible hazards that may affect a particular product and process. In addition, section V of this document, the accompanying appendix, and the preambles to these proposed rules contain information on most of the hazards that have caused problems in juice products in the past. Additional information may be forthcoming in the HACCP final rule (after FDA evaluates the comments). Experience from the HACCP pilot suggests that the hazard analysis for products similar to juice took 16 to 24 hours. FDA's preliminary estimate is that it will take approximately four individuals, including a plant manager; 5 hours each to complete the hazard analysis; and another 15 hours each to formulate the HACCP plan. The HACCP plan requires that the plant manager, quality control official and others establish critical control points (CCP's) for every hazard identified in the hazard analysis and critical limits at each CCP; establish a plan to monitor those CCP's; determine how deviations from critical limits will be handled; and establish procedures for verification and validation that the plan is being followed and that it is properly controlling the identified hazards. FDA assumes that part of this process will be to determine the most cost-effective means to comply with this regulation when developing the plan. Thus, the total number of person hours per plant to develop both documents is 80 hours. At $13 per hour the total cost per plant is about $1,000 per plant.

FDA has assumed that about 5 percent (50 plants) of all juice plants in the OEI will have implemented HACCP substantially in the form required by this regulation by the time that this regulation is finalized regardless of this regulatory action. This assumption is based on conversations with pilot plant firms who have indicated to FDA that many large firms have begun both to do HACCP and require HACCP of their suppliers. It is estimated that approximately 1,070 plants will need to do hazard analyses and develop HACCP plans to comply with this rule, if it is adopted. Therefore, the total cost of 1,070 plants at $1,000 each to develop a hazard analysis and a HACCP plan is approximately $1,070,000 million.

ii. *Pesticide HACCP controls.* Pesticides may be a component of material inputs that must be controlled. If a processor has direct knowledge of the amount of pesticide applied, either because the produce is from the processor's own farm or because records showing the application of pesticides accompanies the incoming produce, then the processor may control pesticide hazards by means of a supplier certificate. Under such an arrangement a supplier would only need to provide the processor with a certification that any pesticides had been properly applied to the produce so as not to exceed applicable tolerances. As each arrives at the processing plant, a worker will need to verify that the supplier for that shipment has supplied the processor with a proper and up-to-date certification. FDA assumes that verification of supplier certification requires 1 minute per shipment which, at $13 per hour, represents a cost per shipment of approximately $0.25.

FDA has estimated the number of shipments that will be verified in this manner by working backward from the amount of juice consumed. Annual juice consumption in the United States is 2.3 billion gallons (gal). The agency assumes that 80 percent of this total (1.84 billion gal) is produced by approximately 75 large firms (operating 225 plants). FDA believes that all large firms are currently doing a sufficient

amount of sampling and monitoring (or receiving supplier certificates) for pesticides. Therefore it is assumed that there are no costs for large firms to comply with this requirement. That leaves 20 percent of the total (460 million gal) produced by approximately 2,575 small and very small firms. FDA assumes that all small and very small firms use domestic produce only. If 15 pounds (lb) of produce are required to make 1 gal of juice, then small firms use 6.9 billion lb of domestic produce (460 million gal x 15 lb/gal). If 45,000 lb of produce (the amount carried by a typical tractor trailer) constitutes 1 shipment of produce, then small and very small firms use 153,000 shipments of produce (6.9 billion lb ÷ 45,000 lb/shipment).

However, for the purposes of this proposed regulation FDA is including as retailers very small businesses that make juice on their premises, whose total sales of juice and juice products do not exceed 40,000 gallons per year and who sell directly to consumers or directly to consumers and other retailers. This exemption decreases the percentage of juice processed under pesticide controls by approximately 14 percent thereby reducing the number of shipments of produce to 132,000 (153,000 x 86 percent).

FDA assumes that 80 percent of small and very small firms covered by the rule (676) will process shipments of produce that will be accompanied by supplier certifications of pesticide application after the HACCP rule is in place. Therefore, the number of shipments to be handled under prerequisite program controls is 106,000 (132,000 shipments x 80 percent) per year. Thus, this analysis assumes that the average small and very small plant receives approximately 160 (106,000 shipments ÷ 676 small plants) shipments per year. The total per plant cost is about $40 (60 shipments x $0.25/shipment) for the 676 small and very small plants that can control this issue in this way. Based on these calculations, the total marginal cost of this type of control for pesticides is approximately $27,000 ($40 x 676 plants).

If such records cannot be obtained, different types of controls need to be implemented. In this case, the processor must run pesticide residue tests to ensure that there are no pesticides either over tolerance or used on products for which there is no tolerance. To determine the frequency of such testing, processors may avail themselves of Government test results which indicate the likely variance of illegal residues over a particular crop or region.

Current records indicate that, for domestic crops, only about .25 percent (one-quarter of 1 percent) are out of compliance. Furthermore, as HACCP is adopted by more of the food industry, it is expected that records, for some types of produce, will routinely accompany produce intended for interstate commerce. However, many types of produce are currently commingled at different stages in the distribution network. This creates a problem for backtracking when there are either pesticide or pathogen problems.

There are two potential costs associated with ensuring that pesticide residues are legal: (1) Matching and shipping pesticide spray records with crops and (2) costs of multiresidue testing. If records are to accompany produce, fruits and vegetables may only be commingled if all of the commingled produce has records showing it is under tolerance. Otherwise, produce with paperwork must be kept separate from produce without such paperwork. In the latter case, if it is to be used to produce juice, multiresidue tests must be performed costing about $150 per test. Just as was calculated for supplier certificates, FDA calculates that there are 132,000 shipments which use 5,865 million pounds of produce that must be covered by pesticide controls. As 80 percent has been considered to be handled by supplier certificates, 20 percent of the remaining shipments must be covered by a sampling plan. Thus, of the 845 small plants total, 169 will cover an average of 160 shipments with a pesticide sampling plan. The number of shipments that must be tested is about 26,000 (132,000 x 20 percent) per year.

Because of the likelihood of a very low violation rate, approximately one-quarter of 1 percent, which is coupled with a maximum upper bound added risk of about 1 in a million lifetime cancer cases (see section V of this document), those processors who are unable to obtain supplier certificates should need to only sample lots periodically to ensure that such lots are in compliance. If the average number of shipments per plant per year is 160, processors could randomly sample 10 shipments per year and, assuming all were negative, could be assured with 80 percent confidence that there are no more than 14 percent violative lots in the entire season's produce input. Furthermore, if processors are turning up violative shipments, they are expected to take corrective action to prevent future shipments from being violative so that the rate of violative juice that reaches consumers is expected to stay extremely low. Thus, costs will be estimated for these processors based on 10 random samples per year at a cost of $150 per sample. Based on these calculations, the total marginal cost of pesticide testing is approximately $254,000 (10 tests x $150/test x 169 firms). Costs per plant are estimated to be an average of $1,500. Therefore, the total annual cost of pesticide control for the HACCP rule is $281,000 ($254,000 for pesticide testing + $27,000 for supplier certificate verification).

iii. *Pathogen HACCP controls.* Processors will need to include controls for microbial hazards in their HACCP plans and to implement these controls in their operations. Potential microbial hazards include both heat sensitive and heat resistant pathogens (and heat resistant toxins produced by pathogens), including viruses. However, FDA is interested in the safety of products as they are consumed, and any combination of controls that successfully controls pathogens will satisfy the requirements of this regulation. This regulation will allow each processor to choose the combination of control measures that cost-effectively controls microbial hazards. In addition, because of this ''performance'' nature of HACCP, manufacturers will be encouraged to continue to seek out and implement less costly and more effective methods.

Processors may attempt to control pathogens through other means, using a combination of several steps that are less effective separately, but which when used together will achieve adequate log reductions of pathogens. These methods may include control of contamination at the growing level, including use of potable water for irrigation, use of safe fertilizers, rejection of fruits dropped from trees onto the ground, and application of good sanitation practices during harvesting. Other controls that can be applied at the receiving, sorting, and processing levels include washing, brushing and sanitizing the product before extraction, acidifying the product, and using preservatives. FDA requests comments on potential costs and use of these or any other methods.

At present, pasteurization is the primary effective, commercially implemented method for controlling pathogens in juice. However, the agency is not proposing to require pasteurization in the proposed HACCP rule since other methods, either singularly or combined, may be as effective in achieving the 5-log reduction. However, the effectiveness and commercial feasibility of these other methods have not been established over a significant period of

time. It is possible that the effectiveness and feasibility of other methods will be established prior to the finalization of the HACCP rule, thus affording processors a less expensive means of pathogen control. To the extent that processors adopt other, less expensive pathogen controls, the costs for pasteurization estimated in this analysis will be an overestimate of the actual cost of the rule. The agency has estimated an option for carrying out pasteurization that it believes minimizes the cost of pasteurization. That is, the agency has estimated the costs of purchasing special, low cost pasteurizers designed for low-volume applications that are suited to small businesses. It is also worth mentioning that pasteurized juice products can be made using drops and culled produce, which significantly lowers the cost of the material inputs. Processes other than pasteurization may not be able to reduce pathogens sufficiently to accept this type of produce.

Another possibility, for which FDA has not estimated costs, is that processors that do not have pasteurizing equipment on site will ship their juice to a facility that can provide them with pasteurization and bottling service and then ship the bottled juice back for distribution. Juice and dairy plants are the facilities most likely to be able to provide this service. Purchasing the service of pasteurization may be a more cost-effective option for some juice processors.

In fact, some juice companies do contract out their juice making process. They blend the different varieties of raw produce for their product and then ship it to a processor. There the produce is washed and culled, pressed, pasteurized, bottled, and labeled. The juice is then picked up by the owner and distributed. Other juice companies have contracted out the pasteurization-bottling processes. They press the produce themselves, then ship the juice to a pasteurization-bottling facility to be pasteurized and bottled. Still other companies have contracted out the pasteurization process only. They press the produce themselves, then ship the juice to a pasteurization facility to be pasteurized, and then ship the pasteurized juice back in bulk for bottling and distribution. If some juice companies decide to take approaches similar to these in response to this rule, their operations will change fundamentally. Juice processors will choose the option which will result in the lowest marginal cost to produce juice. The agency has not included the estimate of the cost of contracting out pasteurizing because of: (1) The increased complexity of the HACCP plan to control for recontamination, (2) the problem of estimating processors' access to pasteurization equipment owned by other processors, and (3) the extra expense involved in transporting the products. All these cast serious doubt on the feasibility of this option for many very small processors. However, this analysis is uncertain and FDA would expect each manufacturer to examine the option of contracting their product to be pasteurized and taking advantage of this where it is less costly than purchasing their own equipment.

Another aspect of pathogen control which some processors may adopt, and for which FDA has not estimated costs, is juice refrigeration. Pasteurized juice which has not been heated to the degree so as to make it shelf stable must be refrigerated. This cost has not been investigated because the agency has assumed that producers of nonshelf stable juice are already refrigerating their products. The agency requests comment on this assumption and on the cost of refrigeration, if any, over and above that which is already being done.

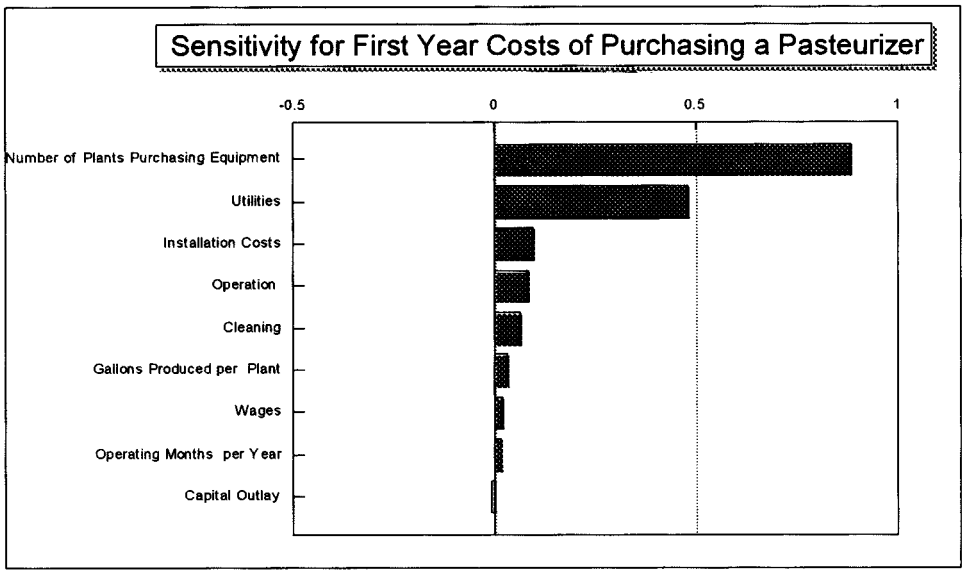
The costs of pasteurization vary depending on numerous factors, such as the capacity of the facility, and the amount of labor. In addition, there is uncertainty in the estimates of the number and size of the processors who will need to install pasteurization equipment, among other factors. Some makers of cider processing equipment are marketing pasteurization units for small processors. Medium sized pasteurization/heater/chiller units are reported to cost about $17,000 plus about $1,500 for installation. These units have the capacity necessary to meet the needs of a small processor producing about 400,000 gal of juice in a 4-month season.

Additionally, initial startup of pasteurization would require alterations in plant construction, design or layout to accommodate the additional processing step and equipment operator training. Also, there are operating expenses related to pasteurization including utilities, cleaning, maintenance and repair, and depreciation. Table 27 lists the parameter values that have been used in a Monte Carlo analysis to model the potential costs of installing and using pasteurization equipment by juice processors.

TABLE 27.—INPUTS AND RESULTS OF MONTE CARLO ANALYSIS OF INITIATING PASTEURIZATION

Parameter	10th Percentile	Mean	90th Percentile
Wage rates	$11.30	$13	$14.70
No. of operating months	2	6	9
Plant capacity (in gal)	34,000	74,000	124,000
Installation costs	$1,300	$1,500	$1,700
Cleaning hours (monthly)	52	60	68
Costs of the pasteurizer	$10,000	$17,000	25,000
Hours to operate (monthly)	26	30	34
Total Pasteurization Cost (per plant)	$18,200	$26,200	$34,800

The key variables that affect this analysis are shown in the ''tornado'' diagram, Figure 1.



For the purpose of this benefit-cost analysis, FDA has preliminarily concluded that it is unlikely that fresh orange (and possibly other citrus) juice processors will have to pasteurize their products to achieve a 5-log reduction when a HACCP program is adopted because of the nature of the fruits and the methods of juice extraction commonly used by industry. Therefore, costs for these processors are limited to the costs of creating and operating a HACCP system, not to purchasing pasteurizing equipment.

Of the 1,070 processors covered by the HACCP rule only a portion of these will need to initiate pasteurization. Table 28 shows FDA's assumption about the number of processors in the OEI of various types of juice that are not pasteurizing.

TABLE 28.—TYPES OF PLANTS CURRENTLY WITHOUT PASTEURIZATION

Type	No. Plants with Type as Primary Product	Best Estimate of Plants Minimally Processing
Berry	77	1
Citrus	211	10
Core	133	3
Mixed Fruit	36	1
Pit	31	1
Sub-tropical/tropical	29	1
Vine	2	0
Other	8	0
Beans/peas/corn	5	0
Fruits used as vegetables	41	1
Leaf/stem	8	0
Mixed vegetable	10	1
Root/tuber	8	1
Fruit beverage bases	37	0
Liquid fruit beverage bases	124	0
Combination true flavored and imitation flavored beverages	19	0
Liquid combination true flavored and imitation flavored beverages	55	0
Other beverage bases	28	0
Baby (infant and junior) fruits, juices and drinks	6	0
Totals	868	20

Of the 20 processors in the OEI assumed not to be pasteurizing, 10 of these are citrus juice processors and may not need to initiate additional controls beyond those already in place for controlling pathogens. That leaves 10 processors in the OEI assumed to need to initiate pasteurization. FDA's preliminary determination is that the 60 very small orange juice processors will not need to implement additional controls for pathogens than those already in place. Of the 160 very small apple juice processors the agency assumes, based on industry sources, that 30 percent (50) have already initiated or are in the process of initiating pasteurization because of both demand and supply effects.

The assumption that 30 percent of apple juice processors have already initiated pasteurization follows from the adverse publicity concerning unpasteurized juice. On the demand side, both consumers and retailers have become more aware of the hazards associated with unpasteurized juice over the last 5 years. From 1992 to 1997, in two national newspapers, the number of articles concerning the safety of apple juice doubled. On the supply side, producers have certainly become aware of the problems associated with their

unpasteurized juice both due to the efforts of FDA and from the news media. For example, in the five states with the largest number of apple juice processors (New York, Ohio, Michigan, Illinois, and Pennsylvania), articles in major newspapers about the safety of juice increased 13 percent between 1992 and 1997. This awareness constitutes action on the supply side as producers contemplate the potential liability and loss in sales (from a loss of goodwill) associated with producing a potentially unsafe product. That leaves 110 very small apple juice processors to implement pasteurization in order to control pathogens as required in the HACCP rule. Table 29 shows the first year total cost of pathogen control attributable to the HACCP rule.

TABLE 29.—FIRST YEAR COST OF PATHOGEN CONTROL ATTRIBUTABLE TO HACCP PROPOSAL

Processor Type	Cost per Plant	No. of Plants	Total
Very small apple juice processors	$18,200	110	$2,002,000
Juice processors in the OEI	$34,800	10	$348,000
Total			$2,350,000

Pasteurization will require ongoing costs for operation and maintenance. FDA estimates these annual costs for labor, utilities, and materials subsequent to the first year to be $7,000 per year for very small processors and $8,000 per year for processors in the OEI. These estimates can be derived from Table 27 by subtracting the cost of the pasteurizer and installation from the total pasteurization cost for the 10th and 90th percentile estimates. The total cost of pathogen control in subsequent years is given in Table 30.

TABLE 30.—SUBSEQUENT YEAR COST OF PATHOGEN CONTROL ATTRIBUTABLE TO HACCP RULE

Processor Type	Cost per Plant	No. of Plants	Total
Very small apple juice processors	$7,000	110	$770,000
Juice processors in the OEI	$8,000	10	$80,000
Total			$850,000

There are other costs that are related to processing for pathogen control. The pasteurization of juice causes changes in the characteristics of the products, primarily in terms of texture and taste. Some current consumers of nonheat-treated juice will bear the costs of losing a particular product as well as costs of searching for products with the characteristics that they prefer the most. Thus, one cost of these regulations is the loss of ''fresh'' juice, that is, juice that is not heat (or otherwise) processed. The appropriate measure of the loss of a product is the sum of producer and consumer surplus. Consumer surplus is a measure of the value that consumers obtain from a product. It is measured by what consumers would be willing to pay for a product over and above what they actually must pay. Producer surplus is a measure of the amount of rent producers receive, the price minus the cost of production. Measurement of consumer surplus depends on several factors that influence the shape of the demand curve; the most important one in this case being the substitutability of other juice products. If a product has close substitutes in the minds of consumers, the amount of both producer and consumers surplus is smaller. In addition, if there are attributes that consumers do not perceive or are not informed about, such as additional nutritional benefits associated with the lost product, there may be additional costs of losing that product. FDA has no information on how readily consumers will accept pasteurized juice in the place of fresh juice nor any other information that could be used to estimate that cost.

iv. *Glass and direct food additive HACCP controls.* FDA has not attributed any costs for control of glass or direct food additives even though these potential hazards are among those that are likely to be relevant for juice. There have been some recalls in recent years for each of these two hazards. However, glass is a food safety hazard that is readily recognized by consumers who can hold producers accountable for its presence in food. Thus, the agency believes that processors packing juice in glass are already currently implementing every feasible control for this potential hazard in order to limit their liability and to provide consumer protection. Additionally, although approximately 25 percent of the processing plants pack juice in glass containers, this number is diminishing rapidly for economic and safety reasons.

Regarding food additives, many juice products contain food or color additives for the purpose of coloring or extending product shelf life. However, the agency believes that processors using direct food additives in juice are already currently implementing sufficient controls for these potential hazards as they are strictly regulated by FDA.

Even though processors may need to institute some additional monitoring and recordkeeping for these hazards after implementing HACCP, the agency believes that the additional cost will be negligible. Therefore, there is zero marginal cost associated with control for direct food additives, and there is zero marginal cost (and zero marginal benefits) associated with HACCP controls for glass.

v. *Natural toxin controls.* Processors of juice using imported apple juice will need to implement controls for the natural toxin, patulin. Patulin is a natural toxin that is found in apple juice made from moldy apples and is a hazard that is more likely to occur in imported apple juice products. Processors of juice using imported apple juice will need to implement controls by testing for this toxin.

FDA has estimated the number of shipments that will be tested for patulin by working backward from the amount of apple juice imported. About 200 million gallons of apple juice are imported into the United States by 7 large firms (operating 23 plants) annually. FDA assumes that all small firms use domestic produce only. Therefore, there are no costs accruing to small firms from this requirement.

If 15 lb of produce are required to make 1 gallon of juice, then large firms use 3 billion lb of foreign apples imported in the form of apple juice (200

million gal x 15 lb/gal). If 45,000 lb of apples (the amount carried by a typical tractor trailer) constitute 1 shipment of apples, then large firms use 66,667 shipments of imported apples (3 billion lb ÷ 45,000 lb/shipment). Thus, this analysis assumes that the average number of imported apple shipments per year to each large plant (which are the likely importers) is approximately 2,900 (66,667 shipments ÷ 23 plants).

The agency does not know the current frequency of shipments of apples containing patulin at violative levels. However, the agency assumes that the 23 large plants will randomly sample 30 shipments per year at a cost of $150 per sample. The total marginal cost of patulin testing is approximately $104,000 (30 tests x $150/test x 23 firms). Costs per plant are $4,500. If any lots are found positive, costs will be incurred that are estimated in section VI.B.1.d.i of this document.

d. *Corrective actions (§ 120.10).*—i. *Corrective action plan.* Most processors will have a corrective action plan that specifies the appropriate action to be taken for the violation of each critical limit. If a processor does not have a corrective action plan then the processor must revalidate the HACCP plan whenever a deviation occurs.

The development of a corrective action plan for juice products is less expensive than revalidation after each deviation from a critical limit. FDA estimates that a corrective action plan for juice products can be developed in 4 hours with a cost per plant of approximately $50 (about 4 hours of management time).

Approximately 1,070 plants will develop corrective action plans to comply with this rule, if adopted. Therefore, the total cost of 1,070 plants at $50 each to develop corrective action plans is approximately $54,000.

ii. *Corrective actions.* The implementation of HACCP requires that corrective actions be taken when critical limits are violated although deviations should be infrequent. The agency is expecting that those juice plants that pasteurize will establish a minimum of two CCP's: One for pathogens and one for pesticides. Firms may already have established CCP's for metal or glass for which no marginal costs or benefits are counted in this analysis. In addition, processors using imported apple juice may need to establish a CCP for patulin. Citrus juice producers may establish three CCP's, culling, washing and brushing, and pesticides. This analysis has assumed that pathogens will be controlled by pasteurization for noncitrus juices. Pasteurizers are designed to sense the temperature at which the product comes out of the pasteurizer and automatically recirculate the product if it has not been heated sufficiently. Therefore, corrective actions for pasteurization should be so rare as to be negligible for this analysis. FDA believe that virtually all citrus processors are currently monitoring the culling, and washing and brushing steps. Based on data from FDA pesticide sampling, violations of critical limits for pesticide should also be rare.

Some plants may choose to have multiple critical limits for pesticides because of the nature of the hazard they present (i.e., chronic). The stringency of the corrective action could vary directly with the critical limits. For example, if the first (lowest) critical limit were exceeded, the corrective action could be to investigate the problem. A violation of a higher limit, possibly one that could present an acute problem, would cause the product to be destroyed. As an upper-bound estimate, this analysis will assume that: (1) Deviations of pesticide and natural toxin critical limits occur once per month in each plant in the first year and once per quarter in subsequent years, (2) each corrective action requires 1 hour of labor to resolve, and (3) the cost of reconditioning is $100 per corrective action. The cost per plant is highly dependent upon the number of months that the plant is in operation.

Assuming that seasonal plants operate 4 months per year and all other plants operate 12 months per year, Tables 31 and 32 show the estimated first year and subsequent year costs of corrective actions per plant as well as the distribution of costs and total industry cost for the corrective actions needed to comply with this rule, if adopted.

TABLE 31.—COST OF FIRST YEAR CORRECTIVE ACTIONS

Production	Months of Operation per Year	No. of Deviations per Month	No. of Labor Hours per Deviation	Wage ($/h)	Cost of Reconditioning per Deviation	Cost per Plant First Year	No. of Plants	Totals
Seasonal Year	4	1	1	$13	$100	$150	645	$97,000
Round	12	1	1	$13	$100	$260	425	$111,000
Totals							1,070	$208,000

TABLE 32.—COST OF SUBSEQUENT YEAR CORRECTIVE ACTIONS

Production	Months of Operation per Year	No. of Deviations per Year	No. of Labor Hours per Deviation	Wage ($/h)	Cost of Reconditioning per Deviation	Cost per Plant Subsequent Year	No. of Plants	Totals
Seasonal Year	4	.25	1	$13	$100	$40	645	$26,000
Round	12	.25	1	$13	$100	$70	425	$30,000
Totals							1,070	$56,000

e. *Validation and verification (§ 120.11).*—i. *Verification.* HACCP coordinators need to verify at least weekly by record review that the HACCP plan is being followed, and calibrate process-monitoring instruments weekly.

If record review for verification requires 1 hour per operating week and the calibration of instruments used for monitoring critical limits requires 1 hour per week, then the verification cost per plant per production cycle is given in Table 33.

TABLE 33.—COST OF VERIFICATION

Production	Weeks of Operation per Year	H per Week for Verification	Wage ($/h)	Verification Cost per Plant	No. of Plants	Totals
Seasonal	16	2	$13	$420	645	$271,000
Year round	52	2	$13	$1,350	425	$574,000
Totals					1,070	$845,000

ii. *Validation*. Processors will need to validate their HACCP plans during the first year after implementation and at least annually, or whenever any changes occur that could affect or alter the hazard analysis, or HACCP plan. Further, if the processor does not have a HACCP plan because there are no hazards that are reasonably likely to occur, the processor must reassess their hazard analysis when any significant changes occur. Examples of things that may change include: (1) Raw material specifications or sources of raw materials, (2) product formulation, (3) processing methods or systems, (4) packaging, (5) finished product distribution systems, or (6) intended consumers or use by consumers. The purpose of validation is to determine that the HACCP plan is adequate to control food-safety hazards.

Validation is intended to answer several specific questions. These include: (1) Have all hazards been identified, (2) have the most appropriate control measures been identified, (3) are the critical limits appropriate, (4) does the monitoring measure what is needed to determine that the critical limits are being met, (5) are the right records being collected to tell whether the system is working properly, (6) are the right corrective measures being taken to ensure that any defective product is controlled properly, and (7) are the verification procedures adequate to provide assurance that the plan is being followed? If the processor addresses each of these several questions and the response to each is positive, then the processor can say that his plan has been validated and is working.

Each processor's operation will be unique and will require a validation approach adapted to the specific operation. Each approach may need to involve multiple activities since there is no one measurement or indicator to use to validate the hazard analysis and the HACCP plan. There are several factors that have been considered to determine the potential costs associated with these activities.

Validation may only be performed by an individual who has received training in an FDA-approved course. However, no additional costs are assigned to this requirement because the same training that is needed to perform the hazard analysis and prepare the HACCP plan will meet this need and is estimated in section VI.B.2.f.g.i of this document.

No one type of validation will work for all processors of fruit and vegetable juices for all types of hazards. For example, validation that a pasteurizer is attaining the desired ''kill'' level for a particular type of product and volume will be considerably different from validating that illegal pesticide residues are not present in the product. Three potential types of validation activities are: (1) Reviewing HACCP documents and scientific literature, (2) challenge studies, and (3) product testing.

The trained individual may periodically review all plant HACCP documents, including the HACCP plan and the hazard analysis, to determine if they are consistent with scientific literature. It is expected that industry trade publications will serve as a ready source of this information. Challenge studies, such as for pasteurizing units, determine the limits of the processing equipment and the unique parameters that need to be set to achieve the desired results. However, in some cases, simply relying on manufacturers specifications will be sufficient. Finally, it is expected that at least some end-product testing will take place. If, for example, processors are unsure of residue levels because of pooled raw inputs, they will need to test some finished product. In addition, some processors may find it useful to perform periodic microbial testing of wash water or incoming raw product. However, because of the sporadic nature of many of the hazards that must be considered in these products, testing alone may not be sufficient validation.

FDA estimates that validation is likely to take place twice per year for the 425 plants that operate year round and once per year for the 645 plants that operate seasonally. Validation of the SOP's and HACCP plan is likely to require hiring a food science and technology consultant (presumably, the same person hired to perform other HACCP-related services) for the approximately 845 plants that are small businesses. The costs estimated are assumed to cover both human and capital costs to accomplish the mix of likely validation activities (literature review, challenge testing, and product or water testing). FDA estimates that such consultant services cost approximately $1,000 per validation in the first year (assuming that consultant's services cost $1,000 per day and that the validation process takes a single day of the consultant's time). The agency estimates that in subsequent years a consultant will be able to validate the system in one-half of a day. There are approximately 75 large firms operating 225 plants who are likely to have the resources available to perform the validation functions inhouse. For large firms, FDA estimates that validating SOP's and HACCP plans will require 25 percent of the level of effort taken for the original SOP and HACCP plan development ($600). Because FDA has assumed that about 5 percent (50 plants) of all juice plants in the OEI would have voluntarily implemented HACCP substantially in the form required by this regulation by the time this regulation is finalized, only 175 large plants are affected. Tables 35 and 36 give the estimated cost for validation in the first and subsequent years.

TABLE 34.—COST OF FIRST YEAR VALIDATION

Plant Type	Cost of SOP Development	Cost of HACCP Plan Development	Ratio of Validation to Development Level of Effort	Validation Cost per Plant	No. of Validations per Year	No. of Plants Affected	Total
Seasonal small businesses				$1,000	1	645	$645,000
Year round small businesses				$1,000	2	250	$500,000
Year round large businesses	$260	$2,100	.25	$600	2	175	$210,000
Total							$1,355,000

TABLE 35.—COST OF SUBSEQUENT YEAR VALIDATION

Plant Type	Cost of SOP Development	Cost of HACCP Plan Development	Ratio of Validation to Development Level of Effort	Validation Cost per Plant	No. of Validations per Year	No. of Plants Affected	Total
Seasonal small businesses				$500	1	645	$323,000
Year round small businesses				$500	2	250	$250,000
Year round large businesses	$260	$2,100	.13	$300	2	175	$105,000
Total							$678,000

f. *HACCP records (§ 120.12).*—i. *Monitoring and recordkeeping.* Processors will need to monitor CCP's and keep HACCP system records of observations at the CCP's. Even for those plants that have necessary controls in place, plants without HACCP are not likely to be doing the amount of monitoring and recordkeeping that HACCP requires. Therefore, all processors that have not already implemented HACCP will need to increase monitoring and recordkeeping activities.

If the additional monitoring and recordkeeping that needs to be done throughout the entire plant is equivalent to 5 percent of one worker's time (3 minutes per hour of operation per plant), then the cost is dependent on the number of days that the plant is in operation and the number of hours that it operates per day.

Assuming seasonal plants operate 12 hours per day for 120 days per year and year round plants operate 24 hours per day for 360 days per year, then Table 36 shows the annual cost of additional monitoring and recordkeeping per plant. It also shows the distribution of per plant costs and total industry costs for the additional monitoring and recordkeeping needed to comply with this proposed rule.

TABLE 36.—COST OF MONITORING AND RECORD KEEPING

Production	Hours of Operation per Day	Days of Operation per Year	Wage ($/h)	Percent Additional Time	Cost per Plant per Year	No. of Plants	Totals
Seasonal	12	120	$13	5%	$900	645	$581,000
Year round	24	360	$13	5%	$5,600	425	$2,380,000
Totals						1,070	$2,961,000

ii. *Record maintenance.* The records produced for this regulation will need to be maintained for use by both the processor and regulators.

Assuming record maintenance requires 1 h per week while the plant is being operated then the annual cost of record maintenance per plant is described in Table 37.

TABLE 37.—COST OF RECORD MAINTENANCE

Production	Weeks of Operation per Year	Hours per Week Maintaining Records	Wage ($/h)	Cost per Plant	No. of Plants	Totals
Seasonal	16	1	$13	$210	645	$135,000
Year round	52	1	$13	$680	425	$289,000
Totals					1,070	$424,000

iii. *Record storage.* Records produced for this regulation will need to be stored for use by both the processor and regulators. A single standard office file drawer should be sufficient to store the proposed records for the proposed duration. If for storage of the additional records each plant needs to purchase one standard office file cabinet at approximately $150 each, then the total cost of record storage for the 1,070 plants is approximately $161,000.

g. *Training (§ 120.13).*—i. *HACCP coordinator training.* Processors may need to employ a HACCP coordinator to carry out the duties specified for such a person. In order to train one employee at a 3-day course that has a curriculum consistent with FDA's standards, a processor will need to pay course tuition, travel and lodging (assuming that there is not a course in the immediate area), and replacement of the labor that the employee would have provided at the processing plant if the employee had not attended the course. Table 38 shows the estimated costs for each of these items and the estimated total cost per plant for training a HACCP coordinator.

