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Wednesday
May 6, 1998

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–09–AD; Amendment 39–10508; AD 98–09–27]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce, plc RB211 Trent 768 and 772 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Rolls-Royce, plc RB211 Trent 768 and 772 series turbofan engines. This action requires initial and repetitive visual inspections of thrust reverser hinge lugs and attachment ribs for cracks, and, if necessary, removal from service and replacement with serviceable parts. This amendment is prompted by aircraft certification testing which revealed that stresses on the thrust reverser hinge were higher than had been anticipated during engine certification. The actions specified in this AD are intended to prevent thrust reverser hinge failure, possibly resulting in liberation of the thrust reverser cowl duct from the engine nacelle, which could result in impact damage to other sections of the aircraft.

DATES: Effective May 21, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 21, 1998.

Comments for inclusion in the Rules Docket must be received on or before July 6, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–09–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.

The service information referenced in this AD may be obtained from Rolls-Royce North America, Inc., 2001 South Tibbs Ave., Indianapolis, IN 46241; telephone (317) 230–3995, fax (317) 230–4743. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7176, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom (UK), recently notified the FAA that an unsafe condition may exist on Rolls-Royce, plc (R–R) RB211 Trent 768 and 772 series turbofan engines. The CAA advises that test measurements of the pylon to thrust reverser cowl duct hinge loads revealed lower than expected hinge lug load carrying capability. In the event of failure of one of the thrust reverser cowl duct hinges, there is a reduced fatigue life capability on the adjacent hinge. This could lead to premature failure of the thrust reverser cowl duct hinges, resulting in liberation of the cowl duct from the aircraft. There are currently no affected engines operated on aircraft of U.S. registry. This AD, then, is necessary to require accomplishment of the required actions for engines installed on aircraft currently of foreign registry that may someday be imported into the U.S. Accordingly, the FAA has determined that notice and prior opportunity for comment are unnecessary and good cause exists for making this amendment effective in less than 30 days. This condition, if not corrected, could result in thrust reverser hinge failure, possibly resulting in liberation of the thrust reverser cowl duct from the engine nacelle, which could result in impact damage to other sections of the aircraft.

R–R has issued Service Bulletin (SB) No. RB.211–78–B115, Revision 1, dated March 14, 1997, that specifies procedures for visual inspections of thrust reverser hinge lugs and attachment ribs for cracks. The CAA classified this SB as mandatory and issued AD 008–03–97 in order to assure the airworthiness of these engines in the UK.

This engine model is manufactured in the UK 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.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of the same type design registered in the United States, this AD requires initial and repetitive visual inspections of thrust reverser hinge lugs and attachment ribs for cracks, and, if necessary, removal from service and replacement with serviceable parts. The actions would be required to be accomplished in accordance with the SB described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted

in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD 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–ANE–09–AD.'' The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–09–27 Rolls-Royce, plc: Amendment 39–10508. Docket 98–ANE–09–AD.

Applicability: Rolls-Royce, plc (R–R) RB211 Trent 768 and 772 series turbofan engines, installed on but not limited to the Airbus A330–341 and A330–342 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 (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent thrust reverser hinge failure, possibly resulting in liberation of the thrust reverser cowl duct from the engine nacelle, which could result in impact damage to other sections of the aircraft, accomplish the following:

(a) Perform initial and repetitive visual inspections of thrust reverser hinge lugs and attachment ribs for cracks, and, if necessary, remove from service and replace with serviceable parts, in accordance with R–R Service Bulletin (SB) No. RB.211–78–B115, Revision 1, dated March 14, 1997, as follows:

(1) Perform the initial inspection at the earlier of the following:

(i) 250 hours time in service (TIS) after the effective date of this AD; or

(ii) 1,200 flight cycles since new (CSN).

(2) Thereafter, perform visual inspections at intervals not to exceed 1,200 flight cycles in service (CIS) since last inspection.

(3) If thrust reverser hinge lugs or attachment ribs are found cracked, remove from service and replace with serviceable parts, in accordance with R–R Service Bulletin (SB) No. RB.211–78–B115, Revision 1, dated March 14, 1997.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, 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.

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

(d) The actions required by this AD shall be performed in accordance with the following R–R SB:

Document No.	Pages	Revision	Date
RB.211–78–B115 ..... Total pages: 6.	1–6	1	March 14, 1997.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Rolls-Royce North America, Inc., 2001 South Tibbs Ave., Indianapolis, IN 46241; telephone (317) 230–3995, fax (317) 230–4743. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on May 21, 1998.

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

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 98–11437 Filed 5–5–98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–ANE–28–AD; Amendment 39–10496; AD 98–09–15]

RIN 2120–AA64

Airworthiness Directives; General Electric Company Model GE90–76B Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to General Electric Company (GE) Model GE90–76B turbofan engines, that requires reduced life limits for certain rotating components. This amendment is prompted by the results of a refined life analysis performed by the manufacturer which revealed minimum calculated low cycle fatigue lives lower than the published low cycle fatigue retirement lives for certain rotating components. The actions specified by this AD are intended to prevent a low cycle fatigue failure of a rotating component and possibly an uncontained engine failure.

DATES: Effective July 6, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 6, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from General Electric Company Technical Services, Attention: Leader for distribution/microfilm, 10525 Chester Road, Cincinnati, OH 45215, telephone (513) 672–8400 Ext. 114, Fax (513) 672–8422. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Karen Curtis, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7192, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to General Electric Company (GE) Model GE90–76B turbofan engines was published in the **Federal Register** on September 24, 1997 (62 FR 49179). That action proposed to require reduced life limits for certain rotating components.

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

One commenter supports the rule as proposed.

Since publication of the Notice of Proposed Rulemaking (NPRM), GE has provided the FAA with additional analysis that substantiates the original cyclic life for the stage 7 disks (part numbers 350–000–656–0 and 350–000–657–0) of 10,000 cycles. These disks are exempted from this AD based on recent FAA approval of GE's refined life analysis substantiating the original cyclic life of 10,000 cycles for this engine model. The latest revision of the GE90 Engine Manual, Chapter 05–11–00, Life Limits 001, restored the stage 7 disk lives for the model to 10,000 cycles.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 24 engines of the affected design in the worldwide fleet. The manufacturer has advised the FAA that there are currently no engines installed on aircraft of U.S. registry that would be affected by this AD. Therefore, there is no associated cost impact on U.S. operators as a result of this AD.

The FAA estimates that the most representative engines will have 3 of the 6 life-limited-reduced components installed. Assuming the 3 components are the High Pressure Compressor Rotor (HPCR) 2–6 spool, HPCR CDP seal, and the Low Pressure Turbine cone shaft and that the parts cost is proportional to the reduction of the low cycle fatigue retirement lives, the required parts will cost approximately $181,993 per engine. Based on these figures, the FAA estimates that if an engine were imported to the U.S., the total cost impact of this AD would be $181,993 per engine.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–09–15 General Electric Company: Amendment 39–10496. Docket No. 97–ANE–28–AD.

Applicability: General Electric Company (GE) GE90–76B Model turbofan engines, installed on but not limited to Boeing 777 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 (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent a low cycle fatigue failure of a rotating component and possibly an uncontained engine failure, accomplish the following:

(a) Remove from service those components listed in Table 1 of GE90 Alert Service Bulletin (ASB) No. 72–A318, dated June 27, 1997, (except as noted in paragraph (b) of this AD) and replace with a serviceable component, prior to exceeding the new cyclic life limits established in paragraph 1.D. (1) of GE90 ASB No. 72–A318, dated June 27, 1997.

(b) GE has provided the FAA with additional analysis that substantiates the original cycle life for the stage 7 disks (part numbers 350–000–656–0 and 350–000–657–0) of 10,000 cycles. These disks are exempted from this AD based on recent FAA approval of GE's refined life analysis substantiating the original cycle life of 10,000 cycles for this engine model.

Note 2: The revised component life limits noted in GE90 ASB No. 72–A318, dated June 27, 1997, were added to the GE90 Engine Manual Chapter 05–11–00, Life Limits 001, in the August 1, 1997, revision. The latest revision of the GE90 Engine Manual, Chapter 05–11–00, Life Limits 001, restored the stage 7 disk lives for the model to 10,000 cycles.

(c) Except as provided in paragraph (d) of this AD, no replacement times may be approved for these parts.

(d) 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 3: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

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

(f) The actions required by this AD shall be done in accordance with the following GE90 ASB:

Document No.	Pages	Date
72–A318 ..... Total Pages: 5.	1–5	June 27, 1997.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from General Electric Company Technical Services, Attention: Leader for distribution/microfilm, 10525 Chester Road, Cincinnati, OH 45215, telephone (513) 672–8400 Ext. 114, Fax (513) 672–8422. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(g) This amendment becomes effective on July 6, 1998.

Issued in Burlington, Massachusetts, on April 20, 1998.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 98–11440 Filed 5–5–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–138–AD; Amendment 39–10510; AD 98–09–29]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747–400 series airplanes, that requires removal and reconfiguration of the battery grounds of the auxiliary power unit (APU). This amendment is prompted by reports of smoke or fire coming from the APU due to battery grounds that were not installed or maintained properly. The actions specified by this AD are intended to prevent overheating and heat damage of the APU battery grounds due to improper installation of the APU battery ground, which could result in heat damage and consequent smoke or fire on the airplane.

DATES: Effective June 10, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 10, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Forrest Keller, Senior Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2790; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747–400 series airplanes was published in the **Federal Register** on November 25, 1997 (62 FR 62726). That action proposed to require removal and reconfiguration of the battery grounds of the auxiliary power unit (APU).

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

Support for the Proposal

One commenter supports the proposal.

Request To Extend the Compliance Time

The Air Transport Association (ATA) of America, on behalf of one of its members, requests that the proposed compliance time be extended to allow the modification to be accomplished within 12 months, rather than 6 months. This ATA member operates the largest number of U.S.-registered 747–400 airplanes. The ATA member claims that such an extension is warranted in light of the amount of time required for preparation and accomplishment of the actions required by this proposed AD, and in light of the results of inspections to detect discrepancies of the APU battery grounds performed subsequent to receipt of and in accordance with Boeing telex M–7240–96–0927, dated May 24, 1996. The ATA member maintains that the results of this inspection indicated that the APU grounds on its airplanes that are the subject of the unsafe condition of this proposed AD were retorqued and found to be free of discrepancies.

The FAA concurs with the commenter's request to extend the compliance time from 6 months to 12 months. In light of the information presented by the commenter, the FAA finds that such an extension will allow the modification to be performed with minimal effect on the maintenance schedule and no adverse effect on safety. Paragraph (a) of the final rule has been revised to specify a compliance time of 12 months.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 359 airplanes of the affected design in the worldwide fleet. The FAA estimates that 26 airplanes of U.S. registry will be affected by this AD, that it will take approximately 16 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $1,325 per airplane. Based on these figures, the cost impact of the AD onU.S. operators is estimated to be $59,410, or $2,285 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–09–29 Boeing: Amendment 39–10510. Docket 97–NM–138–AD.

Applicability: Model 747–400 series airplanes, as listed in Boeing Alert Service Bulletin 747–24A2214, dated June 19, 1997; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent the auxiliary power unit (APU) from overheat and heat damage due to an improperly installed/maintained APU battery ground, accomplish the following:

(a) Within 12 months after the effective date of this AD, reconfigure the APU battery grounds to a dual-direct ground, single-lug configuration, in accordance with Boeing Alert Service Bulletin 747–24A2214, dated June 19, 1997.

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

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

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

(d) The actions shall be done in accordance with Boeing Alert Service Bulletin 747–24A2214, dated June 19, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on June 10, 1998.

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

Gary L. Killion,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–11562 Filed 5–5–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–199–AD; Amendment 39–10513; AD 98–10–02]

RIN 2120–AA64

Airworthiness Directives; British Aerospace (Jetstream) Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace (Jetstream) Model 4101 airplanes, that requires replacement of certain wheel tie bolts with new bolts; and placing a life limit on these wheel tie bolts. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent metal fatigue failure of the wheel tie bolts, which could result in a tire burst or loss of the main wheel/tire assembly, and consequent reduced controllability of the airplane.

DATES: Effective June 10, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 10, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: 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: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain British Aerospace (Jetstream) Model 4101 airplanes was published in the **Federal Register** on February 23, 1998 (63 FR 8881). That action proposed to require replacement of certain wheel tie bolts with new bolts; and placing a life limit on these wheel tie bolts.

Comments

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

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Interim Action

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

Cost Impact

The FAA estimates that 57 airplanes of U.S. registry will be affected by this AD; however, wheel tie bolts must be removed and reinstalled during each tire change, therefore no additional work hours would be required as a result of this AD. Required parts will be supplied by the manufacturer at no charge. Based on this information, the cost impact of the AD on U.S. operators is estimated to be negligible.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–10–02 British Aerospace Regional Aircraft [Formerly Jetstream Aircraft Limited; British Aerospace (Commercial Aircraft) Limited]: Amendment 39–10513. Docket 97–NM–199–AD.

Applicability: Jetstream Model 4101 airplanes equipped with main wheels having part number (P/N) AHA1837, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent metal fatigue failure of the wheel tie bolts, which could result in a tire burst or loss of the main wheel/tire assembly, and consequent reduced controllability of the airplane, accomplish the following:

(a) At the next tire change after the effective date of this AD, remove main wheel tie bolts having P/N BAC–B30M516 (DSR4528–1216), and replace them with new tie bolts in accordance with Jetstream Service Bulletin J41–32–058, dated May 9, 1997. Repeat this replacement thereafter at every fifth tire change.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, 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.

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

(d) The actions shall be done in accordance with Jetstream Service Bulletin J41–32–058, dated May 9, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in CAA airworthiness directive 002–05–97.

(e) This amendment becomes effective on June 10, 1998.

Issued in Renton, Washington, on April 28, 1998.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–11809 Filed 5–5–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

15 CFR Part 270

[Docket No. 970822201–7202–00]

Procedures for the Evaluation of Energy-related Inventions; Removal of Regulations

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Final rule.

SUMMARY: The National Institute of Standards and Technology (NIST) is terminating the current NIST program which evaluated inventions as a service to the Department of Energy's (DOE) Energy-Related Inventions Program (ERIP). During the twenty-plus years of the evaluation program's existence, NIST transmitted recommendations based on its evaluations to the Department of Energy, which used the recommendations in its decision-making for DOE's award of grants to inventors and small businesses for further development of the NIST-recommended inventions.

The Department of Energy will continue the Energy Related Inventions Program with a newly designed evaluation process consistent with a competitive procurement. The DOE has renamed ERIP as part of the DOE-operated Inventions and Innovation Program. DOE will issue a solicitation for proposals to be evaluated by DOE under the new program, beginning on May 1, 1998.

Since DOE will now process evaluations through a competitive procurement and since evaluations made by NIST under 15 CFR part 270 will no longer be used in the award selection process, there is no function for the NIST Energy-Related Invention Evaluation Program to perform, and the NIST evaluation program is being terminated.

EFFECTIVE DATE: May 1, 1998.

FOR FURTHER INFORMATION CONTACT: Dr. Michael E. McCabe at telephone number (301) 975–5504.

SUPPLEMENTARY INFORMATION: Title 15 part 270 of the Code of Federal Regulations prescribes procedures for the evaluation of energy-related inventions. These procedures were issued in 1976 to partially implement section 14 of the Federal Non-nuclear Energy Research and Development Act of 1974, Pub. L. 93–577 (codified as amended at 42 U.S.C. 5901, *et seq.* hereinafter referred to as the Act). The Act established a comprehensive national program for research and development of all potentially beneficial energy sources and utilization technologies. Section 14 of the Act directed the National Bureau of Standards (now the National Institute of Standards and Technology) to give particular attention to the evaluation of all promising energy-related inventions, especially those submitted by individual inventors and small companies for the purpose of obtaining direct grants from the Administrator of the Energy Research and Development Administration which was later incorporated into the Department of Energy.

Since 1975 NIST has been providing the prescribed evaluation services to the Department of Energy, which has overall management and budgetary responsibility for the Energy-Related Inventions Program (ERIP). NIST has completed all processing for the 33,430 requests for evaluation which were received on or before August 2, 1997. Evaluation was not performed for requests received after that date.

Of the evaluation requests received on or before August 2, 1997, 17,482 were not accepted for evaluation, largely due to inadequate documentation, obvious technical flaws in projected invention operation, or insufficient energy relation. Of the 15,948 accepted, 14,239 were rejected in a first-stage evaluation, which included commentary generally by at least two consultants, usually for lack of competitive advantage. Of the 1709 remaining (not rejected in the first stage) 741 were recommended for DOE support. The continuous multi-stage evaluation process yielded, on average, two to three recommendations per month. For each of the 15,207 cases which were not recommended, a report was provided to the inventor commenting on the technology and giving reasons why DOE support was not warranted.

The DOE will continue to evaluate inventions under its new Inventions and Innovation Program. DOE has issued a solicitation for proposals to be evaluated under the new program beginning on May 1, 1998.

NIST finds good cause to issue this rule in final without opportunity for notice and comment and delayed effective date because those procedures are unnecessary pursuant to 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d)(3), since the Department of Energy is continuing the program in its entirety.

Executive Order 12866

It has been determined that this Rule is ''not significant'' under section 3(f) of E.O. 12866.

List of Subjects in 15 CFR Part 270

Energy, Inventions and patents.

Accordingly, under the authority of 15 U.S.C. 271 et seq., part 270 is removed from Title 15 of the Code of Federal Regulations.

Dated: April 30, 1998.

Robert E. Hebner,

Acting Deputy Director.

[FR Doc. 98–12043 Filed 5–5–98; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 911

[Docket No. 970725178–8087–02]

RIN 0648–AK04

Policies and Procedures Regarding Use of the NOAA Space-Based Data Collection Systems

AGENCY: National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Final rule.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) is issuing a final rule that revises its policies and procedures for authorizing the use of its space-based Data Collection Systems (DCS) which operate on NOAA's Geostationary Operational Environmental Satellites (GOES) and Polar-orbiting Operational Environmental Satellites (POES). This final rule revises the current policy on the use of the GOES DCS, and formalizes a new policy for the use of the Argos Data Collection and Location System (Argos DCS) which flies on the POES. The rule harmonizes, as much as practicable, the system use policies for the two systems, which in the past have been disparate. The fundamental principle underlying this rule is that the Government will not allow its space-based DCS to be used where there are commercial space-based services available that fulfill users' requirements.

DATES: Effective June 5, 1998.

ADDRESSES: Send comments on the collection information to Dane Clark, NOAA, National Environmental Satellite, Data, and Information Service, Direct Services Division (E/SP3), 4700 Silver Hill Road, Stop 9909, Room 3320,

Washington, DC 20223–9909, and to the Office of Management and Budget (OMB) at the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Dane Clark at (301) 457–5681, e-mail: satinfo@nesdis.noaa.gov; or Kira Alvarez at (301) 713–0053, e-mail: Kira.Alvarez@noaa.gov.

SUPPLEMENTARY INFORMATION: For general background on NOAA's Data Collection Systems (Argos DCS and GOES DCS), please refer to the notice of proposed rulemaking published in the **Federal Register** on September 9, 1997, at 62 FR 47388.

In 1996, NOAA recognized that a commercial industry was starting to emerge in the area of data collection and location services (e.g., Mobile Space Services). Guided by the U.S. Government's long-standing policy against competing with the private sector, NOAA, in October 8, 1996, (61 FR 52775), announced that it would no longer promote the use of the Argos DCS for commercial non-environmental applications. NOAA, moreover, has been eager to explore new opportunities for meeting mission requirements that are presented by the development of private space-based DCS. To explore these opportunities, NOAA initiated a dialogue among users of the systems and both public and private sector service providers by hosting a public meeting in December 1996. This meeting brought together more than 100 individuals representing current and planned space-based data collection service providers and users to present, discuss and document pertinent information necessary to reevaluate and reexamine government practice and policy.

As demonstrated at the public meeting, there are operational and soon-to-be operational commercial DCS. However, the government users of the current NOAA-provided systems require an established operational capability that meets users' requirements from the private sector service providers before contemplating a change away from these government-provided systems. Based on the representations, both oral and written, made at the public meeting, the commercial providers are currently unable to provide such a capability to the vast majority of government users. Consequently, there is still a need for the Government to provide a space-based data collection system for government use until such a time as the government's requirements can be met by the commercial sector. However, given the evolving state of the commercial industry, government users must take into account the progress and development of these commercial systems. As a result, any new system use policy should be focused on meeting the requirements of the government users, while also encouraging them to canvass the commercial marketplace on a periodic basis.

The participants expressed interest in the issuance of new consolidated regulations that clarify the system use policies for the Argos DCS and the GOES DCS and that build in the incentive to investigate the opportunities available from the private sector. The participants indicated that new regulations establishing a clear set of criteria for allowing access to the government systems would accord them the predictability and transparency necessary to make rational business decisions.

On September 9, 1997, (62 FR 47388), NOAA published a proposed rule in the **Federal Register.** Comments on the proposed rule were invited through November 10, 1997. A total of eight letters of comment on the proposed rule were received.

Response to Comments

Comment 1: The statements in the notice of proposed rulemaking that commercial providers are currently unable to provide a demonstrated operational capability to the vast majority of government users and that consequently, there is still a need for the Government to provide a DCS for government use until such time as the Government's requirements can be met by the commercial sector, are categorically incorrect.

Response: NOAA has determined that there is still a need for the Government to provide a space-based DCS. This determination was made with the consultation of a U.S. Government (USG) users group, which advised NOAA on the government requirements for space-based DCS. These government agencies determined their own current and future requirements and then conveyed the same to NOAA. NOAA and the user group assessed the commercial alternatives available and compared them with the existing government services and determined that no commercial service currently available had the requisite demonstrated operational capability to meet all of the USG user requirements. Nonetheless, this rulemaking serves notice that this situation will not be indefinite and viable commercial space-based alternatives may eventually obviate the need for NOAA to operate its own space-based DCS.

Comment 2: The 1991 U.S. Space Policy encouraging U.S. agencies to promote access to excess U.S. space-based assets is ''outdated and no longer applicable.''

Response: NOAA agrees, and in this regard, announced in the **Federal Register** on October 8, 1996, (61 FR 52775), that it was no longer promoting commercial use of the Argos System.

Comment 3: A major point of contention is the degree to which particular applications are conducted for environmental protection versus economic considerations. NOAA must recognize that certain applications may serve both purposes. What is the definition of cost-effectiveness? Full cost accounting should be used, including the full cost of providing the NOAA DCS service. NOAA should not use user switching costs in this assessment.

Response: Cost-effectiveness is only a valid criterion to be considered in the case of government agencies. Furthermore, it is the individual agency that determines what is cost-effective for their particular agency, as a user of the system. It is not a valid consideration for non-governmental entities. Moreover, for non-governmental entities, not only must the use be environmental, but there is the additional criterion that there must be government interest in the collection of the data.

Comment 4: In section 911.1, Purpose, change the italicized language: ''The regulations are intended to facilitate the collection of environmental data as well as other such data which the Government is interested in collecting, *while at the same time not disadvantaging the development of the commercial space-based services in this sector.*'' The following is proposed as a replacement: ''The regulations are intended to facilitate the collection of environmental data as well as other such data which the Government is interested in collecting, *and to allow for the use of commercial space-based services where possible while precluding all direct or indirect government competition with such services.*''

Response: The proposed change is inaccurate because it implies that NOAA has the authority to disallow the use of commercial services by other USG agencies. Moreover, NOAA has not taken any steps to discourage the use of commercial services. However, the language will be changed to clarify NOAA's position as follows:

''The regulations are intended to facilitate the collection of

environmental data as well as other such data which the Government is interested in collecting. *In those instances where space-based commercial systems do not meet users' requirements, the intent is to not disadvantage* the development of the commercial space-based services in this sector.''

Comment 5: ''The revised regulations should explicitly state that all non-government users of government spectrum must be licensed by the Federal Communications Commission (FCC). This NOAA must include as an integral part of its review and approval process for Argos System use certification that the candidate user of Argos has met these requirements.''

Response: While an explicit statement in the regulations that non-government users subject to U.S. jurisdiction must be licensed by the FCC is appropriate, it would be inconsistent with Administration regulatory policy to include a certification requirement pertaining to FCC license procedures that essentially duplicates existing requirements. However, it should be noted that System Use Agreements will include an obligation that users must obtain authorization from the appropriate national agencies, in the case of the United States—the FCC, to transmit on the assigned frequencies and to comply with all applicable national telecommunications laws and regulations.

Comment 6: NOAA should set up a vetting process similar to the FCC's, which includes the publication at designated intervals, of a Request for Information in the Commerce Business Daily, that would include the details of user requests since the previous notice, and would allow for timely comment by commercial providers before the signing of any agreements.

Response: Requiring the completion of such an administrative process before allowing access to the NOAA DCS would create an unfair burden on potential users and, in some cases would interfere with the ability of certain users to have timely access to data which may be mission critical. Under the USG's current regulatory reform program, any new regulatory burdens on the public must be kept to the minimum necessary to achieve the stated goal and this proposed administrative process would clearly be contrary to this policy.

Comment 7: The scope of the regulations is too narrow and these regulations should be applicable globally. As a result, include in § 911.2, Scope, the following language: ''regardless of whether an applicant is subject to the jurisdiction and control of the United States.''

Response: This proposed statement overreaches the territorial jurisdiction of the United States, and as such is inappropriate. However, NOAA agrees with the observation that the Argos DCS is a global system which should be operated under a consistent and uniform set of globally applicable rules. As a result, the Argos Operations Committee has adopted these regulations as part of the governing rules for the system.

Comment 8: Under which category of users would international government users fall?

Response: International government users would fall under the definition of government users.

Comment 9: ''Government Interest'' is defined too ambiguously.

Response: By necessity, this definition is broad. It would be impractical to give the exhaustive list of the relevant missions of all government agencies that utilize these data for operational and research purposes.

Comment 10: The definitions of ''Environmental Data,'' ''Environmental Protection Data,'' and ''Environmental Measurement Data'' are too broad. In addition, the definitions of ''Environmental Measurement Data'' and ''Environmental Protection Data'' should include the following statement: ''It is recognized that in many cases, commercial services may be available that adequately address user requirements and that these user needs may be motivated by reasons in addition to environmental-related concerns. Instances of such cases will be viewed as non-environmental applications for the purposes of these regulations.''

Response: These definitions accurately reflect the environmental stewardship mission requirements of the primary USG agencies for which these systems are operated. And because these systems are primarily operated for environmental purposes, these definitions serve as a primary justification for use of the system. However, we do understand the concerns expressed in the comment, and that is why NOAA also requires that, for non-governmental use of the system, the user show that there is a government interest in the collection of the data. We note, though, that the statement of policy proposed in the comment is inappropriate in the definition section of a regulation. Such a statement, moreover, concerns the use of the system for cost-effective purposes, and as we noted in comment 3 above, except in the case of government agencies, cost-effectiveness is not an appropriate consideration for potential users of the system. We feel that the operative sections of the regulations already take into account the concerns expressed in the commenter's proposed statement.

Comment 11: It is unclear what types of events fall under the definition of Episodic Use. Please clarify with examples.

Response: NOAA agrees, and as a result, examples of such uses have been added to the final rule. These examples include: Arctic expeditions and scientific campaigns into remote areas, which represent events in which there is a significant possibility for the loss of life.

Comment 12: Who decides whether there are commercial services that meet the users' requirements? How will NOAA validate user requirements?

Response: Users determine whether there are commercial space-based services that meet their program's requirements. Not only are the users asked to provide the reasons why they have determined that they need to use the Argos System, but they must also certify that there are no commercial space-based services which meet their requirements.

Comment 13: Why was an explanation of the factors of the users' requirements that may not be met by commercial space-based services included in the preamble, but not in the actual proposed rule?

Response: NOAA agrees that the factors should be included in the text of the rule; as a result, these factors have now been incorporated into § 911.4(b).

Comment 14: The reduction in non-environmental use of the system, while ''well intended, * * * fails to address the real issue that, in the majority of cases, non-environmental user requirements can be met by commercial providers.''

Response: We reiterate the fact that the primary requirement for use of the system is that there be no commercial space-based services which meet the users' requirements. Only after a user has determined that fact, and certified to it, will NOAA apply the other criteria to determine if they are qualified to use the system. For non-environmental use of the system there are only two instances where use of the system is allowed: (1) For episodic uses, where there is the significant possibility of loss of life, which is consonant with NOAA's (and all USG agencies' inherent) public safety mission(s); and (2) for government users and non-profit users where there is a governmental interest. For government users there may be instances where the use of commercial services is not

appropriate due to the sensitive nature of the applications (such as for national security or law enforcement purposes); however, this is a determination made by the individual agency, not NOAA.

As we have stated previously, NOAA will monitor the commercial sector to determine whether they are developing and implementing the necessary capabilities. We encourage service providers to continue to interact with NOAA and keep us informed of their progress. We are committed to facilitating government-industry interface and dialogue. In fact we are already aware of several government agencies that are testing and using commercial space-based services.

Comment 15: All agreements for non-governmental, non-environmental use should be terminated upon publication of a final rule and no new non-governmental, non-environmental use agreements should be signed from this point forward.

Response: NOAA cannot arbitrarily terminate all non-governmental, non-environmental agreements upon publication of the final rule. However, we have stated previously that such agreements will not be renewed and will terminate upon expiration. We have also stated previously that no new non-governmental, non-environmental agreements will be approved, with the exception of those for episodic use, which are consonant with our public safety mission.

Comment 16: Section 911.7(a) should be amended; the following language should be included at the end: ''However, the existence of viable commercial space-based alternatives may eventually obviate the need for NOAA to operate its own satellite-based DCS.''

Response: NOAA agrees that it must convey a strong signal that it is determined not to compete with viable commercial providers of space-based DCS services. NOAA has incorporated the suggested language, with a slight modification; § 911.7(a) now reads: ''NOAA expects to continue to operate DCS on its geostationary and polar-orbiting satellites, subject to the availability of future appropriations. However, viable commercial space-based alternatives may eventually obviate the need for NOAA to operate its own space-based DCS.''

Comment 17: What is the reasoning behind limiting non-environment users to 5 percent of the terminals in use for the Argos DCS. With the expected decline in users, the non-environment users will continually need to remove terminals from the system. What will be the selection process in removing those terminals (which users will be impacted)? the existing limit has never created a problem for the operation of the system.

Response: NOAA established these systems to further its environmental stewardship responsibilities. Moreover, the radio spectrum frequencies within which these systems operate are allocated primarily for environmental use. Thus by strictly limiting the nonenvironmental use of the system to 5 percent of total system use, the integrity of the use of the allocated frequencies is maintained, while also accomplishing the additional goal of not competing unfairly with the private sector.

In accordance with this rule, current non-governmental, non-episodic, non-environmental agreements will not be renewed. Terminals operating under expired agreements should be deactivated at the end of the current agreement. Since any remaining non-environmental uses of the system will only be approved for one year terms, this will allow for an orderly decrease in the non-environmental use of the system.

Comment 18: There is concern that the statement: ''The fundamental principle underlying these regulations is that the Government will not allow its space-based DCS to be used where there are commercial services available that fulfill the users' requirements'', indicates not only that users will have to convert to commercial services when/where available, but also an eventual retreat by the Government from providing a data collection service without a definite discussion of how and when that would happen.

Response: Government user requirements will continue to dictate which instruments fly on government assets. Moreover, it is inappropriate for the Government to compete unfairly with the private sector. At this point in time, NOAA, in consultation with government users, has determined that there are no commercial providers of space-based services that can meet the government's needs, and so the Government will continue to operate its own systems. While this rulemaking serves notice that this situation will not be indefinite, it is impossible given the state of development in the commercial marketplace to determine with any accuracy when or how the full transition to the private sector will take place. When such a transition is warranted, NOAA will provide, to the maximum extent practicable, advance notice to the affected users to allow for an orderly transition.''

Comment 19: We believe that canvassing the market every 3–5 years is not enough. Also, what level of diligence does this require?

Response: NOAA has decreased the duration of the System Use Agreements in order to create a forcing function to make the users periodically reassess their requirements and their options for meeting them. This creates a dynamic process wherein applications and renewals have varying durations for 6 months to 5 years, and are received on a continuing basis. Hence, the canvassing of the commercial marketplace will take place on a continuing basis.

For existing users of the system, the following outlines the schedule for transitioning to new system use agreements:

1. Government and non-profit, environmental users of the Argos DCS shall be required to submit a new system use agreement within 3 years from the effective date of this rule or upon expiration of their current system use agreement, whichever occurs first;

2. Government, non-profit, and non-government, environmental users of the GOES DCS shall be required to submit a new system use agreement within 5 years from the effective date of this rule, or upon expiration of their current system use agreement, whichever occurs first;

3. Government and non-profit, non-environmental users of the Argos DCS shall be required to submit a new system use agreement within 1 year from the effective date of this rule or upon expiration of their current system use agreement, whichever occurs first;

4. Non-government, environmental users of the Argos DCS shall be required to submit a new system use agreement within 1 year from the effective date of this rule, or upon expiration of their current agreement, whichever comes first; and

5. Non-government, non-environmental users of the Argos DCS will be required to submit new system use agreements within 1 year from the effective date of this rule, or upon expiration of their current agreement, whichever comes first.

Please note, however, that submission of a new system use agreement does not imply acceptance of such an agreement, especially for non-governmental, non-environmental uses.

As to the level of diligence, NOAA requires a certification for each user that the use of the NOAA DCS is required because there are no commercial space-based services that meet its program requirements.

Comment 20: There needs to be further detail provided on what the ''platform compatibility'' factor is and how it is determined.

Response: NOAA agrees that this term should be defined. The ''platform compatibility'' factor addresses the compatibility of the platform with the space segment of the system and includes elements such as message length and composition, signal strength, as well as transmission protocol (e.g., continuous versus event driven).

Comment 21: These proposed rules do not support the needs of small businesses, the commercialization of space, the needs of the environmental users and the Government's requirements to allow access to underutilized assets of the Government to non-governmental users.

Response: As noted in the notice of proposed rulemaking, NOAA had previously made the excess capacity of its DCS available to non-NOAA users. This was consistent with the National Space Policy then in effect, which encouraged government agencies to promote commercial access to excess U.S.C. space-based assets in order to promote the growth of the emerging U.S. commercial space industry. However, by 1996, NOAA recognized that a commercial industry was staring to emerge in the area of space-based data collection and location services. Given the U.S. Government's long-standing policy against competing with the private sector, NOAA undertook a reassessment of its role in this market sector. This reassessment eventually led to those new regulations.

Changes from the Proposed Rule

For a description of the proposed rule, see 62 FR 47388. The following seven changes have been made to the text of the proposed rule in response to comments.

In § 911.1, language was added to clarify the intent of these regulations.

The definition of ''episode use'' in § 911.3, was clarified with further examples.

The definition of ''government use'' in § 911.3 was clarified, and now specifies that government approval is necessary in advance.

The definition of ''government user'' in § 911.3 was clarified to specify that international government users are included.

A definition of ''platform compatibility'' was added to § 911.3.

Section 911.4(b)(2) was added, which lists the factors that help users determine when commercial space-based services meet their requirements, was included. This list was included in the preamble of the notice of proposed rulemaking, but not in the actual rule.

A statement was added at the end of § 911.&(a) which qualifies the first sentence and states that while NOAA expects to continue to operate a DCS, in the future, the existence of viable commercial space-based systems may eventually obviate this need.

Additional Technical Changes to the Proposed Rule

A definition of ''Director'' was added to § 911.3, which defines the term as the Director of the Office of Satellite Data Processing and Distribution of the National Environmental Satellite, Data, and Information Service.

The term ''space-based'' was included in § 911.4(b) to modify the term ''commercial services'' to clarify the fact that NOAA will be looking at whether other space-based alternatives to the use of the NOAA DCS are available. This allows the comparison between systems to be a more accurate ''apples to apples'' comparison.

The requirements of former § 911.4(d) have now been incorporated into § 911.4(c). These sections were rearranged after some consideration, because the new arrangement leads to a more logical flow and makes the regulatory scheme easier to understand.

The section previously classified as § 911.4(c)(4), and which is now classified as § 911.4(c)(5), was revised to specify that the experimental use provisions applied to both NOAA DCS services. The name of this category was also changed from ''experimental use'' to ''testing use'' to better reflect the nature of the use; this change was also made in §§ 911.4(d)(5) and 911.5(e)(2).

Section 911.5(a)(2) was added, which directs persons who are interested in using the NOAA DCS to contact the Director.

A language change in § 911.5(b)(3) reflects that it is not by choice, but rather by necessity that a user requires access to the NOAA DCS.

Section 911.5(d)(5) was added; this is a conforming change that was necessary in order to reflect that the experimental use of the Argos System is also allowed. As a result, it was necessary to indicate the length of time of approval of agreements for this category of use of the system.

Appendix B was added to map out the system use policy for the GOES DCS and has been included to help users understand how the regulations apply to that system.

Classification

A. Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

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 the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification. As such, no final regulatory flexibility analysis has been prepared.

B. Paperwork Reduction Act of 1995 (35 U.S.C. 3500 et. seq.)

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The collection of this information has been approved by OMB Control Number 0648–0157.

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

Public reporting burden for this collection of information is estimated to average 3 hours per GOES agreement and 30 minutes per Argos agreement, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this collection of information to Dane Clark, NOAA, National Environmental Satellite, Data, and Information Service, Direct Services Division (E/SP3), 4700 Silver Hill Road, Stop 9909, Room 3320, Washington, DC. 20233–9909, and to OMB at the Office of Information and Regulatory Affairs, Washington, DC 20503 (Attention: NOAA Desk Officer).

C. National Environmental Policy Act (42 U.S.C. 4321 et seq.)

Publication of the final regulations does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required.