TABLE 38.–COST OF HACCP COORDINATOR TRAINING

Tuition	Travel and Lodging	Foregone Labor Hours	Wage ($/h)	Total Cost per Plant
$500	$500	24	$13	$1,300

FDA estimates that if each of the 1,070 processing plants that are not currently estimated to have HACCP have a single employee trained by a course that is acceptable to the agency, then the total industry cost is $1,391,000 million.

ii. *Employee training in HACCP.* Each processor will need to train employees in their HACCP-related activities and may need to provide training for some employees to enable them to read and write English.

Each processor will need to train some of their employees as to how to perform their HACCP-related activities. From the OEI and the American Business Listing data, FDA has information on the distribution of employment for juice plants in the OEI. FDA has assumed that all of the 220 very small orange and apple juice processors employ three people on average. FDA has also assumed that the 50 plants that have implemented HACCP are the 50 plants with the largest number of employees. This analysis assumes that each plant must train 5 employees or 10 percent of their employees in HACCP-related responsibilities, whichever is greater. Table 39 describes the cost of training each employee for 8 hours annually, total employment in the affected plants and the total cost of this level of training.

TABLE 39.—COST OF EMPLOYEE TRAINING

No. of Annual Hours of Training per Employee	Wage ($/h)	Annual Cost per Employee	Average Plant Employment	No. of Employees Trained per Plant	No. of Plants	No. Plants With HACCP Imple-mented	Total No. of Employees Trained	Total
8	$13	$100	3	3	252	0	756	75,600
8	$13	$100	7	5	35	0	175	17,500
8	$13	$100	15	5	68	0	340	34,000
8	$13	$100	35	5	100	0	500	50,000
8	$13	$100	75	8	103	0	824	82,400
8	$13	$100	175	18	161	0	2,898	289,800
8	$13	$100	375	38	59	0	2,242	224,200
8	$13	$100	750	75	25	16	675	67,500
8	$13	$100	3,000	300	14	14	0	$0
8	$13	$100					8,910	$841,000

h. *Imports and foreign processors (§ 120.14).*—i. *Importers.* Information from the U.S. Customs Service indicates that approximately 120 importers import juice into the United States. The import provisions of the HACCP proposal will, in practice, cause importers to implement written procedures to ensure that the juice is produced under HACCP or equivalent safeguards. The importer may keep file copies of the foreign processor's HACCP plan, written guarantees that the product was produced in accordance with the HACCP plan, or certificates of inspection from foreign Governments. The importer may also have to inspect the foreign plant or test the imported product. Written records of all HACCP actions must be maintained by the importer. Some combination of records from the foreign processor and safeguards provided by the importer will become necessary to meet the requirements of this proposed rule. The agency estimates that the cost of these activities will be $10,000 per importer in early years, decreasing as memorandum of understandings with exporting countries are established.

ii. *Foreign juice processors.* The agency does not have any direct information on the number of foreign juice plants that export to the United States. However, approximately 75 percent of U.S. juice consumption is supplied by 900 plants in the OEI. Approximately 25 percent of U.S. juice consumption is supplied by foreign firms. This analysis assumes that the ratio of the number of domestic plants in the OEI to domestic production is equivalent to the ratio of the number of foreign exporters to foreign juice imports. The result of this assumption is an estimate of 300 foreign plants exporting to the United States that will need HACCP. FDA requests information from foreign governments and importers on the number of exporting juice plants in their respective countries.

Using this estimate for the number of juice exporting plants, if the cost per plant for initiating HACCP is same as for a large U.S. plant which is already pasteurizing juice (since all juice exported to the United States is pasteurized), then the first year cost per foreign juice exporter is approximately $26,000, and the cost in subsequent years is $22,000. Therefore the total cost in the first year for 300 foreign processors is approximately $8 million and approximately $7 million in subsequent years.

Table 45 in the Initial Regulatory Flexibility Analysis, which follows, shows typical costs for a large plant which has not already implemented HACCP. The agency assumes that these costs are representative of foreign plants exporting to the United States. The largest point of uncertainty in this estimation relates to the cost of employee training. The average domestic juice plant which employs 500 or more people has approximately 830 employees. This analysis assumes that 10 percent of these employees will need to be trained in HACCP-related duties. If training costs $100 per employee then the cost of employee training alone in a large plant is $8,300. Some plants employ more than 3,000 employees. For such a plant the cost of employee training would be $30,000. The agency request comment on the cost to foreign processors.

Table 40 lists types of juice exported to the United States and the various countries producing the juice. This is not a complete list of countries exporting juice to the United States, nor is it a comprehensive list of juice products.

TABLE 40.—SOURCES OF IMPORTED JUICE

Apple Juice	Grape Juice	Citrus Juice	Prune Juice	Pineapple Juice	Vegetable Juice
Argentina	Argentina	Argentina			
Australia		Australia			
Austria	Austria	Austria			
Belgium-Luxembourg	Belgium-Luxembourg	Belgium-Luxembourg	Belgium-Luxembourg		
		Belize			
	Brazil	Brazil		Brazil	
Canada	Canada	Canada	Canada		Canada
Chile	Chile				
Denmark					
		Dominican Republic			
France	France	France	France		
		Honduras		Honduras	
Hungary					
Israel	Israel	Israel			Israel
Italy	Italy	Italy			
		Jamaica			
		Japan			Japan
		Leeward/Windward Islands			
Mexico		Mexico		Mexico	
Netherlands					
New Zealand					
				Philippines	
Germany	Germany	Germany	Germany		
		South Korea			
				Singapore	
Spain					
Switzerland					Switzerland
				Taiwan	Taiwan
				Thailand	
Turkey					
Yugoslavia					

Table 40 is provided to give information about the scope of countries and products covered by these rules. The agency believes that a high estimate of the number of firms exporting juice to the United States is 300. Because the quality of the juice must be maintained during transport, all juice exported to the United States is currently processed in such a way so as to appropriately address potential pathogens. However, the agency has no information to suggest that any foreign juice processors have implemented HACCP in their operations.

C. Summary of Costs for Labeling and HACCP Rules

The total quantified costs are approximately $26 million in the first year and $15 million in all subsequent years. There will be a substantial impact on those processors who are producing minimally processed juice in that some will stop making the product, some will implement HACCP, and some will label. Table 41 summarizes costs of the rules by provision.

TABLE 41.—TOTAL FIRST YEAR AND RECURRING COST PER ACTIVITY

Activity	First Year Costs	Recurring Costs
Labeling Costs	$4,387,000	
Develop SOP's	$174,000	
Sanitation SOP's	$160,000	
Monitoring and documenting for SOP's	$218,000	$218,000
Hazard analysis and HACCP plan	$1,070,000	
Pesticide controls	$281,000	$281,000
Pathogen controls	$2,350,000	$850,000
Natural toxin controls	$104,000	104,000
Corrective action plan	$54,000	
Corrective actions	$208,000	$56,000
Verification	$845,000	$845,000
Validation	$1,355,000	$678,000
HACCP monitoring and recordkeeping	$2,961,000	$2,961,000
Record maintenance	$424,000	$424,000
Record storage	$161,000	
HACCP coordinator training	$1,391,000	
Employee training	$841,000	$841,000
Importers	1,200,000	600,000
Foreign processors	8,000,000	7,000,000
Totals	$26,184,000	$14,858,000

VII. Summary of Benefits and Costs

FDA has examined the costs and benefits of the proposed rules as required under Executive Order 12866. FDA finds that the costs and benefits of these rules have different values in subsequent years such that, to compare them properly, they must be discounted to the present year (the point at which a decision must be made). The quantified benefits (discounted annually at 7 percent) are expected to range from $3 billion to $ 4 billion and the quantified costs (discounted annually at 7 percent) are expected to be $240 million.

VIII. Initial Regulatory Flexibility Analysis

FDA has examined the impact of the two proposed rules as required by the RFA (5 U.S.C. 601–612). If a rule has a significant impact on a substantial number of small entities, the RFA requires agencies to analyze options that would minimize the economic impact of that rule on small entities. The agency acknowledges that these proposed rules are likely to have a significant impact on a substantial number of small entities.

A. Objectives

The RFA requires a succinct statement of the purpose and objectives of any rule that will have a significant impact on a substantial number of small entities.

The warning label proposal responds to the need to alert consumers to the potential risk of foodborne illness from consumption of juice products not pasteurized or otherwise processed to destroy pathogens that may be present. FDA is proposing to require warning labels on such juice products to inform consumers of the potential hazard of pathogens in such products; such labeling will not be required for juice that is processed to achieve a 5-log reduction. Once HACCP is implemented, the warning labeling will no longer be required for those products covered by the HACCP rule. The HACCP rule is being proposed to ensure that juice manufacturers control all physical, chemical, and microbial hazards in their products.

B. Definition of Small Business and Number of Small Businesses Affected

The RFA requires a statement of the definition of small business used in the analysis and a description of the number of small entities affected.

Table 42 shows the definition of small business for each type of establishment affected and a description of the number of small entities affected by each of the rules. The agency has accepted the Small Business Administration (SBA) definitions of small business for this analysis.

TABLE 42.—APPROXIMATE NUMBER OF SMALL PLANTS COVERED BY THESE RULES

Type of Establishment	Standard Industry Classification Codes	SBA Definition of Small by Category	Percentage of Category Defined as Small by SBA	No. of Small Establishments Covered by HACCP Rule	No. of Small Establishments Covered by Labeling Rule
Juice manufacturers in the OEI	2033, 2037	Less than 500 employees	75%	675	20

TABLE 42.—APPROXIMATE NUMBER OF SMALL PLANTS COVERED BY THESE RULES—Continued

Type of Establishment	Standard Industry Classification Codes	SBA Definition of Small by Category	Percentage of Category Defined as Small by SBA	No. of Small Establishments Covered by HACCP Rule	No. of Small Establishments Covered by Labeling Rule
Roadside-type apple juice makers	2033, 2037	Less than 500 employees	100%	160	1,600
Roadside-type orange juice makers	2033, 2037	Less than 500 employees	100%	60	300
Grocery stores and supermarkets processing at the point of sale	5411	Less than $20,000,000 per yr.	85%		1,100
Grocery stores and supermarkets	5411	Less than $20,000,000 per yr.	85%		1,450
Totals				895	4,470

C. Description of the Impact on Small Entities

1. Costs to Small Entities

Because there is a broad distribution of products covered, firm types, current processing practices and sizes, it would be misleading to report average per firm costs. However, some idea of the costs can be gained from the following examples. The impacts that the costs will have on a firm will vary depending on the total revenue derived from juice by a firm and the profit (return on sales) associated with juice production. Data on food manufacturing firms indicates that 75 percent of firms have return on sales of less than 5 percent.

The first example (Table 43) is of a small apple cider plant that is now producing nonheat-treated juice, buying commingled fruit, and has not developed or implemented sanitation SOP's. This plant will need to buy a pasteurizer (or find and validate a different process that achieves a 5-log reduction) and do some pesticide testing. The next example (Table 44) is a small plant that is producing pasteurized orange juice year round with fruit from a known source, and that has already developed and implemented sanitation SOP's (except that records have not been kept on SOP's). These two plants can be compared to a very large apple juice plant (Table 45) that imports some apples and therefore must test for patulin, and has not developed or implemented sanitation SOP's.

TABLE 43.—COSTS FOR ILLUSTRATIVE SMALL APPLE CIDER PROCESSOR

Type of Cost	Cost in First Year	Cost in Subsequent Years
Develop SOP's	$260	
Sanitation SOP's	$500	
Monitoring and documenting of SOP's	$100	$100
Hazard analysis and HACCP plan	$1,000	
Pesticide testing controls	$1,500	$1,500
Pathogen controls	$18,200	$7,900
Corrective action plan	$50	
Corrective actions	$150	$40
Verification	$420	$420
Validation	$1,000	$500
HACCP monitoring and recordkeeping	$900	$900
Record maintenance	$210	$210
Record storage	$150	
Training of coordinator	$1,300	
Employee training	$300	$300
Totals	$26,000	$11,900

TABLE 44.—COST FOR ILLUSTRATIVE SMALL ORANGE JUICE PROCESSOR

Type of Cost	Cost in First Year	Cost in Subsequent Years
Monitoring and documenting of SOP's year round	$340	$340
Hazard analysis and HACCP plan	$1,000	
Pesticide controls	$60	$60
Corrective action plan	$50	
Corrective actions	$260	$70
Verification	$1,350	$1,350
Validation	$2,000	$1,000
HACCP monitoring and recordkeeping	$5,600	$5,600
Record maintenance	$680	$680
Record storage	$150	
Training of coordinator	$1,300	
Employee training	$300	$300

TABLE 44.—COST FOR ILLUSTRATIVE SMALL ORANGE JUICE PROCESSOR—Continued

Type of Cost	Cost in First Year	Cost in Subsequent Years
Totals	$13,100	$9,400

TABLE 45.—COSTS FOR ILLUSTRATIVE VERY LARGE APPLE JUICE PROCESSOR

Type of Cost	Cost in First Year	Cost in Subsequent Years
Develop SOP's	$260	
Sanitation SOP's	$500	
Monitoring and documenting of SOP's	$340	$340
Hazard analysis and HACCP plan	$1,000	
Natural toxin control	$4,500	$4,500
Corrective action plan	$50	
Corrective actions	$260	$70
Verification	$1,350	$1,350
Validation	$1,200	$1,200
HACCP monitoring and recordkeeping	$5,600	$5,600
Record maintenance	$680	$680
Record storage	$150	
Training of coordinator	$1,300	
Employee training	$8,300	$8,300
Totals	$26,000	$22,000

2. Professional Skills Required for Compliance

The RFA requires a description of the professional skills required for compliance with this rule. Table 46 describes the professional skills required for compliance with the various activities required by this rule.

TABLE 46.—PROFESSIONAL SKILLS REQUIRED FOR COMPLIANCE

Required Activity	Section of Proposal	Professional Skills Required for Compliance
Developing prerequisite program SOP's	§ 120.6	Managers familiar with incoming materials and plant sanitation
Implementing sanitation controls with corrections of deviations from prerequisite program SOP's	§ 120.6	Production workers who are able to maintain the sanitation controls as described in the sanitation SOP's and supervisors or managers who can determine what corrective actions are necessary for deviations from SOP's
Monitoring and documenting of prerequisite program SOP's	§ 120.6	Production workers who are appropriately trained to monitor and keep records on observations and measurements for prerequisite program SOP's
Developing hazard analysis and HACCP plan	§§ 120.7 and 120.8	Supervisors or managers who fulfill the role of HACCP coordinator as well as microbiologists, chemists, and attorneys
Implementing pesticide controls	§§ 120.7 and 120.8	Production workers who are appropriately trained to carry out tests, to monitor, and to keep records on observations and measurements at critical control points
Implementing pathogen controls	§§ 120.7 and 120.8	Production workers who are appropriately trained to monitor and keep records on observations and measurements at critical control points
Taking corrective actions	§ 120.10	Production workers who are trained to take corrective actions described in corrective action plans and supervisors or managers who can determine what corrective actions are necessary for deviations from critical limits
Verification	§ 120.11	Supervisors or managers who fulfill the role of HACCP coordinator
Validation	§ 120.11	Food scientists or food technologists who can perform a scientific review of the process
Monitoring and recordkeeping	§ 120.12	Production workers who are appropriately trained to monitor and keep records on observations and measurements at critical control points
Record maintenance	§ 120.12	Clerical or production workers
HACCP coordinator training	§ 120.13	Supervisors or managers who fulfill the role of HACCP coordinator
HACCP employee training	§ 120.13	Clerical and production workers

TABLE 46.—PROFESSIONAL SKILLS REQUIRED FOR COMPLIANCE—Continued

Required Activity	Section of Proposal	Professional Skills Required for Compliance
Imports	§ 120.14	Clerical workers as well as supervisors or managers who fulfill the role of HACCP coordinator

3. Recordkeeping requirements

The RFA requires a description of the recordkeeping requirements of the proposed rule. Table 47 shows the provisions for which records need to be made and kept by small businesses, the number of small businesses affected, the annual frequency that the records need to be made, the amount of time needed for making each record, and the total number of hours for each provision in the first year and then in subsequent years.

TABLE 47.—SMALL BUSINESS RECORDKEEPING REQUIREMENTS

Provision	No. of Small Entities Keeping Records	Annual Frequency	Hours per Record Small Entity	Total Hours, First Year	Total Hours, Subsequent Years
120.6 Monitoring and recordkeeping of SOP's	670	16	.5	5,400	5,400
	225	52		5,900	5,900
120.7 and 8 Hazard analysis and HACCP plan	895	1	80	71,600	0
120.8 Pesticide controls by supplier certificate	676	227	.02	3,100	3,100
120.11 Verification	670	16	2	21,400	21,400
	250	52		26,000	26,000
120.11 Validation	670	1	8 (first yr)	5,400	2,700
	250	2	4 (subsequent yr)	4,000	2,000
120.12 HACCP records	670	1,440	.05	48,200	48,200
	250	8,640		108,000	108,000
120.12 Record maintenance	670	16	1	10,700	10,700
	250	52		13,000	13,000
Totals				323,000	246,000

D. Minimizing the Burden on Small Entities

The RFA requires an evaluation of any regulatory overlaps and regulatory alternatives that would minimize the costs to small entities.

There are two alternatives that the agency has considered to provide regulatory relief for small entities. First, FDA considered and is proposing the option of exempting some small entities from the requirements of these rules. Second, FDA considered and is proposing the option of lengthening the compliance period for small entities.

1. Exempt Small Entities

One alternative for alleviating the burden for small entities would be to exempt them from the provisions of these rules. FDA is proposing to exempt retailers who, for the purposes of this rule, the agency has tentatively decided will include very small businesses that make juice on their premises and whose total sales of juice and juice products do not exceed 40,000 gallons per year and who sell directly to consumers or directly to consumers and other retailers.

Revenue from sales of 40,000 gallons of nonheat treated juice may be approximately $160,000 with annual profits ranging from $1,600 to $16,000 per year (1 percent to 10 percent). This exemption covers most of the very small businesses, although less than 15 percent of the volume of unpasteurized juice. However, packaged products sold by these types of retailers are covered under the labeling rule. FDA requests comments on this exemption.

2. Extend Compliance Period

FDA has also proposed a tiered, extended compliance period giving the smallest firms the most time to comply with the HACCP rule, if such rule is adopted. The proposed labeling rule, however, requires either label changes on the product or labeling 60 days after publication of the final rule. It is proposed that small businesses be allowed to use signs and placards for an extended period before changing the labels on their products. Small and very small firms that produce packaged juices may continue to use signs and placards to display the warning instead of placing the warning on the label of the product until January 1, 2001. On that date all firms producing packaged juice that is not processed with a 5-log reduction must display the warning on the product label. A longer compliance period allows firms to finance large fixed costs out of retained earnings. For a regulation of general applicability across a sector of the economy, it is difficult for firms obtain loans to finance regulatory costs, partially because no increases in profits are expected that could be used to repay the loan. This may be particularly troublesome for small firms that must finance the costs of HACCP controls. FDA is unable to quantify the cost savings of the extended compliance period although one effect of the cost savings will be to reduce small firm failure.

E. Summary

FDA has examined the impact of these proposed rules on small businesses in accordance with the RFA. This analysis, together with the rest of the preamble and the Preliminary Regulatory Impact Analysis, constitutes the preliminary RFA. FDA has determined that these rules are likely to have a significant impact on a substantial number of small entities.

IX. References

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

1. Bean, Nancy H., and Patricia M. Griffin, ''Foodborne Disease Outbreaks in the United States, 1973–1987: Pathogens, Vehicles, and Trends,'' *Journal of Food Protection*, vol. 53 (September), p. 805.

2-3. Buzby, J., et al., *Bacterial Foodborne Disease: Medical Costs and Productivity Losses* (AER–741), U.S. Department of Agriculture, 1996, p. 42.

4. *Estimating the Value of Consumers' Loss from Foods Violating the FD&C Act*, vol. II, Final Report, September 1988, FDA Contract No. 233–86–2097, p. D–12–13.

5. Cohen, M. L., R. E. Fountaine, R. A. Pollard, S. D. Von Allmen, T. M. Vernon, and E. J. Gangarosa, ''An Assessment of Patient-Related Economic Costs in an Outbreak of Salmonellosis,'' *New England Journal of Medicine*, vol. 299, no. 9, 1978, pp. 459–460.

6. Council for Agricultural Science and Technology, *Foodborne Pathogens: Risks and Consequences*, Task Force Report No. 122, September 1994, p. 51.

7. Personal communication of Gibbs, R., ERS/USDA to David Zorn, Rural Wage for '96, April 22, 1997.

8. Bureau of Labor Statistics, U.S. Department of Labor, ''Employer Costs for Employee Compensation—March 1996,'' U.S. Department of Labor: 96–424, p. 1.

9. Food and Drug Administration, Williams, R., et al., ''Appendix: Preliminary Investigation into the Morbidity and Mortality Associated with the Consumption of Fruit and Vegetable Juices,'' October, 31, 1997.

10. Food and Drug Administration, Zorn, D., and K. Klontz, ''Appendix: The Value of Consumer Loss Relating to Foodborne Reactive Arthritis,'' February 2, 1998.

11. Food Marketing Institute, *Trends in the United States: Consumer Attitudes & the Supermarket, 1996*. Washington, DC: Food Marketing Institute.

12. U.S. Department of Agriculture, *Food and Nutrition Intakes by Individuals in the United States, 3 Days, Continuing Survey of Food Intakes by Individuals, 1989–1991*).

13. Letter from Julia Stewart Daly, U.S. Apple Association to Dr. John E. Kvenberg, FDA, August 14, 1997.

X. Requests for Comments

Interested persons may, on or before May 26, 1998, submit to the Dockets Management Branch (address above) written comments regarding this preliminary regulatory impact analysis on aspects related to labeling for juice and juice products and by July 8, 1998, on aspects of this analysis related to HACCP for juice and juice products. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket numbers found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 24, 1998.

Michael A. Friedman,

Lead Deputy Commissioner for the Food and Drug Administration.

Donna E. Shalala,

Secretary of Health and Human Services.

The following are the appendices to the Preliminary Regulatory Impact Analysis and Initial Regulatory Flexibility Analysis of the Proposed Rules to Ensure the Safety of Juice and Juice Products.

BILLING CODE 4160–01–F

Appendix:

The Value of Consumer Loss Relating to Foodborne Reactive Arthritis

Prepared by David J. Zorn. Karl Klontz supplied key data.

February 2, 1998

Introduction

This appendix details the calculation of economic losses to consumers from developing reactive arthritis (ReA) as a result of a foodborne *Salmonella* infection. The agency requests comments on all aspects of this appendix, especially the link between ReA and *Salmonella* infections and any variation in that link with the different *Salmonella* species.

This study has relied primarily on the work of Thomson, et al. to describe ReA in terms of attack rate, severity and duration. This study was chosen because it represents the most recent primary research into this issue. The study is of post-*Salmonella*-infection ReA in a point source cohort concurrently exposed to the same microorganism. Because the study is specific to a *Salmonella* outbreak, any variation related to ReA resulting from infections of other pathogens is eliminated. Because the study is based on epidemiological follow-up of an outbreak of foodborne illness rather than reviews of clinical reports and medical records, its results are well suited to applying to epidemiological data on cases of *Salmonella* related to juice consumption.

I. Description of Foodborne Relationship

Reactive arthritis commonly occurs in young men and women (and sometimes children). ReA refers to pain, stiffness, redness or swelling in a joint resulting from a previous infection, usually involving the digestive or genito-urinary systems such as *Salmonella*, *Yersinia*, *Shigella* and *chlamydia* infections. (Ref. http://text.arthritis.ca/types/reactive.html)

II. Description of ReA

Stiffness and pain are often worse in the morning. Arthritis most often occurs in the joints of the lower limbs (knees, ankles, toes), but the upper limbs can also be involved. Problems may be in the joints only or involve other body systems such as the eyes, skin, or tendons. Occasionally there is heel pain where the Achilles tendon attaches to the bone, or underneath the foot where the tendons supporting the arch of the foot attach to the heel. Sometimes there is back pain resulting from involvement of the sacroiliac joints.

Women may develop cervicitis (irritation of the cervix) but there may be no symptoms. In men urethritis (discharge from the urethra, difficult or painful urination) may develop. Painful or painless skin ulcers may appear in the mouth, or on the penis, or vagina. These features are similar to those in Reiter's syndrome. Problems with the eyes may result in mild or severe symptoms including pain or sensitivity to sunlight. Sometimes these problems occur many months prior to the onset of joint problems.

Sometimes the disease is self-limiting, meaning it goes away with no remaining problems. Other people have recurrent attacks. Most people manage well with treatment. Ongoing joint problems may result in stiff joints and weak muscles and it often becomes difficult to fully straighten the joints.

Treatments

1. Medication
Short-term antibiotics (usually tetracycline) are sometimes used to treat the initial infection. Non-steroidal anti-inflammatory drugs (NSAIDs), most commonly Voltaren¨ (diclofenac) or Indocid¨ (indomethacin), are used to treat joint problems. Intra-articular steroid injections can help the pain and swelling in single joints. Occasionally, stronger medications such as RheumatrexTM (methotrexate) are used.

Eye problems should be managed jointly by a rheumatologist and an ophthalmologist (eye specialist). Treatment for eye problems is usually steroid drops but oral corticosteroids are sometimes needed in more severe cases.

2. Heat/cold

3. Exercise

4. Protecting Joints
Protecting joints means using joints in ways that avoid excess mechanical stress from daily tasks. There are three main techniques for protecting joints:

Pacing: alternating heavy or repeated tasks with easy tasks or breaks.

Joint Position: using joints in the best way to avoid extra stress. For example, using larger, stronger joints to carry loads, such as a shoulder bag instead of a hand-held purse, and avoiding keeping the same position for a long time.

Helpful Devices: such as canes, luggage carts, grocery carts, special chairs, etc., can help perform daily tasks. Small appliances such as microwaves, food processors and bread makers can be useful in the kitchen. Grab bars and shower seats are important protection against falls.

5. Weight Control

Lifestyle
Along with the physical symptoms of RA, many people experience feelings of helplessness and depression. (Ref. http://text.arthritis.ca/types/reactive.html)

III. Percent of Cases

The incidence of ReA following *Salmonella* infection is often reported to be about 1-2%. Thomson et al. found an incidence of 6.6% (27/411).[1] This is consistent with studies of other epidemics where a dysenteric population forms the inception cohort. The greater incidence reflects the methodology of surveying an entire dysenteric population.

Of those persons with *Salmonella* infections 2.2% (33% of the total that developed ReA) experienced pain that resolved completely within 4 months. Another 2.4% (37% of the total that developed ReA) experienced flares and remissions of pain with periods of wellness in between. Another 1% (15% of the total that developed ReA) experienced waxing and waning of symptoms

[1] Percentages have been recalculated based on the actual number of persons contacted in the 5 year follow-up survey (411) instead of the number of persons which originally experienced acute gastroenteritis (423).

with no periods of wellness. Finally, 1% (15% of the total that developed ReA) experienced chronic unremitting pain.

IV. Duration

Of those persons who experienced pain that resolved completely within 4 months, 22% (2/9) were asymptomatic within 7 days, 67% (6/9) were asymptomatic within 28 days, 11% (1/9) were asymptomatic within 120 days. If symptoms resolved three quarters of the way through each of these periods (i.e., 5 days, 20 days, and 80 days respectively), then the weighted average duration for this group is about 25 days.

Persons in the other categories were still experiencing symptoms 5 years after the onset of the gastrointestinal illness. The duration of ReA in such patients is taken to be for the rest of their lives. Thomson et al. found that the mean age of onset of ReA was not statistically different from the mean age of the infected population. Information from CDC indicates that in 1996 the average age of persons contracting salmonellosis is 27. Using an average life span of 77 years, the average person developing long term ReA following a *Salmonella* infection will experience symptoms for 50 years (18,250 days).

V. Functional Status Codes and Disutility

In order to quantify the disutility that individuals experience from developing ReA, the reduction in mobility and physical and social activity must be scaled. This study uses one type of scaling of these effects following the work of Bush et al. Individuals who become ill experience different levels of functional status in terms of mobility, ability to do other physical activity, and ability to engage in social activities. Functional status disutility represents a degree of departure from perfect functionality.

According to Thomson et al. "Two thirds [18 out of the 27 that developed ReA] continued to have subjective complaints, mostly of minor significance. However, symptoms were severe enough to force a change in work for 4 patients [15%]." The other third showed signs and symptoms of active inflamation that resolved within a 4 month period with no late exacerbations.

Course of Disease	Percent of Total ReA Patients
Resolved Pain within 4 Months	33%
Flares and Remissions with Periods of Wellness	37%
Waxing and Waning with No Periods of Wellness	15%
Chronic Unremitting Pain	15%

For the two categories of patients where there is no indication of change in the course of the illness during its duration (regardless whether the duration is 1 month or 50 years) the functional status code of L35 is assigned. These patients experience no change in mobility but suffer a reduction in physical and social activity.

For the two remaining categories of patients where there is an indication of change in the course of the illness a combination of the functional status codes L41, L42 and L43 is assigned. For the 15% of ReA patients which never experience periods of wellness, codes L41 and L42 were assigned in equal portions ((L41 x .5) + (L42 X .5)). For the 37% of ReA patients which do experience periods of wellness, codes L41, L42 and L43 were assigned in equal portions ((L41 x .33) + (L42 X .33) + (L43 X .34)).

Function Status Level	Mobility	Physical Activity	Social Activity	Level of Disutility
L35	Drove car & used transportation without help	Walked with physical limitations	Limited in work, school, or housework	.3980
L41	Drove car & used transportation without help	Walked without physical limitations	Did work, school, or housework, but other activities limited	.3145
L42*	Drove car & used transportation without help	Walked without physical limitations	Did work, school, or housework, and other activities	.2567
L43*	Drove car & used transportation without help	Walked without physical limitations	Did work, school, or housework, and other activities	.0000

* Code 42 is used whenever the mobility, physical activity and social activity conditions apply and a person is experiencing a symptom. Code L43 is used whenever the mobility, physical activity and social activity conditions apply and a person is experiencing no symptoms.

Course of Disease	Percent of Total ReA Patients	Functional Status Disutility
Resolved Pain within 4 Months	33%	.3980
Flares and Remissions with Periods of Wellness	37%	.1885
Waxing and Waning with No Periods of Wellness	15%	.2856
Chronic Unremitting Pain	15%	.3980

VI. Symptom/Problem Code and Disutility

Additionally, in order to quantify the disutility that individuals experience from developing ReA, the pain and suffering must be scaled. Again, this study uses the scaling of these effects by Bush et

al. Individuals who become ill experience disutility due to the symptoms of illness.

The characteristic pain symptoms of arthritis can be described as pain, stiffness, numbness, or discomfort of neck, hands, feet, arms, legs, ankles, or several joints together. This description corresponds to the Bush et al. Symptom/Problem Complex code of 19. Therefore, the level of symptom-related disutility assigned to each category of patients for each day they experience symptoms is .0344. For the 37% of ReA patients which do experience periods of wellness, this level of disutility is assigned for only two thirds of the time for an average daily disutility of .0227.

VII. Total Disutility per Day per Case

Course of Disease	Percent of Total ReA Patients	Functional Status Disutility per Day	Symptom/ Problem Complex Disutility per Day	Total Daily Disutility	Duration in Days	Total Disutility per Case (in Quality Adjusted Life Days Lost)
Resolved Pain within 4 Months	33%	.3980	.0344	.4324	25	11
Flares and Remissions with Periods of Wellness	37%	.1885	.0227	.2112	18,250	3,854
Waxing and Waning with No Periods of Wellness	15%	.2856	.0344	.3200	18,250	5,840
Chronic Unremitting Pain	15%	.3980	.0344	.4324	18,250	7,891
Weighted Average of Long-Term Cases		.2582	.0280	.2862		5,223

VIII. Medical Cost Estimate

Direct information on the direct medical cost (cost of medical treatment and patient care) per case of ReA is not available. Medical costs for ReA are calculated based on the assumption that medical costs per case of ReA are equivalent to the medical costs per case of the average case of all types of arthritis. Information indicates that in 1992 the total cost in terms of direct medical costs and lost wages of all types of arthritis was about $65 billion dollars. Of this total 24% was

due to direct medical costs and 76% was due to lost wages. (Ref. www.nih.gov/niams/news/lappin.htm National Institute of Arthritis and Musculoskeletal and Skin Diseases "Arthritis: What We Know Today," Debra R. Lappin, Esq., May 30, 1997) According to the National Health Interview Survey, an estimated 40 million Americans have arthritis. Approximately 6 million people are self-diagnosed (that is, they believe that they have arthritis, but have not sought medical attention for it.)
(Ref. http://www.arthritis.org/offices/al/about/demecoinfo.shtml)

Based on this information, the total direct medical cost for all types of arthritis is approximately $16 billion per year ($64.8 billion x 24%). Therefore the average direct medical cost per arthritis sufferer is approximately $400 per year ($16 billion ÷ 40 million). This medical cost estimate is used for long term ReA cases. Discounted at 7% annually the total medical cost for an average case of ReA lasting 50 years is estimated to be $5,860. The medical cost for a short term case of ReA lasting 25 days on average is estimated at $100.