D. Executive Order 12866

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

List of Subjects in 15 CFR part 911

Scientific equipment, Space transportation and exploration.

Dated: April 28, 1998.

Robert S. Winokur,

Assistant Administrator for Satellite and Information Services.

Accordingly, for the reasons set forth above part 911 of Title 15 of the Code of Federal Regulations is revised to read as follows:

PART 911—POLICIES AND PROCEDURES CONCERNING USE OF THE NOAA SPACE-BASED DATA COLLECTION SYSTEMS

Sec.

911.1 Purpose.
911.2 Scope.
911.3 Definitions.
911.4 Use of the NOAA Data Collection Systems.
911.5 NOAA Data Collection Systems Use Agreements.
911.6 Treatment of data.
911.7 Continuation of the NOAA Data Collection Systems.
911.8 Technical requirements.
Appendix A to Part 911—Argos DCS Use Policy Diagram
Appendix B to Part 911—GOES DCS Use Policy Diagram

Authority: 15 U.S.C. 313, 49 U.S.C. 44720; 15 U.S.C. 1525; 7 U.S.C. 450b; 5 U.S.C. 552.

§ 911.1 Purpose.

These regulations set forth the procedural, informational and technical requirements for use of the NOAA Data Collection Systems (DCS). In addition, they establish the criteria NOAA will employ when making determinations as to whether to authorize the use of its space-based DCS. The regulations are intended to facilitate the collection of environmental data as well as other such data which the Government is interested in collecting. In those instances where space-based commercial systems do not meet users' requirements, the intent is to not disadvantage the development of the commercial space-based services in this sector. Obtaining a system use agreement to operate data collection platforms pursuant to these regulations does not affect related licensing requirements of other Federal agencies such as the Federal Communications Commission.

§ 911.2 Scope.

(a) These regulations apply to any person subject to the jurisdiction or control of the United States who operates or proposes to operate data collection platforms to be used with the NOAA DCS either directly or through an affiliate or subsidiary. For the purposes of these regulations a person is subject to the jurisdiction or control of the United States if such person is:

(1) An individual who is a U.S. citizen; or

(2) A corporation, partnership, association, or other entity organized or existing under the laws of any state, territory, or possession of the United States.

(b) These regulations apply to all existing Geostationary Operational Environmental Satellite (GOES) and Argos DCS users as well as all future applications for NOAA DCS use.

§ 911.3 Definitions.

For purposes of this part:

(a) *Approving authority* means NOAA for the GOES DCS; and it means the Argos Participating Agencies, via the Argos Operations Committee, for the Argos DCS.

(b) *Argos DCS* means the system which collects data from fixed and moving platforms and provides platform location data. This system consists of platforms, the Argos French instrument on the Polar-orbiting Operational Environmental Satellites (POES) and other international satellites; a ground processing system; and telemetry ground stations.

(c) *Argos participating agencies* means those agencies of the United States and other countries that participate in the management of the Argos DCS.

(d) *Assistant Administrator* means the Assistant Administrator for Satellite and Information Services, NOAA, or his/her designee.

(e) *Director* means the Director of the Office of Satellite Data Processing and Distribution for the National Environmental Satellite, Data, and Information Service of NOAA.

(f) *Environmental data* means environmental measurement data for the purpose of using the GOES DCS; and it means environmental measurement and environmental protection data for the purpose of using the Argos DCS.

(g) *Environmental measurement data* means data that relate to the characteristics of the Earth and its natural phenomena by helping to better understand, evaluate, or monitor its natural resources.

(h) *Environmental protection data* means data that relate to the characteristics of the Earth and its environment (including its ecosystems and the species which inhabit them) by helping to protect against any unreasonable adverse effects thereto.

(i) *Episodic use* means the use of the system for short events where there is a significant possibility of loss of life, such as for Arctic expeditions or scientific campaigns into remote areas.

(j) *Government interest* means that the use is determined in advance to be of interest to one or more governmental entities of the United States, France or, once they have become an Argos Participating Agency, Japan or a European Organization for the Exploitation of Meteorological Satellites (EUMETSAT) member state; or also, in the case of the GOES DCS, a state or local government.

(k) *Government user* means agencies of international governmental organizations, national government or any subdivision thereof, or any of those agencies' contractors or grantees, so long as the contractor is using the data collected by the NOAA DCS to fulfill its contractual obligations to the government agency or in the case of a grantee that these data are being used in accordance with the statement of work for the award.

(l) *NOAA DCS* means the GOES and Argos space-based DCS.

(m) *Non-profit user* means a not-for-profit academic, research, or other non-governmental organization, which is using these data, for education and/or scientific, non-commercial purposes.

(n) *Operational use* means the use of data in a situation where the utility of the data are significantly reduced if not collected or delivered in a specific time window. This includes situations where extensive preparation work is in place and a delay in acquisition of data would jeopardize the project.

(o) *Platform compatibility* means the compatibility of the platform with the space segment of the system, and includes elements such as message length and composition, signal strength, and transmission protocol (e.g., continuous versus event drive).

(p) *Testing use* means the use of the NOAA DCS by manufacturers of platforms for use in conjunction with the NOAA DCS by manufacturers of platforms for use in conjunction with the NOAA DCS, for the limited purpose of testing and certifying the compatibility of new platforms with the technical requirements of the NOAA DCS.

(q) *User* means the entity and/or organization which owns or operates user platforms for the purpose of collecting and transmitting data through the NOAA DCS.

(r) *User platform* means devices, designed in accordance with the specifications delineated and approved by the Approving Authority, used for the in-situ collection and subsequent transmission of data via the NOAA DCS. Those devices which are used in conjunction with the GOES DCS are

referred to as data collection platforms (DCP) and those which are used in conjunction with the Argos DCS are referred to as Platform Transmitter Terminals (PTT). For purposes of these regulations, the terms ''user platform,'' ''DCP'' and ''PTT'' are interchangeable.

(s) *User requirement* means the requirement expressed and explained in the System Use Agreement.

§ 811.4 Use of the NOAA Data Collection Systems.

(a) Use of the NOAA DCS will only be authorized in accordance with the conditions and requirements set forth in paragraphs (b), (c), (d), (e), and (f) of this section.

(b)(1) Use of the NOAA DCS will only be authorized where it is determined that there are no commercial space-based services available that meet the user's requirements.

(2) A determination under paragraph (b)(1) of this section must be based on such factors as satellite coverage, accuracy, data throughput, platform power consumption, size and weight, service continuity and reliability, platform compatibility, system access mode, and, in the case of government agencies, cost-effectiveness.

(c)(1) Except as provided in paragraphs (c)(2), (3), (4), and (5) of this section, NOAA DCS shall only be used for the collection of environmental data by governmental and/or non-profit users.

(2) Non-governmental, environmental use of the NOAA DCS is only authorized where there is a Government interest in the collection and/or receipt of the data.

(3) Except as provided in paragraph (c)(4) of this section, non-environmental use of the Argos DCS is only authorized for government use and non-profit users where there is a government interest. Non-environmental use of the system shall not exceed five percent of the system's total use.

(4) Episodic use of the Argos DCS may also be authorized in specific instances when there is a significant possibility for loss of life. Such use shall be closely monitored.

(5) Testing use of the NOAA DCS will only be authorized for manufacturers of NOAA DCS platforms, that require access to the system in order to test and certify prototype and production models.

(d) Because of capacity limitations on the GOES DCS, system applicants will be admitted to use the GOES system in accordance with the following priority:

(1) NOAA programs or users whose data are required for implementation of NOAA programs, as determined by the Assistant Administrator, will be accorded first priority.

(2) Users whose data are desired to support NOAA programs will be accorded second priority.

(3) Users whose data and/or use of the GOES DCS will further a program of an agency or department of the U.S. Government, other than NOAA, will be accorded third priority.

(4) Users whose data are required by a state or local Government of the United States will be accorded fourth priority.

(5) Testing users of the system will be accorded fifth priority.

(6) No other usage will be authorized for the GOES DCS.

(e) In the event that Argos DCS capacity limitations require that priority determinations be made, priority will be given to those platforms that provide environmental data of broad international interest, especially of an operational nature, and to those requiring the unique capabilities of the Argos DCS, such as platform location or polar coverage.

§ 911.5 NOAA Data Collection Systems Use Agreements.

(a)(1) In order to use a NOAA DCS, each user must have an agreement with the approving authority for that system.

(2) Persons interested in entering into a system use agreement should contact the Director.

(b) These agreements will address, but may not be limited to, the following matters:

(1) The period of time the agreement is valid and procedures for its termination,

(2) The authorized use(s), and its priorities for use,

(3) The extent of the availability of commercial space-based services which meet the user's requirements and the reasons for necessitating the use of the Government system,

(4) Any applicable government interest in the data,

(5) Required equipment standards,

(6) Standards of operation,

(7) Conformance with applicable ITU and FCC agreements and regulations,

(8) Reporting time and frequencies,

(9) Data formats,

(10) Data delivery systems and schedules, and

(11) User-borne costs.

(c) The Director shall evaluate user requests and conclude agreements for use of the NOAA DCS.

(d)(1) Agreements for the collection, via the Argos DCS, of environmental data by government agencies or non-profit institutions shall be valid for 3 years from the date of initial in-situ deployment of the platforms, and may be renewed for additional 3-year periods.

(2) Agreements for the collection of environmental data, via the Argos DCS, by non-government users shall be valid for 1 year from the date of initial in-situ deployment of the platforms, and may be renewed for additional 1-year periods, but only for so long as there exists a governmental interest in the receipt of these data.

(3) Agreements for the collection of non-environmental data, via the Argos DCS, by government agencies, or non-profit institutions where there is a government interest, shall be valid for 1 year from the date of initial in-situ deployment of the platforms, and may be renewed for additional 1-year periods.

(4) Agreements for the episodic collection of non-environmental data, via the Argos DCS under § 911.4(c)(4), shall be of short, finite duration not to exceed 1 year without exception, and usually shall not exceed 6 months. These agreements shall be closely monitored and shall not be renewed.

(5) Agreements for the testing use of the Argos DCS by equipment manufacturers shall be valid for 1 year from the date of initial testing, and may be renewed for additional 1-year periods.

(e)(1) Agreements for the collection of data, by the GOES DCS, shall be valid for 5 years from the date of initial in-situ deployment, and may be renewed for additional 5-year periods.

(2) Agreements for the testing use of the GOES DCS, by equipment manufacturers, shall be valid for 1 year from the date of initial testing, and may be renewed for additional 1-year periods.

911.6 Treatment of Data.

(a) All NOAA DCS users must agree to permit NOAA and other agencies of the U.S. Government the full, open and timely use of all data collected from their platforms; this may include the international distribution of environmental data under the auspices of the World Meteorological Organization. Any proprietary data will be protected in accordance with applicable laws.

§ 911.7 Continuation of the NOAA Data Collection Systems.

(a) NOAA expects to continue to operate DCS on its geostationary and polar-orbiting satellites, subject to the availability of future appropriations. However, viable commercial space-based alternatives may eventually

obviate the need for NOAA to operate its own space-based DCS.

(b) If use of the system in support of NOAA programs increases, it eventually may be necessary to the further restrict system usage by other users. If such restrictions on use become necessary, or in the event that NOAA discontinues operation of GOES and/or POES, NOAA will provide, to the maximum extent practicable, advance notice and an orderly transition.

(c) NOAA will not be responsible for any losses resulting from the nonavailability of the NOAA DCS.

§ 911.8 Technical requirements.

(a) All platform operators of the NOAA DCS must use a data collection platform radio set whose technical and design characteristics are certified to conform to applicable specifications and regulations.

(b) All platform operators are responsible for all costs associated with the procurement and operation of the platforms, and for the acquisition of data from those platforms, either directly from the satellite or from the applicable data processing center.

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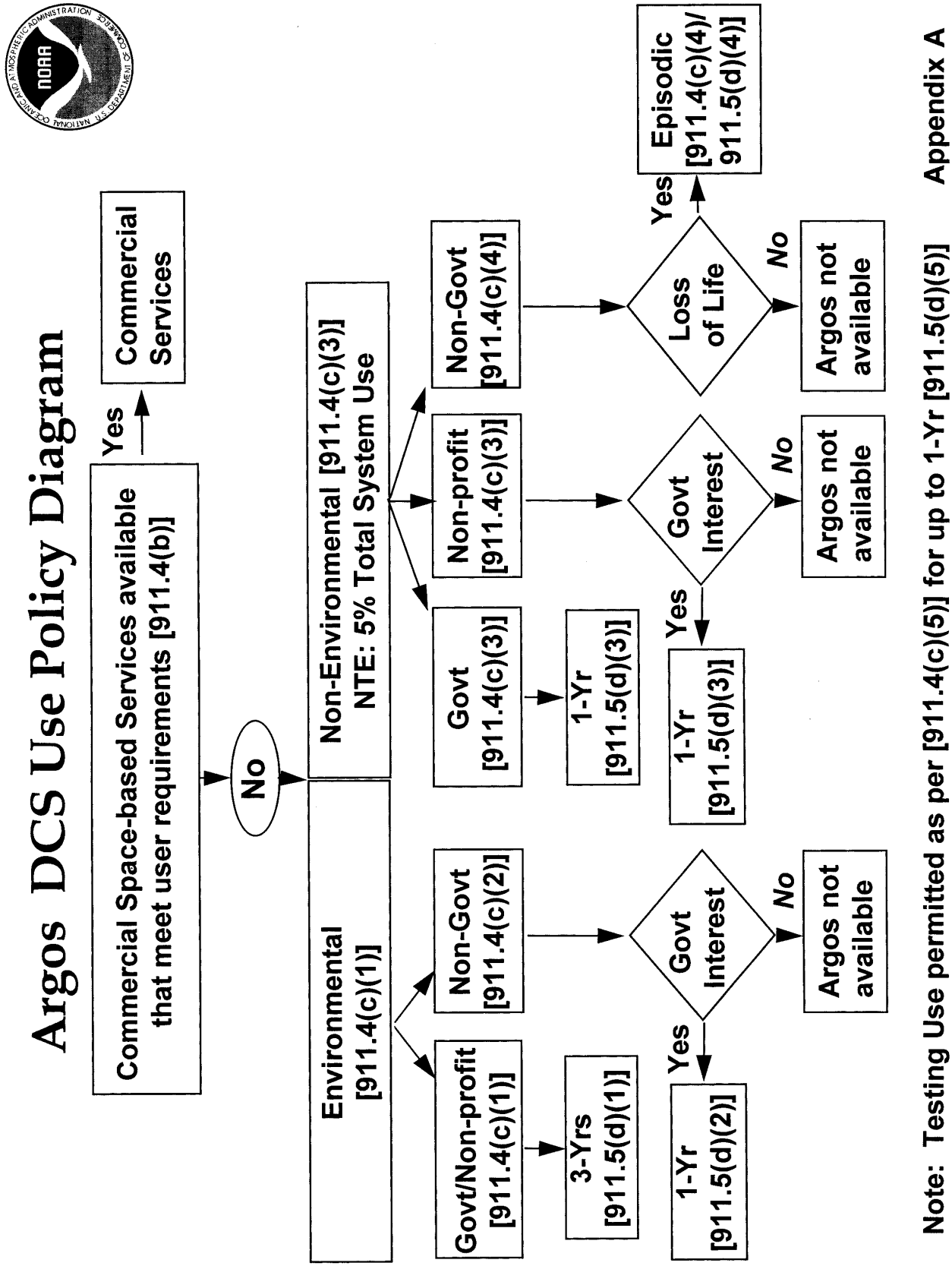
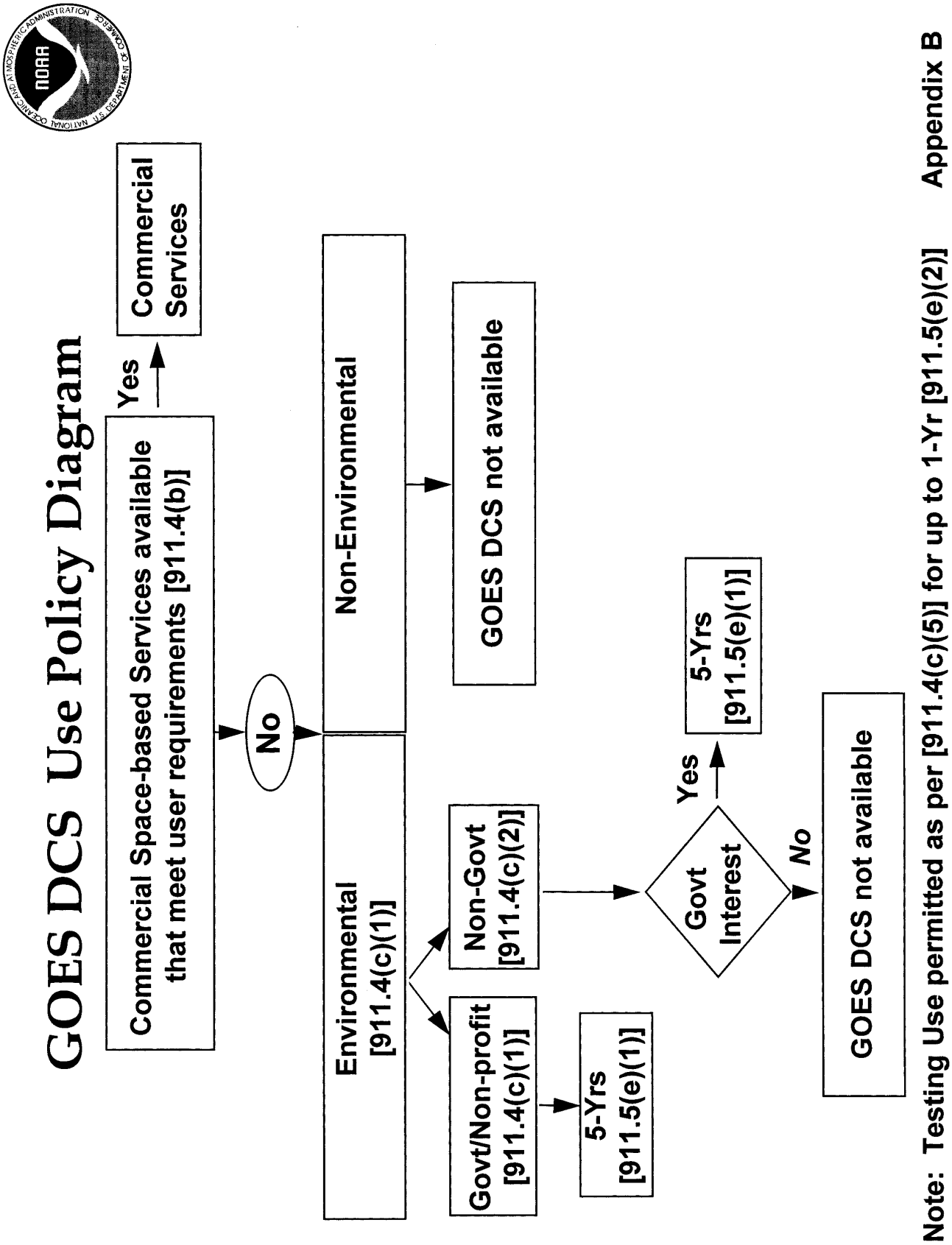
Appendix A to Part 911—Argos DCS Use Policy Diagram



Appendix B to Part 911—GOES DCS Use Policy Diagram



[FR Doc. 98–11970 Filed 5–5–98; 8:45 am]
BILLING CODE 3510–12–C

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

RIN 0960–AE74

Federal Old-Age, Survivors, and Disability Insurance Benefits; Supplemental Security Income for the Aged, Blind, and Disabled; Organization and Procedures; Application of Circuit Court Law

AGENCY: Social Security Administration (SSA).

ACTION: Final rules.

SUMMARY: These final regulations revise the current regulations governing how we apply holdings of the United States Courts of Appeals (circuit courts) that we determine conflict with our interpretation of the Social Security Act or regulations in adjudicating claims under title II and title XVI of the Social Security Act (the Act). The regulations explain the new goal we have adopted to ensure that Acquiescence Rulings (ARs) are developed and issued promptly and the new procedures we are implementing to identify claims pending in the administrative review process that might be affected by ARs.

EFFECTIVE DATES: These amendments are effective June 5, 1998.

FOR FURTHER INFORMATION CONTACT: Gary Sargent, Litigation Staff, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1695 for information about these rules. For information on eligibility or claiming benefits, call our national toll free number, 1–800–772–1213.

SUPPLEMENTARY INFORMATION: On January 11, 1990, (55 FR 1012) we published final regulations, set out at 20 CFR 404.985 and 416.1485, to implement a revised policy explaining how we apply circuit court holdings that we determine conflict with our interpretation of the Act or regulations to subsequent claims within that circuit involving the same issue. Under those regulations, we prepare ARs which explain the circuit court holdings and provide instructions to adjudicators, at all levels of the administrative review process, on how to apply the circuit court's holding to subsequent claims within the circuit involving the same issue. Those regulations reflected the agency's decision in 1985 to abandon its prior policy of applying circuit court holdings that we determined conflicted with our interpretation of the Act or regulations only to the named party or parties to the decision, rather than to other cases pending in the administrative review process involving the same issue or issues.

On July 2, 1996, we issued Social Security Ruling (SSR) 96–1p (61 FR 34470) clarifying and reaffirming the rules established in the 1990 regulations. Since that time, we have reviewed our rules and our implementing procedures to determine what changes could be instituted to further improve the acquiescence process. Based upon that review, on September 18, 1997, we published at 62 FR 48963, proposed revisions to the acquiescence regulations, which we are now publishing as final rules.

The proposed rules provided the addition of new paragraphs 404.985(b)(1) and 416.1485(b)(1) to establish a general goal for issuing ARs no later than 120 days from the date of our receipt of a precedential circuit court decision. The proposed rules also provided, by the addition of new paragraphs 404.985(b)(3) and 416.1485(b)(3), for new procedures to identify claims pending within SSA which may be affected by an AR that may subsequently be issued. These same sections also provided that, once an AR is issued, we will send notices to those individuals whose claims have been identified as potentially being affected by the AR informing them of their right to request a readjudication, as described in paragraphs 404.985(b)(2) and 416.1485(b)(2) of the rules.

The Final Rules

The Role of Litigation in the Policymaking Process

Our review indicated that it is important to reaffirm the principle that our goal in administering our programs is to have uniform, national program standards. Our procedures, which provide for acquiescence within the circuit when a circuit court issues a precedential decision containing a holding that we determine conflicts with our interpretation of the Act or regulations, result in differing rules in different sections of the country. This situation is not desirable and ordinarily should not, if possible, continue indefinitely.

Therefore, we wish to make it clear that generally ARs are temporary measures. When we receive a precedential circuit court decision containing a holding that we determine conflicts with our interpretation of the Act or regulations, we consider whether the rules at issue should be changed on a nationwide basis to conform to the court's holding. If we continue to believe that our interpretation of the statute or regulations at issue is correct and we seek further judicial review of the circuit court's decision, we will stay further development of the AR until the judicial review process runs its course. If our assessment shows that we should change our rules and adopt a circuit court's holding nationwide, we will, at the time we publish the AR, have determined the steps necessary to do so. This may require changing our regulations or rulings; it may also require seeking a clarifying legislative change to the Act. We would then proceed to issue an AR because changing our nationwide rules through legislation or rulemaking may require a significant period of time.

Similarly, if our assessment shows that our rules represent a reasonable interpretation of the Act or regulations, but we are unable to resolve the matter by seeking further judicial review, we will issue an AR and at the time we publish the AR have determined the appropriate steps to attempt to address the issue which was the subject of the circuit court's holding. This may mean issuing clarifying regulations or seeking legislation. There are certain instances when an issue cannot be resolved, such as a constitutional issue which the Supreme Court chooses not to review or legislation is required but not enacted and, therefore, an AR may remain in effect.

Although our goal to have uniform national standards is implicit in the current regulations, we are including in this preamble an explicit statement of our commitment to maintaining a uniform nationwide system of rules. In addition to making minor editorial corrections to the current regulations, these rules amend the regulations in two substantive areas, as follow:

Establishing a Timeliness Goal for Issuing ARs

A common criticism regarding the acquiescence process has involved the length of time it has taken for us to prepare and issue an AR. As a result, we have reassessed our procedures and have decided to place in our regulations our goal to release an AR for publication in the **Federal Register** no later than 120 days from the time we receive a precedential circuit court decision for which the AR is being issued, unless further judicial review of that decision is pending. This timeframe will also not apply when publication of an AR requires such coordination with the Department of Justice and/or other Federal agencies that it becomes no longer feasible. We are adding new

paragraphs 404.985(b)(1) and 416.1485(b)(1) so that the public is fully informed of this new timeframe.

Identifying Pending Claims Which May Be Affected by an AR

When we published the 1990 acquiescence regulations, we noted that a number of commenters on the 1988 proposed regulations (53 FR 46628 (November 18, 1988)) urged that we take action to identify and list pending claims that might be affected by an AR. In the response to that comment, we stated at 55 FR at 1013:

> As a matter of operational necessity, some time will always elapse between the date of a court decision and the time that we could notify all adjudicators to begin listing cases which might be affected by its holding. Thus, a substantial number of cases would not be listed for later readjudication. The process which these comments suggest presumes instantaneous, comprehensive identification of all cases, which operationally we cannot accomplish. Therefore, despite the fact that requiring claimants to seek readjudication does require some action on their part, we have concluded that this is the most efficient and effective way to proceed and have not adopted these comments in the final regulations.

The basic facts noted in that response remain valid. Despite improved technology, it is still operationally impossible for us to identify all pending claims that might be affected by an AR. However, we have reassessed this situation and have now decided that it would be appropriate to identify pending claims that might be affected by an AR, as expeditiously as possible, even though we may not be able to identify all such claims.

Therefore, as described in paragraphs 404.985(b)(3) and 416.1485(b)(3), we are implementing the following procedures. As soon as possible after we receive a precedential circuit court decision that we find may contain a holding that conflicts with our interpretation of the Act or regulations, we will develop and provide our adjudicators with criteria that they will use to identify pending claims we are deciding within the relevant circuit that might be affected, if we subsequently determine that an AR is required. If an AR is subsequently released, a notice will be sent informing the claimants in these cases that might be affected by the AR that an AR has been issued that might affect the claim. The notice to the claimant will also explain the procedures for obtaining a readjudication of the claim under the AR. If we develop criteria and begin identifying claims, but subsequently determine that an AR is not required, the notices will not be sent.

We will notify adjudicators of the appropriate criteria to be used to identify claims no later than 10 days after we receive a circuit court decision that we determine may contain a holding which conflicts with our interpretation of the Act or regulations. Although we believe that the new procedure to identify pending claims within the relevant circuit that might be affected will greatly reduce the number of claimants who would have to learn of the issuance of the AR through the **Federal Register** publication of it or otherwise, the new procedure will likely not identify all individuals whose claims may be subject to the AR. For this reason, we have retained the readjudication procedure in paragraphs 404.985(b)(2) and 416.1485(b)(2) to ensure the protection of all claimants. Additionally, if a claimant or an adjudicator brings to our attention that a claim could potentially be affected by a circuit court decision that might become the subject of an AR, we will, if appropriate, identify that case pending a decision as to whether an AR is necessary in the circuit court decision in question.

These regulations do not apply to current and reopened claims governed by the court-approved settlement in *Stieberger* v. *Sullivan,* 801 F. Supp. 1079 (S.D. N.Y. 1992), to the extent that the regulations are inconsistent with the settlement.

Public Comments

These regulatory provisions were published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on September 18, 1997 (62 FR 48963). We provided the public a 60-day comment period. We received a total of five statements containing multiple comments in response to this NPRM, two from individuals who are attorney representatives of claimants and three from legal services organizations.

Comment: One commenter recommended that the 120-day timeframe for publishing an AR specified in the NPRM be reduced to coincide with the date of the issuance of the circuit court's mandate under Rule 41 of the Federal Rules of Appellate Procedure. The commenter stated that this would allow SSA at least 52 days to prepare and release an AR. Another commenter stated that an AR should be effective as of the date of the order of the circuit court for which the AR is being issued.

Response: We have not adopted these comments. By necessity, some time will always elapse between the date of a court decision and the date that we publish an AR for that decision, due to the practical impossibility of immediately taking all the steps necessary for implementing a circuit court decision. Because, as we note below, interpreting and applying a circuit court's holding may not be a simple matter, we have decided that 120 days from the date we receive the court's decision is the appropriate timeframe for us to thoroughly analyze the decision, determine that it contains a holding conflicting with our interpretation of the Act or regulations, and develop an AR to provide as specific a statement as possible explaining SSA's interpretation of the holding and how SSA will apply the holding when adjudicating claims within the applicable circuit. Therefore, ARs will generally continue to be effective as of the date of publication, and the readjudication procedures will continue to be available with respect to claims decided between the date of the court decision and publication of the AR. The new provision in the regulation for identifying pending claims potentially affected by the court's holding will further protect the rights of claimants whose claims are adjudicated during the period prior to the effective date of the AR. We relied on similar reasoning in not adopting a comment on the 1990 acquiescence regulations, 55 FR at 1016, which suggested that ARs should be effective as of the date of the circuit court decision.

Comment: One commenter stated that the regulations establishing the process for identifying claims affected by precedential circuit court holdings should provide a procedure for ''listing'' affected claims (including those decided beyond the 120-day timeframe if publication of an AR is delayed) and should provide our adjudicators with instructions for readjudicating these claims. The same commenter asked who would be responsible for identifying the affected claims and suggested that the regulations assign this responsibility to specific SSA personnel.

Response: The regulations establish a new process for identifying pending claims that may be affected by publication of an AR. We will begin to list identified claims no later than 10 days after the date the precedential circuit court decision is received by SSA. Identification criteria and instructions will be issued to all of our adjudicators in the circuit who will be responsible for deciding, in accordance with those criteria and instructions, whether a particular claim may be affected by the court's holding. We believe that adjudicators are best suited to identify these claims because ARs apply to all levels of adjudication, not

only to the ALJ and Appeals Council levels, unless a court holding by its nature applies to only certain levels of adjudication. If publication of an AR is delayed beyond the 120-day timeframe, the identification process will continue until the AR is issued. After an AR is published, additional instructions for each AR will be issued to all adjudicators in the circuit as needed.

Comment: One commenter stated that paragraph 404.985(b)(3) of the regulations should explicitly reflect the timeframe which was contained in the preamble to the NPRM that, within 10 days after SSA receives a circuit court decision for which it determines an AR may be required, SSA will provide instructions to adjudicators on the criteria for identifying pending claims that might be subject to readjudication if an AR is subsequently published for that court decision.

Response: Ordinarily we do not include operational processing time goals in regulations. However, because of our commitment to the timely publication of ARs, we have provided in these regulations that, in general, an AR will be released for publication in the **Federal Register** no later than 120 days from receipt of the court's decision. We believe the operational steps necessary for identifying pending claims are appropriately placed in the various detailed instructions that will be issued to adjudicators. Since the specific elements of the identification process are an operational matter, we have not placed it within the regulations. When we issue implementing instructions, they will contain the operational details necessary for us to inform adjudicators and others in the claims process of the appropriate criteria to be used to identify claims no later than 10 days after we receive a circuit court decision that we determine may contain a holding which conflicts with our interpretation of the Act or regulations.

Comment: One individual suggested that any process that does not provide for notice to all claimants, including claimants who received determinations between the date of the circuit court decision and the date we start identifying claimants who could potentially be affected by an AR (generally 10 days after our receipt of the circuit court decision), is ''wholly inadequate.''

Response: As we pointed out in the NPRM, we recognize that the new procedure may not identify all individuals who could be affected by an AR. Consequently, we have retained the readjudication procedures in paragraphs 404.985(b)(2) and 416.1485(b)(2) to ensure the protection of all claimants. We expect that, generally, very few claims that could potentially be affected by an AR will be adjudicated during the relatively short period before we begin to identify claimants. However, claimants can bring to our attention and adjudicators can identify such claims during this period. While the procedures contained in our regulations require some action on the claimant's part, we have concluded that, from an operational standpoint, we cannot always accomplish instantaneous, comprehensive identification of all claims. We believe the new procedure represents the best balance we can strike between service to claimants and operational limitations.

Comment: Two commenters suggested that we publish our decision not to issue an AR for a circuit court holding that we determine does not conflict with our interpretation of the Act or regulations. One of these commenters also suggested that we should publish a notice in the **Federal Register** whenever we are unable to meet the 120-day timeframe for publishing an AR.

Response: We have not adopted these comments. We review approximately 600 circuit court decisions each year to determine whether an AR is required. We believe that publishing notices in the **Federal Register** for each of these decisions is an inefficient and costly way to inform the public and the courts about our conclusions with respect to acquiescence. We also do not believe it would be efficient to require SSA to publish a notice whenever issuance of an AR is delayed beyond the 120-day timeframe. We believe that we will provide the highest quality service to the public by focusing our limited resources on publishing ARs within the 120-day timeframe specified in these regulations and on notifying individual claimants identified under the procedure in paragraphs 404.985(b)(3) and 416.1485(b)(3) about circuit court decisions that may affect their claims.

Comment: One commenter suggested that the regulations should not limit readjudications under an AR to the particular issue addressed by the AR but instead should allow de novo review of the entire claim.

Response: Claims pending administrative review will receive de novo review when adjudicated under an AR. Under the 1990 acquiescence regulations, which we have not changed in this regard, other claims in which administrative appeal rights have lapsed are readjudicated based upon a consideration of the issues covered by the AR. To the extent that those issues covered by the AR affect other issues in the claim, those other issues will also be addressed as part of the readjudication. However, we do not believe that the Act requires us to automatically afford lapsed claims being readjudicated the opportunity for de novo review.

Comment: One commenter suggested that the regulations should permit full appeal rights as to a finding that a claim is not subject to readjudication under an AR.

Response: This question was addressed in the preamble to the 1990 acquiescence regulations, 55 FR at 1014. We do not believe that permitting further review on the question of whether or not an AR applies to a pending claim is appropriate. Once we conclude that readjudication is not necessary, the next step should be an appeal on the substantive merits of the claim itself, not the readjudication question. When a decision is reached on appeal concerning the substantive issue(s), the readjudication issue will be resolved. In cases where a person did not appeal timely and subsequently becomes aware of an AR that may apply to his or her claim, the readjudication procedure is available. Also, claimants may request to have their lapsed claims reopened and we may do so if the grounds for reopening are met.

We continue to believe that the combination of appeal, readjudication, and reopening provides a fair process that protects the rights of claimants.

Comment: One commenter expressed the view that paragraph 404.985(b)(2) should not require claimants to identify the appropriate AR when seeking readjudication. The commenter suggests that a claimant should be allowed to seek readjudication by identifying the appropriate circuit court decision, without also identifying the AR.

Response: We have adopted this comment and modified the new paragraphs under 404.985(b)(2) and 416.1485(b)(2) to specify that the claimant may request application of the AR to his or her case by either citing the AR or, in the alternative, by specifying the holding or portion of a circuit court decision which could change the prior determination in their case. It should be noted, however, that the 1990 regulations provided under paragraphs 404.985(b) and 416.1485(b) that one way a claimant may obtain a readjudication was by submitting a statement which cited the AR; the regulations did not state that this was, and we did not intend this to be, an absolute requirement for obtaining readjudication.

Regulation paragraphs 404.985(b)(3) and 416.1485(b)(3) provide for the identification by SSA of pending claims which might be affected by the issuance

of an AR. When an AR is published, we will send individual notices for those claims. In addition, as stated in the preamble to the NPRM, a claimant or an adjudicator may bring to our attention a claim that could be potentially affected by a circuit court decision and we will, if appropriate, identify that claim pending our decision as to whether an AR is necessary for the circuit court decision in question.

Comment: One individual observed that the regulations result in the application of differing rules in different sections of the country, which is not desirable, and the regulations can cause the differing rules to continue indefinitely without restoring national uniformity. The commenter suggested that we establish a formal process to oversee litigation and to make changes in national rules whenever a district or circuit court decision conflicted with our rules.

Response: As discussed in the preamble to the 1990 acquiescence regulations, 55 FR at 1012–1013, a number of studies on the subject of Federal acquiescence have noted that nationwide adoption of the decision of the first circuit court to address an issue (intercircuit acquiescence) would preclude other circuit courts from considering the issue. In 1984, when Congress considered legislation that would have required SSA to acquiesce in circuit court decisions, the Solicitor General of the United States expressed similar concerns, stating that the practical effect of that legislation would be to require the Department of Justice to consider seeking Supreme Court review of the first adverse decision on an issue by any court of appeals. The Department of Justice reiterated these concerns in 1997 when Congress was again considering legislation to address the issue of acquiescence by Federal agencies.

An approach that would require nationwide adoption of the first circuit court decision on a particular issue would not improve SSA's adjudicatory and policy making processes, but would instead result in the first circuit that happened to rule on an issue setting SSA's national rules on that subject. In effect, the circuit court that would rule first would rule last. This result could hardly be intended by any reasonable interpretation of acquiescence and would undermine the advantages, which have been recognized by the Supreme Court, of having issues considered by more than one circuit court.

Moreover, we acquiesce only in the holdings of Federal circuit courts and not in holdings of Federal district courts within a circuit. See SSR 96–1p (61 FR 34470). This is consistent with the well-recognized principle that one district court's decision does not constitute binding precedent applicable to other claims arising within that district. There is no such thing as the ''law of the district.'' Indeed, even within the same district, one judge may disagree with the holding in a decision by another judge. Thus, despite a district court holding in a decision that may conflict with our interpretation of the Act or regulations, we will continue to apply our nationwide rules when adjudicating claims within that district court's jurisdiction unless the court directs otherwise such as may occur in a class action.