IX. Total Value of Losses per Case

To determine the total value of losses per case associated with ReA it is necessary to add the utility losses per case to the medical costs per case. To do this it is necessary to monetize the value of the utility losses. FDA values a Quality Adjusted Life Day at $630.

Course of Disease	Percent of Total ReA Patients	Total Disutility per Case (in Quality Adjusted Life Days Lost)	Value of Utility Losses per Case (Discounted at 7%) (QALD = $630)	Medical Costs per Case (Discounted at 7%)	Total Value of Losses per Case
Resolved Pain within 4 Months	33%	10.8	$6,800	$100	$6,900
Flares and Remissions with Periods of Wellness	37%	3,854.4	$711,500	$5,900	$717,400
Waxing and Waning with No Periods of Wellness	15%	5,840.0	$1,078,000	$5,900	$1,083,900
Chronic Unremitting Pain	15%	7,891.3	$1,456,700	$5,900	$1,462,500
Weighted Average of Long-Term Cases		5,223.2	$962,000	$5,900	$967,900

Printed Reference

Thomson, Glen T. D., Debra A. DeRubeis, Matthew A. Hodge, Cecilia Rajanayagam, Robert D. Inman. 1995. "Post-*Salmonella* Reactive Arthritis: Late Clinical Sequelae in a Point Source Cohort." *American Journal of Medicine* 98 (January): 13-21.

Appendix:

Preliminary Investigation into the Morbidity and Mortality Associated with the Consumption of Fruit and Vegetable Juices

Prepared by Richard Williams, Thomas Wilcox, Babgaleh Timbo, Debra Street, Clark Nardinelli, Patrick McCarthy, George Jackson, Minnis T. Hendricks, and Elisa Elliot. Cristina Ford McLaughlin, Judy Lee, Eric Hanson, Tom O'Brien, and Mary Bender supplied key data. Wesley Long, Lee Anne Jackson, Ken Falci, and Ron Lorentzen commented on various drafts.

[April 20, 1998. Note. This document was prepared in the Spring and Summer of 1997 in support of the Preliminary Regulatory Impact Analysis and the Initial Regulatory Flexibility Analysis of the Proposed Rules to Ensure the Safety of Juice and Juice Products. Since the completion of the final version of this document, FDA has accumulated more information, refined its assumptions about the relationships between reported and actual numbers of illnesses, and estimated the distribution of illnesses by severity. The new information and methods are used in the regulatory impact analysis, but not in this document, which has not been changed since Fall 1997.]

October 31, 1997

Executive Summary

Recent outbreaks of illnesses associated with juices have demonstrated the potentially serious human health hazards posed by fruit and vegetable juices. As a component of the cost-benefit analysis for both the HACCP and Labeling rules associated with fruit and vegetable juices, the Center for Food Safety and Applied Nutrition's working group was asked to investigate the morbidity and mortality associated with the consumption of juices and juice drinks. The standard procedure for estimating human health benefits is to (1) estimate the baseline numbers of illnesses and death associated with a technology or compound to be controlled, (2) estimate the likely reductions in those illnesses and deaths associated with various proposed control options, and (3) estimate the values associated with the reduced illnesses and deaths. The report estimates the parameters associated with the first step -- the numbers of illnesses and deaths likely to be associated with the consumption of juice products.

This preliminary investigation included a description of juice products, the estimated levels of consumption of juices, a discussion of production methods, an explanation of how hazards may be introduced into the product, a discussion of the evidence on illness from consuming juices, a description of the human health effects caused by selected microbial pathogens, and a discussion of the physical and chemical hazards associated with juices.

Americans consumed approximately 2.3 billion gallons of the major fruit and vegetable juices in 1995, or 37 billion servings. Orange and apple juice accounted for over 80 percent of juice consumption. The consumption of juice drinks amounted to 2 billion gallons, or 32 billion servings. The working group estimated annual consumption of non-heat-treated juice to be 38 million gallons, or 600 million servings.

The working group found that contamination of juice products may occur at any point between the orchard and the table, but most likely occurs during the growing and harvesting of the raw product. The use of dropped fruit, the proximity of livestock or

wild animals, contaminated ground water, and contaminated humans are possible causes of contaminated fruit.

From 1993 through 1996, the Centers for Disease Control and Prevention outbreak data and U. S. Food and Drug Administration recall data show that juices accounted for 447 laboratory-confirmed cases of illness associated with microbial pathogens. The cases by pathogen included 62 *Salmonella* spp., 86 *E. coli* O157: H7, 85 *B. cereus*, 191 *C. parvum*, and 23 illnesses caused by an unknown pathogen. The associated juice products were apple juice or cider (277 cases) and orange juice (170 cases). The annual average of 112 cases included annual averages of 16 *Salmonella*, 22 *E. coli* O157: H7, 48 *C. parvum*, 21 *B. cereus*, and 6 cases with unknown pathogens.

There is wide agreement that the laboratory-confirmed cases from outbreaks and recalls understate the actual number of juice-related cases, but no consensus exists on the size of the understatement. We estimated the total number of juice-related illnesses by multiplying the average number of laboratory-confirmed cases by factors that account for under-reporting. We based the multipliers on the relationships between annual outbreak cases in 1983-1987 and two widely cited estimates of the number of foodborne illnesses (Bennett et al. 1987; Todd 1989). However, these estimates contain considerable uncertainty.

For *Salmonella*, the two multipliers were 307 and 474, which implied that the 16 annual laboratory-confirmed cases might have been accompanying by an estimated 4,900 or 7,600 total juice-related cases. For E. *coli* O157: H7, the two multipliers were 100 (the default multiplier) and 195, which implied that the 22 annual laboratory-confirmed cases may have been accompanied by 2,200 or 4,300 total juice-related cases. For *C. parvum*, we multiplied 48 annual laboratory-confirmed cases by100 (the default) to get an estimated 4,800 total juice-related cases. For B. *cereus* the two multipliers were 96 and 1,615, so that 21 annual laboratory-confirmed cases implied 2,000 or 33,900 total juice-related

cases. For the unknown pathogen we multiplied 6 annual laboratory-confirmed cases by 100 for an estimated 600 total juice-related cases.

Among reported cases of the four pathogens, *E. coli* O157: H7 has led to the most severe human health consequences, including hemolytic uremic syndrome and death. The most severe reported juice-related Salmonella cases have led to hospitalization. Cases of *C. parvum* and *B. cereus* have caused gastrointestinal and other symptoms, but have not required hospitalization. The severity of unreported cases is uncertain; in this preliminary investigation we assumed that that the severity of unreported juice-borne illnesses was similar to the severity of all foodborne illnesses. For all foodborne pathogens, the average severity of illnesses associated with *E. coli* O157: H7 is greatest, followed by the illnesses associated with *Salmonella*. Foodborne *C. parvum* and *B. cereus* both lead to milder symptoms.

The other hazards -- mostly physical and chemical -- that have been found in juices have been sporadic and associated with fewer cases than the microbial pathogens.

Illnesses and deaths in four recent outbreaks associated with juice products have demonstrated that juices can present serious human health hazards. The principal purpose of this preliminary investigation is to separate what we know from what we do not know about the hazards associated with juices. We will use what we know to make some preliminary inferences about what we do not know. These inferences are not intended to be the final word on the morbidity and mortality associated with the consumption of fruit and vegetable juices. On the contrary, the study of the hazards associated with juices is ongoing and will change as we accumulate new data and other information.

Most hazard assessments are performed for a single hazard, such as a pesticide or a specific microbial pathogen. The hazard assessed may even be limited to a single food or product. This study of the hazards associated with juices will concentrate on microbial pathogens in fruit and vegetable juices, but will also include physical and chemical hazards. The organization of the report is as follows:

I. Description of the Product
II. Consumption
III. Description of the Production Methods: What Can Go Right
IV. Potential Introduction of Hazards into Juice Products: What Can Go Wrong
V. The Level of Contamination and the Probability of Illness: Evidence that Something Has Gone Wrong
VI. Human Health Effects
VII. Not Heat-Treatable Hazards
VIII. Summary

The most important health hazards recently associated with juices have been microbial pathogens; the framework for this investigation will therefore be based on microbiological hazards. The framework will be modified as necessary to account for other types of hazards, including chemical and physical hazards.

I. Description of the Product

The products encompassed by this investigation include juices, drinks, and nectars made from soft fruit (e.g., berries, cranberries, and currants), stone fruit (e.g., prune, apricot), citrus fruit, pome fruit (e.g., apple, pear), mixed fruit, fruit seed or pit (e.g., coconut), tropical fruit (e.g., guava, mango), vine fruit (e.g., grape), any other fruit, beans-peas-corn, fruits-used-as-vegetables (e.g., tomato), leaf and stem vegetables (e.g., celery), root and tuber vegetables (e.g., carrot), and mixed vegetables. The various products are sold in cans and paper, plastic, or glass containers. Products are either shelf-stable, frozen, or refrigerated.

II. Consumption

We estimated the annual consumption of all fruit and vegetable juices and juice drinks. We based the estimates on several sources; the table below shows the sources of data and how we used them.

Source of data	Description	Uses
Putnam and Alehouse (1997)	U. S. Department of Agriculture disappearance data	Total juice consumption; part of calculation of consumption of non-heat-treated orange juice
U. S. Department of Agriculture (1995), *Continuing Survey of Food Intakes of Individuals, 1989-1991.*	Consumer survey data	Percentiles of juice consumption; consumption of juices by different age groups; corroboration of disappearance estimates of consumption
Nielsen SCANTRACK	Results from supermarket sales by bar codes	Fraction of total juice consumption accounted for by non-heat-treated orange juice; lower-bound

		estimated consumption of non-heat-treated apple juice and cider
U. S. Apple Association (1997a; 1997b)	Survey of apple cider processors	Consumption of non-heat-treated apple juice and cider

We used the disappearance data in preference to other sources, which we used mainly for information not contained in the disappearance data. Annual juice consumption can be measured and reported in gallons, liters, or servings, and can be characterized as per person, per juice drinker, or total. Although the data available and the question to be answered determined how we characterized various aspects of juice consumption, we used total servings as the principal measure of annual exposure.

We expected the distinction between heat-treated and non-heat-treated juices to matter more than any other for the morbidity and mortality associated with juices. We therefore estimated both total juice consumption and the consumption of non-heat-treated juices.

A. TOTAL CONSUMPTION OF FRUIT AND VEGETABLE JUICES

The Economic Research Service of the U. S. Department of Agriculture (Putnam and Alehouse 1997) estimates annual food consumption as the residual in the food supply and food use balance sheet. Total available food supply is the sum of production, beginning inventories, and imports. The measurable uses of food commodities include exports, industrial uses, seed and feed, and closing (or end-of-year) inventories. The difference between available supply and measurable uses is called food disappearance.

The use of food disappearance to estimate human food consumption has some shortcomings. The assumption that people consume all non-measured food commodities is wrong, because much food is wasted or fed to pets and other animals. Moreover, the estimated measurable uses of food commodities may miss some non-food uses. Food disappearance should therefore be regarded as an upper bound on the consumption of most foods. For juices, however, the difference between the upper bound represented by

disappearance and the true level of consumption is probably small, because juices do not have non-food uses. In this investigation, we used the disappearance data as the principal estimate of annual consumption of fruit and vegetable juices and drinks.

The consumption (or disappearance) per person of the major fruit juices (single strength equivalent: orange, grapefruit, lemon, lime, apple, grape, pineapple, prune) was 8.7 gallons in 1995 (Putnam and Alehouse 1997). The disappearance data do not contain separate estimates for berry, pear, plum, apricot, coconut, and tropical fruit juices, but the consumption of these juices is likely to be quite small. Vegetable juice (mainly tomato and tomato-based mixed juices) consumption was 0.3 gallons per person, for total juice consumption of 9.0 gallons or 34.1 liters (9.0 gallons × 3.785 liters per gallon) per person per year. Total annual consumption of juice products (based on a population of 260 million) was therefore 2.3 billion gallons (260 million × 9.0 gallons), or 8.9 billion liters (see table 1). In addition to juices, Americans consumed 7.8 gallons per person of fruit drinks (including flavored non-carbonated drinks, cocktails, and ades), for a total juice drink consumption of 2 billion gallons or 7.7 billion liters.

The great variety of juices and juice products consumed may give the misleading impression that American juice consumption is extremely varied. As table 1 shows, orange juice consumption -- 5.45 gallons per person in 1995 -- accounted for 60 percent of all juice consumed. Americans consumed 1.79 gallons of apple juice per person -- 20 percent of all juice consumed. The Continuing Survey of Food Intakes by Individuals gave a similar picture of juice consumption. In the survey for 1989-1991, orange juice accounted for 55 percent and apple juice for 17 percent of all eating occasions for juices. Southgate, Johnson, and Fenwick (1995) estimated orange juice to be 55 percent and apple juice to be 19 percent of total juice consumption. Orange and apple juices therefore account for the greater part of total juice consumption.

Juice and juice drink consumption can be put in perspective by comparison with the consumption of other beverages. In 1995, the average American consumed 24.4 gallons

of milk, 11.6 gallons of bottled water, 20.5 gallons of coffee, 8.7 gallons of tea, 51.2 gallons of carbonated soft drinks, and 25.1 gallons of alcoholic beverages (Putnam and Alehouse 1997). Fruit juices and fruit drinks combined accounted for more than 10 percent of all major beverage consumption (see table 2).

The U. S. Food and Drug Administration's (FDA) serving size for fruit juices and fruit drinks (and all other beverages) is 8 fluid ounces (240 milliliters). The serving size represents the amount customarily consumed per eating occasion for fruit and vegetable juices and juice drinks. The FDA juice serving size implies that total juice servings in 1995 were 37 billion (2.3 billion gallons ÷ 0.0625 gallons per serving). For juice drinks, the total number of servings was 32 billion servings (2.0 billion gallons ÷ 0.0625 gallons per serving).

The U. S. Department of Agriculture's Continuing Survey of Food Intakes by Individuals for 1989-1991 provides another way to estimate the annual consumption of juices. We used it to check the plausibility of the estimates derived from the disappearance data. The survey counted 219,181 eating occasions for juice products over a 3-day period. Each weighted response represented on average 1000 people. We estimated total juice drinking occasions per year to be 219,181 × 1,000 × 121 = 26.5 billion. If each person consumed (on average) 8 ounces per eating occasion, then the total amount consumed was 1.7 billion gallons (26.5 billion × 0.0625 gallons). The annual amount consumed per person would be 6.9 gallons (1,660,000,000 gallons ÷ 248,000,000 people). This estimate is lower than the 9.0 gallons estimated from the disappearance data partly because fruit juice consumption per person rose 13 percent between 1989-1991 and 1995. In 1989-91 juice disappearance averaged close to 8 gallons per person. In addition, as we pointed out above, the disappearance of fruit and vegetable juices overstates consumption because it is the residual left after other uses have been measured. Any measurement error or waste will be counted as juice consumption. Finally, the survey understated consumption because it counted an eating occasion with multiple servings as a single serving.

We believe, then, that juice consumption as estimated from the Continuing Survey of Food Intakes by Individuals for 1989-1991 and the disappearance data (Putnam and Alehouse 1997) give roughly consistent estimates of juice consumption. Because it was more recent, we relied on the disappearance data for our overall estimates of juice consumption. The disappearance data, however, did not tell us anything about the distribution of juice consumption -- all it told us was the annual per capita consumption of the leading juices. To estimate the distribution of juice consumption, we used the Continuing Survey of Food Intakes by Individuals for 1989-1991.

According to the survey, approximately 40 percent of the population ("eaters") consumed at least one serving of fruit or vegetable juice over a 3-day period. We will use that fraction as a lower-bound estimate of the number of regular consumers. For these juice drinkers, mean annual consumption was 16 gallons. Median annual consumption equaled 12 gallons. Other points of the distribution of consumption included the 25th percentile consumption equal to 8 gallons, the 75th percentile consumption equal to 22 gallons, and the 90th percentile equal to 32 gallons. According to the survey, the amount of juice consumed by relatively heavy juice drinkers remained low. Two standard FDA servings of juices per day (16 ounces, or 46 gallons per year) would have put an individual above the 95th percentile consumer in the survey. This result, however, may partly reflect the survey's under-count of the number of servings per eating occasion.

The Continuing Survey of Food Intakes by Individuals also showed that children and the elderly consumed a disproportionate amount of juices. Children under the age of 6 made up 9 percent of the population at the time of the survey, but consumed 16 percent of juices. Adults 60 and over made up 17 percent of the population, but consumed 20 percent of juices. Fruit juice accounts for 50 percent of all fruit servings consumed by children (Dennison 1996).

B. NON-HEAT TREATED JUICES

We estimated the consumption of non-heat-treated juices by combining estimates of total consumption or production with estimates of the market share of non-pasteurized juices. The two main products in the non-heat-treated category are fresh orange juice and natural (or fresh) apple cider or juice. We did not have direct estimates of the consumption of non-heat-treated juices. We estimated consumption of non-heat-treated citrus juice indirectly by combining information from supermarket sales data with disappearance data. Because the supermarket sales data did not list non-heat-treated apple juice as a separate category, we relied on industry production data on apple juice and cider for our best estimate of consumption.

Orange juice. According to the Nielsen SCANTRACK data, by volume fresh squeezed citrus juices accounted for 0.5 percent of all fruit juices sold in 1996. We assumed that nearly all of that was orange juice (some grapefruit juice is sold fresh-squeezed). The annual amount of fruit juice consumed was approximately 9.0 gallons per person in 1995 (see table 1); the amount of non-pasteurized orange juice per person would therefore be 0.05 gallons (0.005 × 9.0 gallons). The total annual amount of non-pasteurized orange juice consumed would be 11,700,000 gallons (0.005 × 9.0 gallons per person × 260,000,000 persons). With the FDA serving size of 8 ounces, the total number of servings of fresh-squeezed orange juice would be 187 million per year (11.7 million gallons ÷ 0.0625 gallons per serving).

Apple juice and cider. The Nielsen SCANTRACK survey does not distinguish between heat-treated and non-heat-treated apple cider. According to the Nielsen 1996 data, 16.4 million gallons of cider required refrigeration. Because many of the refrigerated products sold as apple cider were pasteurized, this estimate may have overstated the amount of non-heat-treated apple cider sold. For two reasons, however, the Nielsen total for refrigerated apple cider more likely understated the amount of non-heat-treated apple juice and cider. First, the survey did not include small grocery stores and other retail stores where refrigerated cider was sold. Second, the total excluded non-heat-treated apple juice. The survey recorded sales of 83 million gallons of refrigerated apple juice, with

some unknown proportion not pasteurized. Sales of refrigerated apple cider may therefore underestimate total sales of non-heat-treated juice and cider. The Nielsen survey results served as a lower-bound estimate of the consumption of unpasteurized cider and juice. The lower-bound annual amount of unpasteurized apple cider and juice consumed per person would therefore be 0.063 gallons, or 8 ounces (16,400,000 gallons ÷ 260,000,000 persons) -- the FDA serving size. The consumption per person, then, would be approximately one serving per person per year, or 260 million servings.

Data supplied by the U. S. Apple Association provided a more complete estimate of the consumption of non-pasteurized apple cider (U. S. Apple Association 1997a). The association identified 1,049 producers of apple cider in the United States. The association distributed 918 surveys to apple cider processors and received 465 responses (51 percent), although not all surveys were returned complete. Of those cider producers in the sample, 97 percent did not pasteurize their product. The producers who did pasteurize, however, were all in the largest sales category. By volume and sales, pasteurized apple cider accounted for much more than 3 percent of output, but we do not know how much more. The processors in the U. S. Apple Association survey who reported engaging in interstate commerce also came disproportionately from the large producers.

The survey gave ranges of output by gallons for apple cider for 409 respondents (88 percent). The largest category by number of firms consisted of 187 small producers who each sold less than 5,000 gallons of apple cider per year. The smallest category by number of firms contained the 7 producers who each sold more than 500,000 gallons per year and probably accounted for a majority (by volume) of cider sales. We estimated total production for the 409 respondents by assigning mean volumes of the range in each category. We assigned all processors in the under 5,000 gallons category an annual output of 2,500 gallons; other assigned outputs included 7,500 gallons for the 5,000 to 9,999 gallons range, 30,000 gallons for the 10,000 to 49,999 range, 75,000 gallons for the 50,000 to 99,999 range, 300,000gallons for the 100,000 to 499,999 range, and 750,000 gallons for the 500,000 to 999,999 range. Two processors produced more than one

million gallons per year (U. S. Apple Association 1997b). The survey gave us no further information, but other sources indicated that at least one large processor produced approximately 4 million gallons per year. We used the range 1,000,000-4,000,000 gallons for the largest output category and assigned each of the two largest survey respondents outputs of 2,500,000 gallons, the midpoint of the range. Under these assumptions, we estimated that the survey respondents produced a total output of 20 million gallons ((187 × 2,500) + (50 × 7,500) + (135 × 30,000) + (12 × 75,000) + (18 × 300,000) + (5 × 750,000) + (2 × 2,500,000)).

The survey respondents produced an estimated 20 million gallons of apple cider, and the response rate to the survey was approximately 50 percent. If the size distribution of non-respondents was the same as respondents, total production equaled 40 million gallons (2 × 20 million gallons). The large interstate producers were more likely to pasteurize their product. Of the 51 interstate producers who responded to the survey, 7 pasteurized and 4 planned to do so in the future (U. S. Apple Association 1997b). In the largest sales category (annual sales greater than $100,000) one half of respondents reported pasteurizing (or had plans to do so in the future). We assumed that all of the firms that were pasteurizing their product came from the three largest output categories, and that half of the firms in those output categories pasteurized their product. Under those two assumption, pasteurizing firms produced 7 million gallons ((18 × 300,000 ÷ 2) + (5 × 750,000 ÷ 2) + (2 × 2,500,000 ÷ 2)), or approximately 35 percent of the survey respondent's output. If the percentage pasteurizing was the same for non-respondents as for respondents, then the total production of pasteurized apple cider was 14 million gallons. Under these assumptions, the total amount of unpasteurized cider would be 26 million gallons (40 million gallons - 14 million gallons). The total number of servings would be 416 million per year (26 million gallons ÷ 0.0625 gallons per serving). Consumption per person would be 0.1 gallons (26 ÷ 260,000,000). The amount exceeded what we estimated from the Nielsen data, probably because the U. S. Apple Association surveys implicitly included more retail outlets than did Nielsen.

Total. We estimated the annual consumption of non-heat-treated orange and other citrus juices to be 11.7 million gallons, or 44 million liters. Annual consumption per person would be about 0.05 gallons. The lower-bound estimated consumption of non-heat-treated apple juice or cider, 16.4 million gallons (62 million liters), came from Nielsen SCANTRACK and failed to include large parts of the market. We therefore chose the higher estimate, 26 million gallons (98 million liters), from the U. S. Apple Association surveys as the preferred estimate of the consumption of non-heat-treated apple juice or cider. We estimated annual consumption per person to be 0.1 gallons per person.

We added the higher apple cider estimate to the Nielsen orange juice estimate to estimate the annual consumption of all non-heat-treated fruit and vegetable juices. The sum, 38 million gallons, (0.15 gallons per person) represented about 1.7 percent (38,000,000 ÷ 2,300,000,000) of total juice consumption. The total number of servings of non-heat-treated juice would be approximately 600 million servings (187 million servings of orange and other citrus juice + 416 million servings of apple juice or cider).

High-risk consumers. We did not find direct estimates of the consumption of non-heat-treated juices by children and old people. As a proxy for non-heat-treated apple juice and cider, we used cider consumption from the Continuing Survey of Food Intakes by Individuals. According to the 1989-1991 survey, children consumed a disproportionate amount of apple cider. Children under the age of 6 made up 9 percent of the population at the time of the survey, but consumed 16 percent of cider. Adults 60 and over made up 17 percent of the population and consumed 17 percent of apple cider.

The survey did not list the consumption of fresh orange juice as a separate category, but did list the consumption of fresh grapefruit juice, which we assume to be non-heat-treated. Children under the age of 6 consumed little fresh grapefruit juice, accounting for less than one-half of one percent of total consumption. Adults 60 and over, by contrast, accounted for more than 48 percent of fresh grapefruit juice consumption -- close to triple that group's population share.

III. Description of the Production Methods: What Can Go Right

As table 3 illustrates, the production of juices is remarkably similar across products. Obtaining fruit and vegetable juice from fruits and vegetables requires up to 12 processing steps, many with several different processing possibilities. The 12 steps are:

1) Growing
2) Harvesting
3) Washing and culling
4) Extraction of juice
5) Pressing to separate juice from remaining solids
6) Clarification and filtration to remove various impurities
7) De-aeration (removes air bubbles)
8) Heat treatments (includes pasteurization) and other anti-microbial treatments
9) Concentration
10) Refrigeration or preservatives
11) Reconstitution of juice from concentrate
12) Packaging

Some products go through all 12 steps; others, such as unpasteurized fresh juices, go through fewer steps. The major unpasteurized commercial products are apple cider (which is unfiltered apple juice), filtered apple juice, and fresh orange juice. Most juice products apparently go through some type of heating stage to inactivate microorganisms or oxidative enzymes.

What follows are short descriptions of different types of juices -- how the fruits and vegetables are harvested, processed, and turned into juice.

A. APPLE JUICE

Varieties. The 15 commercially most important varieties have historically been Red Delicious, Yellow Delicious, Macintosh, Rome Beauty, Jonathan, York Imperial, Stayman Winesap, Yellow Newtown, Cortland, Rhode Island Greening, Winesap, Northern Spy, Idared, Gravenstein and Granny Smith.

Growing environment. Apples are grown throughout the United States, with Washington, New York, Michigan, California and Pennsylvania being the largest producers (Way and McLellan 1989). Apples are grown both in humid and dry areas, high and low altitudes, warm and cold climates. Most orchards do not use manure as a fertilizer (U. S. Apple Association 1997a). Deliberate livestock grazing is rare; most growers attempt to keep wild animals away from the trees, although it is impossible to keep all wildlife out of orchards. Apples may be sprayed with pesticides in the orchard.

Juice. The definition of apple cider and apple juice differs across regions. Cloudy juice is called cider; thoroughly filtered and clarified juice is called juice. Different definitions exist for products that have undergone some filtering and clarification, but are not clear. In general, the product must be cloudier in New England than in the West in order to qualify as cider.

Most apple cider or juice is a blend of several varieties of apples. Blending enables the producer to achieve the desired balance of acidity, aroma, astringency and sweetness (Downing 1989).

Harvesting. Apples can be harvested by hand or by machine. Hand harvesting is much more common, because mechanical harvesting damages fruit more frequently (Massey 1989). Apples are stored in the processor's yard only for short periods after harvest. Long-term storage takes place in facilities where low temperature (normally -1 to 0°C), adequate ventilation, and a controlled atmosphere (less than 3 percent O_2 and less than 3

percent CO_2) can be maintained. Half of the respondents in a survey of apple cider producers use drops (apples that have fallen to the ground)(U. S. Apple Association 1997a).

Transportation. Apples are packed in 20-pound boxes (Eastern U. S.) or bushel packs (Western U. S.). They are most often transported to processing facilities in open trunks or wagons pulled by tractors.

Washing and inspection of fruit. A bin of apples is usually dumped into water at an inspection station. Some apples are culled and the rest washed in an acid bath of pH 2 or 3; others are dumped into water with 100 ppm chlorine (or higher) (Kupperman 1996). Some apple processors use either brushing or agitation (O'Leary 1993). The apples are rinsed before the juice is extracted (with skin on) and the remaining solids pressed (steps 3, 4, and 5).

Finished product. Nothing further is done to natural cider or juice, except chilling, possible chemical preservation (step 10), refrigeration or freezing (step 10), and packaging (step 12). For heat-treated apple juice, clarification (step 6) and pasteurization (step 8) will be performed. Pasteurization takes 25 to 30 seconds at temperatures that vary between 76.6°C and 87.7°C. Apple juice to be concentrated (step 9) is heated to temperatures of 77 to 93°C for 2 to 3 minutes (Kress 1996). The juice leaves the concentrator at about 70° Brix (70 percent sugar) (Kress 1996). Juice can then be re-constituted. (step 11).

Apple juice is hot-filled at 79 to 91°C into containers and held for 1 to 2 minutes before closing (step 12). Containers are cooled to between 32 and 41°C and stored (Kress 1996).

Imports. Imported apple juice accounts for close to one-half of total consumption (see table 1). Practically all imported juice comes in the form of concentrate (*The Almanac of*

the Canning, Freezing, Preserving Industries 1996). The imported apple juice comes from all over the world, with Latin America and Europe being particularly important sources.

B. ORANGE JUICE

Varieties. One species of orange, the Sweet Orange, is commercially important in the United States. Sweet Oranges include common (or Valencia), navel, blood, non-acid, and sour oranges. Most orange juice is made from Valencia and navel oranges (Kimball 1991). Domestic oranges are grown in Arizona, California, Florida and Texas (Rebeck 1995).

Juice. Most commercial orange juice is a blend of several varieties. Non-pasteurized, which is mostly fresh-squeezed juice, comes from one variety at a time -- such as early season Hamlin or late season Valencia oranges (Attaway, Carter, and Fellers 1989).

Harvesting and transportation. In Florida, harvesting begins when the fruit reaches the standard for maturity established by the USDA and the Florida Department of Citrus. California does not have mandatory USDA or state standards for maturity. Oranges are harvested by hand or by machine; the fruit is then loaded into trucks that hold 500-550 boxes (90 pounds each) of fruit (Rebeck 1995). Trucks dump oranges onto a ramp where processing eliminates leaves, stems and dirt. Oranges are culled and then put into holding bins.

Washing and inspection of fruit. Conveyer belts move oranges from holding bins to surge bins to roller spreaders and brush washers. The oranges are washed with a detergent and culled again before the orange juice is extracted (with skin off, step 4) and pressed (step 5) (Kimball 1991; Rebeck 1995; Nordby and Nagy 1980). For non-pasteurized juice, the oranges may be chilled to 0.6°C before juice extraction (Attaway, Carter, and Fellers 1989).

Finished product. Nothing further is done to non-pasteurized juice, unless a heat exchanger is used to chill the juice to -1.1°C. Refrigeration (step 10) will be used for preservation; packaging will be in non-hermetically sealed containers (step 12) (Attaway, Carter, and Fellers 1989).

For heat-treated orange juice, filtration, de-aeration, and pasteurization will all be performed. Pasteurization takes about 30 seconds at temperatures between 60°C and 93°C (Rebeck 1995, Nordby and Nagy 1980). Orange juice that is for concentrate is heated to about 81.9°C , although we do not know the period of time for this heat treatment (Rao and Sancho 1993). The juice leaves concentrator at about 65° Brix (65 percent sugar).

Imports. Orange juice (almost all concentrate) is imported from Brazil, Mexico, and other countries. Brazil is the world's leading exporter of orange juice. Imported orange juice accounts for more than 15 percent of consumption (see table 1) (*The Almanac of the Canning, Freezing, Preserving Industries* 1996).

C. GRAPEFRUIT JUICE

Varieties. There are two basic types of grapefruit -- common (or white) and pigmented (or pink). White grapefruit varieties commercially grown in the U. S. are Duncan and Marsh. Pink grapefruit varieties are Flame, Henderson, Ray Ruby, Rio Red and Star Ruby (Kimball 1991).

Harvesting and transportation. In Florida, harvesting begins when fruit reaches maturity standards set up by the USDA and the Florida Department of Citrus. Grapefruit are harvested by hand or by machine; the fruit is then loaded into trucks that hold 500-550 boxes (85 pounds each) of fruit (Rebeck 1995). Trucks dump grapefruit onto a ramp

where processing eliminates leaves, stems and dirt. The grapefruit are culled and put in holding bins.

Washing and inspection of fruit. Conveyor belts move the grapefruit from holding bins to surge bins to roller spreaders and brush washers, where the grapefruit are washed with a detergent and culled again before the juice is extracted (skin off, step 4) and solids pressed (step 5).

Finished product. The literature we have surveyed does not contain references to unpasteurized grapefruit juice. We therefore assume that, because grapefruit juice processing and orange juice processing are similar in the steps leading to and including pasteurization, the methods for processing grapefruit juice that does not undergo pasteurization are similar to the methods for orange juice that does not undergo pasteurization.

For heat-treated grapefruit juice, filtration, de-aeration, and pasteurization will be performed. Pasteurization temperatures are between 60°C and 88°C for about 30 seconds (Rebeck 1995; Nordby and Nagy 1980). Although the literature does not say, we assume that grapefruit juice is concentrated at the same temperature as orange juice. The juice leaves the concentrator at about 65° Brix (65 percent sugar).

Imports. Some grapefruit juice (almost all concentrate) is imported from Latin America. Imported grapefruit juice accounts for less than one percent of consumption (see table 1) (*The Almanac of the Canning, Freezing, Preserving Industries* 1996).