Comment: Several commenters expressed the opinion that we have not fully implemented our existing acquiescence policy because, in reviewing circuit court holdings to determine whether they conflict with our rules, we read the holdings too narrowly and, thus, incorrectly decide that an AR is not necessary. The commenters suggested that this was caused by a lack of specific standards for determining when a circuit court holding conflicts with our rules. One commenter said that it was inappropriate for us to interpret circuit court holdings and that we should be limited to merely implementing the ''policy directive'' stated by the court.

Response: We review every circuit court decision to determine whether a circuit court's holding conflicts with our interpretation of the Act or regulations. Since our acquiescence policy became effective in 1985, we have published 68 ARs. There has been a dramatic decline in litigation based on allegations that we have refused to acquiesce in specific circuit court decisions since the adoption of the 1990 acquiescence regulations.

As discussed in the preamble to the 1990 acquiescence regulations, 55 FR at 1012, the vast majority of adverse circuit court decisions do not conflict with our interpretation of the Act and regulations; they are based either on the issue of whether substantial evidence supports SSA's final administrative decision or on the issue of whether the final administrative decision adheres to established agency rules. A court holding based on the adjudicator's failure to follow established rules does not conflict with the rules themselves. Identifying the holding of a particular circuit court decision and determining whether or not the holding conflicts with our interpretation of the Act and regulations are not always clear or simple matters, and this may account for the concern expressed by these commenters about how we implement acquiescence policy.

Establishing specific standards for evaluating whether a court holding conflicts with our interpretation of the Act and regulations would be impractical because of the diversity and complexities both of the programs and policies we administer and of the court decisions concerning these programs and policies. For example, the policies and issues considered in adjudicating disability claims usually involve technical medical and vocational concepts, which are very different from the benefit computation and family relationship questions frequently considered in retirement and survivors claims. Because explaining how we will apply the circuit court holding within the circuit is also not a clear and simple matter, we do not believe that a standard for analyzing all circuit court holdings would be feasible. Consequently, we have declined to adopt this comment.

By statute, establishing rules and procedures governing SSA's programs is the responsibility of the Commissioner of Social Security. Furthermore, court decisions generally resolve individual claims and neither address similar circumstances, nor are written in a way that necessarily instructs our adjudicators how to apply the courts' holdings to other claims. We believe that to ensure uniform and consistent adjudication procedures necessary for the administration of a national program, SSA must analyze and interpret circuit court holdings that we determine conflict with SSA's nationwide rules to provide our adjudicators as specific a statement as possible of how to apply the holding in the course of adjudicating other claims.

If a person believes that we have overlooked or misconstrued a holding in a court of appeals decision, that person may bring this matter to our attention and we will respond appropriately.

Comment: Two commenters suggested that SSA should amend the current acquiescence regulations to direct adjudicators to follow circuit court precedent whether or not an AR has been issued. It was also suggested that SSR 96–1p, which sets forth a different policy from that suggested by the commenters, be withdrawn immediately.

Response: Both the preamble to the 1990 acquiescence regulations, 55 FR at 1013, and SSR 96–1p, published on July 2, 1996, explain the basis for our longstanding policy that SSA adjudicators are to follow SSA's nationwide rules until the

Commissioner determines that a circuit court holding is in conflict with our national rules and publishes an AR instructing adjudicators on how the decision is to be followed within the applicable circuit. Circuit court decisions generally resolve individual claims and are not necessarily written in a way that instructs our adjudicators on how to consistently apply the courts' holdings to other claims, particularly when the numerous possible situations to which they may apply are considered. The meaning and scope of a court holding are not always clear and can be subject to disparate interpretations.

If each of SSA's over 15,000 adjudicators were permitted to apply his or her own interpretation of a circuit court decision in resolving these difficult questions, rather than relying on guidance from the Commissioner in the form of an AR, it could result in conflicting standards being used by decisionmakers, even within the same circuit. Furthermore, the Commissioner has the responsibility by statute to administer the Social Security programs and establish the agency's rules and procedures. If the Commissioner abdicated that responsibility by allowing individual adjudicators to decide claims according to his or her individual interpretation of the law, it would be impossible for the Commissioner to carry out his responsibility to administer the Social Security programs in an effective and efficient manner on a nationwide basis, and to ensure consistent and uniform application of SSA's rules. Indeed, some adjudicators might apply the circuit court's decision in ways less favorable to claimants than the court intended. Furthermore, it would not necessarily be apparent what standard was applied by an individual adjudicator; therefore, unlike the standards established by the Commissioner in an AR, the interpretation of a circuit court decision by an individual adjudicator might not be readily susceptible to judicial scrutiny.

In addition, adjudicators at the initial and reconsideration levels of review generally do not have any legal training in interpreting and applying circuit court decisions. If authority to apply circuit court decisions in the absence of an AR was extended only to ALJs and the Appeals Council, it would further undermine uniformity in decisionmaking by creating different standards of adjudication at different levels of administrative review.

For all these reasons, we continue to believe that the AR is the fairest and most effective method to achieve uniform acquiescence in circuit court holdings that conflict with SSA's nationwide rules. This approach is consistent with the longstanding legal principle that it is the responsibility of the Commissioner, not individual adjudicators, to establish SSA's rules and policies (including how to apply a circuit court holding which conflicts with SSA's nationwide rules). Any erosion of this legal principle would represent a radical change in the Federal administrative structure, and would undermine a Federal department or agency head's accountability for the administration of the agency's programs. Therefore, it is the role and responsibility of individual adjudicators to decide claims by applying the rules and policies established by the Commissioner to the facts of an individual case.

Comment: One individual suggested that we clarify our longstanding regulatory language setting forth SSA's authority to rescind an AR when we subsequently publish a new regulation addressing an issue not previously included in our regulations.

Response: This provision has been in the regulations since 1990 and courts have not found that it has been misapplied. We do not believe there is a need for a clarifying amendment to this particular provision at this time.

Comment: One commenter questioned the legality of relitigating in the same circuit an issue addressed by an AR. Another questioned whether the regulations permit SSA to relitigate an issue within the same circuit after publication of an AR if we later publish a nationwide regulation reaffirming our original position on the issue.

Response: These final rules make no changes in our relitigation policies and procedures which were set forth in the 1990 acquiescence regulations. We do not believe that a Federal agency is legally precluded from relitigating an issue within a circuit that has previously issued a ruling adverse to the Government's position. When we published the 1990 acquiescence regulations, we discussed some of the authorities supporting our position on relitigation and stated that we would not use relitigation as a primary means for resolving conflicts in statutory and regulatory interpretation. To date, we have never used the relitigation procedures outlined in the 1990 regulations. Those regulations state that if we do decide to relitigate an issue, we will publish a notice of our intention in the **Federal Register** and also provide a notice explaining our action to all affected claimants.

As discussed in the preamble to the 1990 acquiescence regulations, 55 FR at 1015, when we determine that a circuit court holding conflicts with our interpretation of the Act and regulations, we generally expect to resolve the conflict by actively pursuing our right to seek further judicial review, revisiting the same issue in related litigation, clarifying our regulations, or seeking statutory amendments. The regulations outline a process for relitigating a court's holding within the same circuit after publication of an AR, which requires certain specific activating events. Publication of a regulation, by itself, is not an activating event for relitigation.

Based on our analysis of the comments, and for the reasons set forth above, we are publishing the proposed rules as final rules with the changes to paragraphs 404.985(b)(2) and 416.1485(b)(2) discussed above. We have also made minor editorial and technical changes for clarification and consistency.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these rules do not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, they are not subject to OMB review.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because these rules affect only individuals. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These regulations contain information collection requirements in paragraphs 404.985(b) and 416.1485(b). We have received approval for these requirements from OMB under OMB No. 0960–0581 which expires November 30, 2000.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.003, Social Security-Special Benefits for Persons Aged 72 and Over; 96.004, Social Security-Survivors Insurance; 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability

benefits, Old-Age, Survivors and Disability insurance, Reporting and recordkeeping requirements, Social security.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements Supplemental Security Income (SSI).

Dated: April 27, 1998.

Kenneth S. Apfel,

Commissioner of Social Security.

For the reasons set out in the preamble, subpart J of part 404 and subpart N of part 416 of chapter III of title 20 of the Code of Federal Regulations are amended as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

20 CFR part 404, subpart J, is amended as follows:

1. The authority citation for subpart J of part 404 continues to read as follows:

Authority: Secs. 201(j), 205(a), (b), (d)–(h), and (j), 221, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 401(j), 405(a), (b), (d)–(h), and (j), 421, 425, and 902(a)(5)); 31 U.S.C. 3720A; sec. 5, Pub. L. 97–455, 96 Stat. 2500 (42 U.S.C. 405 note); secs. 5, 6(c)–(e), and 15, Pub. L. 98–460, 98 Stat. 1802 (42 U.S.C. 421 note).

2. Section 404.985 is revised to read as follows:

§ 404.985 Application of circuit court law.

The procedures which follow apply to administrative determinations or decisions on claims involving the application of circuit court law.

(a) *General.* We will apply a holding in a United States Court of Appeals decision that we determine conflicts with our interpretation of a provision of the Social Security Act or regulations unless the Government seeks further judicial review of that decision or we relitigate the issue presented in the decision in accordance with paragraphs (c) and (d) of this section. We will apply the holding to claims at all levels of the administrative review process within the applicable circuit unless the holding, by its nature, applies only at certain levels of adjudication.

(b) *Issuance of an Acquiescence Ruling.* When we determine that a United States Court of Appeals holding conflicts with our interpretation of a provision of the Social Security Act or regulations and the Government does not seek further judicial review or is unsuccessful on further review, we will issue a Social Security Acquiescence Ruling. The Acquiescence Ruling will describe the administrative case and the court decision, identify the issue(s) involved, and explain how we will apply the holding, including, as necessary, how the holding relates to other decisions within the applicable circuit. These Acquiescence Rulings will generally be effective on the date of their publication in the **Federal Register** and will apply to all determinations and decisions made on or after that date unless an Acquiescence Ruling is rescinded as stated in paragraph (e) of this section. The process we will use when issuing an Acquiescence Ruling follows:

(1) We will release an Acquiescence Ruling for publication in the **Federal Register** for any precedential circuit court decision that we determine contains a holding that conflicts with our interpretation of a provision of the Social Security Act or regulations no later than 120 days from the receipt of the court's decision. This timeframe will not apply when we decide to seek further judicial review of the circuit court decision or when coordination with the Department of Justice and/or other Federal agencies makes this timeframe no longer feasible.

(2) If we make a determination or decision on your claim between the date of a circuit court decision and the date we publish an Acquiescence Ruling, you may request application of the published Acquiescence Ruling to the prior determination or decision. You must demonstrate that application of the Acquiescence Ruling could change the prior determination or decision in your case. You may demonstrate this by submitting a statement that cites the Acquiescence Ruling or the holding or portion of a circuit court decision which could change the prior determination or decision in your case. If you can so demonstrate, we will readjudicate the claim in accordance with the Acquiescence Ruling at the level at which it was last adjudicated. Any readjudication will be limited to consideration of the issue(s) covered by the Acquiescence Ruling and any new determination or decision on readjudication will be subject to administrative and judicial review in accordance with this subpart. Our denial of a request for readjudication will not be subject to further administrative or judicial review. If you file a request for readjudication within the 60-day appeal period and we deny that request, we shall extend the time to file an appeal on the merits of the claim to 60 days after the date that we deny the request for readjudication.

(3) After we receive a precedential circuit court decision and determine that an Acquiescence Ruling may be required, we will begin to identify those claims that are pending before us within the circuit and that might be subject to readjudication if an Acquiescence Ruling is subsequently issued. When an Acquiescence Ruling is published, we will send a notice to those individuals whose cases we have identified which may be affected by the Acquiescence Ruling. The notice will provide information about the Acquiescence Ruling and the right to request readjudication under that Acquiescence Ruling, as described in paragraph (b)(2) of this section. It is not necessary for an individual to receive a notice in order to request application of an Acquiescence Ruling to his or her claim, as described in paragraph (b)(2) of this section.

(c) *Relitigation of court's holding after publication of an Acquiescence Ruling.* After we have published an Acquiescence Ruling to reflect a holding of a United States Court of Appeals on an issue, we may decide under certain conditions to relitigate that issue within the same circuit. We may relitigate only when the conditions specified in paragraphs (c)(2) and (3) of this section are met, and, in general, one of the events specified in paragraph (c)(1) of this section occurs.

(1) Activating events:

(i) An action by both Houses of Congress indicates that a circuit court decision on which an Acquiescence Ruling was based was decided inconsistently with congressional intent, such as may be expressed in a joint resolution, an appropriations restriction, or enactment of legislation which affects a closely analogous body of law;

(ii) A statement in a majority opinion of the same circuit indicates that the court might no longer follow its previous decision if a particular issue were presented again;

(iii) Subsequent circuit court precedent in other circuits supports our interpretation of the Social Security Act or regulations on the issue(s) in question; or

(iv) A subsequent Supreme Court decision presents a reasonable legal basis for questioning a circuit court holding upon which we base an Acquiescence Ruling.

(2) The General Counsel of the Social Security Administration, after consulting with the Department of Justice, concurs that relitigation of an issue and application of our interpretation of the Social Security Act or regulations to selected claims in the

administrative review process within the circuit would be appropriate.

(3) We publish a notice in the **Federal Register** that we intend to relitigate an Acquiescence Ruling issue and that we will apply our interpretation of the Social Security Act or regulations within the circuit to claims in the administrative review process selected for relitigation. The notice will explain why we made this decision.

(d) *Notice of relitigation.* When we decide to relitigate an issue, we will provide a notice explaining our action to all affected claimants. In adjudicating claims subject to relitigation, decisionmakers throughout the SSA administrative review process will apply our interpretation of the Social Security Act and regulations, but will also state in written determinations or decisions how the claims would have been decided under the circuit standard. Claims not subject to relitigation will continue to be decided under the Acquiescence Ruling in accordance with the circuit standard. So that affected claimants can be readily identified and any subsequent decision of the circuit court or the Supreme Court can be implemented quickly and efficiently, we will maintain a listing of all claimants who receive this notice and will provide them with the relief ordered by the court.

(e) *Rescission of an Acquiescence Ruling.* We will rescind as obsolete an Acquiescence Ruling and apply our interpretation of the Social Security Act or regulations by publishing a notice in the **Federal Register** when any of the following events occurs:

(1) The Supreme Court overrules or limits a circuit court holding that was the basis of an Acquiescence Ruling;

(2) A circuit court overrules or limits itself on an issue that was the basis of an Acquiescence Ruling;

(3) A Federal law is enacted that removes the basis for the holding in a decision of a circuit court that was the subject of an Acquiescence Ruling; or

(4) We subsequently clarify, modify or revoke the regulation or ruling that was the subject of a circuit court holding that we determined conflicts with our interpretation of the Social Security Act or regulations, or we subsequently publish a new regulation(s) addressing an issue(s) not previously included in our regulations when that issue(s) was the subject of a circuit court holding that conflicted with our interpretation of the Social Security Act or regulations and that holding was not compelled by the statute or Constitution.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

20 CFR part 416, subpart N, is amended as follows:

1. The authority citation for subpart N continues to read as follows:

Authority: Secs. 702(a)(5), 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1383, and 1383b).

2. Section 416.1485 is revised to read as follows:

§ 416.1485 Application of circuit court law.

The procedures which follow apply to administrative determinations or decisions on claims involving the application of circuit court law.

(a) *General.* We will apply a holding in a United States Court of Appeals decision that we determine conflicts with our interpretation of a provision of the Social Security Act or regulations unless the Government seeks further judicial review of that decision or we relitigate the issue presented in the decision in accordance with paragraphs (c) and (d) of this section. We will apply the holding to claims at all levels of the administrative review process within the applicable circuit unless the holding, by its nature, applies only at certain levels of adjudication.

(b) *Issuance of an Acquiescence Ruling.* When we determine that a United States Court of Appeals holding conflicts with our interpretation of a provision of the Social Security Act or regulations and the Government does not seek further judicial review or is unsuccessful on further review, we will issue a Social Security Acquiescence Ruling. The Acquiescence Ruling will describe the administrative case and the court decision, identify the issue(s) involved, and explain how we will apply the holding, including, as necessary, how the holding relates to other decisions within the applicable circuit. These Acquiescence Rulings will generally be effective on the date of their publication in the **Federal Register** and will apply to all determinations, redeterminations, and decisions made on or after that date unless an Acquiescence Ruling is rescinded as stated in paragraph (e) of this section. The process we will use when issuing an Acquiescence Ruling follows:

(1) We will release an Acquiescence Ruling for publication in the **Federal Register** for any precedential circuit court decision that we determine contains a holding that conflicts with our interpretation of a provision of the Social Security Act or regulations no later than 120 days from the receipt of the court's decision. This timeframe will not apply when we decide to seek further judicial review of the circuit court decision or when coordination with the Department of Justice and/or other Federal agencies makes this timeframe no longer feasible.

(2) If we make a determination or decision on your claim between the date of a circuit court decision and the date we publish an Acquiescence Ruling, you may request application of the published Acquiescence Ruling to the prior determination or decision. You must demonstrate that application of the Acquiescence Ruling could change the prior determination or decision in your case. You may demonstrate this by submitting a statement that cites the Acquiescence Ruling or the holding or portion of a circuit court decision which could change the prior determination or decision in your case. If you can so demonstrate, we will readjudicate the claim in accordance with the Acquiescence Ruling at the level at which it was last adjudicated. Any readjudication will be limited to consideration of the issue(s) covered by the Acquiescence Ruling and any new determination or decision on readjudication will be subject to administrative and judicial review in accordance with this subpart. Our denial of a request for readjudication will not be subject to further administrative or judicial review. If you file a request for readjudication within the 60-day appeal period and we deny that request, we shall extend the time to file an appeal on the merits of the claim to 60 days after the date that we deny the request for readjudication.

(3) After we receive a precedential circuit court decision and determine that an Acquiescence Ruling may be required, we will begin to identify those claims that are pending before us within the circuit and that might be subject to readjudication if an Acquiescence Ruling is subsequently issued. When an Acquiescence Ruling is published, we will send a notice to those individuals whose cases we have identified which may be affected by the Acquiescence Ruling. The notice will provide information about the Acquiescence Ruling and the right to request readjudication under that Acquiescence Ruling, as described in paragraph (b)(2) of this section. It is not necessary for an individual to receive a notice in order to request application of an Acquiescence Ruling to his or her claim, as described in paragraph (b)(2) of this section.

(c) *Relitigation of court's holding after publication of an Acquiescence Ruling.* After we have published an Acquiescence Ruling to reflect a holding

of a United States Court of Appeals on an issue, we may decide under certain conditions to relitigate that issue within the same circuit. We may relitigate only when the conditions specified in paragraphs (c)(2) and (3) of this section are met, and, in general, one of the events specified in paragraph (c)(1) of this section occurs.

(1) Activating events:

(i) An action by both Houses of Congress indicates that a circuit court decision on which an Acquiescence Ruling was based was decided inconsistently with congressional intent, such as may be expressed in a joint resolution, an appropriations restriction, or enactment of legislation which affects a closely analogous body of law;

(ii) A statement in a majority opinion of the same circuit indicates that the court might no longer follow its previous decision if a particular issue were presented again;

(iii) Subsequent circuit court precedent in other circuits supports our interpretation of the Social Security Act or regulations on the issue(s) in question; or

(iv) A subsequent Supreme Court decision presents a reasonable legal basis for questioning a circuit court holding upon which we base an Acquiescence Ruling.

(2) The General Counsel of the Social Security Administration, after consulting with the Department of Justice, concurs that relitigation of an issue and application of our interpretation of the Social Security Act or regulations to selected claims in the administrative review process within the circuit would be appropriate.

(3) We publish a notice in the **Federal Register** that we intend to relitigate an Acquiescence Ruling issue and that we will apply our interpretation of the Social Security Act or regulations within the circuit to claims in the administrative review process selected for relitigation. The notice will explain why we made this decision.

(d) *Notice of relitigation.* When we decide to relitigate an issue, we will provide a notice explaining our action to all affected claimants. In adjudicating claims subject to relitigation, decisionmakers throughout the SSA administrative review process will apply our interpretation of the Social Security Act and regulations, but will also state in written determinations or decisions how the claims would have been decided under the circuit standard. Claims not subject to relitigation will continue to be decided under the Acquiescence Ruling in accordance with the circuit standard. So that affected claimants can be readily identified and any subsequent decision of the circuit court or the Supreme Court can be implemented quickly and efficiently, we will maintain a listing of all claimants who receive this notice and will provide them with the relief ordered by the court.

(e) *Rescission of an Acquiescence Ruling.* We will rescind as obsolete an Acquiescence Ruling and apply our interpretation of the Social Security Act or regulations by publishing a notice in the **Federal Register** when any of the following events occurs:

(1) The Supreme Court overrules or limits a circuit court holding that was the basis of an Acquiescence Ruling;

(2) A circuit court overrules or limits itself on an issue that was the basis of an Acquiescence Ruling;

(3) A Federal law is enacted that removes the basis for the holding in a decision of a circuit court that was the subject of an Acquiescence Ruling; or

(4) We subsequently clarify, modify or revoke the regulation or ruling that was the subject of a circuit court holding that we determined conflicts with our interpretation of the Social Security Act or regulations, or we subsequently publish a new regulation(s) addressing an issue(s) not previously included in our regulations when that issue(s) was the subject of a circuit court holding that conflicted with our interpretation of the Social Security Act or regulations and that holding was not compelled by the statute or Constitution.

[FR Doc. 98–11945 Filed 5–5–98; 8:45 am]

BILLING CODE 4190–11–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 96N–0119]

21 CFR Part 801

Natural Rubber-Containing Medical Devices; User Labeling

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; interpretation.

SUMMARY: The Food and Drug Administration (FDA) is providing notice that it does not intend to apply to combination products currently regulated under human drug or biologic labeling provisions its September 30, 1997, final rule requiring certain labeling statements for all medical devices that contain or have packaging that contains natural rubber that contacts humans. FDA is taking this action, in part, in response to a citizen petition and other communications from industry that the agency has received since the publication of the final rule. FDA intends to initiate a proceeding to propose natural rubber labeling requirements for drugs and biologics, including combination products that are currently regulated under drug and biologic labeling provisions. Such a proceeding may include a combination of rulemaking and guidance and will offer opportunity for public comment.

EFFECTIVE DATE: September 30, 1998.

FOR FURTHER INFORMATION CONTACT:

Brian L. Pendleton, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5649; or

Robert A. Yetter, Center for Biologics Evaluation and Research (HFM–10), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301–827–0737.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 30, 1997 (62 FR 51021), FDA published a final rule to be codified at 21 CFR 801.437 requiring certain labeling statements on medical devices that contain or have packaging that contains natural rubber that contacts humans. The labeling statements alert users that a product contains either dry natural rubber or natural rubber latex, and for products containing natural rubber latex that the presence of this material may cause allergic reactions. The final rule, which becomes effective September 30, 1998, was adopted because natural rubber may cause a significant health risk to persons who are sensitized to natural latex proteins.

In response to a comment on the proposed latex labeling regulation (61 FR 32618, June 24, 1996) about the applicability of the requirements to combination products, FDA stated in the preamble to the final rule that it intended to require combination products (i.e., drug/device and biologic/device combinations) that contain natural rubber device components to be labeled in accordance with § 801.437 (62 FR 51021 at 51026). Because the entities that comprise a combination product meet more than one jurisdictional definition, the agency may apply one or more sets of regulatory provisions to such products, as specified in the Intercenter Agreement Between the Center for Drug Evaluation and Research and the Center for Devices and Radiological Health and the Intercenter Agreement Between the Center for Biologics Evaluation and Research and the Center for Devices and

Radiological Health (the Intercenter Agreements).

Concerning the implementation of the final rule for these combination products, the FDA stated that natural rubber combination products that are listed in the Intercenter Agreements as being regulated under device labeling provisions will be required to comply with the final rule on the effective date. FDA stated that natural rubber combination products that are listed in the Intercenter Agreements as being regulated under drug or biologic labeling provisions will be subject to the labeling requirements on September 30, 1998, or when FDA amends the Intercenter Agreements to provide that these types of combination products are subject to the requirements, whichever is later. FDA stated that it would provide notice in the **Federal Register** of the amendments to the Intercenter Agreements to apply the labeling requirements to all natural rubber combination products regulated under drug and biologic provisions. FDA also stated then that: ''the agency anticipates that the Drug/Device Intercenter Agreement will be amended to reflect that prefilled drug vial containers, transdermal patches, infusion pumps, and prefilled syringes that presently are regulated under drug authorities are also subject to this regulation'' (62 FR 51021 at 51026).

The agency has received numerous inquiries about, and objections to, the application of the natural rubber labeling requirements to combination drug/device products and to combination biologic/device products that currently are regulated under drug and biologic labeling provisions. These include a citizen petition submitted by the Health Industry Manufacturers Association (Docket No. 98P–0012/CP1). One concern was that some combination products may raise different labeling issues than single-entity device products. In addition, a concern was raised that adequate notice and opportunity for comment was not provided with regard to the applicability of the rule to combination products that currently are regulated under drug and biologic labeling provisions.

FDA believes that the notice provided was legally sufficient. However, upon consideration of these comments and the need to provide a uniform labeling approach for all drug and biological products, including combination products currently regulated under drug and biologic labeling provisions, FDA has decided that further opportunity for public comment should be provided on how natural rubber labeling requirements should be applied to all products regulated as drugs and biologics. FDA believes that it would benefit from additional public comment on whether there are labeling issues that are unique to products regulated as drugs and biologics as well as on whether the agency should adopt rules and guidance that would apply to all natural rubber-containing products regulated under the drug and biologic labeling provisions rather than only to combination products.

Therefore, FDA is announcing that it does not intend to amend the Intercenter Agreements as stated in the preamble to the final rule. Instead, FDA intends to initiate a proceeding to propose requirements for labeling statements on products regulated as drugs and biologics, including combination products currently regulated under drug and biologic labeling provisions, that contain natural rubber that contacts humans. Such a proceeding may include a combination of proposed rulemaking and guidance and will offer opportunity for public comment. In the interim, FDA is providing notice that it does not intend to apply to combination products regulated under human drug or biologic labeling provisions its September 30, 1997, final rule requiring certain labeling statements for all medical devices that contain or have packaging containing natural rubber that contacts humans.

Dated: April 30, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–11982 Filed 5–5–98; 8:45 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OR–67–7282, OR–70–7285; FRL–5976–5]

Approval and Promulgation of State Implementation Plans: Oregon

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Pursuant to procedures described in the January 19, 1989 **Federal Register**, EPA recently approved two minor State Implementation Plan (SIP) revisions submitted by the Oregon Department of Environmental Quality (ODEQ). These revisions include: changes to the definition of Volatile Organic Compounds (VOC) in the Oregon Administrative Rules (OAR) consistent with changes made in the federal definition and delisting certain compounds no longer considered VOCs; and, changes in the OAR that increase Air Contaminant Discharge Permit Fees for stationary sources to recover costs of operating the state permit program. This document lists the revisions EPA has approved and incorporates the relevant material into the Code of Federal Regulations.

EFFECTIVE DATE: June 5, 1998.

ADDRESSES: Copies of Oregon's State SIP revision requests and EPA's letter notices of approval are available for public inspection during normal business hours at the following locations: EPA, Region 10, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101; State of Oregon Department of Environmental Quality, 811 SW Sixth Ave., Portland, OR 97204–1390.

FOR FURTHER INFORMATION CONTACT: Tracy Oliver, Office of Air Quality (OAQ–107), EPA, Seattle, Washington, (206) 553–1388.

SUPPLEMENTARY INFORMATION: EPA Region 10 has approved the following minor SIP revision requests under section 100(a) of the Clean Air Act (Act):

State	Subject matter	Date of submission	Date of approval
OR	Changes to the definition of VOC in the OAR consistent with changes in the federal definition. Delisting perchloroethylene, acetone, HFC 43–10mee and HCFC 225ca and cb which are no longer considered VOCs.	5–22–97	6–16–97
OR	Changes in the OAR that increase the Air Contaminate Permit Fees for stationary sources and allow the state to recover the costs of operating the permit program.	11–13–97	2–13–98

EPA has determined that each of these SIP revisions complies with all applicable requirements of the Act and EPA policy and regulations concerning such revisions. Due to the minor nature of these revisions, EPA concluded that conducting notice-and-comment rulemaking prior to approving the revisions would have been ''unnecessary and contrary to the public interest'' and hence not required by the Administrative Procedure Act, 5 U.S.C. 553(b). Each of these SIP approvals became final and effective on the date of EPA approval as listed in the chart above.

I. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D, of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

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

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

D. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a major rule as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 6, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the Implementation Plan for the State of Oregon was approved by the Director of the Office of Federal Register on July 1, 1982.

Dated: February 20, 1998.

Chuck Findley,

Acting Regional Administrator, Region X.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart MM—Oregon

2. Section 52.1970 is amended by adding paragraph (c)(123) to read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

(123) On May 22, 1997, ODEQ submitted changes to the definition of Volatile Organic Compounds (VOC) in the Oregon Administrative Rules (OAR) consistent with changes made in the federal definition and delisted certain compounds no longer considered VOCs under the new definition. On November 13, 1997, ODEQ submitted changes in the OAR that increased Air Contaminant Discharge Permit Fees for stationary sources to recover costs of operating the state permit program.

(i) Incorporation by reference.

(A) Oregon Administrative Rules 340–022–0102(73) and 340–028–0110(129), effective May 9, 1997; Oregon Administrative Rule 340–028–1750, effective August 27, 1997.

[FR Doc. 98–11882 Filed 5–5–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300649; FRL–5787–9]

RIN 2070–AB78

Various Inert Ingredients; Tolerance Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes exemptions from the requirement of a tolerance exemptions for residues of 2-

propene-1-sulfonic acid, sodium salt, polymer with ethenol and ethenyl acetate; polyvinyl pyrrolidone butylated polymer; vinyl pyrrolidone-acrylic acid copolymer; maleic anhydride-diisobutylene copolymer, sodium salt; vinyl alcohol-vinyl acetate copolymer, benzaldehyde-o-sodium sulfonate condensate when used as inert ingredients in pesticide formulations applied to growing crops, crops after harvest, and/or animals. EPA is establishing this regulation on its own initiative.

DATES: This regulation is effective May 6, 1998. Objections and requests for hearings must be received by EPA on or before July 6, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300649], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300649], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300649]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Bipin Gandhi, Registration Division 7505W, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308-8380, e-mail: gandhi.bipin@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 1, 1997 (62 FR 51397) (FRL–5746–3), EPA proposed the establishment of an exemption from the requirement of a tolerance for residues of 2-propene-1-sulfonic acid, sodium salt, polymer with ethenol and ethenyl acetate; polyvinyl pyrrolidone butylated polymer; vinyl pyrrolidone-acrylic acid copolymer; maleic anhydride-diisobutylene copolymer, sodium salt; vinyl alcohol-vinyl acetate copolymer, benzaldehyde-o-sodium sulfonate condensate when used as inert ingredients in pesticide formulations applied to growing crops, raw agricultural commodities after harvest and/or animals on its own initiative pursuant to section 408(e)(1)(B) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e). This proposal noted that these chemicals were the subject of proposed rules published prior to the enactment of the Food Quality Protection Act of 1996. Summaries of each of those initial proposed rules were also included. There were no comments received in response to the proposed rule.

Based on the information and data considered and the findings set forth in the preamble to the proposed rule, EPA is establishing exemptions from the requirement of a tolerance as set forth in this document.

I. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by July 6, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

II. Public Docket

EPA has established a record for this rulemaking under docket control number [OPP–300649] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this document.

III. Regulatory Assessment Requirements

This final rule establishes an exemption from the requirement of a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

The Regulatory Flexibility Act (RFA) 5 U.S.C. 605(b), as amended, Pub. L. 104-121, 110 Stat. 847, generally requires an agency to prepare a regulatory flexibility analysis of the impact of any notice and comment rulemaking on small entities unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. The Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950) and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Therefore, pursuant to section 605(b) of the RFA, EPA certifies that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, no final regulatory flexibility analysis under section 604(a) of the Act is required.

IV. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 22, 1998.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180— [AMENDED]

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

Authority: 21 U.S.C. 346a and 371.

2. In § 180.1001 the tables in paragraphs (c) and (e) are amended by adding alphabetically the following inert ingredients, and the table in paragraph (d) is amended by removing the entry for ''Maleic anhydride diisobutylene copolymer, sodium salt'' to read as follows:

§ 180.1001 Exemptions from the requirements of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
* * *	*	* * *
Maleic anhydride- diisobutylene copolymer, sodium salt (CAS Reg. No. 37199-81-8), minimum number average molecular weight (in amu) 5,000-18,000.	.....	Suspending agent and dispersing agent.
* * *	*	* * *
Polyvinylpyrrolidone butylated polymer (CAS Reg. No. 26160-96-3), minimum number average molecular weight (in amu) 9,500.	.....	Surfactants, related adjuvant of surfactants and binder.
* * *	*	* * *
2-Propene-1-sulfonic acid sodium salt, polymer with ethenol and ethenyl acetate, number average molecular weight (in amu) 6,000 - 12,000.	.....	Binding agent.
* * *	*	* * *
Vinyl alcohol-vinyl acetate copolymer, benzaldehyde-o-sodium sulfonate condensate, minimum number average molecular weight (in amu) 20,000.	.....	Water soluble resin.

Inert ingredients	Limits	Uses
* * *	*	* * *
Vinyl pyrrolidone-acrylic acid copolymer (CAS Reg. No. 28062-44-4), minimum number average molecular weight (in amu) 6,000.	.....	Adhesive, dispersion stabilizer and coating for sustained release granules.
* * *	*	* * *

* * * * * * *

(e) * * *

Inert ingredients	Limits	Uses
* * *	* *	* *
Maleic anhydride-diisobutylene copolymer, sodium salt (CAS Reg. No. 37199-81-8), minimum number average molecular weight (in amu) 5,000-18,000.	.....	Suspending agent and dispersing agent.
* * *	* *	* *
Polyvinylpyrrolidone butylated polymer (CAS Reg. No. 26160-96-3), minimum number-average molecular weight (in amu) 9,500.	.....	Surfactants, related adjuvant of surfactants and binder.
* * *	* *	* *
2-Propene-1-sulfonic acid sodium salt, polymer with ethenol and ethenyl acetate, number average molecular weight (in amu) 6,000 - 12,000.	.....	Binding agent.
* * *	* *	* *
Vinyl alcohol-vinyl acetate copolymer, benzaldehyde-o-sodium sulfonate condensate, minimum number average molecular weight (in amu) 20,000.	.....	Water soluble resin.
* * *	* *	* *
Vinyl pyrrolidone-acrylic, acid copolymer (CAS Reg. No. 28062-44-4), minimum number average molecular weight (in amu) 6,000.	.....	Adhesive, dispersion stabilizer and coating for sustained release granules.
* * *	* *	* *

[FR Doc. 98–11765 Filed 5–5–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300650; FRL–5788–1]

RIN 2070–AB78

Safener HOE–107892; Extension of Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule extends time-limited tolerances for residues of the herbicide safener HOE-107892 and its metabolites in or on wheat grain at 0.01 part per million (ppm) and wheat straw at 0.05 ppm for an additional 18–month period, to February 1, 2000. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide fenoxaprop with the safener HOE–107892 (trade name Puma®) on durham wheat. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA.

DATES: This regulation becomes effective May 6, 1998. Objections and requests for hearings must be received by EPA, on or before July 6, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300650], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300650], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII

file avoiding the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP–300650]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Andrew Ertman, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location , telephone number, and e-mail address: Rm. 278, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703) 308–9367; e-mail: ertman.andrew@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of August 8, 1997 (62 FR 42678) (FRL–5731–7) , which announced that on its own initiative and under section 408(e) of the FFDCA, 21 U.S.C. 346a(e) and (l)(6), it established time-limited tolerances for the residues of herbicide safener HOE–107892 and its metabolites in or on wheat grain at 0.01 ppm and wheat straw at 0.05 ppm, with an expiration date of August 1, 1998. EPA established the tolerances because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of fenoxaprop with the safener HOE–107892 on durham wheat for this year's growing season because the registered alternatives for use on durham wheat are not providing reliable, season-long control of green and yellow foxtail. In addition, documented cases of trifluralin resistant green foxtail have been reported by North Dakota. After having reviewed the submission, EPA concurs that emergency conditions exist for these states. EPA has authorized under FIFRA section 18 the use of Puma (fenoxaprop with the safener HOE–107892) on durham wheat for control of green and yellow foxtail in North Dakota and Montana.

EPA assessed the potential risks presented by residues of the herbicide safener HOE–107892 in or on wheat grain and wheat straw. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerances under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of August 8, 1997. Based on the data and information considered, the Agency reaffirms that extension of the time-limited tolerances will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerances are extended for an additional 18–month period. Although these tolerances will expire and are revoked on February 1, 2000, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on wheat grain and wheat straw after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerances. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

I. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by July 6, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

II. Public Record and Electronic Submissions

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this document

Electronic comments may be sent directly to EPA at: opp-docket@epamail.epa.gov.

Electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received

and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

III. Regulatory Assessment Requirements

This final rule extends time-limited tolerances that were previously extended by EPA under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). In addition, this final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

Since this extension of existing time-limited tolerances does not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

IV. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 22, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180— [AMENDED]

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

Authority: 21 U.S.C. 346a and 371.

§ 180.509 [Amended]

2. In § 180.509, the table in paragraph (b) is amended by changing the date ''August 1, 1998'' to read ''2/1/00'', wherever it appears.

[FR Doc. 98–11763 Filed 5–5–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300653; FRL–5788–5]

RIN 2070–AB78

Cymoxanil; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of the fungicide, cymoxanil, 2-cyano-*N*-[(ethylamino)carbonyl]-2-(methoxyimino) acetamide, in or on potatoes. E.I. DuPont de Nemours & Company submitted a petition under the Federal Food, Drug and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (Pub. L. 104–170) requesting this tolerance.