D. TANGERINE AND LEMON JUICE

The six varieties of tangerines commercially important in the U. S. are Clementine, Dancy, Kinnow, Lee, Murcott and Nova. Up to 10 percent of tangerine juice can be added to orange juice without declaration or violation of federal standards of identity.

Tangerines to be made into juice are handled and processed in a similar manner to oranges and grapefruit.

Lemon juice is prepared and handled in a similar manner to the other citrus juices (Swisher and Swisher 1980). In certain cases, lemon juice may be crushed and comminuted (minced) (Worrall 1994). Juice that is to be concentrated is usually prepared from unpasteurized or partially pasteurized lemon juice (Swisher and Swisher 1980).

Imports. Lemon juice (almost all concentrate) is imported from Latin America. Imported lemon juice accounts for more than 28 percent of consumption (see table 1) (*The Almanac of the Canning, Freezing, Preserving Industries* 1996).

E. GRAPE JUICE

Varieties. There are 4 classes of grapes: hybrids of native northeastern grapes, European grapes, southern and southeastern Muscadine grapes, and French hybrids (McLellan and Race 1995). Most grape juice is made from the Concord grape, a northeastern hybrid. The rest of this discussion will refer only to Concord grapes.

Harvesting. Concord grapes are harvested when their acid level is high. Cold storage at 0°C reduces grape acidity to levels acceptable to consumers. Grapes are harvested mechanically, placed in one-ton bulk boxes equipped with polyethylene liners, and taken to a grading station to measure their soluble solids. Grapes are usually processed within 4 to 6 hours after picking (McLellan and Race 1995).

Washing and inspection of fruit. Grapes are transferred to a stemmer-crusher operation that removes leaves, petioles and stems from the fruit (step 4). The grapes are then put in a rotating perforated drum where they are crushed or broken open. The grapes then enter a tubular heat exchanger where they are heated to 60°C. This process, called hot-break, is designed to extract color and increase juice yield (Pederson 1980a; McLellan and Race

1995). Enzymes (step 4B) and press aids (step 4C) are added. Pressing and screening and filtration are similar to those steps for other products.

Finished product. Juice is flash pasteurized at 79.4 to 85°C for 1 minute, then cooled to 0°C (Pederson 1980a; McLellan and Race 1995). The cooled grape juice is stored in refrigerated tanks for up to one year. During storage some of the natural potassium bitartrate precipitates out as argol, a waste product. Before juice is further processed additional clarification is performed (step 6). The clarified juice is hot filled at a minimum temperature of 82.2°C. Either evaporation (57.2 to 71°C) or a combination of reverse osmosis and evaporation (Pederson 1980a; Downes 1995) can concentrate grape juice.

Imports. Close to one-third of the grape juice consumed is imported (table 1) (*The Almanac of the Canning, Freezing, Preserving Industries* 1996). The United States imports grape juice from North and South America, the Middle East, and elsewhere.

F. CHERRY JUICE

Varieties. Cherry juice can be made from sweet or sour cherries.

Harvesting and inspection of fruit. Cherry juice is made from high quality cherries -- not culls, which usually possess off-flavors. They can be harvested mechanically. Harvested cherries are usually soaked for less than 12 hours in cold (10°C) water (Tressler et al 1980).

Processing and finished product. Cherries are processed in one of three ways: hot pressing, cold pressing, and cold pressing thawed fruit. In hot pressing, cherries are heated to 65.5°C and pressed (step 4 and 5) before being cooled and screened. After the juice is chilled to 10°C, it is allowed to settle overnight and is clarified (step 6). In cold pressing, washed cherries are extracted (step 4) and pressed (step 5). The juice is then heated to 87.7 to 93.3°C and cooled. Pectinase is added and allowed to act for about 3

hours in order to reduce viscosity and clarify the juice. Following this step, the juice is heated to 82.2°C, cooled and filtered. With cold pressing, thawed cherries are crushed and pitted, then frozen. Before pressing, cherries are thawed to about 4.5-10°C. This juice is treated like cold pressed juice. Sugar is normally added to cherry juice to bring it up to 17° Brix. If sweet cherries are used for juice, sour cherry juice will be mixed with it to create proper flavor. Hot and cold pressed juices are usually mixed together to obtain proper color and flavor. Because of its strong flavor, cherry juice is usually blended or mixed with other juices. Cherry juice can be pasteurized to as low as 73.8°C, if air is eliminated in the headspace (Tressler, Charley, and Luh 1980).

G. BERRY AND STONE FRUIT JUICE

Varieties. These fruits include prunes, plums, apricots, strawberries, blackberries, raspberries, cranberries, pears, and similar fruits (Downes 1995).

Harvesting and inspection of fruit. Hand picked fruit is normally of high quality; mechanically picked fruit need not be. Both are used to make juice. After the fruit is picked, debris, mold, and rot are removed before the fruit is washed.

Processing and finished product. Pears and similar fruit need to be pressed at high pressure; berries probably need enzymes and pressing aids as well. These fruits are all processed with their skin on. Different milling and pressing processes (steps 4 and 5) are used for the different fruits. Various clarification and filtration may also be needed, depending on the product (step 6). Some of the berry juices may need de-aeration (step 7). Almost all of these juices can be flash pasteurized at 79.4°C or above for 30 seconds to eliminate microorganisms and oxidative enzymes (Tressler, Charley, and Luh 1980). Either evaporation (57.2 to 71°C) or a combination of reverse osmosis and evaporation (Pederson 1980a; Downes 1995) can concentrate these juices.

Imports. In 1995, the United States imported close to 90 million liters of pear and berry juice (*The Almanac of the Canning, Freezing, Preserving Industries* 1996). We do not have separate estimates of the consumption of those juices; it is likely that imports make up a relatively large share -- perhaps one-third -- of total consumption.

H. PINEAPPLE JUICE

Varieties. The pineapple is a member of the Bromeliaeceae family. It is grown in the tropics, mainly in Hawaii, Thailand, Indonesia, Malaysia and Brazil (Hooper 1995; Inderkum 1994; Mehrlich and Felton 1980).

Processing of fruit. Pineapple juice tends to be a by-product of the pineapple canning industry. The juice is obtained from whole fruits, canning industry fruit, and skin residues (Inderkum 1994; Hooper 1995). The fruit residues are crushed by rollers and the mash is extracted and pressed (steps 4 and 5). The juice from fruit residues is combined with pre-extraction juice before being filtered and pasteurized. The juice is concentrated to 60 or 70° Brix and packed either aseptically or frozen. Reconstituted juice is pasteurized, chilled, packaged, and shipped (step 12).

Imports. Approximately 90 percent of the pineapple juice consumed in the United States is imported (see table 1). Of the imported juice, about 75 percent is concentrate (*The Almanac of the Canning, Freezing, Preserving Industries* 1996). The imported juice comes from the major producing countries, such as Brazil, Indonesia, Malaysia, and Thailand.

I. TOMATO JUICE

Varieties. Many different varieties of tomatoes are used commercially for tomato juice.

Harvesting. Tomatoes are mechanically harvested before they are well colored and ripened; otherwise, harvesting will cause extensive damage to the raw fruit (Leonard 1980).

Washing and inspection of fruit. Tomatoes are sorted in the field to eliminate tomatoes with insect damage, mold, off-color, rot, sunburn, and other flaws. They are then taken to a cannery where they are washed several times. The final wash normally contains at least 5 ppm chlorine. Tomato juice can be extracted using methods in step 4, or by slicing (skin on), pressing (as per step 5), and filtering (step 6). After extraction, heating the juice to 104.4°C for 15 seconds inactivates the natural enzymes pectinesterase and polygalacturonase (Leonard 1980). Tomato juice also requires de-aeration (step 7).

Finished product. Tomato juice is homogenized after de-aeration to prevent settling and separation. Salt is added from 0.5 to 1.25 percent by weight to improve juice flavor. Tomato juice contains less acid than many other juices, so more severe heat processing is necessary. Tomato juice must be processed to temperatures that eliminate *Bacillus coagulans* -- 118.3°C for 1.5 minutes, 121.1°C for 42.0 seconds (steps 8 and 10) (Leonard 1980). Tomato juice is not usually concentrated by heat, because heat concentration affects taste (Francis and Harmer 1988).

Imports. Very little tomato juice is imported (*The Almanac of the Canning, Freezing, Preserving Industries* 1996).

J. OTHER VEGETABLE JUICES

Types. Vegetable juice may be obtained from leaf or stem vegetables such as beet leaves, cabbage, celery, lettuce, rhubarb, and others. Juice may also be obtained from root vegetables -- beets, carrots, onions, parsnips, sweet potatoes -- and seed bearing plants, including cucumbers, pepper, and others.

Harvesting. Vegetables can be harvested by hand or by machine. Vegetables are normally harvested before maturity in order to reduce mechanical damage during handling and processing.

Washing and inspection of fruit. Vegetables are sorted and trimmed to eliminate those with insect damage, mold, off-color, rot, sunburn, and other flaws. After being sorted, the vegetables are washed in water that contains from 10 to 200 ppm chlorine (Powrie and Skura 1991). Vegetable juices can be extracted using methods in step 4, or slicing (skin on), pressing (step 5), and filtering (step 6). If a vegetable was not heated before juice extraction, it is necessary to heat-treat the extracted juice to inactivate the natural enzymes. Although the enzymes are inactivated in tomato juice by heating juice to 104.4°C for 15 seconds, other vegetables may be heated to different temperatures. Some vegetable juices may also require de-aeration.

Finished product. Many vegetable juices are non-acidic and therefore require severe heat processing to inactivate enzymes and microorganisms. Vegetable juices may be processed to temperatures of 115.5 to 121.1°C (steps 8 and 10). If acid is added to the vegetable juice, then less heat treatment is necessary (Pederson 1980b). Vegetable juices are not normally concentrated by heat, because heat concentration affects taste (Francis and Harmer 1988).

Imports. Imports are negligible, as is total consumption of non-tomato-based vegetable juices.

K. PACKAGING

Glass bottles are the traditional containers used for fruit and vegetable juices (Paine and Paine 1992 is the reference for this entire section). Glass is inert, easy to clean, durable and rigid, and impermeable to odors, vapors and liquids. Juices can either be hot-filled or pasteurized in the bottle.

Polyethylene (PET) and polyvinyl chloride (PVC) bottles can also be used for juices, but these bottles become distorted at temperatures above 65-70°C. Polyethylene bottles covered with polyvinylidene chloride have reduced gas permeability. Because they rely on internal pressure to provide rigidity, they are best suited for carbonated juices. Orange juice has been packed in clear oriented polypropylene bottles because this material provides good oxygen and moisture barriers.

High-acid juices are packed in lacquered and coated cans. Cans are usually hot filled but they may also be cold filled. Cold filled juice is pasteurized and then placed in the can; this type of canned juice requires refrigeration.

Frozen orange juice concentrate is packed in composite paperboard canisters. Bulk frozen orange juice is packed into 200 liter polyethylene drums or polyethylene lined drums. Pasteurized fruit juices can be packed in polyethylene-coated cartons. These products must be stored in refrigerators. Pasteurized juice can be stored long term under frozen conditions. All juice containers, except those aseptically packaged, benefit from cool storage.

IV. Potential Introduction of Hazards into Juice Products: What Can Go Wrong

In the previous section we described common production methods for fruit and vegetable juices. In this section we discuss possible hazards and theoretical points in the production process where hazards might enter.

A. MOST COMMON HAZARDS

Three types of hazards may affect juice products: microbiological, chemical, and physical. Of these, microbiological hazards are the most severe.

The primary microbial hazards that have been found in fruit juices are *Escherichia coli* O157:H7, *Cryptosporidium parvum*, *Bacillus cereus*, and *Salmonella* spp. Table 4 contains information on those outbreaks and recalls for which there have been confirmed cases with juice as the vehicle. The 1996 outbreaks were associated with *E. coli* O157:H7 and *C. parvum.* Past outbreaks and isolated cases have involved *Vibrio cholerae* O1 and *Clostridium botulinum*.

The microbial hazards identified from the history of pathogen-related outbreaks from juice products do not exhaust the potential microbial hazards; emerging pathogens may be more serious than any currently identified hazards. The outbreaks associated with *E. coli* O157:H7 and *C. parvum* involved pathogens that were unknown a generation ago.

B. HAZARD ENTRY POINTS

The outline below shows areas where hazards may enter juice products. This information may be useful in assessing the likelihood of hazard entry for purposes of (for example) a Hazard Analysis Critical and Control Point (HACCP) hazard assessment.

Contamination can occur within any of the 12 steps associated with juice production described above and in table 3. Some of the theoretically possible modes of entry for hazards include:

1. Raw Product: (steps 1 and 2)
    - a. Contamination by airborne pathogens (from nearby farms, for example)
    - b. Contamination by fertilizer
    - c. Contamination by wild or domestic animal feces (especially drop fruit)
    - d. Contamination by non-potable water used to apply pesticides
    - e. Contamination during shipping
    - f. Human contamination

g. Pesticides or herbicides during farm production

f. Raw Product -- metals, stones

2. Contamination during processing (steps 3 through 12)

a. Contaminated by unsanitary wash water

b. Contamination during extraction, pressing or clarification

c. Contamination following heat treatment or during bottling

d. Contamination by humans following heat treatment of juice

e. Processing -- chemical sanitizers

g. Processing -- filtration screens, glass (from breaking bottles, plastic)

3. Post-Processing Contamination

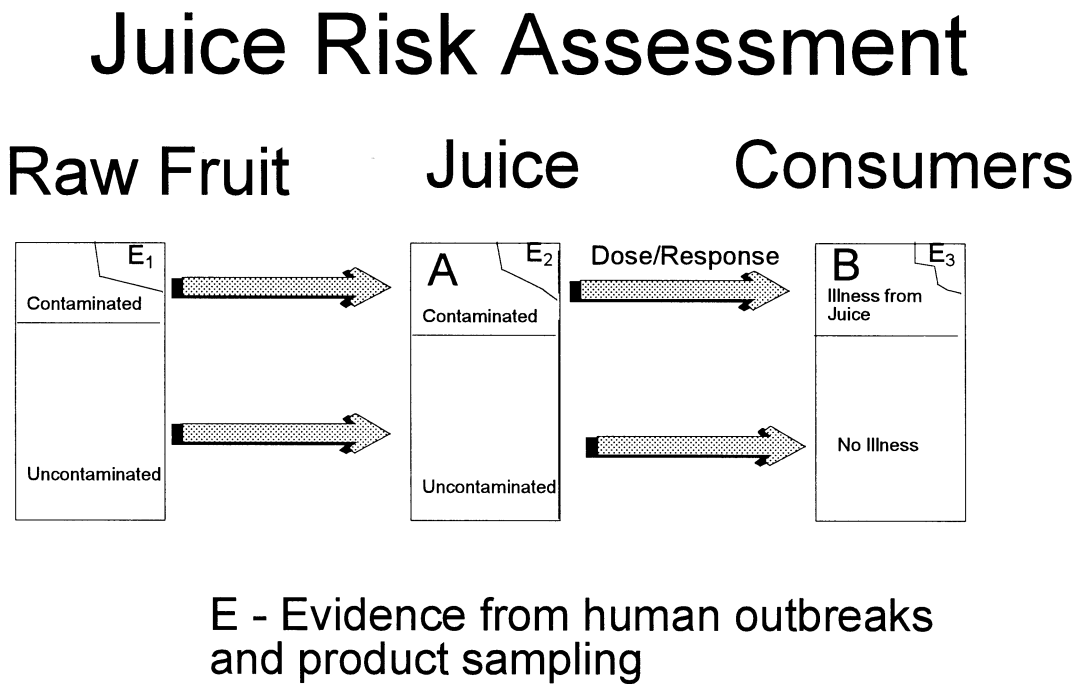
a. Contamination during storage and shipping

Adequate heat treatment (pasteurization or further heat treatment) will inactivate heat-sensitive pathogens resulting from contamination occurring in steps 1(a) through (f) or 2 (a) through 2 (b). Non-heat methods, such as pulsed light or filtration, may also inactivate these pathogens.

V. The Level of Contamination and the Probability of Illness: Evidence that Something Has Gone Wrong

The probability of illness resulting from consumption of contaminated juice products may be divided into two underlying probabilities: 1) the probability that the juice becomes contaminated (at some level), and 2) the conditional probability that, given that the juice is contaminated, drinking it makes humans ill. The probability of illness from drinking juice contaminated with microbial pathogens is positively related to the degree of contamination as measured by the number of organisms (or dose) consumed. As with most hazards associated with juices, however, the evidence needed to estimate these two probabilities -- the probability that juice is contaminated and the probability of illness from consuming contaminated juice -- is either fragmented or missing. The diagram below illustrates the

relationship between the two probabilities and the role of the supporting data that are generally available to estimate these probabilities.



As the diagram illustrates, the evidence on product contamination and human illness (areas E_1, E_2, and E_3) from microbiological hazards are small, unknown proportions of total contamination and illness. Contamination may start with the raw fruit or vegetable and be carried through processing into juice. Contamination may occur during processing. Product sampling provides the most telling evidence that juice is contaminated. If, however, the underlying rates of contamination are low and contamination is sporadic, it may be impossible to sample enough product to estimate rates of contamination with any statistical precision. One sample snapshot will not provide an accurate description of the average amount of contaminated raw product or the resulting amount of contaminated juice.

Once juice is contaminated, some people will likely become ill. If we knew the amount of contaminated juice (area A), the level of contamination (organisms per unit of volume), and the dose-response relationship, we could predict the number of illnesses (area B) and deaths likely to result from consuming the contaminated juice. Because we do not know the amount of contaminated juice, the level of contamination, or the dose-response function, we cannot estimate the total amount of illness by combining the three variables. Instead, we must infer the total amount of illness from the data on reported outbreaks -- a small and unknown fraction of total illnesses.

In order to use the epidemiological data from an outbreak to estimate a dose-response function, we would need to determine the total population exposed to contaminated juice, verify that juice was the vehicle, estimate the dose consumed, and classify the symptoms and complications. In order to estimate the full human dose-response relationship for a particular pathogen-product combination (such as *E. coli* O157: H7 in apple juice), we would need a large, representative sample of outbreak data, with estimated doses consumed and the percent of consumers who became ill at each dose level.

Because we lacked an evidence-based dose-response model, we looked at the evidence linking the microbial contamination of juices to the epidemiological evidence on the microbial illnesses associated with juices.

A. THE LEVEL OF CONTAMINATION

1. Discussion

Contamination may occur during growth, harvesting, processing, or post-processing of fruits and vegetables. The level of exposure (pathogen count or quantity) is a function of the initial amount of the hazard introduced into the product and subsequent increase or decrease of the hazard (if any) before consumption. For microbial hazards, the dose in the

final product will be a function of (1) the initial microbial load and (2) the multiplication or inactivation of the pathogens during processing, storage and distribution.

The probability that the raw product is contaminated with a microbial pathogen depends on whether domestic or wild animals are in or near the growing area, the source of water, the use of drop apples (or the equivalent for other fruit), the type of fertilizer used (particularly manure), and the frequency and method of washing the raw fruit. Animal feces cause contamination either directly by contaminating drop apples or indirectly by contaminating workers, water, or possibly air. The use of manure also increases the probability of contamination. Well water is more likely to be contaminated than water from a municipality or other qualified provider. Washing the fruit tends to reduce contamination, unless the water itself is contaminated.

Once the juice has been contaminated, the pathogens may either multiply or become inactivated. For bacterial and fungal pathogens, the number of organisms will increase at different rates depending on the pathogen, the package, the storage temperature, and the specific characteristics of the juice, particularly the acidity and water activity. With low temperatures, low water activity (low a_w), or acidic conditions (low pH), the pathogens may not survive or may fail to multiply. Recent studies indicate, however, that the specific characteristics of juices cannot be expected to completely inactivate all microbial pathogens.

Several organisms, including an *E. coli* O157: H7 strain (ATCC 43895) can survive exposure to extremely acidic (pH < 3) environments (Leyer, Eang, and Johnson 1995; Benjamin and Datta 1995). Most juices, including apple (pH = 3.4 - 4.0), orange (pH = 3.6 - 4.3), grapefruit (pH = 3.0), prune (pH = 3.7), tomato (pH = 4.1 - 4.2), and pineapple (pH = 3.5), are not acidic enough (pH ≥ 3) to guarantee pathogen inactivation (U. S. Food and Drug Administration 1997a). Sugar reduces water activity (a_w); the reduced water activity can lead to pathogen cell shrinkage and death (Branen and Davidson 1983). The sugar concentrations in juices, however, are probably too low to ensure safety. Fruit

juices have water activity levels of about 0.97; an activity level of 0.80 would be necessary for microbial safety (Peterson and Johnson 1978; Thorner and Herzberg 1970). Freezing will prevent multiplication, but will not kill bacterial pathogens (Council for Agricultural Science and Technology [CAST] 1994). Parasites (e.g., *C. parvum*) and human viruses (e.g., Norwalk virus) will not multiply in juice, but will not be inactivated..

Apple and other juices produced by pressing or other methods that introduce skin into the product are likely to contain contaminants before processing, because sterile field conditions are highly unlikely. The outbreak literature contains examples of contamination from nearby cattle, from deer in the orchard, and possibly from sheep (see citations in table 4). Few farmers report that livestock are allowed to graze in the orchards (U. S. Apple Association 1997a). Orchards are, however, often located near livestock or wildlife with the potential for microbial contamination. *E. coli* O157: H7 has been cultured from the feces of deer, sheep, pigs, goats, dogs, birds, flies, and a horse (Randall, Wray, and Mclaren 1997; Keene et al. 1996; Rice, Hancock, and Besser 1995).

Farmers can take steps to reduce the likelihood of contamination from these sources, but it is impossible to eliminate microbial pathogens from all raw fruits and vegetables. The microbial pathogens that have been found in juice are widespread in animal feces and are therefore likely to be present in soil, water, and air.

2. Evidence

The ideal way to gather evidence on the morbidity and mortality associated with juices would be to carry out a prospective statistical survey that linked evidence on the microbial contamination of juices with evidence on subsequent human illness, but no one has done such a survey. The best current evidence that some juice is contaminated came from retrospective outbreak investigations, which demonstrated an association between illness outbreaks and juice consumption. In four of the outbreaks listed in table 4, investigators were able to isolate the pathogen from the product itself. *Salmonella typhimurium* was

isolated from two bottles of apple cider taken from homes of victims of the 1975 outbreak. In the 1993 *C. parvum* outbreak from fresh-pressed apple cider, oocysts were detected in the leftover cider and on swabs from the surface of the cider press. In the outbreak of salmonellosis from orange juice in 1995, the Centers for Disease Control and Prevention (CDC) investigators cultured *Salmonella* spp. from 10 of 12 juice containers and from all 4 juice lots represented. An FDA laboratory found *E. coli* O157:H7 in one sample of apple juice from the 1996 outbreak and recall associated with unpasteurized apple juice.

Recalls provide even more direct evidence of juice contamination. In the 1994 orange juice recall listed in table 4, 4 of 6 samples analyzed for *B. cereus* tested positive. For the 1992 Orange Julius recall, 2 of 13 samples tested positive for *Salmonella* spp.

We can also call upon circumstantial evidence suggesting that at least some juice products will be contaminated. We know which conditions and practices are likely to cause microbial contamination and we know that some of the conditions and practices are widespread. For example, according to the industry survey, 55 percent of cider producers use drop apples, 97 percent do not pasteurize their cider, and 8 percent do not wash apples before pressing (U. S. Apple Association 1997a). As long as these practices continue, some apple cider will likely be contaminated with microbial pathogens.

The prevalence of practices that can lead to microbial contamination, when combined with outbreak and recall investigations that have found contaminated juices, establishes the plausibility of juices as the vehicles for illnesses. Because we do not have evidence on the level and types of contamination, the importance of the health hazard cannot be measured by the level of contamination of fruit and vegetable juices. Instead, we measure the health hazard as the number of illnesses associated with the consumption of juices.

B. PROBABILITY OF ILLNESS

1. Discussion

Once the contaminated product finds its way to consumers, the dose of the microbial pathogen is only one component affecting the probability of illness. The age and immune status of the exposed population, and individual characteristics -- such as the acidity of the stomach -- affect both the probability and the severity of illness at a given dose. Children accounted for all of the known severe cases from one recent *E. coli* O157:H7 outbreak associated with unpasteurized apple juice.

We did not have sufficient information on the age and immune status of consumers of the various juice products to incorporate those variables into the estimates of the number of illnesses causes by juices. The numbers presented below, then, do not distinguish between consumers of different age or immune status.

2. Evidence

Table 4 contains all the of evidence that we have accumulated on microbial illnesses resulting from juice consumption. The table lists the outbreaks of illness reported to the Centers for Disease Control and Prevention (CDC), FDA recalls, and state health agencies' investigations associated with microbial pathogens in juices and juice drinks. In order to avoid double-counting, when an event appeared in more than one data base, we listed the CDC outbreak data only; if the event did not appear in the CDC records but was in both FDA recall data and state health records, we listed it under FDA recalls. The table contains 21 events: 13 outbreaks, 3 recalls, and 5 incidents reported by state health departments. The products involved were apple juice or cider (8 events), orange juice (5 events), tomato juice (4 events) coconut milk (1 event), carrot juice (1 event), watermelon juice (1 event), and flavored drinks (1 event). The pathogens were *E. coli* O157: H7 (5 events), *Salmonella* spp. (5 events), *C. parvum* (3 events), *B. cereus* (1 event), *Vibrio cholerae* O1 (1 event), *Clostridium botulinum* (5 events), and unknown (1 event).

According to Centers for Disease Control and Prevention outbreak data, state outbreak data, and FDA recall records, juices accounted for 447 confirmed illnesses from 1993 through 1996 (see table 4). The breakdown by pathogen was 62 *Salmonella* spp., 86 *E. coli* O157: H7, 85 *B. cereus*, 191 *C. parvum*, and 23 cases caused by an unknown pathogen. The products associated with illnesses were apple juice or cider (277 cases) and orange juice (170 cases).

No estimates of the annual number of all juice-related microbial illnesses exist. Most observers agree that the total number of cases exceeds the reported cases, but no consensus exists on the magnitude of the difference. The uncertainty can be seen in the estimates of the total number of foodborne illnesses caused by the four pathogens that have been associated with juices since 1993.

The most information on incidence of foodborne microbial illnesses is for *Salmonella.* The National *Salmonella* Surveillance System of the Centers for Disease Control and Prevention collects reports of *Salmonella* isolates from throughout the U. S.; the annual number of isolates averages about 40,000 (CDC 1996c). The CDC also includes *Salmonella* as one of the pathogens followed by its sentinel sites survey program. The CDC's 5 sentinel sites (representing 5 percent of the U. S. population) reported 2,142 laboratory-confirmed cases of foodborne illness attributable to *Salmonella* spp. in 1996 (USDA 1997), implying that 42,840 (2,142 × 20) total laboratory-confirmed cases could have occurred in 1996. The extrapolation from the sentinel sites comes close to the 40,000 average annual laboratory-confirmed cases in the CDC national *Salmonella* surveillance project.

The total number of illnesses caused by *Salmonella* exceeds the number of laboratory-confirmed cases, but by an uncertain amount. In some early surveys based on investigations of outbreaks, epidemiologists found that unreported cases might be about 100 (or more) times reported cases (Aserkoff, Schroaeder, and Brachman 1970). That estimate has often been used as an upper-bound multiplier for converting reported cases of

salmonellosis into estimated total cases (Helmick et al. 1994). More recent estimates of total cases derived from reported cases usually include both lower-bound and upper-bound multipliers. Cohen and Tauxe (1986) suggested that between one and 10 percent of cases of salmonellosis were reported, for a multiplier range of 10 to 100. Chalker and Blaser (1988) found the median ratio of estimated total cases to reported cases in 8 outbreaks to be close to 20. In another section of the same paper, Chalker and Blaser used the carriage rate for *Salmonella* to estimate the annual number of infections. The carriage rate of 0.15 percent combined with the infection duration of about 5 weeks (0.096 years) implied an estimated annual infection rate of approximately 1.5 percent (0.15 percent ÷ 0.096 years). With an infection rate of 1.5 percent, we would expect about 4 million infections per year (0.015 × 260 million).

Chalker and Blaser concluded that the number of laboratory-confirmed cases of salmonellosis represented 1 to 5 percent of all cases, which remains the most widely-cited range for the rate of reported cases. Multiplying the 40,000 annual cases in the CDC *Salmonella* surveillance by 20 to 100 generates an estimated 800,000 to 4,000,000 of annual illnesses caused by *Salmonella*, a range cited by Helmick et al. (1994), Buzby and Roberts (1996), and in much of the literature on foodborne diseases.

The most widely cited point estimates of the annual number of illnesses are Bennett et al. (1987), who estimated the annual number of foodborne *Salmonella* cases to be 1,920,000, and Todd (1989), who put the number at 2,960,000. Bennett et al. relied on the judgment of experts from CDC who reviewed the evidence from outbreak investigations and the surveillance reports to come up with an estimated 2,000,000 total cases, with 96 percent foodborne (0.96 × 2,000,000 = 1,920,000). Todd estimated the number of cases in several ways, but selected the median estimate as the most likely. His median was the mid-point between Bennett et al.'s 1,920,000 cases and the standard upper bound of 4,000,000 cases. Because CAST (1994) included both point estimates, we used them to generate two different upper bounds on the number of *Salmonella* cases associated with juices.

The relatively recent emergence of *E. coli* O157:H7 as a major foodborne pathogen meant that we had fewer estimates of its incidence. The Centers for Disease Control and Prevention's 5 sentinel sites reported 384 laboratory-confirmed cases of foodborne illness attributable to *E. coli* O157:H7 in 1996 (USDA 1997). The sentinel sites cover about 5 percent of the U. S. population, which implies that 7,680 (384 × 20) total laboratory-confirmed cases could have occurred in 1996 -- if the sentinel sites are representative of the entire population. Because many cases are either not reported or not confirmed, the true number may be higher. Boyce, Swerdlow, and Griffin (1995) applied the infection rate from a prospective population study conducted in Washington state -- 8 per 100,000 people -- to the U. S. population to get an estimated 21,000 annual infections. According to the Council for Agricultural Science and Technology (CAST) 1994 report, other studies found infection rates as low as 3 per 100,000. If the two estimated infection rates represent lower and upper bounds, then 7,668 to 20,448 cases of *E. coli* O157: H7 illness occur per year (0.00003 × 260,000,000 to 0.00008 × 260,000,000).

Todd (1989) included three estimates of the annual number of *E. coli* O157: H7 illnesses. He generated two of the estimates by inflating the annual average number of outbreak cases for the years 1978-1982 with different multipliers; he generated the third estimate by extrapolating from Canadian data. Todd chose the median of the three estimates, 25,000, as the best point estimate of the annual number of illnesses attributable to *E. coli* O157:H7. His chosen estimate of 25,000 equaled the average annual outbreak cases in 1978-1982 --30 -- multiplied by the implicit multiplier -- 826 -- linking *Salmonella* cases as estimated in Bennett et al. (1987) to reported outbreak cases. Todd's estimate for the incidence of foodborne *E. coli* O157:H7 assumed that the degree of under-reporting for *E. coli* O157:H7 was identical to the degree of under-reporting implicit in Bennett et al.'s estimated incidence of foodborne *Salmonella*. CAST (1994) reproduced Todd's estimate as the best point estimate of the annual number of cases of illness caused by *E. coli* O157:H7.

C. parvum is also a newly recognized foodborne microbial hazard. Although human infection with *C. parvum* was first confirmed in 1973, the first confirmed foodborne outbreak occurred in 1993. The distinctive symptoms of cryptosporidiosis -- long-lasting watery diarrhea -- make it likely that outbreaks will be noticed. The most important outbreaks associated with this pathogen have come about as a result of contaminated water. In an outbreak associated with municipal drinking water, over 400,000 people may have become ill (Mac Kenzie et al. 1994). According to a recent study of 199 sites in 23 states, *C. parvum* was present in 11 percent of all groundwater (Hancock, Rose, and Callahan 1997). The groundwater tested and found positive came from vertical wells (5 percent positive), springs (20 percent positive), infiltration galleries (50 percent positive), and horizontal wells (45 percent positive).

If the contaminated water comes into contact (directly, or indirectly through an animal carrier) with the fruit or juice and is not pasteurized, illness will likely occur. The cider-related outbreaks caused by *C. parvum* demonstrate that this event has occurred (see table 4). The CDC attributed the cider-related 1996 outbreak to the use of contaminated well-water to rinse the apples used to make cider.

C. parvum has emerged too recently for there to be estimates of its foodborne incidence. Moreover, producing estimates of the incidence of foodborne cryptosporidiosis is complicated by the difficulty of distinguishing foodborne from other sources of *C. parvum*. For example, the 1993 waterborne outbreak may have included some cases associated with juice drinks made with contaminated water (see table 4). Several products made with municipal water were recalled, but the far greater direct contact with contaminated water made it impossible to determine how many illnesses were associated with juice drinks. Person-to-person transmission of *C. parvum* may also make estimating its foodborne incidence difficult. In the 1993 outbreak associated with apple cider contaminated with *C. parvum*, the 160 primary cases caused by cider consumption led to 53 secondary cases caused by person-to-person contact (Millard et al. 1994).