DATES: This regulation is effective May 6, 1998. Objections and requests for hearings must be received by EPA on or before July 6, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300653], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300653], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300653]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Mary Waller, Acting Product Manager (PM) 21, Registration Division 7505C, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–9354, e-mail: waller.mary@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of (July 25, 1997, 62 FR 40075)(FRL–5726–4), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) announcing the filing of pesticide petition (PP 7F4805) for a tolerance by E.I. DuPont de Nemours and Company, E. I. DuPont Agricultural Products, Walker's Mill,

Barley Mill Plaza, P.O. Box 80038, Wilmington, Deleware, 19880–0038. This notice included a summary of the petition prepared by E.I. DuPont de Nemours & Company, the registrant. No comments were received in response to the notice of filing.

The petition requested that 40 CFR 180.503 be amended by establishing a tolerance for residues of the fungicide cymoxanil, 2-cyano-*N*-[(ethylamino)carbonyl]-2-(methoxyimino) acetamide, in or on potatoes at 0.05 parts per million (ppm).

I. Risk Assessment and Statutory Findings

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

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

A. Toxicity

1. *Threshold and non-threshold effects.* For many animal studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the ''no-observed effect level'' or ''NOEL'').

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a ''safety factor'') of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100 percent or less of the RfD) is generally considered acceptable by EPA. EPA generally uses the RfD to evaluate the chronic risks posed by pesticide exposure. For shorter term risks, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This hundredfold MOE is based on the same rationale as the hundredfold uncertainty factor.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short-term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or MOE calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

2. *Differences in toxic effect due to exposure duration.* The toxicological effects of a pesticide can vary with different exposure durations. EPA considers the entire toxicity data base, and based on the effects seen for different durations and routes of exposure, determines which risk assessments should be done to assure that the public is adequately protected from any pesticide exposure scenario. Both short and long durations of exposure are always considered. Typically, risk assessments include ''acute,'' ''short-term,'' ''intermediate term,'' and ''chronic'' risks. These assessments are defined by the Agency as follows.

Acute risk, by the Agency's definition, results from 1–day consumption of food and water, and reflects toxicity which could be expressed following a single oral exposure to the pesticide residues. High end exposure to food and water residues are typically assumed.

Short-term risk results from exposure to the pesticide for a period of 1–7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enaction of FQPA, this assessment has been expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In this assessment, risks from average food and water exposure, and high-end residential exposure, are aggregated. High-end exposures from all three sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization. Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1–7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

Intermediate-term risk results from exposure for 7 days to several months. This assessment is handled in a manner similar to the short-term risk assessment.

Chronic risk assessment describes risk which could result from several months to a lifetime of exposure. For this assessment, risks are aggregated considering average exposure from all sources for representative population

subgroups including infants and children.

B. Aggregate Exposure

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, residues in groundwater or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children. The TMRC is a ''worst case'' estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100 percent of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

Percent of crop treated estimates are derived from Federal and private market survey data. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of percent of crop treated, the Agency is reasonably certain that exposure is not understated for any significant subpopulation group. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups, to pesticide residues. For this pesticide, the most highly exposed population subgroup (children 1 to 6 years old) was not regionally based.

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action, EPA has sufficient data to assess the hazards of cymoxanil to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for residues of cymoxanil 2-cyano-*N*-[(ethylamino)carbonyl]-2-(methoxyimino) acetamide in or on potatoes. EPA's assessment of the dietary exposures and risks associated with establishing this tolerance follows.

A. Toxicological Profile

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

1. *Acute toxicity.* A battery of acute toxicity studies resulted in an acute oral LD_{50} = 760 milligrams/kilograms (mg/kg) for males and LD_{50} =1,200 mg/kg for females; an acute dermal LD_{50} > 2,000 mg/kg for both sexes; an acute inhalation LC_{50} > 5.06 for both sexes; no ocular irritation; slight dermal irritation and a finding that the cymoxanil is not a dermal sensitizer.

2. *Subchronic toxicity.* a. A subchronic oral toxicity/neurotoxicity study in rats fed cymoxanil at dose levels of 0, 100, 750, 1,500, or 3,000 ppm (0, 6.54, 47.6, 102, or 224 mg/kg/day for males, and 0, 8.0, 59.9, 137, or 333 mg/kg/day for females) for approximately 97 days. A group of 10 rats/sex/dose were evaluated for subchronic systemic toxicity and a group of 10 rats/sex/dose underwent neurobehavioral testing at pre-test, 5, 9, and 13 weeks. The control and high-dose groups were assessed for neuropathology. The LOEL for subchronic systemic toxicity is 1,500 ppm based on decreases in body weights, body weight gains, and food efficiency in the females, and body weight decreases and testicular and epididymal changes in the males. The no-observed-effect level (NOEL) for subchronic systemic toxicity is 750 ppm.

b. A subchronic oral study in mice fed doses of 50, 500, 1,750, 3,500, or 7,000 ppm (average 8.25, 82.4, 294, 566, or 1,306 mg/kg/day, for males; 11.3, 121, 433, 846, or 1,130 mg/kg/day, for females) for 98 days showed a decrease in body weight gains in males dosed at 500, 1,750, and 3,500 ppm. An increase in the absolute liver and spleen weights was seen in females fed doses of 1,750 and 3,500 ppm. The NOEL was established at 50 ppm for males and 500 ppm for females; the LOEL was 500 ppm for males and 1,750 ppm for females.

c. A subchronic oral toxicity study was conducted in dogs fed doses of 100 or 200 ppm (3 or 5 mg/kg/day) for 13 weeks, or at 250 ppm (5 mg/kg/day) for 2 weeks followed by 500 ppm (11 mg/kg/day) for 11 weeks. The 250/500 ppm males had lower epididymal and testicular weights, and aspermatogenesis was observed. The LOEL is 3 mg/kg body weight/day (100 ppm) for dogs based on decreased body weights and food consumption in females. The NOEL was not established.

d. In a 28–day dermal toxicity study, cymoxanil was applied to the shaved backs of rats for 6 hrs/day at doses of 50, 500, and 1,000 mg/kg/day. There were no demonstrated effects and no compound-related histopathology. The NOEL for systemic toxicity and dermal irritation was 1,000 mg/kg/day, the highest dose tested (HDT).

3. *Chronic toxicity.* a. A combined chronic/carcinogenicity study was conducted in rats fed cymoxanil at doses of 0, 50, 100, 700, or 2,000 ppm (0, 1.98, 4.08, 30.3, and 90.1 mg/kg/day for males, and 0, 2.71, 5.36, 38.4, and 126 mg/kg/day for females) for 23 months. A satellite group was included and terminated at 52 weeks. Because of poor survival in controls and treated rats, the study was terminated after 23 months. Survival was 24–45 percent and 21–40 percent in the male and female groups, respectively.

Chronic toxicity observed at 126 mg/kg/day in females included significant decreases in mean body weight and body weight gains, a decrease in food efficiency, and increased incidences of non-neoplastic lesions in several organ systems including the lungs, intestines, and mesenteric lymph nodes. In females receiving 38.4 mg/kg/day, chronic toxicity was characterized by increased incidences of non-neoplastic lesions of the lungs, liver, sciatic nerve, and eyes (retinal atrophy). Chronic toxicity in the males dosed at 30.3 or 90.1 mg/kg/day included aggressiveness and/or hyperactivity, decreased mean body weight and body weight gain, decreased food efficiency, and increased incidence of elongate spermatid degeneration and retinal atrophy. No important effects

were observed in the low- and low-mid-dose groups. No increases in the incidences of any neoplasm was observed in dosed animals. The chronic LOEL was 30.3 mg/kg/day for males and 38.4 mg/kg/day females based on histologic changes detected in several organs of the females and decreased body weight, body weight gains, and food efficiency observed in the males and females. The chronic NOEL is 4.08 mg/kg/day for males and 5.36 mg/kg/day for females. Under the conditions of this study, there was no evidence of carcinogenic potential.

b. A chronic toxicity study was conducted in dogs fed cymoxanil at doses of 25, 50, or 100 ppm for females (0.7, 1.6, or 3.1 mg/kg/day) and 50, 100, or 200 ppm for males (1.8, 3.0, or 5.7 mg/kg/day) for 52 weeks. The only effect seen in females in the 100 ppm treatment group was weight loss during the first week of the study. No effect was observed in females in the 25 or 50 ppm group, or in males in the 50 or 100 ppm group. The LOEL was 200 ppm for males, based on depressed weight gains through week 12 and changes in hematology and blood chemistry. No LOEL was established for females. The NOEL was 100 ppm.

4. *Carcinogenicity.* a. A combined chronic/carcinogenicity study, conducted in rats (described in the Chronic Toxicity Section, above, Unit II.A.3.) showed no evidence of carcinogenic potential.

b. A carcinogenicity study was conducted in mice fed cymoxanil at doses of 30, 300, 1,500, and 3,000 ppm (4.19, 42.0, 216, and 446 mg/kg/day for males; 5.83, 58.1, 298, and 582 mg/kg/day for females) for approximately 80 weeks. Two additional groups were sacrificed at 31–32 days for cell proliferation and biochemical evaluation.

Males and females dosed at 300 ppm and above exhibited alterations in organ weights and microscopic pathology. Affected organs were the testes and epididymis in males, the gastrointestinal tract in females, and the liver in both sexes. Male mice fed 300 ppm exhibited treatment-related increased frequency of sperm cyst/cystic dilation, tubular dilation, and increased lymphoid aggregate. Centrilobular apoptotic hepatocytes, pigment-containing macrophages, and granuloma were detected in males dosed with 300 ppm. Elevated centrilobular hepatocellular hypertrophy and associated significant increases in liver weight in males dosed with 300 ppm was considered a pharmacologic response to cymoxanil. Hyperplastic gastropathy increased significantly in 300 ppm female mice and cystic enteropathy of the small intestine showed a significant positive trend. At the 1,500 ppm dose, decreases in body weight, body weight gain, and food efficiencies were observed in males and females. In addition to the testicular and epididymal abnormalities observed at the lower dose, the 1,500 ppm males exhibited increased incidence of sperm granuloma and bilateral oligospermia. Females at 1,500 ppm exhibited the microscopic liver abnormalities seen in males at the lower dose. Cystic enteropathy was observed in males at 1,500 ppm. At 3,000 ppm, there were significant reductions in body weight, body weight gain, food consumption, and food efficiencies in males and females. Survival over 18 months was decreased in the 3,000 ppm females, 57 percent compared to 69 percent in controls. Early deaths among high-dose females were attributed to pancreatic acinar cell necrosis and/or stress, evidenced by splenal and thymic atrophy and bone marrow congestion. The 3,000 ppm females exhibited increased frequency of pallor, weakness, and hunching over. Male mice fed 3,000 ppm showed hematological signs of decreased circulating erythrocyte mass at the 12–month evaluation. The high dose also resulted in gross and microscopic pathology of the liver, gastrointestinal tract, and testes. Dosing was considered adequate based on decreased body weight gains and an increase in non-neoplastic lesions in both sexes relative to the controls at the highest dose level.

The LOEL was 300 ppm, based on toxicity to the testes and epididymides in males and toxicity to the gastrointestinal mucosa in females. The NOEL was 30 ppm. Under the conditions of this study, there was no evidence of a carcinogenic effect.

5. *Developmental toxicity.* a. A prenatal developmental toxicity study was conducted in rats gavaged with cymoxanil on days 7–16 of gestation at dose levels of 0, 10, 25, 75, or 150 mg/kg/day. The maternal LOEL was 25 mg/kg/day, based upon reduced body weight, body weight change, and food consumption. The maternal NOEL was 10 mg/kg/day. The developmental LOEL was 25 mg/kg/day, based upon a significant increase in overall malformations and a generalized dose-related delay in skeletal ossification. Fetal body weights were significantly decreased at 75, 150 and 150 mg/kg/day. Increased early resorptions resulted in reduced litter sizes. The developmental NOEL was 10 mg/kg/day.

b. A prenatal developmental toxicity study was conducted in rabbits gavaged with cymoxanil on days 6–18 of gestation at dose levels of 0, 4, 8, or 16 mg/kg/day. There was no evidence of treatment-related maternal or developmental toxicity. A maternal and developmental LOEL was not determined; the maternal and developmental NOEL was ≧ 16 mg/kg/day. When considered along with other prenatal developmental toxicity studies in rabbits, this study provides acceptable information that assists in determining the overall maternal and developmental NOEL and LOEL for cymoxanil in a nonrodent species.

c. A prenatal developmental toxicity study was conducted in rabbits gavaged with cymoxanil on days 6–18 of gestation at dose levels of 8, 16, or 32 mg/kg/day. Uncertainties regarding the source of the parental rabbits substantially reduced the confidence that any observed skeletal effects were solely related to treatment.

d. A prenatal developmental toxicity study was conducted in rabbits gavaged with cymoxanil on days 6–18 of gestation at dose levels of 0, 1, 4, 8, or 32 mg/kg/day. The females showed significant posttreatment increases in body weight gain at 8 and 32 mg/kg/day. The maternal LOEL was 8 mg/kg/day, based upon a significant dose-related rebound in maternal body weight. The maternal NOEL was 4 mg/kg/day. The developmental LOEL was 8 mg/kg/day, based upon an increase in skeletal malformations of the cervical and thoracic vertebrae and ribs; and, at 32 mg/kg/day, cleft palate was observed. The developmental NOEL was 4 mg/kg/day.

6. *Reproductive toxicity.* A two-generation reproduction study was conducted in rats fed cymoxanil at doses of 100, 500, or 1,500 ppm (equivalent to 6.5, 32.1, or 97.9 mg/kg/day in males and 7.9, 40.6, or 130 mg/kg/day in females) over two consecutive generations. No effects of treatment were observed at 100 ppm. The parental systemic LOEL was 500 ppm based upon reduced pre-mating body weight, body weight gain, and food consumption for F_1 males; and decreased gestation and lactation body weight for F_1 females. The parental systemic NOEL was 100 ppm. The offspring LOEL was 500 ppm based upon decreased F_1 pup viability on postnatal days 0–4 and on a significant reduction in F_{2b} pup weight. The offspring NOEL was 100 ppm.

7. *Neurotoxicity.* a. The neurotoxicity portion of the subchronic/neurotoxicity study in rats demonstrated no effects on the functional observation battery or on motor activity after 5, 9, and 13 weeks of dietary doses of cymoxanil at 0, 100,

750, 1,500, or 3,000 ppm (0, 6.54, 47.6, 102, or 224 mg/kg/day for males, and 0, 8.0, 59.9, 137, or 333 mg/kg/day for females) for 97 days. There were no treatment-related gross or microscopic findings detected in the nervous system or skeletal muscles. Grip strength and foot splay measurements were decreased (non-significantly) in males at 224 mg/kg/day in the 13–week subchronic neurotoxicity study in rats, although these findings occurred in conjunction with decreased body weight. A LOEL for neurobehavioral and neuropathic effects was not established. The NOEL for neurotoxicity was 3,000 ppm.

b. In the combined chronic toxicity/carcinogenicity study in rats, increased incidence of sciatic nerve axon/myelin degeneration was observed in females fed cymoxanil at doses of 38.4 and 126 mg/kg/day for 104 weeks. Also, increased incidence and severity of retinal atrophy was observed in males at 30.3 and 90.1 mg/kg/day as well as in females at 38.4 and 126 mg/kg/day. These two findings demonstrated a dose-related effect. In addition, clinical observations of hyperactivity and aggressiveness were reported in males at 700 and 2,000 ppm (30.3 and 90.1 mg/kg/day).

c. In the carcinogenicity study in mice, absolute brain weight was decreased in both sexes at 1,500 and 3,000 ppm (216/298 mg/kg/day and 446/582 mg/kg/day for males/females, respectively).

d. No evidence of developmental anomalies of the fetal nervous system were observed in the prenatal developmental toxicity studies in either rats, or rabbits, at maternally toxic oral doses up to 25 and 32 mg/kg/day, respectively. In addition, there was no evidence of behavioral or neurological effects on the offspring in the two-generation reproduction study in rats.

e. There were no major data gaps for the assessment of potential neurotoxicological effects due to cymoxanil. However, following a weight-of-the evidence review of the database, which suggested that neuropathological lesions, changes in brain weight, axon/myelin degeneration, and retinal atrophy could result from long-term exposure to cymoxanil, the Agency will require a confirmatory developmental neurotoxicity study in rats.

8. *Mutagenicity*. Mutagenicity studies with cymoxanil included gene mutation assays in bacterial and mammalian cells, a mouse micronucleus assay and an *in vivo/in vitro* unscheduled DNA synthesis (UDS) assay in rats. These studies did not demonstrate mutagenicity. An *in vitro* unscheduled DNA synthesis assay-primary rat hepatocytes was positive from 5–500 µg/mL and cytotoxicity was seen at concentrations of ≧ 500 µg/mL. A chromosome aberrations in human lymphocytes assay was also positive at 100 - 1,500 µg/mL, positive at 1,250 and 1,500 µg/mL -S9, and 850–1,500 µg/mL +S9.

9. *Metabolism*. A metabolism study was conducted by gavaging rats with single doses of radiolabeled cymoxanil at 2.5 or 120 mg/kg, or as a single dose (2.5 mg/kg) following a 14–day pretreatment with unlabeled cymoxanil (2.5 mg/kg/day). Radiolabeled cymoxanil was readily absorbed through the intestinal tract. Maximum plasma concentrations were attained within 3–5 hours of dosing, then declined steadily. Dose rate and pretreatment did not appear to affect absorption.

Elimination was not dependent on sex or dosing regimen; occurring predominantly in the urine (63.8–74.8 percent), during the first 24 hours (58–66 percent). Fecal excretion accounted for 15.7–23.6 percent of the dose, and radioactivity in the tissues and carcasses accounted for <1 percent of the dose at sacrifice for all three dosing regimens. A pilot study indicated that approximately 3 percent of the dose would be expected to be respired as $^{14}CO_2$.

For each dosing regimen, there was also no difference between male and female rats in the distribution of radioactivity in tissues. No accumulation of radioactivity was observed over time in any tissues. However, in comparison, concentrations of radioactivity were highest in liver and kidney and lowest in brain tissue at 96 hours post-dosing sacrifice.

Peak plasma concentrations for the low and high dose groups were attained within 3–5 hours of dosing, and both dose groups had similar elimination half-lives from plasma, suggesting that the metabolic process was not saturated by the high dose. In addition, there was a fortyfold difference in the area under the curve for plasma from the low and high dose groups, approximating the 48-fold difference in the dose levels.

The metabolite profile in urine and feces was similar between sexes and among dose groups. In the urine, the majority of the radioactivity (36.7–55 percent of the dose) was free and/or conjugated [^{14}C]glycine, and 2-cyano-2-methoxyiminoacetic acid (IN-W3595) (6.5–33 percent of the dose) was also found. Intact [^{14}C]cymoxanil was not detected. In the feces, trace levels (<1 percent of the dose) of [^{14}C]cymoxanil and IN-W3595 were detected, but the majority of radioactivity was the free and conjugated [^{14}C]glycine (8.5–13.1 percent of the dose). The data indicate that the principal pathway for the elimination of cymoxanil from rats is via renal elimination.