The symptoms of *B. cereus* food poisoning are short-lived (see below). For this reason, the illness may be the most under-reported of those that we have identified as juice-related microbial pathogens. The potential for a large degree of underreporting leads to more uncertainty in the estimated *B. cereus* incidence than for any other of the pathogens we associated with juices. The experts in Bennett et al. (1987) put the number of illnesses at 5,000 per year. Todd (1989) used two *Salmonella* multipliers -- 350 (his own) and 826 (from Bennett at al. 1987) -- to inflate the 142 annual average *B. cereus* cases from the 1978-1982 CDC outbreak reports; the resulting estimates equaled 49,700 (350 × 142) and 117,416 (826 × 142). Todd's best point estimate, 84,000 annual cases, was approximately midway between the two estimates generated by the multipliers. The CAST (1994) report included both 5,000 and 84,000 as estimated annual incidences of *B. cereus* food poisoning.

3. Estimates of the Number of Illness from Consuming Juices

In order to estimate the number of illness from the consumption of juices, we used estimates of the frequency of reported juice-related illnesses in the years 1993 to 1996. We assumed that estimated frequencies of illnesses in recent years constituted the best estimates of the current frequency of illnesses. To generate the estimated frequencies, we found it necessary to make several assumptions that were not based on evidence. For that reason, the estimated numbers of illnesses must be regarded as highly uncertain. As more data and better models become available, we expect these estimates to change.

As table 4 shows, 447 confirmed illnesses of widely varying severities -- an annual average of 112 -- can be associated with juices in 1993-1996. The 112 illnesses included annual averages of 16 *Salmonella*, 22 *E. coli* O157: H7, 48 *C. parvum*, 21 *B. cereus*, and 6 cases with unknown pathogens per year. We used these averages as our lower-bound estimated annual number of illnesses associated with juices. Generating upper-bound estimates proved more difficult. We believe that the laboratory-confirmed cases from outbreaks and recalls understate the actual number of juice-related cases, but no consensus exists on the

size of the understatement. Estimating the total number of illnesses associated with juices therefore required going well beyond the data. We estimated the total number of juice-related illnesses by multiplying the average number of 1993-1996 reported cases by factors that account for under-reporting. Because the under-reporting probably differs by pathogen, the multipliers differed for the four pathogens.

The multipliers (20 to 100) cited above for the annual number of illnesses caused by *Salmonella* apply to the annual number of laboratory-confirmed cases recorded by the CDC surveillance system. Because the confirmed cases of juice-related illnesses in table 4 came from outbreak and recall data, we could not use multipliers based on the surveillance numbers. Instead, we chose multipliers appropriate for outbreak cases. The state data and recall data (see table 4) came from events like CDC outbreaks -- not from passive surveillance.

The decision to use multipliers appropriate to outbreaks proved straightforward, but the selection of specific multipliers posed problems. Neither Todd (1989) nor Bennett et al. (1987) used explicit multipliers for *Salmonella*. Bennett et al. made no explicit connection between outbreak cases and total cases, but it is possible to compute an implicit multiplier by dividing their estimated total cases by outbreak cases of *Salmonella*. Todd used Bennett et al.'s implicit *Salmonella* multiplier for *E. coli* O157:H7 and as part of the estimates for *B. cereus* and *Salmonella* itself. The multipliers used by Todd, however, applied to outbreak cases from 1978-82, and -- if applied to the more recent outbreak data -- would not generate the same estimated numbers of illnesses. For that reason, we computed new multipliers based on more recent outbreak data.

CAST (1994) described the estimates of foodborne illnesses from Bennett et al. (1987) and Todd (1989) as "not at the high or low ends of the ranges and generally are considered by CAST tasks force members to be estimates based on defensible assumptions." Because both Todd and Bennett were members of the CAST task force, we assumed that they both continued to accept their earlier estimates of incidence. The

CAST report contained five estimates of foodborne illnesses caused by the pathogens we identified as the hazards associated with juices -- two estimates each for *Salmonella* and *B. cereus*, one estimate for *E. coli* O157:H7. The report contained no estimates of the number of illnesses caused by *C. parvum*, which was only recognized as a foodborne hazard in 1993. The most recent CDC foodborne outbreak data in the CAST report (based on Bean et al. 1990) covered the years 1983-1987. We therefore computed implicit multipliers based, when possible, on the ratios of Todd's or Bennett et al.'s estimated cases to average annual outbreak cases for 1983-1987. The implicit multipliers for each pathogen equaled the estimated annual number of total foodborne cases divided by the annual number of outbreak cases in 1983-1987. The main disadvantage of this procedure was that the base years for reported cases were a decade old. Another disadvantage, the absence of estimated cases of foodborne *C. parvum*, forced us to use a default multiplier for that pathogen.

After computing the multipliers from outbreak data and estimated cases of all foodborne illness, we used them to generate upper-bound estimates of the annual amount of juice-borne illness in 1993-1996. We assumed that the relationship between confirmed juice-related outbreak cases and total estimated cases of juice-related microbial illnesses in the years 1993-1996 was identical to the relationship between confirmed foodborne outbreak cases in 1983-1987 and total estimated cases of foodborne microbial illnesses. The assumption, although unlikely to be precisely correct, led to no obvious bias. We then generated upper-bound estimates of the number of cases associated with each of the four pathogens by multiplying the number of reported juice-borne cases by the implicit multipliers. Table 5 shows the results.

The annual average number of outbreak cases caused by *Salmonella* spp. in 1983-1987 was 6,249. With the estimate of total cases based on Bennett et al. (1987), the ratio of total to confirmed outbreak cases of salmonellosis equaled 307 (1,920,000 ÷ 6,249). The implicit multiplier of 307 generated an estimate of 4,900 (16 × 307) annual cases of juice-borne salmonellosis (table 5, column 3). In the estimate based on Todd (1989) the ratio of

total to confirmed outbreak cases of salmonellosis equaled 474 (2,960,000 ÷ 6,249). The implicit multiplier of 474 generated an estimate of 7,600 (16 × 474) annual cases of juice-borne salmonellosis (table 5, column 4).

We estimated the number of juice-related illnesses attributable to the other pathogens with the same method used for *Salmonella*. The average annual number of outbreak cases caused by *E. coli* O157: H7 in 1983-1987 was 128. Because Bennett et al. (1987) made no estimates of the illnesses attributable to *E. coli* O157: H7, we used 100 as a default multiplier --100 remains the standard multiplier in the literature on under-reporting of microbial illness. The estimated number of *E. coli* O157: H7 illnesses attributable to juices was 2,200 (22 × 100) (table 5, column 3). In the estimate based on Todd (1989), the ratio of total to confirmed outbreak cases of *E. coli* O157: H7 equaled 195 (25,000 ÷ 128). That multiplier led to an estimated 4,300 (22 × 195) annual cases of illness attributable to juices (table 5, column 4).

Because we lacked estimates from Bennett et al. (1987) or Todd (1989) of the annual number of illnesses caused by foodborne *C. parvum*, we again used 100 as the default multiplier linking reported outbreak cases to total juice-related cases. The 48 average annual cases of cryptosporidiosis generated an annual juice-related illnesses estimate of 4,800 (table 5, columns 3 and 4).

B. cereus displayed the largest difference in estimated cases. Outbreaks of *B. cereus* illness led to an average of 52 cases per year in 1993-1996. Bennett et al. (1987) estimated the annual number of cases to be 5,000. With a ratio of total to confirmed outbreak cases of 96 (5,000 ÷ 52), the estimated number of juice-related cases would be 2,000 (21 × 96) (table 5, column 3). In Todd (1989), the estimated *B. cereus* illnesses equaled 84,000. The ratio of this estimated total to confirmed outbreak cases of *B. cereus* was 1,615 (84,000 ÷ 52). This implicit multiplier generated an estimate of 33,900 (21 × 1,615) for annual *B. cereus* cases associated with juices (table 5, column 4).

The large difference between the two estimates of *B. cereus* illnesses came from the extremely large difference in the two multipliers used to link reported and actual cases. The large range of implicit multipliers for *B. cereus* reflects the large uncertainty associated with that illness; the uncertainty exists because the short-lived symptoms cause *B. cereus* illness to seldom be reported.

We applied the default multiplier of 100 to the unknown pathogen, for a total of 600 cases. The sum of the *B. cereus* cases and cases associated with the unknown pathogen represent the total cases of illnesses associated with heat-treated juices. With the *B. cereus* multiplier based on Bennett et al., the total annual estimated illnesses associated with microbial pathogens in heat-treated juices would be 2,600 (2,000 + 600). With the multiplier based on Todd, the total would be 34,500 (33,900 + 600).

The multipliers we used to estimate total cases based on reported cases embodied much uncertainty. Moreover, multipliers derived from estimates of all foodborne illnesses may not be applicable to the sub-category of juice-borne illnesses. It is also likely that for a sub-category such as fruit and vegetable juices, the multipliers vary greatly from year to year. We regard these multipliers and the resulting estimated numbers of illness not as definitive but as a first attempt to link reported and unreported cases of juice-related illness. We look forward to improved multipliers and estimates of unreported cases from the results to be generated by the CDC sentinel site project.

VI. Human Health Effects

The descriptions of illnesses presented below apply to all cases of the illnesses, not to juice-related cases alone. Although the symptoms might differ for juice-related cases, we assume that the differences are not systematic. The evidence regarding frequencies of illnesses of different severity is summarized in table 6. The table is not intended to be comprehensive and is not specific to juices; the frequencies and patient outcomes will

differ for different doses and serotypes of pathogens. The microbial pathogens that have been associated with outbreaks all lead to gastrointestinal symptoms of varying severity and duration. The outbreak cases listed in table 4 may not have had the same distribution by severity of illness as described in table 6, because reported cases tend to be more severe than unreported cases. Persons suffering from mild gastrointestinal symptoms seldom seek medical care and do not show up in the disease data bases.

The symptoms accompanying *E. coli* O157: H7 illness include diarrhea, bloody stools, abdominal pain, and cramping. In about one-half of all cases, vomiting will occur; something less than one-third of all victims will suffer fever. Mild cases, which are characterized by diarrhea, abdominal pain, and nausea, account for about one-half of the total (CAST 1994). Mild cases last less than four days; victims do not consult physicians (Buzby et al. 1996). In moderate cases, which account for 32 percent of the total, muscle pain and dehydration can occur in addition to the gastrointestinal symptoms. Moderate cases last 4 or more days and involve at least one visit to a physician. Severe cases, which require hospitalization, account for 18 percent of the total. The probability of a severe case of the illness is much greater for the immunocompromised than for the immunocompetent. It is also typically the immunocompromised who develop the long-term and more serious health consequences associated with this pathogen. Those consequences can include hemolytic uremic syndrome (HUS), thrombotic thrombocytopenic purpora (TTP), or death (Griffin 1995). Children and the elderly are at greater risk of developing hemolytic uremic syndrome (CAST 1994). About one-half of fatalities attributed to *E. coli* O157: H7 are caused by hemolytic uremic syndrome; the other half are caused by hemorrhagic colitis. Estimated fatality rates range from 1 to 2.5 percent (Griffin 1995; CAST 1994; Buzby et al. 1996).

Reported outbreak cases provide direct evidence on the human health effects of *E. coli* O157:H7. The 19 *E. coli* O157:H7 outbreaks that occurred between February 1982 and March 1993 resulted in 1,557 confirmed cases of illness. Of those cases, 23 percent required hospitalization and 6 percent developed hemolytic uremic syndrome. 19 people -

- 1.2 percent of the total -- died (Griffin 1995; Boyce, Swerdlow, and Griffin 1995). Because outbreak cases tend to be of greater than average severity, these percentages probably overstate the frequency of severe outcomes for all cases. The percentages of juice-related cases leading to hospitalization and hemolytic uremic syndrome, however, exceeded the percentages for all 19 outbreaks (see table 4).

Symptoms of salmonellosis vary by serotype and by the immune status of the victim. Diarrhea, nausea, vomiting, fever, and headache lasting anywhere from a day to a week characterize a typical case of salmonellosis. A mild case might last two days, whereas a moderate case could last a week or more. Severe cases, which can last up to three weeks, usually require hospitalization. Reactive arthritis and Reiter's syndrome are potential long-term consequences. The estimated distribution of cases between mild, moderate, and severe depends on dose and on the population at risk. At doses that have been associated with past outbreaks, mild cases are estimated to account for about 60 to 70 percent, moderate cases for 20 to 30 percent, and severe cases 5 to 15 percent of all cases (Mauskopf et. al. 1988; Martin et al. 1993). Fatal cases account for less than 0.1 percent of the total (CAST 1994).

Salmonella typhi leads to a severe illness characterized by fever, headache, coughing, nausea, vomiting, diarrhea, dehydration, rash, weakness, and malaise. The illness may last several weeks and usually requires hospitalization. The case fatality rate is 6 percent (CAST 1994)

C. parvum causes watery diarrhea, nausea, vomiting, abdominal pain, and cramping. Cryptosporidiosis lasts from one to several weeks. In a study of the 1993 Greater Milwaukee outbreak, CDC used the following severity classifications: a mild case meant that the patient did not seek health care; a moderate case meant at least one physician visit or emergency room visit but no hospitalization; a severe case required hospitalization. For the Greater Milwaukee outbreak associated with drinking water, the distribution of severity was 90 percent mild, 9 percent moderate, and 1 percent severe (Haddix 1997).

Cryptosporidiosis can also lead to certain chronic health problems, including cholycystitis, hepatitis, and pancreatitis. For some immunocompromised people, such as AIDS victims, cryptosporidiosis can be progressive and possibly fatal.

B. cereus food poisoning has been associated with diarrhea and abdominal cramping. The illness caused by the *B. cereus* diarrhea toxin usually lasts less than one day, and victims seldom seek medical care. The illness caused by the *B. cereus* emetic toxin lasts longer and can lead to vomiting, but has mainly been associated with rice and other starchy foods.

VII. Not Heat-Treatable Hazards

The microbial pathogens do not exhaust the potential human hazards associated with fruit and vegetable juices. The other hazards, mostly not heat-treatable, include various materials that can be inadvertently introduced into the product, such as chemical contaminants and metallic substances. Outbreaks and product recalls (see table 7) provide the main evidence that these hazards may be present in juice and juice drinks. Product recalls have been issued because of the presence of lead, tin, copper, sulfites, sodium hydroxide, unlabeled yellow dye #5, natamycin, salt, milk, glass, and plastic. The presence of pesticides, tin, fluoride, viruses, toxic seed material from guanabana fruit, and the poisonous parts of the elderberry plant have caused outbreaks.

These hazards are diverse in their health consequences (all information on health effects in this section comes from the U. S. Food and Drug Administration's (1997b) Health Hazards Evaluation Board Report). Lead "represents a long-term, chronic hazard of negative consequences on neurological-behavioral and cognitive development." There may also be acute symptoms if the dose is high enough. For tin in fruit drinks, the hazards are gastrointestinal: vomiting and acute gastric disturbance. The small amounts of copper that have been found in juices have led to nausea and vomiting. Higher concentrations of copper are more toxic, but have not occurred in juices or juice drinks.

The chemical contaminants that have been found in juices include sulfites, sodium hydroxide, and undeclared dyes. Sulfite-sensitive people can experience symptoms ranging from moderate-acute sensitivity reaction to anaphylactic-like shock. Victims described the health effect from sodium hydroxide in citrus punch as oral burning or irritation of the lips if in contact with the bottle neck. Multiple fruit drink products for 10 companies contained undeclared FD&C yellow # 5 (a potential allergen), which is considered a limited-acute to moderate-acute health hazard.

Other contaminants posing health hazards include glass, plastic, salt, and milk. Undeclared salt could be a health hazard to people with hypertension, heart failure, and some types of renal disease. Undeclared milk is a hazard to people with lactose intolerance or protein allergy (or intolerance). Glass particles are a danger to the mouth, throat, and gut, but the risk is small. For plastic, aspiration is the potential hazard. The people who swallowed the plastic complained of choking.

Pesticides pose many potential human health hazards. Although pesticides can be toxic in high enough doses, the residues likely to be found in fruit juices are too small to pose an acute hazard. The more likely hazards result from chronic exposure to small pesticide residues. Those residues, if consumed for many years, may be large enough to lead to chronic health problems such as cancer. The likelihood of chronic health hazards from pesticide residues in juices depends on the likelihood of long-term consumption of the contaminated product. If an excessive residue occurred rarely, the likelihood of chronic health effects would be negligible. If an excessive residue occurred as a result of normal processing practice (such as might occur with the improper use of an anti-microbial) and was likely to recur, then there would be potential chronic health effects for some consumers.

The probability that juices or juice products will contain pesticide residues depends on the amounts used on the raw product, the amounts present in the soil, and the effect of

processing on pesticide residues. The levels of pesticide residues found in raw fruits have generally been well below established safety levels. In fiscal year 1994, for example, less than one percent of the fruits sampled in the FDA's pesticide monitoring program had violative residues (Food and Drug Administration 1995). Processing probably reduces residues further. For example, 98 percent of benomyl residue is removed from oranges and 71 percent is removed from apples during processing into juice (Elkins 1989). The combined effects of low residues on raw fruits and vegetables and of further reductions during processing account for the virtually absence of violative residues in fruit juices.

From fiscal year 1991 through fiscal year 1997, the FDA tested 1,196 domestic and imported fruit and vegetable juice samples; the samples came from both surveillance and compliance programs. Of the 1,196 samples, three contained violative residues of acephate. Other violative residues (class 2 -- not in compliance but not of regulatory concern) found between fiscal 1991 and fiscal 1997 included traces of acephate in one sample of watermelon juice concentrate, traces of chlorpyrifos in one sample of grape juice, and traces of methamidophos in two samples strawberry-nectarine juice and one sample of apple juice concentrate. Of the eight samples not in compliance, only three were of regulatory concern.

To estimate the potential number of excess cancers from violative acephate residues, we will assume that the samples analyzed between fiscal year 1991 and fiscal year 1997 were representative of all juices. The levels of acephate in the three violative juice samples were 0.075, 0.052, and 0.040 ppm, for an mean residue equal to 0.056 ppm (mg/liter). The fraction of samples containing measurable residues was approximately 0.0025 ($3 \div 1196$). The average residue in all juices (both violative and non-violative) would equal 0.00014 mg/liter (0.056×0.0025). With annual juice consumption equal to 34 liters, daily juice consumption would be 0.093 liters/day (34 liters/year ÷ 365 days/year). The mean daily intake of acephate residues in juice would equal 1.3×10^{-5} mg/day (0.00014 mg/liter × 0.093 liters). The daily intake per kilogram of body weight for a 60 kg person would be 2.2×10^{-7} mg/kg-bw/day (1.3×10^{-5} mg/day ÷ 60 kg-bw). The U. S. Environmental

Protection Agency has estimated the cancer potency of acephate to be 0.0087 (mg/kg-bw/day)$^{-1}$. The lifetime probability of cancer would be the product of potency and exposure, or 1.9×10^{-9} (0.00000022 mg/kg-bw/day $\times$ 0.0087 (mg/kg-bw/day)$^{-1}$). For a population of 260 million, the result would be about 0.5 additional cancers.

Other contaminants found in fruit and vegetable juices include suspected viral contamination, natural toxins (patulin), and mold. In one juice-related outbreak of gastrointestinal illness, the symptoms included abdominal pain, nausea, and vomiting and were characterized by abrupt onset and short duration. In another outbreak, the symptoms developed within 48 hours of drinking juice and included cramping, vomiting, diarrhea, and low-grade fever. Viral contaminants were suspected in both outbreaks, but not found. The nausea and vomiting suspected to have resulted from toxic seed material in guanabana juice began within one hour of consumption. Parts of the elderberry plant contain an alkaloid and glucose that under certain conditions can produce hydrocyanic acid. Juice made from elderberry caused gastrointestinal and neurological symptoms.

Assessing most of the hazards described in this section will not go beyond hazard identification. These hazards are irregular and unpredictable, with mostly mild outcomes. The potential adverse health effects associated with some of the hazards, such as pesticides, are great and may require monitoring by processors. Nonetheless, we found little epidemiological and product sampling evidence that juices have been contaminated with these hazards at levels sufficient to cause serious illness.

VIII. Summary

Several different questions about the morbidity and mortality associated with the consumption of fruit and vegetable juices have been shown to be potentially important. These questions include:

- What are the health hazards associated with juice consumption?
- Which processing steps are most frequently associated with the introduction of these hazards?
- What kinds of juices are most likely to contain these hazards?

The Center for Food Safety and Applied Nutrition working group has gathered and considered information and data related to these questions and will address what is known and what is not known concerning the answers to all three questions.

What are the health hazards associated with juice consumption?

The main health hazards associated with juices appear to be illnesses caused by microbial pathogens. Although other hazards -- such as pesticide residues -- are potentially serious, the estimated risks are small and no human data indicates that their presence in juices has caused serious illnesses. By contrast, we do have some human health data on illnesses and deaths resulting from consumption of juice contaminated with microbial pathogens. From 1993 through 1996, juices accounted for 447 confirmed illnesses caused by microbial pathogens, with symptoms that ranged from mild discomfort to one death (see tables 4, 5 and 6). The pathogens included *Salmonella, E. coli* O157:H7, *B. cereus*, *C. parvum*, and an unknown microbial pathogen. It is likely that the 447 reported cases represented a very small fraction of the total cases that occurred, because in most instances victims either do not seek medical treatment, or -- when they do -- their illnesses are not diagnosed, misdiagnosed, not reported, or fail to be associated with their consumption of juice.

Which processing steps are most frequently associated with the introduction of these hazards? We found little data available to answer this question. Farms and orchards appear to account for most primary sources of contamination; in fact, many pathogens, such as *E. coli* O157: H7, appear to be common in the rural environment, and therefore some of the raw product will be contaminated. Although little evidence has been accumulated to indicate where and how pathogens are most likely to be introduced, the following possible causes of contamination (which occur during the growing and

harvesting steps) have been suggested: use of dropped fruit, proximity of livestock or wild animals, contaminated ground water, and contaminated humans.

Washing the exterior of the fruits effectively removes the contamination only if the washing is sufficiently thorough and the product interior has not become contaminated. If heat processing (or some similar effective step) is carried out properly, little risk from pathogens should remain in the finished juice product (with the exception of the *B. cereus* toxin, which can survive ordinary juice pasteurization times and temperatures). In the past, acidity and water activity prevented the survival of microbial pathogens in non-heat-treated juice. In recent years, new microbial strains have emerged that have demonstrated their ability to survive in at least some relatively acidic juices.

What kinds of juices are most likely to contain these hazards? This question can be answered at least qualitatively. Non-heat-treated juices accounted for 339 (76 percent) of the 447 cases reported in 1993-1996, while accounting for slightly more than one percent of juice consumption. In addition, the illnesses associated with non-heat-treated juices tended to be more severe than those associated with heat-treated juices (see table 6). We therefore conclude that non-heat-treated juices are much more hazardous than heat-treated juices.

References

The Almanac of the Canning, Freezing, Preserving Industries. 1996. Westminster, MD: Edward E. Judge & Sons.

Aserkoff, Bernard, Steven A. Schroeder, and Philip S. Brachman. 1970. "Salmonellosis in the United States -- A Five-Year Review." *American Journal of Epidemiology* 92: 13-24.

Attaway, J. A., R. D. Carter, and P. J. Fellers. 1989. "Trends in Citrus Industry - the Production and Handling of Fresh-Squeezed, Un-pasteurized Orange Juice." *Flussiges Obst* 56: 613-616.

Barker, W. H., Jr. and V. Runte. 1972. "Tomato Juice-Associated Gastroenteritis, Washington and Oregon 1969." *American Journal of Epidemiology* 96: 219-226.

Bean, Nancy H., Patricia M. Griffin, Joy S. Goulding, and Cecile B. Ivey. 1990. "Foodborne Disease Outbreaks, 5-Year Summary, 1983-1987." *Journal of Food Protection* 53 (August): 711-728.

Benjamin, M. M. and A. R. Datta. 1995. "Acid Tolerance and Enterohemorrhagic *Escherichia Coli*." *Applied Environmental Microbiology* 61: 1669-1672.

Bennett, John V, Scott D. Holmberg, Martha F. Rogers, and Steven L. Solomon. 1987. "Infectious and Parasitic Diseases." In *Closing the Gap: The Burden of Unnecessary Illness*, ed. R. W. Ambler and H. B. Dull, 102-114. New York: Oxford University Press.

Besser, Richard E., Susan M Lett, J. Todd Walker, Michael P. Doyle, Timothy P. Barrett, Joy G. Wells, and Patricia M. Griffin. 1993. "An Outbreak of Diarrhea and Hemolytic

Uremic Syndrome from *Escherichia coli* O157:H7 in Fresh-Pressed Apple Cider." *Journal of the American Medical Association* 269: 2217-2220.

Boyce, Thomas G., David L. Swerdlow, and Patricia M. Griffin. 1995. "*Escherichia coli* O157: H7 and the Hemolytic-Uremic Syndrome." *New England Journal of Medicine* 333: 364-368.

Branen, Alfred Larry and P. Michael Davidson. 1983. *Antimicrobials in Food.* New York: Marcel Dekker, Inc.

Buchanan, Robert L. 1996. Presentation at Food and Drug Administration Public Meeting, December 16-17, Arlington, VA. "Current Science and Technology on Fresh Juices; Notice of Meeting." *Federal Register* 61 (November 27, 1996): 60290.

Buchanan, Robert L. 1997. Personal communication, April 29.

Buzby, Jean C. and Tanya Roberts. 1996. "ERS Updates U. S. Foodborne Disease Costs for Seven Pathogens." *FoodReview* 19 (September-December): 20-25.

Buzby, Jean C., Tanya Roberts, C.-T. Jordan Lin, and James M. MacDonald. 1996. *Bacterial Foodborne Disease: Medical Costs & Productivity Losses.* Washington, DC: United States Department of Agriculture, Economic Research Service, Agricultural Economic Report No. 741 (August).

Centers for Disease Control and Prevention (CDC). 1975. "*Salmonella typhimurium* Outbreak Traced to a Commercial Apple Cider -- New Jersey." *Morbidity and Mortality Weekly Report (MMWR)* 24: 87-88.

Centers for Disease Control and Prevention (CDC). 1984. "Poisoning from Elderberry Juice -- California." *Morbidity and Mortality Weekly Report (MMWR)* 33: 173-174.

Centers for Disease Control and Prevention (CDC). 1991. "Cholera Associated with Imported Coconut Milk." *Morbidity and Mortality Weekly Report (MMWR)* 40: 844-845, 860.

Centers for Disease Control and Prevention (CDC). 1996a. "Surveillance for Foodborne-Disease Outbreaks -- United States, 1988-1992." CDC Surveillance Summaries. *Morbidity and Mortality Weekly Report (MMWR)* 45: SS-5.

Centers for Disease Control and Prevention (CDC). 1996b. "Outbreak of *Escherichia coli* O157: H7 Infections Associated with Drinking Unpasteurized Commercial Apple Juice -- British Columbia, California, Colorado, and Washington." *Morbidity and Mortality Weekly Report (MMWR)* 1996b. 45: 975.

Centers for Disease Control and Prevention (CDC). 1996c. "National *Salmonella* Surveillance System: Preliminary Report of Data Received for 1995." Memorandum, August 27.

Centers for Disease Control and Prevention (CDC). 1997. "Outbreak of *Escherichia coli* O157: H7 Infection and Cryptosporidiosis Associated with Drinking Unpasteurized Apple Cider -- Connecticut and New York -- October, 1996." *Morbidity and Mortality Weekly Report (MMWR)* 46: 4-10.

Cockram, S. 1993. "Juice Extraction." In *Juice Technology Workshop, October 18-19, 1993*, ed. Donald L. Downing, 4-8. Ithaca: Cornell University.

Cohen, Mitchell L. and Robert V. Tauxe. 1986. "Drug-Resistant *Salmonella* in the United States: An Epidemiologic Perspective." *Science* 234 (November): 964-969.

Cook, Kim A., David L. Swerdlow, Thomas Dobbs, N. Puhr, G. Hlady, C. Genese, L. Finelli, B. Toth, D. Bodager, and Patricia M. Griffin. 1996. "Fresh-Squeezed *Salmonella:* An Outbreak of *Salmonella* Hartford Associated with Un-Pasteurized Orange Juice -- Florida." *Proceedings of the 45th Annual Epidemic Intelligence Service Conference, Atlanta, GA* (April 22-26).

Council for Agricultural Science and Technology (CAST). 1994. *Food-Borne Pathogens: Risks and Consequences*. Ames, Iowa: Council for Agricultural Science and Technology, Task Force Report No. 122 (September).

Dennison, Barbara A. 1996. "Fruit Juice Consumption by Infants and Children: A Review." *Journal of the American College of Nutrition* 15: 4S-11S.

Downes, J. W. 1995. "Equipment for Extraction of Soft and Pome Fruit Juices." In *Production and Packaging of Non-Carbonated Fruit Juices and Fruit Beverages*, ed. P. R. Ashurst, 197-220. New York: Van Nostrand Reinhold.

Downing, Donald L. 1989. "Apple Cider." In *Processed Apple Products*, ed. Donald L. Downing, 169-188. New York: Van Nostrand Reinhold.

Elkins, Edgar R. 1989. "Effect of Commercial Processing on Pesticide Residues in Selected Fruits and Vegetables. *Journal of AOAC International* 72: 533-535.

Faigh, J. G. 1995. "Enzyme Formulations for Optimizing Juice Yields." *Food Technology* 49: 79-83.

Francis, A. J. and P. W. Harmer. 1988. "Fruit Juices and Soft Drinks." In *Food Industries Manual*, ed. M. D. Ranken, 249-284. New York: Van Nostrand Reinhold.

Griffin, Patricia M. 1995. "*Escherichia coli* O157:H7 and Other Enterohemorrhagic *Escherichia coli.* " In *Infections of the Gastrointestinal Tract*, ed. M. J. Blaser, P. D. Smith, J. I. Ravdin, H. B. Greenberg, and R. L. Guerrant, 739-761. New York: Raven Press.

Griffin, Patricia M. 1996. Presentation at Food and Drug Administration Public Meeting, December 16-17, Arlington, VA. "Current Science and Technology on Fresh Juices; Notice of Meeting." *Federal Register* 61 (November 27, 1996): 60290.

Griffin, Patricia M., Stephen M. Ostroff, Robert V. Tauxe, Katherine D. Greene, Joy G. Wells, Jay H. Lewis, and Paul A. Blake. 1988. "Illnesses Associated with *Escherichia coli* O157:H7 Infections." *Annals of Internal Medicine* 109: 705-712.

Griffin, Patricia M., Beth P. Bell, Paul R. Cieslak, Jessica Tuttle, Timothy P. Barrett, Michael P. Doyle, Anne Marie McNamara, Abigail M. Shefer, and Joy G. Wells. 1994. "Large Outbreak of *Escherichia coli* O157: H7 in the Western United States." In *Recent Advances in Verocytoxin-Producing Escherichia coli Infections*, ed. M. A. Karmall and A. G. Goglio, 7-12. Amsterdam: Elsevier Science.

Haddix, Anne. 1997. Personal communication, February 24.

Hancock, Carrie M., Joan B. Rose, and Michael Callahan. 1997. "The Prevalence of *Cryptosporidium* and *Giardia* in U. S. Groundwaters." Proceedings, International Symposium on Waterborne *Cryptosporidium.* Newport Beach, California (March).

Hang, Y. D. 1993. "Enzymes in Juice Processing." In *Juice Technology Workshop, October 18-19, 1993*, ed. Donald L. Downing, 8-9. Ithaca: Cornell University.

Helmick, Charles G., Patricia M. Griffin, David G. Addiss, Robert V. Tauxe, and Dennis D. Juranek. 1994. "Chapter 3: Infectious Diarrheas." In *Digestive Diseases in the United*

States: Epidemiology and Impact, ed. James E. Everhart, 83-123. Washington, DC: U. S. Government Printing Office, NIH Publication No. 94-1447 (May).

Hooper, J. 1995. "Tropical Fruit Juice Processing." In *Production and Packaging of Non-Carbonated Fruit Juices and Fruit Beverages*, ed. P. R. Ashurst, 106-127. New York: Van Nostrand Reinhold.

Inderkum, B. 1994. "Pineapple Juice -- A Tropical Delicacy." *Flussiges Obst* 61: 102-104.

Keene, W. E., J. Kok, E. Sazie, V. K. Balan, D. H. Rice, and D. D. Hancock. 1996. "An Outbreak of *Escherichia coli* O157: H7 Traced to a Novel Source: Black-Tailed Deer." Abstract # K152. 36th Interscience Conference on Antimicrobial Agents and Chemotherapy (ICAAC) (September 15-18): 277.

Kimball, Dan A. 1991. *Citrus Processing: Quality Control and Technology*. New York: Van Nostrand Reinhold.

Kress, R. 1996. Presentation at Food and Drug Administration Public Meeting, December 16-17, Arlington, VA. "Current Science and Technology on Fresh Juices; Notice of Meeting." *Federal Register* 61 (November 27, 1996): 60290.

Kupperman, G. 1996. Presentation at Food and Drug Administration Public Meeting, December 16-17, Arlington, VA. "Current Science and Technology on Fresh Juices; Notice of Meeting." *Federal Register* 61 (November 27, 1996): 60290.

Leonard, S. 1980. "Tomato Juice and Tomato Juice Blends." In *Fruit and Vegetable Juice Processing Technology*, ed. Philip E. Nelson and Donald K. Tressler, 548-572. Westport, Conn.: AVI Publishing Company.

Leyer, G. J., L. L. Eang, and E. A. Johnson. 1995. "Acid Adaption of *E. coli* O157: H7 Increases Survival in Acidic Foods." *Applied Environmental Microbiology* 61: 3752-3755..

Mac Kenzie, William R., Neil J. Hoxie, Mary E. Proctor, M. Stephen Gradus, Kathleen A. Blair, Dan E. Peterson, James J. Kazmierczak, David G. Addiss, Kim R. Fox, Joan B. Rose, and Jeffrey P. Davis. 1994. "A Massive Outbreak in Milwaukee of Cryptosporidium Infection Transmitted Through the Public Water Supply." *New England Journal of Medicine* 331: 161-167.

Martin, Sheila A., Nancy Dean, Josephine A. Mauskopf, Vincent G. Iannachione, and Thomas S. Wallsten. 1993. *A Sampling Aid for Implementing Risk-Based Import Inspection*. Research Triangle Institute Report to the Center for Food Safety and Applied Nutrition, U. S. Food and Drug Administration (September).

Massey, L. M. 1989. "Harvesting, Storing and Handling Processed Apples." In *Processed Apple Products*, ed. Donald L. Downing, 31-52. New York: Van Nostrand Reinhold.

Mauskopf, Josephine A., Michael T. French, A. Scott Ross, Dierdre M. Maguire, Richard W. Leukroth, Jr., and Kenneth D. Fisher. 1988. *Estimating the Value of Consumers' Loss from Foods Violating the FD&C Act*. Research Triangle Report to the Center for Food Safety and Applied Nutrition, U. S. Food and Drug Administration (September).

McLellan, M. R. 1993. "An Overview of Juice Filtration Technology." In *Juice Technology Workshop, October 18-19, 1993*, ed. Donald L. Downing, 23-28. Ithaca: Cornell University.

McLellan, M. R. and E. J. Race. 1995. "Grape Juice Processing." In *Production and Packaging of Non-Carbonated Fruit Juices and Fruit Beverages*, ed. P. R. Ashurst, 88-105. New York: Van Nostrand Reinhold.

Mehrlich and Felton. 1980. In *Fruit and Vegetable Juice Processing Technology*, ed. Philip E. Nelson and Donald K. Tressler, . Westport, Conn.: AVI Publishing Company.

Millard, Peter S., Kathleen F. Gensheimer, David G. Addiss, Daniel M. Sosin, Geoffrey A. Beckett, Agnes Houck-Jankoski, and Arlene Hudson. 1994. "An Outbreak of Cryptosporidiosis from Fresh-Pressed Apple Cider." *Journal of the American Medical Association* 272 (November 23-30): 1592-1596.

National Advisory Committee for Microbiological Criteria for Foods. 1997. Document on the Principles of Risk Assessment for Illness Caused by Foodborne Biological Agents. Document prepared by Working Group on Risk Assessment, U. S. Department of Agriculture, Agricultural Research Service.

National Research Council. 1983. *Risk Assessment in the Federal Government*. Washington, DC: National Academy Press.

Nielsen SCANTRACK. 1995-1996. Cherry Hill, New Jersey: A. C. Nielsen Marketing Research.

Nordby H. E., and S. Nagy. 1980. "Processing of Oranges and Tangerines." In *Fruit and Vegetable Juice Processing Technology*, ed. Philip E. Nelson and Donald K. Tressler, 35-96. Westport, Conn.: AVI Publishing Company.

O'Leary, Joe. 1993. "Ensuring the Safety of Cider." In *Manual for Massachusetts Cider Producers*, ed. Franklyn Carlson and Karen I. Hauschild, 1-6. The Massachusetts Cider Guild.

Paine, F. A. and H. Y. Paine. 1992. *A Handbook of Food Packaging*. London: Blackie Academic & Professional.

Pederson, C. S. 1980a. "Grape Juice." In *Fruit and Vegetable Juice Processing Technology*, ed. Philip E. Nelson and Donald K. Tressler, 268-309. Westport, Conn.: AVI Publishing Company.

Pederson, C. S. 1980b. "Vegetable Juices." In *Fruit and Vegetable Juice Processing Technology*, ed. Philip E. Nelson and Donald K. Tressler, 573-596. Westport, Conn.: AVI Publishing Company.

Peterson, Martin S. and Arnold H. Johnson. 1978. *Encyclopedia of Food Science*. Volume 3. Westport, Conn.: AVI Publishing Company.

Powrie, WE. D. and B. J. Skura. 1991. "Modified Atmosphere Packaging of Fruits and Vegetables." In *Modified Atmosphere Packaging of Food*, ed. B. Ooraikul and M. E. Stiles, 169-245. New York: Ellis Horwood.

Putnam, Judith Jones, and Jane E. Alehouse. 1997. *Food Consumption, Prices, and Expenditures, 1970-95*. Washington, DC: United States Department of Agriculture, Economic Research Service, Statistical Bulletin.

Randall, L. P., C. Wray, and I. M. Mclaren. 1997. "Studies on the Development and Use of Monocausal Sandwich ELISA for the Detection of Verotoxic *Escherichia coli* in Animal Faeces." *Veterinary Record* 140: 112-115.

Ranken, M. D., ed. 1988. *Food Industries Manual*. New York: Van Nostrand Reinhold.

Rao, M. A. and M. F. Sancho. 1993. "Concentration of Apple Juice." In *Juice Technology Workshop, October 18-19, 1993*, ed. Donald L. Downing, 74-90. Ithaca: Cornell University.

Rao, M. A. and M. F. Sancho. 1993. "Principles of Concentration". In *Juice Technology Workshop, October 18-19, 1993*, ed. Donald L. Downing, 29-30. Ithaca: Cornell University.

Rebeck, H. M. 1995. "Processing of Citrus Juice." In *Production and Packaging of Non-Carbonated Fruit Juices and Fruit Beverages*, ed. P. R. Ashurst, 221-252. New York: Van Nostrand Reinhold.

Rice, Daniel H., Dale D. Hancock, and Thomas E. Besser. 1995. "Verotoxigenic *E coli* O157 Colonization of Wild Deer and Cattle Range." *The Veterinary Record* 39: 524.

Schmelzer, L. L. , J. M. Gates, M. S. Redfearn, and I. R. Tabershaw. 1967. "Gastroenteritis from an Orange Juice Preparation: II. Field and Laboratory Investigation." *Archives of Environmental Health* 15: 78-82.

Slonczewski, Joan L. and John W. Foster. 1996. "pH-Regulated Genes and Survival at Extreme pH." In *Escherichia Coli and Salmonella: Cellular and Molecular Biology*, ed. Frederick C. Neidhardt. 2nd ed. Washington, DC: ASM Press.

Smith, Alice Lorraine. 1977. *Principles of Microbiology*. 8th ed. St. Louis: C. V. Mosby.

Southgate, G. A. T., I. T. Johnson, and G. R. Fenwick. 1995. "Nutritional Value and Safety of Processed Fruit Juices." In *Production and Packaging of Non-Carbonated Fruit Juices and Fruit Beverages*, ed. P. R. Ashurst, 331-359. New York: Van Nostrand Reinhold.

Swisher, H. E. and L. H. Swisher. 1980. "Lemon and Lime Juices." In *Fruit and Vegetable Juice Processing Technology*, ed. Philip E. Nelson and Donald K. Tressler, 144-179. Westport, Conn.: AVI Publishing Company.

Tabershaw, I. R., L. L. Schmelzer, and H. B. Bruyn. 1967. "Gastroenteritis from an Orange Juice Preparation: I. Clinical and Epidemiological Aspects ." *Archives of Environmental Health* 15: 72-77.

Taylor, Jean Lin, Jessica Tuttle, Thana Pramukul, Kevin O'Brien, Timothy J. Barrett, Beverly Jolbitado, Y. L. Lim, Duc Vugia, J. Glenn Morris, Jr., Robert V. Tauxe, and Diane M. Dwyer. 1993. "An Outbreak of Cholera in Maryland Associated with Imported Commercial Frozen Fresh Coconut Milk." *Journal of Infectious Diseases* 167: 1330-1335.

Thorner, Marvin Edward and Ronald J. Herzberg. 1970. *The Food Beverage Service Handbook*. Westport, Conn.: AVI Publishing Company.

Todd, Ewen C. D. 1989. "Preliminary Estimates of Costs of Foodborne Disease in the United States." *Journal of Food Protection* 52: 595-601.

Tressler, Donald K., V.L.S. Charley, and B. S. Luh. 1980. "Cherry, Berry and other Miscellaneous Fruit Juices." In *Fruit and Vegetable Juice Processing Technology*, ed. Philip E. Nelson and Donald K. Tressler, 310-343. Westport, Conn.: AVI Publishing Company.

U. S. Apple Association. 1997a. Memorandum on industry survey, January 30.

U. S. Apple Association. 1997b. Memorandum on special survey analysis, February 17.

U. S. Department of Agriculture (USDA). 1995. *Food and Nutrition Intake by Individuals in the United Sates, 3 Days. Continuing Survey of Food Intakes of Individuals, 1989-1991.* Washington, DC: U. S. Department of Agriculture.

U. S. Department of Agriculture (USDA). 1997. Report to Congress. FSIS/CDC/FDA Sentinel Site Study: The Establishment and Implementation of an Active Surveillance System for Bacterial Foodborne Diseases in the United States. Washington, DC: U. S. Department of Agriculture, Food Safety and Inspection Service (February).

U. S. Food and Drug Administration (FDA). 1995. "Food and Drug Administration Pesticide Program -- Residue Monitoring -- 1994." *Journal of AOAC International* 78: 117A-142A.

U. S. Food and Drug Administration (FDA). 1997a. *Foodborne Pathogenic Organisms and Natural Toxins.*

U. S. Food and Drug Administration (FDA). 1997b. Health Hazards Evaluation Board Report.

Way, R. D. and M. R. McLellan. 1989. "Apple Cultivars for Processing." In *Processed Apple Products*, ed. Donald L. Downing, 1-30. New York: Van Nostrand Reinhold.

Worrall, P. 1994. "The Fruit Juice Factory of the Future." *Flussiges Obst* 61: 220-227.

Table 1. Consumption and Imports: 1995

Juice	Consumption (gallons per person)	Total Consumption (millions of gallons)	Total Consumption (millions of liters)	Imports (millions of liters)	Import Share (percent of total)
Orange	5.45	1417.0	5363.3	829.1	15.5
Grapefruit	0.64	166.4	629.8	3.3	0.5
Lemon	0.12	31.2	118.1	33.6	28.5
Lime	0.02	5.2	19.7	n.e.s.	n.e.s.
Apple	1.79	465.4	1761.5	874.3	49.6
Grape	0.29	75.4	285.4	90.7	31.8
Pineapple	0.35	91.0	344.4	308.7	89.6
Prune	0.04	10.4	39.4	n.e.s.	n.e.s.
Tomato (vegetable)	0.30	78.0	295.2	1.3	0.4
Other	n.a.	n.a.	n.a.	159.4	n. a.
Total juice	9.00	2340.0	8856.8	2300.4	26.0

Sources: Putnam and Alehouse 1997; *The Almanac of the Canning, Freezing, Preserving Industries* 1996.

Table 2. Beverage Consumption by Type

Product	Annual Consumption (gallons per person)	Total Consumption (billions of gallons)	Total Consumption (billions of servings)
Major Beverages	158.3	41.2	659
Carbonated Soft Drinks	51.2	13.3	213
Milk	24.4	6.3	101
Alcoholic Beverages	25.1	6.5	104
Coffee	20.5	5.3	85
Bottled Water	11.6	3.0	48
Tea	8.7	2.3	36
All Juice Drinks	7.8	2.0	32
Fruit and Vegetable Juices	9.0	2.3	37
All Orange Juice	5.5	1.4	23
Non-Heat-Treated Orange Juice	0.05	0.012	0.187
All Apple Juice	1.8	0.5	7
Non-Heat-Treated Apple Juice	0.10	0.026	0.416

Sources: Putnam and Alehouse 1997; *The Almanac of the Canning, Freezing, Preserving Industries* 1996; U. S. Apple Association 1997a; Nielsen SCANTRACK.

Table 3. Production

Step 1. Growing	Step 2. Harvesting	Step 3. Washing and Culling
	A. Hand B. Mechanical - quicker and more economical.	Quality of fruit A. Damage by harvesting a potential problem. B. Fruits and vegetables inspected to eliminate products with insect damage, mold, off-color, rot, etc. Only good quality fruits used for juices. C. Fruits and vegetables brushed and cleaned with detergent and chlorinated water.

Step 4. Extraction	Step 4. Extraction, continued	Step 4. Extraction, continued	Step 5. Pressing
A. Milling 1. Hammer mill. 2. Grinder mill - rotating head which forces fruit over a set of fixed knives. 3. Stoned fruit mill-crushes fruit without damaging stones. 4. Grape mill (de-stalker)	5. Citrus mill a. FMC juice extractor - a serrated cup positions fruit, a round steel tube is inserted into fruit. Pressure is applied to fruit, forcing its contents out through inserted tube. b. Brown extractor - juice is obtained by cutting fruit in half, with halves given pressure over reamers. The juice is transferred in one direction and hulls in the other direction. 6. Mash transport - pipe using pumps to move mash.	B. Enzymes - used to break down mash to simpler substances - increases juice yield. Some enzyme products can almost liquefy mash. 1. Pectinase. 2. Cellulose and hemicellulase. C. Press aids - improves pressing of fruits - adds bulk. 1. Wood fibers. 2. Paper. 3. Rice hulls. D. Leaching - the addition of water or low Brix juice - lower quality juice and additional water to eliminate.	Press types A. Rack and frame. B. Bladder press - press aid may be used. C. Screw press - continuous operation - press aid used - operating cost low. D. Counter current extractor - removes juice by leaching - requires firm fruit - time required to start up and shut down means machine should be run for several weeks - press aid used. E. Horizontal basket press (Bucher press) - press aid used. F. Belt press - press aid used. G. Decanter centrifuge - use centrifugal force to separate the solids from juice.

Step 6. Clarification and Filtration	Step 7. Juice De-aeration	Step 8. Heat Treatments	Step 9. Concentration
A. Screening. B. Pectinase - used to reduce viscosity and clarify juice. C. Gelatins - used to remove tannins or proteins. D. Bentonite - used to remove excess proteins. E. Filtration 1. Diatomaceous earth filtration 2. Plate and frame press 3. Horizontal filter 4. Vacuum filters 5. Cartridge filters F. Ultra-filtration. G. Micro-filtration.	Some juices, such as orange, trap air and are de-aerated by being sprayed into vacuum de-aerator. This process reduces vitamin C destruction and other changes due to oxygen.	A. Juices are heated to decrease microbial growth and to inactivate natural enzymes. B. Sugar solutions (frozen fruit) reduce dissolved oxygen. C. Lemon juice, ascorbic acid, sulfur dioxide, sulfites, other chemical agents can be used.	Juices are low in solids, so it is common to concentrate many of them. A. Evaporation - water is removed by boiling. An evaporation plant consist of: 1. an evaporator, where the juice evaporates by using the heat provided (usually steam). 2. a separator, where the concentrate is separated from the vapors, and 3. a condenser, where the vapors are condensed. B. Reverse Osmosis - the suspended solids are removed by centrifugation or ultra-filtration and the clear serum is concentrated by reverse osmosis. C. Freeze concentration - high quality juice concentrations can be made. Concentrate to maximum Brix 50°; operation has high capital and operating costs.

Step 10. Preservation	Step 11. Juice from Concentrate	Step 12. Packaging
A. Refrigeration (0-2.2°C) B. Freezing C. Pasteurization D. Chemical treatment Benzoic acid, sulfur dioxide E. Membrane filtration F. Drying G. Other potential treatments 1. Irradiation 2. Ultraviolet light sterilization 3. High-intensity pulse-light pasteurization 4. Electric pulse and poration 5. Microwave pasteurization 6. Surface pasteurization 7. High-pressure pasteurization	Concentrate is pumped into blending tank where treated water, essence (and oil in the case of citrus fruit) and probably pulp is added. This reconstituted juice is pasteurized, chilled, packaged and shipped.	A. Hermetically (air and moisture sealed): 1. Glass 2. Cans 3. Aseptic packaging into: tetra Pak, Combibloc, PurePak, Elopak, etc. B. Not hermetically sealed 1. Polyethylene (PET) plastic bottles (sizes fl oz: 4, 8, 16, 32, 64, 128) 2. Polyvinyl chloride (PVC) bottles 3. Plastic bags in fiberboard boxes (4-5 gal) 4. composite paperboard cartons

Table 4. Heat-Treatable Microbial Hazards

Evidence from outbreaks

Year	Juice	Hazard	Cases	Cause	Source
1975	Apple cider	*Salmonella typhimurium*	296	Drop apples; orchard fertilized with cow manure; unpasteurized	CDC 1975
1976	Tomato juice	*Clostridium botulinum*	1	Home-made	CDC Foodborne Outbreak Surveillance System
1979	Tomato juice	*C. botulinum*	1	Home-made	CDC Foodborne Outbreak Surveillance System
1981	Tomato juice	*C. botulinum*	1	Home-made	CDC Foodborne Outbreak Surveillance System
1983	Tomato juice	*C. botulinum*	1	Home-made	CDC Foodborne Outbreak Surveillance System
1991	Apple cider	*Escherichia coli* O157:H7	23; 6 hospitalized; 4 HUS	Drop apples; unpasteurized	Besser et al. 1993
1991	Coconut milk	*Vibrio cholerae* O1	4 (6 consumed product)	Heavy contamination during manufacturing in Thailand; unpasteurized	Taylor et al. 1993
1993	Apple cider	*Cryptosporidium parvum*	160	Apples contaminated with calf feces; unpasteurized	Millard et al. 1994

Year	Juice	Hazard	Cases	Cause	Source
1995	Orange juice	*Salmonella* Hartford, Gaminara, Rubinslaw	62	Inadequate sanitation and cleaning; unpasteurized	Cook et al. 1996
1996	Apple juice	*E. coli* O157: H7	66; 14 HUS; 1 death	Unpasteurized	CDC 1996b CDC 1997
1996	Apple cider	*E. coli* O157: H7	14; 7 hospitalized; 3 HUS	Drop apples; unpasteurized	CDC 1997
1996	Apple cider	*E. coli* O157: H7	6	Apple cider made at church event	Griffin 1996
1996	Apple cider	*C. parvum*	31	Unpasteurized; well water used for rinsing contained coliforms	CDC 1997

Evidence from recalls

Year	Juice	Hazard	Cases	Cause	Source
1992	Orange Julius drink	*Salmonella* agona	25	Orange Julius compound contaminated with *Salmonella* spp.	FDA recall data
1993	Flavored drinks	*C. parvum*	Cannot be separated from water-borne cases	From contaminated city water supply	FDA recall data
1994	Orange juice	*Bacillus cereus*; yeast	85 cases	Fermented; juice left at room temperature	FDA recall data

Evidence from state investigations

Year	Juice	Hazard	Cases	Cause	Source
1989	Orange juice	*Salmonella typhi*	69; 21 hospitalized	Infected worker	Personal communication with Mike Cambridge, New York State Health Dept., January 22, 1997
1993	Carrot juice	*C. botulinum*	1 hospitalized	Home-made	Personal communication with Patty Walker, Washington State Health Dept., January 15, 1997
1993	Orange juice	Yeast or unknown toxicant	23; 1 person saw physician	Improper storage time and container	Personal communication with Sharon Karam, Ohio State Health Dept., January 21, 1997
1993	Watermelon drink	*Salmonella* spp.	18	Home-made	Personal communication with Roberta Hammond, Florida State Health Dept., January 21, 1997
1996	Apple cider	*E. coli* O157:H7 (suspected)	1	Cow manure on clothes of farmer making cider	Personal communication with Marshall Deasy, Pennsylvania State Health Dept., January 15, 1997

Table 5. The Annual Number of Illnesses Associated with Juice Consumption

(1) Pathogen	(2) Lower Bound	(3) Upper-Bound Estimate I	(4) Upper-Bound Estimate II
a. Non-Heat-Treated			
Salmonella	16	4900	7600
E. coli O157: H7	22	2200	4300
C. parvum	48	4800	4800
b. Heat-Treated			
B. cereus	21	2000	33900
Unknown	6	600	600

Notes to Table 5:

Column (1). We classified the pathogens associated with illness according to whether or not the juice vehicle was heat-treated. The illnesses caused by the pathogens listed under the non-heat-treated heading (part (a)) all were associated with the consumption of non-pasteurized juices. The illnesses listed under the heat-treated heading (part (b)) all were associated with the consumption of pasteurized juices.

Column (2). The lower-bound numbers are the annual average confirmed illnesses for 1993-1996 from CDC outbreaks, state outbreak investigations, and FDA recall data.

Column (3). The estimated number of cases is based on Bennett et al. (1987) and CAST (1994). To get these numbers, we multiplied the confirmed cases from column (2) by 307 for *Salmonella*, 100 for *E. coli* O157: H7, 100 for *C. parvum*, 96 for *B. cereus*, and 100 for the unknown pathogen.

Column (4). The estimated number of cases is based on Todd (1989) and CAST (1994). To get these numbers, we multiplied the actual cases from column (2) by 474 for *Salmonella*, 195 for *E. coli* O157: H7, 100 for *C. parvum*, 1,615 for *B. cereus*, and 100 for the unknown pathogen.

Table 6. Human Health Effects

Hazard	Distribution of cases by severity (percent)	Characteristics of mild case	Characteristics of moderate case	Characteristics of severe case
Escherichia coli O157:H7	Mild: 50 Moderate: 27-32 Severe: 18-23	Nausea, cramping, or diarrhea; lasts less than 4 days	Nausea, cramping, or diarrhea, possible headache, muscle pain, fever, abdominal pain, dehydration; lasts 4 days or more	Hospitalization; some cases develop HUS or TTP; case fatality rate = 1-2.5 percent; 1.2 percent of outbreak cases have been fatal; HUS and hemorrhagic colitis each account for half of fatalities
Salmonella (non *typhi*)	Mild: 60-70 Moderate: 20-30 Severe: 5-15	Diarrhea, nausea, vomiting, abdominal cramping; lasts 1-2 days	Same as mild, but lasting up to one week	Headache, possible fever, hospitalization; case fatality rate = 0.1 percent of all cases
Cryptosporidium parvum	Mild: 90 Moderate: 9 Severe: 1	Watery diarrhea, lasting one day to several weeks, abdominal cramping, nausea	Same as mild, but lasting longer	Hospitalization
Bacillus cereus	Mild: most cases Moderate: rare	Diarrhea, abdominal cramping	Same as mild, with vomiting	

Sources: Council for Agricultural Science and Technology 1994; Griffin 1995; Mauskopf et al. 1988; Martin et al. 1993; Haddix 1997; U. S. Food and Drug Administration 1997.

Table 7. Not Heat-Treatable Hazards

Year	Product	Hazard	Cases	Cause	Source
Evidence from outbreaks					
1967	Orange juice	Virus (unidentified; other contaminants possible)	5200 (estimated)	Contaminated water added to orange juice concentrate	Schmelzer et al. 1967; Tabershaw et al. 1967
1969	Canned tomato juice	Tin	113	Nitrate in soil incorporated in tomato and corroded cans	Barker and Runte 1972
1984	Elderberry juice	Poisonous parts of plant	11		CDC 1984
Evidence from state investigations					
1989	Orange juice	Virus		Ill food handlers	Personal communication with Pam Shillam, Colorado State Health dept., January 17, 1997
1990	Guanabana juice	Toxic seed material	9		Personal communication with Dr. Hendricks, Texas State Health Dept., January 16, 1997

Evidence from recalls

Year	Product	Hazard	Cases	Cause	Source
1988	Fruit punch drink	Tin	2	Acidity of punch reacted with tin coating of cans (used wrong cans for packaging juice drink)	FDA recall data
1990-1991	Fruit juice and fruit drinks	Natamycin		Added as a preservative	FDA recall data
1991	Fruit drink	Sulfites		Inadvertently added	FDA recall data
1991	Fruit Punch	Glass		Packed in glass bottles	FDA recall data
1991-1992	Fruit drinks	Sodium hydroxide	3; 1 hospitalized (in 1992)	Sanitizing agent got into product containers during cleaning	FDA recall data
1990s	Fruit drinks	FD&C yellow #5 dye		Undeclared dye	FDA recall data
1992	Fruit juices	Lead	1	Leached from can seams by low pH	FDA recall data
1993	Orange juice	Milk		Filler lines not cleaned between milk and juice production	FDA recall data
1993	Orange flavored soft drink (with pear juice)	Copper	2	Cracks in heat exchanger allowed product to come in contact with copper pipe fitting	FDA recall data
1994	Fruit flavored juice beverage	Glass		Unknown	FDA recall data

Year	Product	Hazard	Cases	Cause	Source
1994	Lemon juice and grape juice	Sulfites		Added	FDA recall data
1995	Tomato juice	Salt	1	Undeclared	FDA recall data
1996	Apple-prune juice and prune juice	Lead	No illness; chronic hazard	Contaminated imported prune juice; possibly came in large drum	FDA recall data
1996	Fruit drink	Plastic	3 (complained of choking)	Plastic bags draped over side of bottle loading bin	FDA recall data
1997	Orange juice	Glass		Packed in glass bottles	FDA recall data
1997	Pineapple juice	Tin		Undeclared	FDA recall data

Evidence from FDA investigations

Year	Product	Hazard	Cases	Cause	Source
1997	Apple juice concentrate	Patulin		Undeclared	FDA analysis

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federal register

Friday
May 1, 1998

Part III

Federal Trade Commission

16 CFR Part 260

Guides for the Use of Environmental Marketing Claims; Final Rule

FEDERAL TRADE COMMISSION

16 CFR Part 260

Guides for the Use of Environmental Marketing Claims

AGENCY: Federal Trade Commission.

ACTION: Final revised guides.

SUMMARY: The Federal Trade Commission (''Commission'') issued Guides for the Use of Environmental Marketing Claims (''guides'') on July 28, 1992. The guides included a provision for public comment and review three years after adoption to determine whether there was a need for any modifications. In connection with this review, in July 1995 the Commission sought public comment on a variety of issues, and held a two day public workshop-conference on December 7 and 8, 1995. On October 11, 1996, the Commission issued revised guides, but advised that it had not yet completed its review of the Recyclable and Compostable guides because of ongoing relevant consumer research. One purpose of the research was to examine whether ''recyclable'' and ''compostable'' claims continue to imply that consumers can recycle or compost the marketed product in their own area. Further, the Commission decided to seek additional public comment on the issue of whether product parts that can be reconditioned and/or reused in the manufacture of new products could be considered ''recyclable'' under the guides and whether products made from such reconditioned and/or reused parts could qualify as ''recycled'' under the guides. The Commission has now completed its review of the above issues and is issuing further amendments to the guides, as discussed below.

The Compostable guide is amended to clarify that an unqualified compostable claim can be made if a product is compostable in a home compost pile or device, even if municipal or institutional composting facilities are not locally available. This is because consumers are likely to perceive claims of compostability to mean that a product may be composted in a home compost pile or device. The Recyclable guide is modified to allow the term ''recyclable'' to be used for a package or product that can be recovered from the solid waste stream for reuse or for the manufacture of another package or product, so long as the package or product can be collected through an established recycling program (thus including reused, reconditioned and remanufactured products). The guides retain the provision that, to make an unqualified recyclable claim, recycling collection programs should be available to a substantial majority of consumers or communities, but the Commission is modifying the suggested qualifying statement for when an unqualified claim is not appropriate. Further, a new example illustrates that the phrase ''Please Recycle'' is considered equivalent to a ''recyclable'' claim. In addition, the Recycled Content guide is amended to clarify that recycled content may consist of used, reconditioned or remanufactured components, as well as raw materials. Finally, the Commission is amending the guides to clarify that they apply to all forms of marketing, including digital or electronic media, such as the Internet and electronic mail, and to the marketing of services, as well as products and packages.

EFFECTIVE DATE: May 1, 1998.

FOR FURTHER INFORMATION CONTACT: Janice Podoll Frankle, Attorney, (202) 326–3022, or Pablo Zylberglait, Attorney, (202) 326–3260, Division of Enforcement, Bureau of Consumer Protection, FTC, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION:

I. Background

A. Purpose of the Guides

Like other industry guides issued by the Commission, the Environmental Marketing Guides ''are administrative interpretations of laws administered by the Commission for the guidance of the public in conducting its affairs in conformity with legal requirements.'' 16 CFR 1.5. The guides indicate how the Commission will apply Section 5 of the Federal Trade Commission Act (''FTC Act''), which prohibits unfair or deceptive acts or practices, in the area of environmental marketing claims. 15 U.S.C. 45. The guides apply to all forms of marketing of products and services to the public, whether through advertisements, labels, package inserts, promotional materials, or electronic media.

B. 1995 Federal Register Notice

When the Commission issued the guides in 1992, it included a provision that three years after adoption, it would seek public comment on ''whether and how the guides need to be modified in light of ensuing developments.'' Pursuant to this provision, in a **Federal Register** Notice published on July 31, 1995 (''1995 Notice''), the Commission sought comment on a number of general issues relating to the guides' efficacy and the need, if any, to revise or update the guides. 60 FR 38978. The Commission also sought comment on specific issues related to particular environmental claims addressed by the guides. In addition, the 1995 Notice announced that Commission staff would be conducting a public workshop-conference at the conclusion of the comment period to discuss issues raised by the written comments. The workshop was held on December 7 and 8, 1995.

The Commission received 99 comments in response to the 1995 Notice.[1] Some of those comments are relevant to the issues presented in the October 11, 1996 **Federal Register** Notice (''1996 Notice''), discussed below.[2]

C. 1996 Federal Register Notice

On October 11, 1996, the Commission published revised guides (1996 Notice), which included revisions to the prefatory sections, as well as the following sections: General Environmental Benefits, Degradable/Biodegradable/Photodegradable, Recycled Content, Source Reduction, Refillable, and Ozone Safe and Ozone Friendly. 61 FR 53311. At that time, the Commission advised that it was still in the process of reviewing the Recyclable and Compostable guides and wanted to evaluate the results of ongoing consumer research. The Commission also stated that it was seeking further public comment on the issue of whether product parts that can be reconditioned and/or reused in the manufacture of new products could be considered ''recyclable'' under the guides and whether products manufactured from such reconditioned and/or reused parts could qualify as ''recycled'' under the guides. In addition, the Commission reiterated its request for consumer

[1] The comments came from 45 trade associations or trade association coalitions; 28 manufacturers, distributors or retailers; 12 consumer, environmental or public advocacy organizations; 4 state government officials or bodies; 2 federal government agencies or officials; 2 certification organizations; 1 standards organization; 1 city government official; 1 individual; 1 educational institution; 1 consulting company; and 1 public-private recycling coalition.

[2] The comments are on the Commission's public record as Document Nos. B17512400001–B17512400099 for the 1995 Notice and B20818700001–B2081870227 for the 1996 Notice. The comments are cited in this Notice by the name of the commenter, reference to either the 1995 Notice or the 1996 Notice, depending on which notice(s) was responded to by the commenter, a shortened version of the comment number, and the relevant page(s) of the comment, e.g., Virginia Automotive Recyclers Ass'n, 1996 Notice, #1 at 1. The transcript of the public workshop is on the Commission's public record as Document No. P954501. A complete list of commenters, the comments, a transcript of the workshop proceedings, and consumer perception studies conducted are available for inspection and copying in the Consumer Response Center, Room 130, Federal Trade Commission, 6th & Pennsylvania Ave., N.W., Washington, D.C. 20580.

perception data for ''recyclable'' and ''compostable'' claims.[3]

In response to the 1996 Notice, 227 comments were received.[4] Part II summarizes the comments on the 1996 Notice, and comments on the 1995 Notice that are relevant to the issues raised in the 1996 Notice.

D. Consumer Survey Evidence

The consumer perception survey evidence received by the Commission is relevant to the issues raised in the 1996 Notice. The Council on Packaging in the Environment (''COPE'') conducted a national telephone survey in April 1996, providing evidence on whether consumers consider products made from reconditioned parts to be ''recycled.'' COPE surveys from March 1993, September 1993, and December 1994 provide empirical data concerning consumers' interpretations of ''recyclable'' and ''Please Recycle'' claims. A Roper Starch Worldwide, Inc. (''Roper Starch'') survey of consumers conducted through personal, in-home interviews during December 1996, provides information on how recyclable claims are interpreted. Research performed by professors from American University, through mall-intercept interviews, provides empirical data on consumer interpretation of recyclable claims and certain disclosures.[5]

II. Summary of Comments and Modifications to the Guides

A. The Compostable Guide

1. Summary of Comments Regarding the Compostable Guide

Only a few comments directly addressed the Compostable guide, which states that an unqualified compostable claim might be deceptive unless a product can be safely composted at home and in a municipal composting facility. The Society of the Plastics Industry, Inc. (''SPI'') stated that home composting appears to be the primary means of composting practiced by consumers and thus asked the Commission to clarify that an unqualified compostable claim can be made for an item that can be safely composted in a home compost pile or device.[6] SPI stated that it was unaware of any data indicating that a product compostable in a home compost pile or device would not be compostable in a municipal composting facility. SPI stated further that the lack of municipal composting facilities near the consumer is irrelevant to the validity of an unqualified compostable claim. SPI noted, however, that if a product is only compostable in a municipal facility, then that fact should be disclosed and a qualifier regarding local availability should be used. Another commenter recommended modifying the definition of ''compostable'' to indicate that the advertised product ''must break down in approximately the same time as the materials it is generally composted with.''[7]

2. Modifications to the Compostable Guide

Because there are fewer than 20 municipal solid waste composting facilities in the United States, the Commission now believes that few consumers are likely to know about and associate a compostable claim with municipal solid waste composting facilities.[8] Moreover, the Commission agrees with SPI that a product technically capable of being composted in a home compost pile or device would also be compostable in a municipal composting facility. Thus, the Compostable guide and Example 1 have been revised to clarify that an unqualified compostable claim can be made if a product is compostable in a home compost pile or device even if municipal or institutional[9] composting facilities are not locally available.[10] The guide still states, however, that if a claim is made that a product is compostable in a municipal or institutional composting facility, then the claim may need to be qualified to the extent necessary to avoid deception about the limited availability of composting facilities.

B. The Recyclable and Recycled Content Guides

1. Claims Regarding Local Availability of Recycling Facilities

a. Background. The Recyclable guide states that consumers are likely to interpret unqualified recyclable claims to imply that facilities are available in their community to recycle the product, and that if facilities are not available to a substantial majority of consumers or in a substantial majority of communities, then such claims should be qualified. An important issue that arose in the review of the Recyclable guide concerned whether this interpretation of an unqualified claim is still correct. Closely related to this issue is how consumers interpret the increasing number of claims such as ''Please Recycle'' in the marketplace, and if these claims also need qualification when available facilities are limited.

b. Summary of Comments Regarding the Local Availability Standard and ''Please Recycle'' Claims. The issue of how consumers interpret unqualified recyclable claims and whether the term implies anything about the availability of local recycling facilities provoked a wide range of comments. A few commenters contended that no qualifications about limited availability were necessary.[11] Most of the

[3] For example, the 1995 Notice requested any empirical data relevant to whether consumers perceive that products made from reconditioned parts that would otherwise have been discarded should qualify as ''recycled'' products. Further, the 1995 Notice sought comment on certain issues relating to the Recyclable and Compostable guides and requested any empirical data regarding whether an unqualified recyclable or an unqualified compostable claim conveys a claim concerning local availability of recycling or composting programs and whether any evidence indicates that those guides should be modified, and if so, in what manner. In addition, the 1995 Notice stated that the available evidence suggested that certain qualifying disclosures outlined in the Recyclable and Compostable guides may be more effective than others in conveying to consumers that facilities may not be available in their community to recycle or compost the product. Thus, the Commission asked for any evidence indicating that certain of those qualifying disclosures should be modified, and if so, in what manner.

[4] These came from 201 automotive parts dealers, ''automotive recyclers,'' automotive salvage companies, dismantlers, wreckers and rebuilders; 17 trade associations (11 of which represent ''automotive recyclers,'' rebuilders, and dismantlers); 2 manufacturers; 1 federal government agency; 1 public-private recycling hotline; 1 municipal recycling and solid waste commission; 1 association of recycling managers; 1 state office of environmental assistance; 1 non-profit public service corporation; and 1 individual.

[5] Although the revised guides are effective immediately, the Commission will take into consideration the date when materials were authorized to be printed in conformance with the former guides.

[6] SPI, 1995 Notice, #53 at 25; 1996 Notice, #70 at 2.

[7] Mobil Chemical Co. (''Mobil''), 1995 Notice, #38 at 4. The guide currently states that a compostable claim means that a product will break down in a ''safe and timely manner.'' The Commission interprets the ''timely manner'' language to mean that the product or package will break down in approximately the same time as the materials with which it is composted.

[8] This view is supported by a 1991 University of Illinois study about consumer perceptions of such terms as ''degradable/biodegradable,'' ''compostable,'' ''recyclable,'' and ''environmentally friendly.'' When consumers were asked the open-ended question, ''What does the term compostable mean?,'' 44.2% of respondents defined compostable in terms of a home compost pile. The study reported that consumers did not mention municipal composting programs in their definitions of ''compostable.''

[9] The word ''institutional'' has been added because there are also privately operated composting facilities.

[10] Example 3 has been deleted because revised Example 1 now illustrates the same concept. In addition, references to ''yard waste'' have been changed to ''yard trimmings'' because the Environmental Protection Agency (''EPA'') advised that the latter term is becoming more prevalent.

[11] International Dairy Foods Ass'n (''IDFA''), 1995 Notice, #13 at 2–3; American Bakers Ass'n, 1995

Continued

approximately 40 commenters who specifically discussed recyclable claims, however, only favored a less restrictive approach to when the term ''recyclable'' should be qualified. One commenter stated that the assertion that some consumers may not understand that ''recyclable'' means that the package is recyclable only if there is a recycling program in the community, seems to unnecessarily question the intelligence of consumers.[12] Another commenter recommended that the Commission indicate that only claims of recyclability that imply availability of programs (rather than recyclable claims in general) may require qualification to the extent necessary to avoid consumer deception about limited availability of recycling programs and collection sites.[13] Another commenter stated that the Commission would promote dissemination of information and spur demand for increased recycling facilities by modifying the recyclability standards to allow claims of recyclability where a material can be recycled by an accepted, practical method, whether or not facilities to do so are widely available.[14]

Commenters also recommended that the threshold for making unqualified ''recyclable'' claims be lowered to permit such claims if facilities are available to a significant percentage of the population nationwide, or to a reasonable portion of the population (rather than the current threshold of substantial majority).[15] Several commenters suggested that the Commission harmonize its guides with the draft standards being developed within the International Organization for Standardization (''ISO''), which would require that collection facilities be available to a ''reasonable portion'' of the population.[16] One commenter contended that the ''reasonable portion'' language is more manageable than the ''substantial majority'' wording in the guides and would require less cumbersome data collection.[17]

In contrast, several commenters urged the Commission to retain the current recyclable qualifications.[18] EPA stated that claims of recyclability need to be qualified as recommended in the guides because there is no real benefit to consumers in being informed that a product or package is technically recyclable if a program is not available enabling them to recycle the material after use.[19] EPA also stated that it would strongly oppose allowing the unqualified use of the term ''recyclable'' unless it can be definitely proven that such usage would not contribute to the placement of improper materials into recycling bins.

Another commenter maintained that the substantial increase in curbside collection programs over the past few years does not obviate the problem because the availability of curbside collection can itself mislead consumers about the recycling properties of certain materials.[20] A recycling association noted that false claims of recyclability waste consumers' time both in preparing materials to be recycled and in sorting through material not picked up because of contamination with non-recyclables.[21] The commenter stated, for example, that its members had to explain to consumers why the recycling crew did not take the corrugated takeout pizza boxes labeled ''recyclable,'' but which, in fact, were not recycled in the community where the pizza was sold.

Another commenter urged the Commission to modify the guides to limit the use of the unqualified claim ''recyclable'' to only those products and materials that are accepted for recycling in the majority of curbside recycling programs across the country or in the communities where the product is sold or distributed, or are accepted for recycling at the point of purchase or distribution, or have demonstrated a recycling rate of 50% or better nationally or in the communities where the product is sold or distributed.[22] The Environmental Defense Fund (''EDF'') stated that, to avoid consumer deception at the point of purchase, the qualifying language accompanying a claim should explicitly state the current extent of availability of facilities and programs required to fulfill the claim, and therefore avoid placing the burden on consumers to determine local availability.[23] Two university professors who conducted research on recycling claims also suggested stronger qualifications.[24]

The comments on statements such as ''Please Recycle'' also were mixed. Several industry commenters stated that statements like ''Please Recycle'' are exhortations to encourage consumers to recycle and not claims about whether a particular product is widely recyclable.[25] NSDA explained that in the soft drink industry, the three-chasing-arrows logo is almost always displayed in conjunction with the ''Please Recycle'' message, and the industry does not want any special meaning to be attached to the logo or the adjoining ''Please Recycle'' phrase, which simply asks the consumer to consider recycling.[26]

In contrast, EPA stated that it viewed ''Please Recycle'' as similar to an unqualified claim of recyclability.[27] EPA also expressed concern that the phrase ''Please Recycle'' accompanied by the chasing-arrows symbol may simply be an effort by marketers to display that symbol without having to make a qualified recyclable claim. EPA stated that such messages are so similar to a claim of recyclability that when unqualified, they may be deceptive. University researchers Mayer & Cude suggested revising the guides to clarify that the phrase ''Please Recycle'' is not adequate to inform consumers about a product's recyclability.[28] Several Attorneys General recommended modifying the guides to state that the exhortation to recycle be expressly qualified whenever collection facilities are limited for the material in question by stating the percentage of the population that cannot recycle the material, followed by information on how to find out whether the material is recyclable in the consumer's area.[29]

Notice, #23 at 1–2; Paperboard Packaging Council (''PPC''), 1995 Notice, #67 at 1–6.

[12] IDFA, 1995 Notice, #13 at 2.

[13] Grocery Manufacturers of America (''GMA''), 1995 Notice, #59 at 10, 20.

[14] Soap and Detergent Ass'n (''SDA''), 1995 Notice, #65 at 9. *See also* Paper Recycling Coalition (''PRC''), 1995 Notice, #91 at 6 (the Commission's recyclable standard may hinder the growth of recycling markets by limiting the recovery of materials for which there is a demand, but for which the threshold to use an unqualified ''recyclable'' claim has not been met).

[15] 3M, U.S. Sub-TAG to ISO, National Ass'n of Manufacturers, Chemical Manufacturers Ass'n (''3M''), 1995 Notice, #32 at 2 (reasonable portion); Eastman Kodak Co. (''Kodak''), 1995 Notice, #42 at 3 (reasonable portion); American Plastics Council, 1995 Notice, #64 at 15 (significant portion); National Ass'n of Photographic Manufacturers, Inc. (''NAPM''), 1995 Notice, #83 at 2 (reasonable portion).

[16] 3M, 1995 Notice, #32 at 2; Kodak, 1995 Notice, #42 at 3; NAPM, 1995 Notice, #83 at 2.

[17] Kodak, 1995 Notice, #42 at 3.

[18] Helene Curtis, Inc., 1995 Notice #8 at 3; National Recycling Coalition Inc., 1995 Notice, #73 at 1.

[19] EPA, 1995 Notice, #22 at 2, 5; 1996 Notice, #215 at 1–2.

[20] Aluminum Ass'n, Inc., 1995 Notice, #66 at 3–5.

[21] Ass'n of Recycling Managers, Inc., 1995 Notice, #77 at 2, 5.

[22] Californians Against Waste Foundation, 1995 Notice, #81 αt 3.

[23] EDF, 1995 Notice, #93 at 4.

[24] Professors Robert N. Mayer and Brenda J. Cude (''Mayer & Cude''), 1995 Notice, #20 at 3.

[25] GMA, 1995 Notice, #59 at 19 (such claims energize consumers to recycle items that can be recycled; curbing the use of ''Please Recycle'' might threaten upward trend of recycling rates); National Soft Drink Ass'n (''NSDA''), 1995 Notice, #62 at 6; SDA, 1995 Notice, #65 at 9; Chemical Specialties Manufacturers Ass'n, 1995 Notice, #72 at 15.

[26] NSDA, 1995 Notice, #62 at 6.

[27] EPA, 1995 Notice, #22 at 2.

[28] Mayer & Cude, 1995 Notice, #20 at 5.

[29] Attorneys General of the States of Arizona, California, Connecticut, Florida, Massachusetts, Minnesota, Missouri, New York, Pennsylvania,

c. *Consumer Perception Data Regarding the Local Availability Standard and ''Please Recycle'' Claims.* In the December 1994 COPE survey, respondents were asked if a ''Please Recycle'' claim on a package meant that collection programs existed in their community to recycle that package. Approximately one-third of consumers stated that the ''Please Recycle'' label meant that they could recycle the product in their community. When consumers were asked if the ''Please Recycle'' label on a package meant that the package can be recycled by consumers in all, most, some, a few or no communities, over one-half responded that the claim meant that the product could be recycled by consumers in ''all'' or ''most'' communities nationwide.

One question in the Roper Starch survey asked consumers if the claim of ''recyclable package'' on a cereal box meant that there *definitely* is a recycling facility for such packages in the consumers' communities. Of the respondents, 37% thought that the ''recyclable'' claim meant that there definitely was a recycling facility in their community, while 50% thought that there definitely was not a recycling facility in their community.

Although the research described above provides some consumer survey data regarding ''Please Recycle'' and local availability claims, in the 1996 Notice the Commission stated that it also wanted to evaluate the results of ongoing consumer research related to the Recyclable and Compostable guides. In July 1997, the Commission received the results of that research, which was conducted by Professors Manoj Hastak and Michael Mazis and funded by American University. Using a mall-intercept approach, respondents were exposed to one of two product packages (cardboard milk carton or plastic petroleum jelly jar) with one of three different labels on the package (''Recyclable,'' ''Please Recycle,'' or no environmental claim).

After examining one package (either milk or petroleum jelly), respondents were asked a series of questions designed to measure their perceptions of the package's recyclability. Consumers were asked how likely or unlikely it is that the package can be recycled in their community.[30] Of the respondents exposed to the package without any environmental claim, between 46% and 54% (for milk and petroleum jelly, respectively) indicated that it was likely or extremely likely that the package was recyclable in their community. Over 72% of the respondents exposed to the ''recyclable'' label indicated that it was likely or extremely likely that the package was recyclable in their community. Over 75% of the respondents who were shown the ''Please Recycle'' label indicated that it was likely or extremely likely that the package was recyclable in their community.

Then, the respondents were asked how likely or unlikely it is that the package can be recycled in most communities in the United States. Of the respondents exposed to the package without any environmental claim, between 40% and 46% (for milk and petroleum jelly, respectively) indicated that it was likely or extremely likely that the package can be recycled in most communities in the United States. Approximately 70% of the respondents who were shown the ''recyclable'' or ''Please Recycle'' label indicated that it was likely or extremely likely that the package can be recycled in most communities in the United States.

d. Retention of the Local Availability Standard; Amendment of the Recyclable Guide Regarding ''Please Recycle'' Claims. As discussed above, recent survey data confirm that the presence of either the ''recyclable'' claim or the ''Please Recycle'' claim significantly increased the percentage of consumers who believed the package to be recyclable in their community and in most communities in the United States. The large increase in responses to the ''recyclable'' and ''Please Recycle'' labels over where no claim is made shows that the claims make a difference in consumer perception of the availability of recycling facilities in their communities and in most United States communities. Further, there were no statistically significant differences in response to the two questions between the ''recyclable'' and ''Please Recycle'' groups. The Commission concludes that these results indicate that a local availability claim is conveyed to consumers by an unqualified ''recyclable'' claim.[31] The study further indicates that packages with the claim ''Please Recycle'' are just as likely to be perceived as recyclable as packages with the claim ''recyclable,'' and also to convey a local availability claim.

Further, some commenters indicated that unqualified claims of recyclability where there is no local availability of recycling programs, mislead consumers into placing improper materials into recycling bins and thus the claims can increase the costs of recycling programs. It also was pointed out that while a product may be technically recyclable, if a program is not available allowing consumers to recycle the product, there is no real value to consumers. Thus, the Commission has decided to retain the current disclosure system for ''recyclable'' claims. Unqualified ''recyclable'' claims should only be made when a package or product is recyclable for a substantial majority of consumers or communities; in all other instances, an appropriate disclosure should accompany such claims.[32]

In addition, recent survey data reveal that a significant majority of consumers equate the claim ''Please Recycle'' with unqualified ''recyclable'' claims. Accordingly, new Example 11 to the Recyclable guide illustrates that the phrase ''Please Recycle'' is equivalent to a ''recyclable'' claim and, thus, that unqualified usage should be limited to products that can be recycled locally by a substantial majority of consumers or communities.

2. Safe Harbor Disclosures for Products or Packages That Are Not Recyclable in a Substantial Majority of Communities

a. Summary of Comments Regarding Disclosures. Under the Recyclable guide, the Commission adopted a three-tiered disclaimer approach, depending on the availability of recycling facilities for a package or product. The first tier is when recycling facilities are available to a substantial majority of consumers or communities nationwide; in such cases,

Tennessee, Washington, and Wisconsin (''Attorneys General''), 1995 Notice, #45 at 3.

[30] The communities that were selected for this study were chosen because neither of the product packages used in the study could be recycled curbside in these areas; there were no known drop off facilities in these communities that would accept either the milk carton or the petroleum jelly jar; and the brand names of the products were not sold locally.

[31] This conclusion is also supported by the December 1994 COPE survey. The Roper Starch data also shows that a significant percentage of consumers take a local availability claim from an unqualified ''recyclable'' claim, although a greater percentage did not. This result may be due, at least in part, to the survey's emphasis on the word ''definitely.''

[32] The Commission is cognizant that ISO's ''reasonable portion'' environmental labeling standard went out in April 1998 for comments and balloting and will go out for final balloting toward the end of 1998. The Trade Agreements Act of 1979 states that any federal agency must, in developing standards, ''take into consideration international standards and shall, if appropriate, base the standards on international standards.'' Trade Agreements Act of 1979, title IV, section 402, 93 Stat. 242 (1979) (codified as amended at 19 U.S.C. 2532(2)(A) (Supp. 1995)). Since the reasonable portion standard has not been formally adopted (or defined) by ISO, the Commission believes that it would be premature to contemplate revising the substantial majority standard at this time. Of course, at any time the Commission may alter or revise the guides based on international developments or other relevant changes.

unqualified recyclable claims can be made. The second tier is when facilities are available to a significant percentage of the population or communities, but not yet to a substantial majority of consumers or communities. In that situation, a suggested qualification is ''Check to see if recycling facilities exist in your area.'' The third tier is when facilities are available to less than a significant percentage of communities or the population. Then, a recommended disclosure would be to state that the product is only recyclable in a few communities nationwide. Also, the guide provides that an alternative approach to qualifications would be to disclose the approximate percentage of communities or the population to whom recycling programs are available for the product.

Almost half of the commenters on recyclable claims urged the Commission to adopt different qualifiers, contending that the current ''check to see'' qualifier is too stringent. Several commenters suggested that the Commission revise the guides to allow for the qualifier ''recyclable—where facilities exist,'' in addition to the ''Check to see if recycling facilities exist in your area'' qualifier.[33] Several commenters stated that the qualifier ''recyclable where facilities exist'' was sufficient to advise a consumer that the product might not be recyclable in the consumer's area.[34] Commenters also favored claims such as ''recyclable through participating photofinishers'' and ''recyclable through participating dealers.''[35] Another commenter urged the Commission to streamline the lengthy qualifications for ''recyclable'' claims offered as examples in the guides.[36]

The Ford Motor Company (''Ford'') contended that the current guides do not adequately address the recyclability of durable goods such as automobiles, because the guides' contemplate situations involving only curbside or drop off recycling programs.[37] Ford noted that vehicle owners have no difficulty availing themselves of various automotive disposal and recycling services, and therefore, recommended that automobile manufacturers be permitted to make unqualified claims of recyclability, even though their collection sites are not those contemplated by the guides.

The U.S. Environmental Recycling Hotline (''Hotline'') suggested that product labels using its 1–800–CLEANUP telephone number in conjunction with a ''recyclable'' claim could be a ''safe harbor,'' if used appropriately.[38] Another commenter maintained that companies using such terms as ''recyclable,'' ''compostable,'' ''degradable,'' and ''refillable'' should be required to print a telephone number near the claim so that confused consumers can have their questions answered.[39]

Several State Attorneys General stated that the ''check to see'' qualifier incorrectly implies that the most likely problem with an unqualified recyclable claim is the possibility of there not being *any recycling facilities in the consumer's locality*.[40] The Attorneys General suggested that the problem consumers are more likely to encounter is that the recycling facilities do not collect the material in question. They suggested that a clear, easily understood qualification be used when collection sites for the material in question are available to some but not all consumers or communities, for instance, ''Not recyclable in 75% of U.S. communities. Check to see if recyclable in your area.''

b. Consumer Perception Data Regarding Recyclable Disclosures. In the March 1993 COPE survey, half of those interviewed were asked whether an unqualified ''recyclable'' claim meant that collection programs existed in their community to recycle the product, and the other half were asked the same question with the qualified ''Recyclable—check to see if recycling facilities exist in your area'' disclosure. In each case, more than 40% of respondents answered ''yes'' (i.e., the claim meant that collection programs existed in their community to recycle the product), regardless of whether they were exposed to the unqualified or qualified claim. There was no statistically significant difference between the two responses (46% for the unqualified claim; 43% for the qualified claim). The Commission believes that these results indicate that the ''check to see'' disclosure may not be effective in conveying to consumers that local facilities may not be available to recycle the product.

In the September 1993 survey, COPE tested a qualification similar to that recommended in the Compostable guide when facilities are available to a significant percentage, but not a substantial majority of the population (*i.e.*, ''Appropriate facilities may not exist in your area''). Half of those questioned were asked whether an unqualified ''recyclable'' claim meant that recycling programs for the product existed in their community and the other half were asked the same question when exposed to the claim: ''Recyclable—recycling programs for this bottle may not exist in your area.'' Of those exposed to the unqualified claim, 45% responded that the claim meant that facilities existed in their area, and 48% responded that it did not. Of consumers exposed to the qualified claim, ''Recyclable—recycling programs for this bottle may not exist in your area,'' 29% responded that it meant that recycling programs for that bottle existed in their area, and 59% responded that the claim did not mean that recycling programs existed in their area. The Commission believes that these results indicate that the more cautionary disclosure, *i.e.*, ''Recycling programs [for this product] may not exist in your area,'' is more successful in conveying to consumers that facilities may not be available locally, than the ''Check to see if recycling facilities exist in your area'' disclosure.

c. Amendments Regarding Safe Harbor Recyclable Disclosures. Based on the comments and the consumer perception data discussed above that found that the ''check to see'' qualification did not significantly change consumers'' perceptions of local availability of collection sites when compared with an unqualified ''recyclable'' claim, the Commission is withdrawing the safe harbor ''Check to see if recycling facilities exist in your area.'' The Commission also concludes that the alternatives suggested by some commenters, such as ''recyclable where facilities exist'' would be inadequate to change consumer perception. In

[33] Foodservice & Packaging Institute, Inc., 1995 Notice, #63 at 8–9 (if the claims are qualified in a positive manner, the consumer may be encouraged to seek out recycling opportunities that exist in the community, or by requesting information, create demand for expansion of recycling programs); Amoco Chemical Co., 1995 Notice, #35 at 2–3 (it is necessary to balance the need to inform the consumer about recyclable products with the need to avoid overstating the consumer's ability to recycle those products); Mobil, 1995 Notice, #38 at 3–4 (negative qualifiers such as ''recycling programs may not exist in your area'' are counterproductive, while positive qualifiers encourage the consumer to seek out recycling opportunities).

[34] Washington Legal Foundation, 1995 Notice, #84 at 3 (manufacturers may reasonably conclude that exhorting consumers to ''check to see if recycling facilities exist in your area'' is a misuse of label and advertising space); SPI, 1996 Notice, #70 at 3.

[35] Kodak, 1995 Notice, #42 at 3; NAPM, 1995 Notice, #83 at 2.

[36] American Frozen Foods Institute, 1995 Notice, #85 at 3 (suggesting that manufacturers must be confident that qualifications that use fewer words and provide less detailed information than the Commission has suggested may be viewed as appropriate by the agency).

[37] Ford, 1995 Comment, #29 at 4–5.

[38] Hotline, 1996 Notice, #216 at 2. The Hotline explained that its telephone number provides recycling drop off center location information and community-specific recycling education information in all 50 states.

[39] California Integrated Waste Management Board, 1995 Notice, #74 at 2.

[40] Attorneys General, 1995 Notice, #45 at 4.

particular, this alternative would suffer from the problem identified by the Attorneys General in that such a claim could imply that if any facility exists in a consumer's community, then the item is recyclable, when, in fact, that facility may not recycle the product. Example 4 of the Recyclable guide (where this issue is presented) has been revised to suggest the following types of disclosures: ''Recycling programs for this bottle [product or packaging] may not exist in your area'' or ''This bottle [product or packaging] may not be recyclable in your area.'' [41] Because the new safe harbors are tied to the marketed product as opposed to recycling programs generally, they reduce the possibility that consumers may infer that because a recycling program exists in their area, that any product represented as ''recyclable'' can, in fact, be recycled in their local program.

3. Reused and/or Reconditioned Parts Marketed as ''Recycled'' or ''Recyclable''

a. Background. In the 1995 Notice, the Commission specifically sought comment as to whether consumers perceive that products made from reconditioned parts that would otherwise have been thrown away are ''recycled'' products, and what modifications, if any, should be made to the guides to address these consumer perceptions. The Commission received no empirical evidence in response to that request, but did receive several comments that discussed the issue. In the 1996 Notice, the Commission stated that it had determined to give further consideration to the question, as well as to the related issue of whether product parts that can be reconditioned and/or reused in the manufacture of new products should be considered ''recyclable'' if adequate infrastructures for collecting the parts are available.

At that time, the Recycled Content guide defined ''recycled content'' as material that a marketer can substantiate has been recovered or otherwise diverted from the waste stream. This definition could be interpreted to include products made from reconditioned and/or reused parts, as well as products made from products converted into raw materials, such as steel made from melted down cans. The 1996 Notice pointed out, however, that the Recyclable guide stated that for something to be recyclable it must be diverted from the solid waste stream for use as ''raw materials in the manufacture or assembly of a new product or package.'' Thus, the 1996 Notice concluded that product parts that are capable of being reconditioned and/or reused in the manufacture of new products are not considered ''recyclable'' under the guides, because the parts are not actually reprocessed into raw materials before reuse.

b. Summary of Comments Regarding Reused and/or Reconditioned Parts as ''Recycled'' or ''Recyclable''. There was a consensus among those commenting that reused and/or reconditioned automotive parts should be permitted to be called ''recycled.'' Approximately 207 comments to the 1996 Notice were patterned after, or similar to, a form letter from the Automotive Recyclers Association (''ARA''), a trade association representing automotive parts dealers, ''automotive recyclers,'' automotive salvage companies, dismantlers, and wreckers.[42] These commenters stated that the automotive recycling industry has been a pioneer in the recycling movement for over 50 years and that the products they sell have been and must continue to be described as ''recycled.'' They contended that by using viable parts removed from vehicles bound for the waste stream, their products are reintroduced into commerce without wasting additional natural resources. The used automotive parts dealers, dismantlers, and salvage companies commented that they consider themselves to be ''professional automotive recyclers'' [43] and one stated that ''recycled'' was the automotive industry's term first, before everyone else ''jumped on the environmental bandwagon.'' [44]

Several commenters said that customers are not confused when they buy a ''recycled'' automotive part because they realize that they are getting a used part for less money, i.e., used automotive parts cost 30–90% of the price of new parts.[45] Other commenters said recycled parts give consumers an alternative repair option and help reduce the unnecessary production of new parts.[46] Some commenters noted that recycling automotive parts also helps keep vehicle insurance affordable because automotive recyclers buy damaged vehicles from insurance companies and resell the recycled parts (indirectly) to insurance companies to repair other damaged vehicles.[47] Another commenter suggested that the sale of many used parts as component assemblies, such as complete engine assemblies, reduces installation time and thus saves labor costs.[48] That commenter also pointed out that the automotive dismantler may be the only source of parts for the consumer who owns an older vehicle.

ARA stated that the Commission should consider the impact on the used automotive parts industry if it does not permit reused parts to be labeled as ''recycled,'' and suggested that failure to do so would provide an unfair competitive advantage for products made from recycled raw materials.[49] ARA therefore recommended revising the Recyclable guide to incorporate reused automotive components as a qualifying use for the term ''recyclable.'' [50] ARA further suggested that reused automotive parts should be included in the guidance regarding the Recycled Content guide.

In contrast, PRC expressed concern that any expansion of the term ''recycling'' would confuse consumers because they would have no means of distinguishing between used or remanufactured products and newly manufactured products made from raw

[41] The new qualifications also are consistent with the one suggested in the Compostable guide: ''Appropriate facilities may not exist in your area.''

[42] Attached to many of these letters were petitions containing the names and addresses of customers who stated: ''[I] support reused parts being described as ''recycled.'' I understand the quality of the product I am buying when it is advertised as ''recycled'' and believe the service this company provides should continue to be recognized as recycling.'' Approximately 2,190 names of customers were on the petitions. *See, e.g.,* Branch Auto Parts, 1996 Notice, #38 at 2; Alliance Auto Parts Inc., 1996 Notice, #48 at 2.

[43] See, e.g., B & K Auto Salvage, 1996 Notice, #124 at 1; Greensboro Auto Parts Co., Inc., 1996 Notice, #128 at 1; EL & M Auto Recycling, Inc., 1996 Notice, #161 at 1; Automotive Parts Rebuilders Ass'n (''APRA''), 1996 Notice, #102 at 4 (noting also that many used automotive parts dealers have the word ''recycling,'' or some variation of it, in their names).

[44] BIG Truck Salvage, Inc., 1996 Notice, #77 at 1.

[45] Georgia Automotive Recyclers Ass'n, 1996 Notice, #117 at 1; Bliss Auto Wreckers, 1996 Notice, #118 at 1. *See also* Michael W. Gibson, Ft. Worth, TX, Controller of the following companies: AAA Small Car World, Auto Recyclers of Houston, Budget American & Import Auto Parts, All Auto Recyclers of San Antonio, Auto Recyclers of Austin and Auto Recyclers of Ft. Worth (''Michael W. Gibson''), 1996 Notice, #78 at 1 (customers are not generally confused when products are described as ''recycled,'' because they are almost always referred to as ''recycled used parts''; these parts cost 50% or less, of the cost of a new or rebuilt/remanufactured part); Palmer's Auto Salvage (''Palmer's''), 1996 Notice, #43 at 3 (30–60%); Arizona Automotive Recyclers Ass'n (''Arizona Recyclers''), 1996 Notice, #99 at 2 (50%).

[46] See, e.g., Midway Auto Parts, 1996 Notice, #2 at 1; Autosalvage of Ithaca Inc., 1996 Notice, #40 at 1; Cousineau Auto Inc., 1996 Notice, #85 at 1.

[47] Route 19 Auto Salvage Inc., 1996 Notice, #39 at 1; Lynnwood Auto Wreckers Incorporated, 1996 Notice, #59 at 1. *See also* Pennsylvania Automotive Recycling Trade Society, 1996 Notice, #15 at 1; Palmer's, 1996 Notice, #43 at 11; Don's Automotive Mall, Inc. (''Don's''), 1996 Notice, #92 at 10; Arizona Recyclers, 1996 Notice, #99 at 2.

[48] Don's, 1996 Notice, #92 at 4.

[49] ARA, 1996 Notice, #101 at 8.

[50] ARA, 1995 Notice, #71 at 2, 6. *See also* ARA, 1996 Notice, #101 at 1–9.

materials.[51] Similarly, Pitney Bowes, while favoring an expansion of the use of ''recycled'' and ''recyclable,'' urged the Commission to distinguish among products that are made from reconditioned parts, reused parts, and remanufactured parts because they differ in specifications, product disclosures to the consumer, warranties, and manufacturing processes.[52] Ford pointed out that in the automotive industry, the use of the term ''recycled'' generally means that a part has been removed from a scrap vehicle and resold with little or no work performed on it.[53] A ''remanufactured'' part, in contrast, has undergone substantial cleaning, repair and reworking and under industry practice this part would not be considered ''recycled.'' Because restoration work has been performed on rebuilt and remanufactured parts, while recycled vehicle parts are often sold ''as is,'' APRA noted that some rebuilders may not desire to use the term ''recycled,'' but they should not be precluded from doing so.[54]

Several commenters urged the Commission to allow the application of ''recycled'' and ''recyclable'' to other remanufactured and reused products that are not broken down to raw materials before being reused. These commenters noted that reused, reconditioned and remanufactured parts are important components of many products, such as office copiers, one-time use cameras and mailing machines.[55] Kodak noted that it has developed a reuse program for its one-time use cameras in which it reconditions and reuses, or breaks down into raw materials, 86% of a used camera by weight for use in the manufacture of new one-time use cameras.[56] Kodak contended that because collection of this sort of reused material diverts products from the waste stream, those products should qualify as ''recyclable.''[57]

ARA pointed out that many states, including New Jersey, Missouri, Minnesota, Maine, Louisiana, Kentucky, Georgia, and Florida, have acknowledged in their statutes that recycling encompasses all efforts, including reuse, to remove solid waste from the waste stream.[58] ARA stated that the Commission should provide incentives for all methods of recycling, as long as the goal of conserving natural resources and diverting waste is achieved. Other commenters noted that the draft ISO standard allows products that are diverted from the waste stream and returned to use in the form of raw materials or products to be considered ''recyclable,'' and urged the Commission to adopt a similar approach.[59]

c. Quality Standards for Reused and Remanufactured Parts. The 1996 Notice asked whether consumers generally perceive that the term ''recycled'' conveys information about the quality of a product, and whether consumers' concerns about product quality differ depending on whether a product is made from reconditioned and/or reused parts recovered from the solid waste stream versus from materials recovered from the solid waste stream and converted into raw materials. The 1996 Notice also asked if consumer perception about whether a product is or is not ''recycled'' would be affected if marketers of products made from reconditioned and/or reused parts could prove that those products are ''substantially equivalent'' in quality to comparable products made from recycled raw materials. The notice further asked what evidence should be required to show ''substantial equivalency,'' and if consumers are likely to be deceived about the quality of products made from reconditioned and/or reused parts if they are advertised as ''recycled.''

Several commenters discussed the quality of reused or reconditioned products as it relates to recyclability and recycled content.[60] SPI suggested that substantial quality equivalency should be required, and that reliance on applicable government or industry standards for such products might be a way to demonstrate such equivalency.

By contrast, APRA noted that the sections of the guides relating to recyclability and recycled content currently do not mention quality and stated there is no reason why a product should have to demonstrate a particular quality, much less a comparability to new products, before being allowed to use the designation ''recycled'' or ''recyclable.''[61] APRA contended that those designations describe environmental attributes and not the quality of a product, and should not be used to denote quality. APRA noted that quality standards for rebuilt and remanufactured motor vehicle parts are already reflected in the Commission's Guides for the Rebuilt, Reconditioned and Other Used Automotive Parts Industry, 16 CFR Part 20. Kodak suggested that any concerns about product quality could be addressed through the responsible use of product warranties extended by manufacturers.[62]

d. Consumer Perception Data Regarding Reconditioned Products as ''Recycled''. The 1995 Notice requested empirical evidence addressing the issue of whether consumers perceive that products made from reconditioned parts that would otherwise have been discarded should qualify as ''recycled'' products. In the April 1996 COPE survey, consumers were asked whether they considered products made from certain materials to be ''recycled.'' Seventy-one percent stated that a television set made from reconditioned parts taken from used televisions is ''recycled,'' while 25% said the reconditioned television set was ''not recycled.'' The Commission believes that these results suggest that a large majority of consumers consider reconditioning to be a form of ''recycling.''

e. Expansion of the Recyclable Guide to Include Reused and/or Reconditioned Products. The majority of those commenting on the Recyclable guide supported its relaxation, and it was pointed out that such relaxation would be consistent with the laws of various states. Commenters pointed out that because the breakdown of a product into raw materials consumes more energy than reuse of that product, reused, reconditioned and remanufactured components diverted from the solid waste stream are even more beneficial to the environment than diverted components that are broken down into raw materials.

The Commission has therefore expanded the ''recyclable'' definition to include any package or product that can be collected, separated or otherwise recovered from the solid waste stream for ''reuse,'' or for the manufacture or assembly of ''another'' (not necessarily new) package or product, so long as the package or product can be collected ''through an established recycling program.'' The phrase ''through an

[51] PRC, 1996 Notice, #100 at 1–2.

[52] Pitney Bowes, 1996 Notice, #218 at 3.

[53] Ford, 1995 Notice, #29 at 6. *See also* Michael W. Gibson, 1996 Notice, #78 at 1 (a recycled part is a used part placed back in service, but rebuilt or remanufactured parts are not referred to as ''recycled'' in the automotive industry).

[54] APRA, 1996 Notice, #102 at 7.

[55] Kodak, 1995 Notice, #42 at 2; 1996 Notice, #95 at 2; Pitney Bowes, 1996 Notice, #218 at 4–7.

[56] Kodak, 1995 Notice, #42 at 2. Kodak stated that statistics show that at least half of all cameras it distributes are returned to the company for this recycling. See also Kodak, 1996 Notice, #95 at 2.

[57] Kodak, 1995 Notice, #42 at 2. See also Kodak, 1996 Notice, #95 at 2 (noting that other products, such as the so-called ''end of life'' office equipment products, are also recovered and converted into equivalent salable products).

[58] ARA, 1996 Notice, #101 at 8.

[59] 3M, 1995 Notice, # 32 at 9; Kodak, 1995 Notice, #42 at 3.

[60] See, e.g., SPI, 1996 Notice, #70 at 3; APRA, 1996 Notice, #102 at 3–5.

[61] APRA, 1996 Notice, #102 at 3–5.

[62] Kodak, 1996 Notice, #95 at 3.

established recycling program'' has been added to the recyclable definition to indicate that the expanded definition does not encompass all goods with a potential for reuse of any kind. For a product to be called ''recyclable,'' there must be an established recycling program, municipal or private, through which the product will be converted into, or used in, another product or package.

New Examples 9 and 10 illustrate the expansion of the Recyclable guide. Example 9 deals with manufacturers or retailers that collect and recycle their own products. The example allows a ''recyclable'' claim, even if no municipal recycling program exists, if the manufacturer or retailer: (a) sets up a collection and recycling program for that product, and (b) explains that the product is recyclable through that non-municipal (or private) program. Example 10 indicates that the disclosure requirements regarding local availability of municipal recycling facilities also apply to non-municipal recycling programs.

f. *Clarification of the Term ''Recycled Content''.* The 1996 Notice explained that the term ''recycled content'' referred to material that a marketer can substantiate has been recovered or otherwise diverted from the waste stream. Although this could be interpreted to include products made from reconditioned and/or reused parts, as well as products made from products converted into raw materials, such as steel from melted down cans, the Commission did not endorse this interpretation because the Recyclable guide unambiguously stated that for something to be ''recyclable'' it must be diverted from the solid waste stream and actually reprocessed into raw materials before reuse. This has now been changed.

For the reasons discussed in this section, the Recycled Content guide has been clarified to expressly encompass used, reconditioned, and remanufactured components, as well as raw materials. The revised Recycled Content guide now also states that manufacturers and retailers must disclose the nature of the recycled content, unless such content consists solely of raw materials, or it would be clear to consumers from the context that a product contains used, reconditioned, or remanufactured components. The Commission believes that whether the product being purchased is new (including a product made from recycled raw materials) or is made from used, reconditioned, or remanufactured components is a fact material to consumers' purchasing decisions. In certain instances, it will be evident to consumers that the product is not new (e.g., if the product is purchased from a secondhand store, or if the product is an automotive part that has been purchased from an automotive dismantler). In those cases, no disclosure of the used nature of the product's recycled content would be necessary because it is clear from the context of the claim that the recycled content consists of used, reconditioned, or remanufactured components. In cases where it is not apparent from the context that the product is not new, however, to avoid consumer deception, the marketer should disclose the used, reconditioned, or remanufactured nature of the product's recycled content. Although the prior use of a product might be less important to consumers' purchasing decisions where substantial equivalency to a new item or an item made from recycled raw materials could be established, at the present time the record does not contain evidence that objective standards for determining substantial equivalency exist for many products. Moreover, in certain cases, there may not even be a comparable item made from recycled raw materials.

New Example 11 illustrates the use of an appropriate qualifier for a product that contains both recycled raw materials and reconditioned parts. Under that example, the percentage of materials composed of reconditioned parts should be disclosed. A consumer could then correctly assume that the remaining percentage consists of recycled raw materials.

New Example 12 deals with the use of a ''recycled'' label when it would not be clear to a consumer that the product at issue was used. In such a case, the product should be labeled to convey to a consumer that the product was used in order to avoid consumer deception.

New Example 13 illustrates the deceptive use of a ''recycled'' label when it would not be clear to a consumer that the product at issue contains recycled reconditioned parts. Such a label should clearly convey that the product contains recycled reconditioned parts to avoid deceiving consumers about the nature of that product's recycled content.

New Examples 14 and 15 concern the automotive parts market. As discussed above, in the used automotive parts market, consumers understand that certain recycled automotive parts are used parts that have not undergone any type of repair, rebuilding, or remanufacturing. Example 14, which involves a used automotive part, illustrates that in such a situation the unqualified use of the word ''recycled'' would not be deceptive. Example 15 deals with rebuilt, reconditioned, or remanufactured automotive parts that are labeled as ''recycled.'' Some commenters pointed out that because reconditioned, rebuilt, and remanufactured parts have had restorative work performed on them, some dealers may not want to use the ''recycled'' label (as it connotes to some consumers that the part is used and has not undergone any restoration). The Commission believes that dealers of reconditioned, rebuilt, and remanufactured parts should nevertheless be permitted to use the ''recycled'' label if they so desire. Example 15 illustrates the types of disclosures that are appropriate for use with those parts that bear a ''recycled'' label.

4. Additional Amendments to the Recyclable Guide

a. The Mercury-Containing and Rechargeable Battery Management Act. The Mercury-Containing and Rechargeable Battery Management Act of 1996 (''Battery Act'') establishes uniform national labeling requirements regarding rechargeable nickel-cadmium and some lead-acid batteries, to aid in battery collection recycling. 42 U.S.C. 14301 et seq. Under the Battery Act, rechargeable nickel-cadmium and some lead-acid rechargeable batteries must be labeled with the three-chasing-arrows symbol or a comparable symbol. Additionally, rechargeable nickel-cadmium batteries must contain the phrase: ''BATTERY MUST BE RECYCLED OR DISPOSED OF PROPERLY.'' 42 U.S.C. 14322(b). Each regulated lead-acid battery must contain the words: ''LEAD,'' ''RETURN,'' and ''RECYCLE.'' If the regulated battery is sealed, it must contain the phrase: ''BATTERY MUST BE RECYCLED.'' 42 U.S.C. 14322(b). The Commission believes that batteries labeled in accordance with the statute's requirements satisfy the guides' disclosure provisions and therefore the Recyclable guide now includes a footnote stating that batteries labeled in accordance with the Battery Act are deemed to be in compliance with the guides.

b. Example Regarding Use of the SPI Code. Example 2 of the Recyclable guide states that the placement of the SPI code in an inconspicuous part of a package or product does not constitute a recyclability claim. That example has been clarified to emphasize that the placement of an SPI code in a conspicuous location may constitute a claim of recyclability, and thus, may have to be qualified to disclose the

limited availability of recycling programs for that package or product.

c. Update of Examples 5 and 6. Examples 5 and 6 have been updated by including products that better illustrate the current level of local recyclability described in each example.

C. Clarification Regarding Applicability of the Guides to the Marketing of Services, and to All Forms of Electronic Advertising

The Commission has determined to make minor amendments to the language in Sections 260.2, 260.5, 260.6(b) and 260.7(a) to clarify that the guides apply to the marketing of services because environmental claims also are being made in the marketing of services and there is no reason to limit the applicability of the guides to only products or packages. Furthermore, the Commission has made a minor amendment to Section 260.2 to clarify that the guides apply to all forms of electronic advertising, including marketing through digital or electronic means, such as the Internet or electronic mail.

III. Text of Modified Guides

List of Subjects in 16 CFR Part 260

Advertising, Environmental claims, Labeling, Trade practices.

For the reasons set forth in the preamble, 16 CFR Part 260 is amended as follows:

PART 260—GUIDES FOR THE USE OF ENVIRONMENTAL MARKETING CLAIMS

1. The authority citation for Part 260 continues to read as follows:

Authority: 15 U.S.C. 41–58.

2. Section 260.2 is revised to read as follows:

§ 260.2 Scope of guides.

(a) These guides apply to environmental claims included in labeling, advertising, promotional materials and all other forms of marketing, whether asserted directly or by implication, through words, symbols, emblems, logos, depictions, product brand names, or through any other means, including marketing through digital or electronic means, such as the Internet or electronic mail. The guides apply to any claim about the environmental attributes of a product, package or service in connection with the sale, offering for sale, or marketing of such product, package or service for personal, family or household use, or for commercial, institutional or industrial use.

(b) Because the guides are not legislative rules under Section 18 of the FTC Act, they are not themselves enforceable regulations, nor do they have the force and effect of law. The guides themselves do not preempt regulation of other federal agencies or of state and local bodies governing the use of environmental marketing claims. Compliance with federal, state or local law and regulations concerning such claims, however, will not necessarily preclude Commission law enforcement action under Section 5.

3. Section 260.5 is revised to read as follows:

§ 260.5 Interpretation and substantiation of environmental marketing claims.

Section 5 of the FTC Act makes unlawful deceptive acts and practices in or affecting commerce. The Commission's criteria for determining whether an express or implied claim has been made are enunciated in the Commission's Policy Statement on Deception.[1] In addition, any party making an express or implied claim that presents an objective assertion about the environmental attribute of a product, package or service must, at the time the claim is made, possess and rely upon a reasonable basis substantiating the claim. A reasonable basis consists of competent and reliable evidence. In the context of environmental marketing claims, such substantiation will often require competent and reliable scientific evidence, defined as tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results. Further guidance on the reasonable basis standard is set forth in the Commission's 1983 Policy Statement on the Advertising Substantiation Doctrine. 49 FR 30999 (1984); *appended to Thompson Medical Co.*, 104 F.T.C. 648 (1984). The Commission has also taken action in a number of cases involving alleged deceptive or unsubstantiated environmental advertising claims. A current list of environmental marketing cases and/or copies of individual cases can be obtained by calling the FTC Consumer Response Center at (202) 326–2222.

[1] *Cliffdale Associates, Inc.*, 103 F.T.C. 110, at 176, 176 n.7, n.8, Appendix, *reprinting* letter dated Oct. 14, 1983, from the Commission to The Honorable John D. Dingell, Chairman, Committee on Energy and Commerce, U.S. House of Representatives (1984) (''Deception Statement'').

4. Section 260.6 is amended by revising paragraphs (a) and (b) (the examples are unchanged) to read as follows:

§ 260.6 General principles.

* * * * *

(a) *Qualifications and disclosures.* The Commission traditionally has held that in order to be effective, any qualifications or disclosures such as those described in these guides should be sufficiently clear, prominent and understandable to prevent deception. Clarity of language, relative type size and proximity to the claim being qualified, and an absence of contrary claims that could undercut effectiveness, will maximize the likelihood that the qualifications and disclosures are appropriately clear and prominent.

(b) *Distinction between benefits of product, package and service.* An environmental marketing claim should be presented in a way that makes clear whether the environmental attribute or benefit being asserted refers to the product, the product's packaging, a service or to a portion or component of the product, package or service. In general, if the environmental attribute or benefit applies to all but minor, incidental components of a product or package, the claim need not be qualified to identify that fact. There may be exceptions to this general principle. For example, if an unqualified ''recyclable'' claim is made and the presence of the incidental component significantly limits the ability to recycle the product, then the claim would be deceptive.

* * * * *

5. Footnotes 4, 5 and 6 of § 260.8 are redesignated as footnotes 7, 8 and 9 and § 260.7 is amended by revising the introductory text, paragraph (a) (the examples are unchanged), paragraphs (c) and (d), and paragraph (e) and its example 10, and by adding examples 11 through 15 for paragraph (e), to read as follows:

§ 260.7 Environmental marketing claims.

Guidance about the use of environmental marketing claims is set forth in this section. Each guide is followed by several examples that illustrate, but do not provide an exhaustive list of, claims that do and do not comport with the guides. In each case, the general principles set forth in § 260.6 should also be followed.[2]

[2] These guides do not currently address claims based on a ''lifecycle'' theory of environmental benefit. The Commission lacks sufficient information on which to base guidance on such claims.

(a) *General environmental benefit claims.* It is deceptive to misrepresent, directly or by implication, that a product, package or service offers a general environmental benefit. Unqualified general claims of environmental benefit are difficult to interpret, and depending on their context, may convey a wide range of meanings to consumers. In many cases, such claims may convey that the product, package or service has specific and far-reaching environmental benefits. As explained in the Commission's Advertising Substantiation Statement, every express and material implied claim that the general assertion conveys to reasonable consumers about an objective quality, feature or attribute of a product or service must be substantiated. Unless this substantiation duty can be met, broad environmental claims should either be avoided or qualified, as necessary, to prevent deception about the specific nature of the environmental benefit being asserted.

* * * * *

(c) *Compostable.* (1) It is deceptive to misrepresent, directly or by implication, that a product or package is compostable. A claim that a product or package is compostable should be substantiated by competent and reliable scientific evidence that all the materials in the product or package will break down into, or otherwise become part of, usable compost (*e.g.*, soil-conditioning material, mulch) in a safe and timely manner in an appropriate composting program or facility, or in a home compost pile or device. Claims of compostability should be qualified to the extent necessary to avoid consumer deception. An unqualified claim may be deceptive if:

(i) The package cannot be safely composted in a home compost pile or device; or

(ii) The claim misleads consumers about the environmental benefit provided when the product is disposed of in a landfill.

(2) A claim that a product is compostable in a municipal or institutional composting facility may need to be qualified to the extent necessary to avoid deception about the limited availability of such composting facilities.

Example 1: A manufacturer indicates that its unbleached coffee filter is compostable. The unqualified claim is not deceptive provided the manufacturer can substantiate that the filter can be converted safely to usable compost in a timely manner in a home compost pile or device. If this is the case, it is not relevant that no local municipal or institutional composting facilities exist.

Example 2: A lawn and leaf bag is labeled as ''Compostable in California Municipal Yard Trimmings Composting Facilities.'' The bag contains toxic ingredients that are released into the compost material as the bag breaks down. The claim is deceptive if the presence of these toxic ingredients prevents the compost from being usable.

Example 3: A manufacturer makes an unqualified claim that its package is compostable. Although municipal or institutional composting facilities exist where the product is sold, the package will not break down into usable compost in a home compost pile or device. To avoid deception, the manufacturer should disclose that the package is not suitable for home composting.

Example 4: A nationally marketed lawn and leaf bag is labeled ''compostable.'' Also printed on the bag is a disclosure that the bag is not designed for use in home compost piles. The bags are in fact composted in yard trimmings composting programs in many communities around the country, but such programs are not available to a substantial majority of consumers or communities where the bag is sold. The claim is deceptive because reasonable consumers living in areas not served by yard trimmings programs may understand the reference to mean that composting facilities accepting the bags are available in their area. To avoid deception, the claim should be qualified to indicate the limited availability of such programs, for example, by stating, ''Appropriate facilities may not exist in your area.'' Other examples of adequate qualification of the claim include providing the approximate percentage of communities or the population for which such programs are available.

Example 5: A manufacturer sells a disposable diaper that bears the legend, ''This diaper can be composted where solid waste composting facilities exist. There are currently [X number of] solid waste composting facilities across the country.'' The claim is not deceptive, assuming that composting facilities are available as claimed and the manufacturer can substantiate that the diaper can be converted safely to usable compost in solid waste composting facilities.

Example 6: A manufacturer markets yard trimmings bags only to consumers residing in particular geographic areas served by county yard trimmings composting programs. The bags meet specifications for these programs and are labeled, ''Compostable Yard Trimmings Bag for County Composting Programs.'' The claim is not deceptive. Because the bags are compostable where they are sold, no qualification is required to indicate the limited availability of composting facilities.

(d) *Recyclable.* It is deceptive to misrepresent, directly or by implication, that a product or package is recyclable. A product or package should not be marketed as recyclable unless it can be collected, separated or otherwise recovered from the solid waste stream for reuse, or in the manufacture or assembly of another package or product, through an established recycling program. Unqualified claims of recyclability for a product or package may be made if the entire product or package, excluding minor incidental components, is recyclable. For products or packages that are made of both recyclable and non-recyclable components, the recyclable claim should be adequately qualified to avoid consumer deception about which portions or components of the product or package are recyclable. Claims of recyclability should be qualified to the extent necessary to avoid consumer deception about any limited availability of recycling programs and collection sites. If an incidental component significantly limits the ability to recycle a product or package, a claim of recyclability would be deceptive. A product or package that is made from recyclable material, but, because of its shape, size or some other attribute, is not accepted in recycling programs for such material, should not be marketed as recyclable.[4]

Example 1: A packaged product is labeled with an unqualified claim, ''recyclable.'' It is unclear from the type of product and other context whether the claim refers to the product or its package. The unqualified claim is likely to convey to reasonable consumers that all of both the product and its packaging that remain after normal use of the product, except for minor, incidental components, can be recycled. Unless each such message can be substantiated, the claim should be qualified to indicate what portions are recyclable.

Example 2: A nationally marketed 8 oz. plastic cottage-cheese container displays the Society of the Plastics Industry (SPI) code (which consists of a design of arrows in a triangular shape containing a number and abbreviation identifying the component plastic resin) on the front label of the container, in close proximity to the product name and logo. The manufacturer's conspicuous use of the SPI code in this manner constitutes a recyclability claim. Unless recycling facilities for this container are available to a substantial majority of consumers or communities, the claim should be qualified to disclose the limited availability of recycling programs for the container. If the SPI code, without more, had been placed in an inconspicuous location on the container (*e.g.*, embedded in the bottom of the container) it would not constitute a claim of recyclability.

Example 3: A container can be burned in incinerator facilities to produce heat and power. It cannot, however, be recycled into

[4] The Mercury-Containing and Rechargeable Battery Management Act establishes uniform national labeling requirements regarding certain types of nickel-cadmium rechargeable and small lead-acid rechargeable batteries to aid in battery collection and recycling. The Battery Act requires, in general, that the batteries must be labeled with the three-chasing-arrows symbol or a comparable recycling symbol, and the statement ''Battery Must Be Recycled Or Disposed Of Properly.'' 42 U.S.C. 14322(b). Batteries labeled in accordance with this federal statute are deemed to be in compliance with these guides.

another product or package. Any claim that the container is recyclable would be deceptive.

Example 4: A nationally marketed bottle bears the unqualified statement that it is ''recyclable.'' Collection sites for recycling the material in question are not available to a substantial majority of consumers or communities, although collection sites are established in a significant percentage of communities or available to a significant percentage of the population. The unqualified claim is deceptive because, unless evidence shows otherwise, reasonable consumers living in communities not served by programs may conclude that recycling programs for the material are available in their area. To avoid deception, the claim should be qualified to indicate the limited availability of programs, for example, by stating ''This bottle may not be recyclable in your area,'' or ''Recycling programs for this bottle may not exist in your area.'' Other examples of adequate qualifications of the claim include providing the approximate percentage of communities or the population to whom programs are available.

Example 5: A paperboard package is marketed nationally and labeled, ''Recyclable where facilities exist.'' Recycling programs for this package are available in a significant percentage of communities or to a significant percentage of the population, but are not available to a substantial majority of consumers. The claim is deceptive because, unless evidence shows otherwise, reasonable consumers living in communities not served by programs that recycle paperboard packaging may understand this phrase to mean that such programs are available in their area. To avoid deception, the claim should be further qualified to indicate the limited availability of programs, for example, by using any of the approaches set forth in Example 4 above.

Example 6: A foam polystyrene cup is marketed as follows: ''Recyclable in the few communities with facilities for foam polystyrene cups.'' Collection sites for recycling the cup have been established in a half-dozen major metropolitan areas. This disclosure illustrates one approach to qualifying a claim adequately to prevent deception about the limited availability of recycling programs where collection facilities are not established in a significant percentage of communities or available to a significant percentage of the population. Other examples of adequate qualification of the claim include providing the number of communities with programs, or the percentage of communities or the population to which programs are available.

Example 7: A label claims that the package ''includes some recyclable material.'' The package is composed of four layers of different materials, bonded together. One of the layers is made from the recyclable material, but the others are not. While programs for recycling this type of material are available to a substantial majority of consumers, only a few of those programs have the capability to separate the recyclable layer from the non-recyclable layers. Even though it is technologically possible to separate the layers, the claim is not adequately qualified to avoid consumer deception. An appropriately qualified claim would be, ''includes material recyclable in the few communities that collect multi-layer products.'' Other examples of adequate qualification of the claim include providing the number of communities with programs, or the percentage of communities or the population to which programs are available.

Example 8: A product is marketed as having a ''recyclable'' container. The product is distributed and advertised only in Missouri. Collection sites for recycling the container are available to a substantial majority of Missouri residents, but are not yet available nationally. Because programs are generally available where the product is marketed, the unqualified claim does not deceive consumers about the limited availability of recycling programs.

Example 9: A manufacturer of one-time use photographic cameras, with dealers in a substantial majority of communities, collects those cameras through all of its dealers. After the exposed film is removed for processing, the manufacturer reconditions the cameras for resale and labels them as follows: ''Recyclable through our dealership network.'' This claim is not deceptive, even though the cameras are not recyclable through conventional curbside or drop off recycling programs.

Example 10: A manufacturer of toner cartridges for laser printers has established a recycling program to recover its cartridges exclusively through its nationwide dealership network. The company advertises its cartridges nationally as ''Recyclable. Contact your local dealer for details.'' The company's dealers participating in the recovery program are located in a significant number—but not a substantial majority—of communities. The ''recyclable'' claim is deceptive unless it contains one of the qualifiers set forth in Example 4. If participating dealers are located in only a few communities, the claim should be qualified as indicated in Example 6.

Example 11: An aluminum beverage can bears the statement ''Please Recycle.'' This statement is likely to convey to consumers that the package is recyclable. Because collection sites for recycling aluminum beverage cans are available to a substantial majority of consumers or communities, the claim does not need to be qualified to indicate the limited availability of recycling programs.

(e) *Recycled content.* (1) A recycled content claim may be made only for materials that have been recovered or otherwise diverted from the solid waste stream, either during the manufacturing process (pre-consumer), or after consumer use (post-consumer). To the extent the source of recycled content includes pre-consumer material, the manufacturer or advertiser must have substantiation for concluding that the pre-consumer material would otherwise have entered the solid waste stream. In asserting a recycled content claim, distinctions may be made between pre-consumer and post-consumer materials. Where such distinctions are asserted, any express or implied claim about the specific pre-consumer or post-consumer content of a product or package must be substantiated.

(2) It is deceptive to misrepresent, directly or by implication, that a product or package is made of recycled material, which includes recycled raw material, as well as used,[5] reconditioned and remanufactured components. Unqualified claims of recycled content may be made if the entire product or package, excluding minor, incidental components, is made from recycled material. For products or packages that are only partially made of recycled material, a recycled claim should be adequately qualified to avoid consumer deception about the amount, by weight, of recycled content in the finished product or package. Additionally, for products that contain used, reconditioned or remanufactured components, a recycled claim should be adequately qualified to avoid consumer deception about the nature of such components. No such qualification would be necessary in cases where it would be clear to consumers from the context that a product's recycled content consists of used, reconditioned or remanufactured components.

* * * * *

Example 10: A packaged food product is labeled with a three-chasing-arrows symbol without any further explanatory text as to its meaning. By itself, the symbol is likely to convey that the packaging is both ''recyclable'' and is made entirely from recycled material. Unless both messages can be substantiated, the claim should be qualified as to whether it refers to the package's recyclability and/or its recycled content. If a ''recyclable'' claim is being made, the label may need to disclose the limited availability of recycling programs for the package. If a recycled content claim is being made and the packaging is not made entirely from recycled material, the label should disclose the percentage of recycled content.

Example 11: A laser printer toner cartridge containing 25% recycled raw materials and 40% reconditioned parts is labeled ''65% recycled content; 40% from reconditioned parts.'' This claim is not deceptive.

Example 12: A store sells both new and used sporting goods. One of the items for sale in the store is a baseball helmet that, although used, is no different in appearance than a brand new item. The helmet bears an unqualified ''Recycled'' label. This claim is deceptive because, unless evidence shows otherwise, consumers could reasonably believe that the helmet is made of recycled raw materials, when it is in fact a used item. An acceptable claim would bear a disclosure clearly stating that the helmet is used.

[5] The term ''used'' refers to parts that are not new and that have not undergone any type of remanufacturing and/or reconditioning.

Example 13: A manufacturer of home electronics labels its video cassette recorders (''VCRs'') as ''40% recycled.'' In fact, each VCR contains 40% reconditioned parts. This claim is deceptive because consumers are unlikely to know that the VCR's recycled content consists of reconditioned parts.

Example 14: A dealer of used automotive parts recovers a serviceable engine from a vehicle that has been totaled. Without repairing, rebuilding, remanufacturing, or in any way altering the engine or its components, the dealer attaches a ''Recycled'' label to the engine, and offers it for resale in its used auto parts store. In this situation, an unqualified recycled content claim is not likely to be deceptive because consumers are likely to understand that the engine is used and has not undergone any rebuilding.

Example 15: An automobile parts dealer purchases a transmission that has been recovered from a junked vehicle. Eighty-five percent by weight of the transmission was rebuilt and 15% constitutes new materials. After rebuilding[6] the transmission in accordance with industry practices, the dealer packages it for resale in a box labeled ''Rebuilt Transmission,'' or ''Rebuilt Transmission (85% recycled content from rebuilt parts),'' or ''Recycled Transmission (85% recycled content from rebuilt parts).'' These claims are not likely to be deceptive.

* * * * *

6. Section 260.8 is revised to read as follows:

§ 260.8 Environmental assessment.

(a) National Environmental Policy Act. In accordance with section 1.83 of the FTC's Procedures and Rules of Practice[7] and section 1501.3 of the Council on Environmental Quality's regulations for implementing the procedural provisions of National Environmental Policy Act, 42 U.S.C. 4321 *et seq.* (1969),[8] the Commission prepared an environmental assessment when the guides were issued in July 1992 for purposes of providing sufficient evidence and analysis to determine whether issuing the Guides for the Use of Environmental Marketing Claims required preparation of an environmental impact statement or a finding of no significant impact. After careful study, the Commission concluded that issuance of the Guides would not have a significant impact on the environment and that any such impact ''would be so uncertain that environmental analysis would be based on speculation.''[9] The Commission concluded that an environmental impact statement was therefore not required. The Commission based its conclusions on the findings in the environmental assessment that issuance of the guides would have no quantifiable environmental impact because the guides are voluntary in nature, do not preempt inconsistent state laws, are based on the FTC's deception policy, and, when used in conjunction with the Commission's policy of case-by-case enforcement, are intended to aid compliance with section 5(a) of the FTC Act as that Act applies to environmental marketing claims.

(b) The Commission has concluded that the modifications to the guides in this part will not have a significant effect on the environment, for the same reasons that the issuance of the original guides in 1992 and the modifications to the guides in 1996 were deemed not to have a significant effect on the environment. Therefore, the Commission concludes that an environmental impact statement is not required in conjunction with the issuance of the 1998 modifications to the Guides for the Use of Environmental Marketing Claims.

By direction of the Commission.

Donald S. Clark,

Secretary.

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[6] The term ''rebuilding'' means that the dealer dismantled and reconstructed the transmission as necessary, cleaned all of its internal and external parts and eliminated rust and corrosion, restored all impaired, defective or substantially worn parts to a sound condition (or replaced them if necessary), and performed any operations required to put the transmission in sound working condition.

[7] 16 CFR 1.83.

[8] 40 CFR 1501.3.

[9] 16 CFR 1.83(a).

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At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/su_docs/. Some laws may not yet be available.

H.R. 1116/P.L. 105–169
To provide for the conveyance of the reversionary interest of the United States in certain lands to the Clint Independent School District and the Fabens Independent School District. (Apr. 24, 1998; 112 Stat. 46)

H.R. 2843/P.L. 105–170
Aviation Medical Assistance Act of 1998 (Apr. 24, 1998; 112 Stat. 47)

H.R. 3226/P.L. 105–171
To authorize the Secretary of Agriculture to convey certain

lands and improvements in the State of Virginia, and for other purposes. (Apr. 24, 1998; 112 Stat. 50)

S. 493/P.L. 105–172
Wireless Telephone Protection Act (Apr. 24, 1998; 112 Stat. 53)

S. 1178/P.L. 105–173
To amend the Immigration and Nationality Act to modify and extend the visa waiver pilot program, and to provide for the collection of data with respect to the number of nonimmigrants who remain in the United States after the expiration of the period of stay authorized by the Attorney General. (Apr. 27, 1998; 112 Stat. 56)

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TABLE OF EFFECTIVE DATES AND TIME PERIODS—MAY 1998

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
May 1	May 18	June 1	June 15	June 30	July 30
May 4	May 19	June 3	June 18	July 6	August 3
May 5	May 20	June 4	June 19	July 6	August 3
May 6	May 21	June 5	June 22	July 6	August 4
May 7	May 22	June 8	June 22	July 6	August 5
May 8	May 26	June 8	June 22	July 7	August 6
May 11	May 26	June 10	June 25	July 10	August 10
May 12	May 27	June 11	June 26	July 13	August 10
May 13	May 28	June 12	June 29	July 13	August 11
May 14	May 29	June 15	June 29	July 13	August 12
May 15	June 1	June 15	June 29	July 14	August 13
May 18	June 2	June 17	July 2	July 17	August 17
May 19	June 3	June 18	July 6	July 20	August 17
May 20	June 4	June 19	July 6	July 20	August 18
May 21	June 5	June 22	July 6	July 20	August 19
May 22	June 8	June 22	July 6	July 21	August 20
May 26	June 10	June 25	July 10	July 27	August 24
May 27	June 11	June 26	July 13	July 27	August 25
May 28	June 12	June 29	July 13	July 27	August 26
May 29	June 15	June 29	July 13	July 28	August 27