Based on the data, the proposed metabolic pathway involves hydrolysis of cymoxanil to IN-W3595, which is then degraded to glycine. Subsequently, glycine is incorporated into natural constituents or further metabolized.

10. *Other toxicological considerations*. The submitted mutagenicity test battery satisfied the new mutagenicity initial testing battery guidelines and the available studies indicate that cymoxanil is not mutagenic in bacterial or cultured mammalian cells. There is, however, confirmed evidence of clastogenic activity and UDS induction *in vitro*. In contrast, cymoxanil was neither clastogenic nor aneurogenic in mouse bone marrow cells and did not induce a genotoxic response in rat somatic or germinal cells. Accordingly, the negative results from the mouse bone marrow micronucleus assay support the lack of carcinogenic effect in the rat and mouse long-term feeding study.

Similarity of clinical signs were observed in the micronucleus and *in vivo* UDS assay, but the confidence in the negative findings of the *in vivo* UDS assay was not high because of a failure to demonstrate that test material reached either target tissue. It was concluded that the test may have been inadequate because of the short interval between dosing and cell harvest. Therefore, the Agency will be requiring that a supplemental rat dominant lethal assay be conducted to determine if any effects are noted which are associated with genetic damage to male germinal cells.

B. Toxicological Endpoints

1. *Acute toxicity-females 13+*. To assess acute dietary exposure, the Agency used a NOEL of 4 mg/kg/day from prenatal developmental toxicity studies in rabbits based on an increase in skeletal malformations of the cervical and thoracic vertebrae and ribs at 8 mg/kg/day. EPA determined that the 10x factor to account for enhanced sensitivity of infants and children (required by FQPA) should be reduced to 3x. An MOE of 300 is required for the acute dietary assessment to protect the sub-population of concern, ''Females 13+,'' due to neuropathological lesions seen in the chronic toxicity study in rats and the need for an additional developmental neurotoxicity study.

Acute toxicity-general population. An acute dose and endpoint was not selected for the general population and

the sub-population including ''infants and children'' because there were no observable effects in oral toxicology studies, and no maternal toxicity in the developmental toxicity studies in rats or rabbits attributable to a single dose.

2. *Short- and intermediate-term residential toxicity.* The Agency determined that this dose and endpoint was not applicable for risk assessment because no dermal or systemic toxicity was seen in a 28 day dermal toxicity study, at the limit dose.

3. *Chronic residential toxicity.* Based on the use pattern, chronic dermal exposure is not anticipated and long-term dermal risk assessment is not required.

4. *Chronic dietary toxicity.* An RfD of 0.013 mg/kg/day was established based on a chronic feeding study in rats with a NOEL of 4.08 mg/kg/day and an uncertainty factor of 300.

5. *Carcinogenicity.* Based on the lack of evidence of carcinogenicity in mice and rats, EPA has classified cymoxanil as a ''not likely'' human carcinogen, according to EPA's Proposed Guidelines for Carcinogen Risk Assessment (April 10, 1996).

C. Exposures and Risks

1. *From food and feed uses.* Time-limited tolerances of 0.05 ppm have been established in the 40 CFR 180.503(b) for residues of cymoxanil in or on potatoes and tomatoes under section 18 of FIFRA. In today's action, a tolerance will be established for residues of cymoxanil in or on potatoes at 0.05 ppm under section 3 of FIFRA in 40 CFR 180.503(a) and the section 18 tolerance for potatoes will be removed. Risk assessments were conducted by EPA to assess dietary exposures and risks from cymoxanil as follows:

a. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study indicates an effect of concern may occur as a result of a 1–day or single exposure. For the subpopulation of concern, females 13+, the estimated acute MOE of 5,000 demonstrates no acute dietary concern.

b. *Chronic exposure and risk.* The chronic dietary risk analysis used the RfD of 0.013 mg/kg/day. Chronic dietary exposure estimates utilized tolerance level residues on potatoes and tomatoes and assumed 100 percent of the crops were treated. The risk assessment resulted in use of <1 percent of the RfD for the general population, including infants (< 1 year old), and < 2 percent of the RfD for children (1–6 or 7–12 years old).

2. *From drinking water.* No monitoring data are currently available to perform a quantitative drinking water risk assessment. Cymoxanil appears to be mobile in soils, although its rapid environmental dissipation precludes extensive leaching. Cymoxanil was not detected below 0–15 cm of soil. Degradates of cymoxanil are mobile, but short-lived, and are not expected to pose a threat to ground water.

EPA estimated surface water exposure using the Generic Expected Environmental Concentration (GENEEC) model, a screening level model for determining concentrations of pesticides in surface water. GENEEC uses the soil/water partition coefficient, hydrolysis half life, and maximum label rate to estimate surface water concentration. In addition, the model contains a number of conservative underlying assumptions. Therefore, the drinking water concentrations derived from GENEEC for surface water are likely to be overestimated. Surface water estimates derived from GENEEC assumed 7 applications of 0.12 lbs. active ingredient/acre would be applied. The model indicated that cymoxanil in surface water could reach 4.13 parts per billion (ppb) (peak concentration) and 0.19 ppb (average 56 day concentration).

a. *Acute exposure and risk.* EPA calculated drinking water levels of concern (DWLOC) for acute exposure by using the acute toxicity endpoint. The acute dietary food exposure (from the DRES analysis) was subtracted from the ratio of the acute NOEL (used for acute dietary assessments) to the ''acceptable'' MOE for aggregate exposure to obtain the acceptable acute exposure to cymoxail in drinking water.

EPA has calculated DWLOCs for acute exposure to cymoxanil in drinking water for females (13+ years old) to be 380 ppb. The maximum estimated concentrations of cymoxanil in surface and ground water are below EPA's levels of concern for cymoxanil in drinking water as a contribution to acute aggregate exposure. Therefore, EPA concludes with reasonable certainty that residues of cymoxanil in drinking water do not contribute significantly to the aggregate acute human health risk.

b. *Chronic exposure and risk.* Chronic (non-cancer), drinking water levels of concern are 450 ppb for the U.S. population and 130 ppb for children (1–6 years old). The estimated average concentrations of cymoxanil in surface and ground water are less than EPA's levels of concern for cymoxanil in drinking water as a contribution to chronic aggregate exposure. Therefore, EPA concludes with reasonable certainty that residues of cymoxanil in drinking water do not contribute significantly to the aggregate chronic human health risk.

3. *From non-dietary exposure.* Cymoxanil is not registered for use on residential non-food sites. Therefore, no non-occupational, non-dietary exposure and risk are expected.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' The Agency believes that ''available information'' in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which

case common mechanism of activity will be assumed).

At this time, EPA does not have available data to determine whether cymoxanil has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Cymoxanil is structurally related to metazachlor, dimethenamid and amiphos. Of these pesticides, only dimethenamid is currently registered for use in the United States. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, cymoxanil does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that cymoxanil has a common mechanism of toxicity with other substances and that structurally-related chemicals will not have common toxic metabolites to cymoxanil.

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* The MOE for the acute dietary (food only) risk assessment for the population subgroup of concern, females 13+ years, was estimated at 5,000. This risk estimate does not exceed the Agency's level of concern. EPA has calculated drinking water levels of concern (DWLOCs) for acute exposure to cymoxanil in drinking water for females (13+ years old) to be 380 ppb. Chronic (non-cancer), drinking water levels of concern are 450 ppb for the U.S. population and 130 ppb for children (1–6 years old). Therefore, EPA concludes with reasonable certainty that the potential risks from aggregate acute exposure (food & water) would not exceed the Agency's level of concern.

2. *Chronic risk.* Using the TMRC exposure assumptions described above, EPA has concluded that aggregate exposure to cymoxanil from food will utilize <1 percent of the RfD. The estimated average concentrations of cymoxanil in surface and ground water are less than EPA's levels of concern for cymoxanil in drinking water as a contribution to chronic aggregate exposure. Therefore, EPA concludes with reasonable certainty that residues of cymoxanil in drinking water do not contribute significantly to the potential aggregate chronic human health risk at the present time, considering the present uses and those proposed in this action.

E. Aggregate Cancer Risk for U.S. Population

EPA has classified cymoxanil as a ''not likely'' human carcinogen, based on the lack of evidence of carcinogenicity in mice and rats, and therefore has a reasonable certainty that no harm will result from exposure to residues of cymoxanil.

F. Aggregate Risks and Determination of Safety for Infants and Children

Safety factor for infants and children - in general. In assessing the potential for additional sensitivity of infants and children to residues of cymoxanil, EPA considered data from developmental toxicity studies in the rat and rabbit and a two-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard uncertainty factor (usually 100 for combined inter- and intra-species variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

The Agency determined that for cymoxanil, the 10x factor for the protection of infants and children (as required by FQPA) should be reduced to 3x, based on the following weight of the evidence considerations: (1) No increased sensitivity in fetuses as compared to maternal animals was observed following *in utero* exposures in developmental studies in rats and rabbits; (2) no increased sensitivity in pups when compared to adults was seen in the two-generation reproduction study in rats; (3) the toxicology data base is complete except for the requirement to submit a developmental neurotoxicity study; and (4) no frank neurotoxicity was seen in the 90–day neurotoxicity study. The Agency has determined that a MOE of 300 is required because of the observance of neuropathological lesions in the chronic toxicity study in rats and the need for a developmental neurotoxicity study.

III. Other Considerations

A. Endocrine Disrupter Effects

EPA is required to develop a screening program to determine whether certain substances (including all pesticides and inerts) ''may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect....'' The Agency is currently working with interested stakeholders, including other government agencies, public interest groups, industry and research scientists in developing a screening and testing program and a priority setting scheme to implement this program. Congress has allowed 3 years from the passage of FQPA (August 3, 1999) to implement this program. At that time, EPA may require further testing of this active ingredient and end use products for endocrine disrupter effects.

B. Metabolism in Plants and Animals

Plants. Based on a metabolism study on potatoes, the nature of the residue is adequately understood. Only the parent cymoxanil compound is of regulatory concern.

Animals. Based on a metabolism study in lactating goats, the nature of the residue in animals is adequately understood. Only the parent cymoxanil compound is of regulatory concern.

C. Analytical Enforcement Methodology

An adequate enforcement method, AMR 3705–95, is available to enforce the tolerance on potatoes. Quantitation is by HPLC/UV. These methods have been submitted for publication in PAM I. The methods are available to anyone who is interested in pesticide residue enforcement from: Calvin Furlow, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Crystal Mall #2, Rm 101FF, 1921 Jefferson Davis Hwy., Arlington, VA (703) 305–5229.

D. Magnitude of Residues

Residues of cymoxanil resulting from the proposed use will not exceed 0.05 ppm in potatoes. The tolerance on potatoes is for the raw agricultural commodity as defined in 40 CFR 180.1(j)(1). For risk assessment purposes, it was concluded that

residues resulting from the proposed use will not exceed 0.05 ppm in potatoes.

E. International Residue Limits

There are no Codex or Canadian residue limits established for cymoxanil on potatoes but a Mexican maximum residue limit (MRL) of 0.05 ppm is established for potatoes. Therefore, no compatibility problems exist for the proposed tolerance on potatoes.

F. Rotational Crop Restrictions

The confined rotational crop studies provided adequate results to conclude that a 30–day plant back interval is sufficient for all crops.

IV. Conclusion

Therefore, the tolerance is established for residues of cymoxanil, 2-cyano-*N*-[(ethylamino)carbonyl]-2-(methoxyimino) acetamide, in or on the raw agricultural commodity, potatoes, at 0.05 ppm.

V. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by July 6, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the EPA docket for this rule making. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Docket and Electronic Submissions

EPA has established a record for this rulemaking under docket control number [OPP–300653] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this document.

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since these tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions was published on May 4, 1981 (46 FR 24950) and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

VIII. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 22, 1998.

Stephen L. Johnson,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180— [AMENDED]

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

Authority: 21 U.S.C. 346a and 371.

2. Section 180.503 is amended by adding text to paragraph (a) to read as follows and by removing the entry for ''potatoes'' in paragraph (b) .

§ 180.503 Cymoxanil; tolerances for residues.

(a) *General* . A tolerance is established for residues of the fungicide, cymoxanil, 2-cyano-*N*-[(ethylamino)carbonyl]-2-(methoxyimino) acetamide, in or on the following food commodity.

Commodity	Parts per million
Potatoes	0.05

* * * * *

[FR Doc. 98–11764 Filed 5–5–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300654; FRL–5789–3]

RIN 2070–AB78

Peroxyacetic Acid; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes an exemption from the requirement of a tolerance for residues of the antimicrobial pesticide peroxyacetic acid up to 100 ppm, in or on raw agricultural commodities, in processed commodities, when such residues result from the use of peroxyacetic acid as an antimicrobial agent on fruits, tree nuts, cereal grains, herbs, and spices. Ecolab, Inc. requested this exemption under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996 (Pub. L. 104–170).

DATES: This regulation is effective May 6, 1998. Objections and requests for hearings must be received by EPA on or before July 6, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300654], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300654], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300654]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Marshall Swindell, Product Manager 33, Antimicrobials Division (7510W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: 2800 Crystal Drive, 6th Floor, Arlington, VA, 22202, 703–308–6341, e-mail: swindell.marshall@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 14, 1998 (63 FR 2232) (FRL–5759–6), EPA, issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) announcing the filing of a pesticide petition (PP) 7F4808 for tolerance by Ecolab, Inc., 370 Wabasha Street, St. Paul, MN 55102. This notice included a summary of the petition prepared by Ecolab, Inc., the registrant. There were no comments received in response to the notice of filing.

Subsequently, the proposed tolerance exemption was amended to delete meat, meat by-products, poultry, milk, and eggs. This was done because at the low proposed use concentrations, no residues of toxicological concern are expected on any animal feeds that may be exposed to peroxyacetic acid. Therefore, no residues of toxicological concern are anticipated either in animals that may consume these feeds, or in associated animal by-products.

In addition, the proposed tolerance exemption was amended to include a maximum residue limit of 100 ppm for peroxyacetic acid. This limitation was added because of Agency concerns that a high use concentration could result in measurable residues of peroxyacetic acid. Residue data will be needed to increase or remove this limitation.

I. Risk Assessment and Statutory Findings

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

Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide

chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

A. Toxicity

1. *Threshold and non-threshold effects.* For many animal studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the ''no-observed effect level'' or ''NOEL'').

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health.

An uncertainty factor (sometimes called a ''safety factor'') of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100% or less of the RfD) is generally considered acceptable by EPA.

EPA generally uses the RfD to evaluate the chronic risks posed by pesticide exposure. For shorter term risks, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This 100-fold MOE is based on the same rationale as the 100-fold uncertainty factor.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short-term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or MOE calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

2. *Differences in toxic effect due to exposure duration.* The toxicological effects of a pesticide can vary with different exposure durations. EPA considers the entire toxicity data base, and based on the effects seen for different durations and routes of exposure, determines which risk assessments should be done to assure that the public is adequately protected from any pesticide exposure scenario. Both short and long durations of exposure are always considered. Typically, risk assessments include ''acute,'' ''short-term,'' ''intermediate term,'' and ''chronic'' risks. These assessments are defined by the Agency as follows.

Acute risk, by the Agency's definition, results from 1-day consumption of food and water, and reflects toxicity which could be expressed following a single oral exposure to the pesticide residues. High end exposure to food and water residues are typically assumed.

Short-term risk results from exposure to the pesticide for a period of 1-7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enaction of the Food Quality Protection Act of 1996 (FQPA), this assessment has been expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available.

In this assessment, risks from average food and water exposure, and high-end residential exposure, are aggregated. High-end exposures from all three sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization.

Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1-7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

Intermediate-term risk results from exposure for 7 days to several months. This assessment is handled in a manner similar to the short-term risk assessment.

Chronic risk assessment describes risk which could result from several months to a lifetime of exposure. For this assessment, risks are aggregated considering average exposure from all sources for representative population subgroups including infants and children.

B. Aggregate Exposure

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, residues in groundwater or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance.

In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children. The TMRC is a ''worst case'' estimate since it is based on the

assumptions that food contains pesticide residues at the tolerance level and that 100% of the crop is treated by pesticides that have established tolerances.

If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

Percent of crop treated estimates are derived from federal and private market survey data. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of percent of crop treated, the Agency is reasonably certain that exposure is not understated for any significant sub-population group.

Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant sub-populations including several regional groups, to pesticide residues. For peroxyacetic acid, based on the lack of any residues of toxicological concern, it is unlikely that significant exposure through the proposed use would occur to any sub-population although sensitive sub-populations may exist (eg.,catalase deficient individuals).

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action, EPA has sufficient data to assess the hazards of peroxyacetic acid and to make a determination on aggregate exposure, consistent with section 408(b)(2), for an exemption of a requirement for a tolerance for residues of peroxyacetic acid up to 100 pm, in or on raw agricultural commodities, in processed commodities, when such residues result from the use of peroxyacetic acid as an antimicrobial agent on fruits, tree nuts, cereal grains, herbs, and spices. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by peroxyacetic acid ($C_2H_4O_3$) are discussed below.

Ecolab, Inc. has requested a waiver of all toxicology testing requirements for peroxyacetic acid. This includes waivers for all acute, 90-day sub-chronic, chronic, carcinogenicity, developmental, reproductive, mutagenicity, neurotoxicity and metabolism requirements. Ecolab's rationale for waivers in each of these areas is similar, and are summarized by the following four arguments:

1. Available data at the Agency are sufficient to estimate the potential human health hazard of the end use product.

2. Peroxyacetic acid reacts rapidly on contact with material such as food and is degraded to moieties which present no toxicological concern. The primary degradation products of peroxyacetic acid are acetic acid, which is generally regarded as safe (GRAS) according to the Food and Drug Administration (21 CFR 184.1005), water, and oxygen.

Based on the chemical reactivity of this compound and the unstable nature of the peroxide bond, conduct of long term residue or metabolism studies would be extremely difficult and unreliable. This peroxyacetic acid petition is also the companion to a similar tolerance petition being ruled on for hydrogen peroxide. Peroxyacetic acid and hydrogen peroxide are classified as peroxy compounds and have similar characteristics for degradation, residue chemistry, dose-relationship toxicology, and risk of exposure with the proposed food contact uses.

The published Reregistration Eligibility Document for Peroxy Compounds (Case 4072, December, 1993), has waived all further toxicology testing requirements for peroxyacetic acid.

The Agency has reviewed the data waivers requested and concurs that no additional acute short term or long term toxicology or mutagenicity testing will be needed for peroxyacetic acid for the following reasons.

1. Peroxyacetic acid is highly reactive and short lived because of the inherent instability of the peroxide bond (i.e., the O-O bond). Agitation or contact with rough surfaces, sunlight, organics, and metals can accelerate decomposition. The instability of peroxyacetic acid to exist as itself, along with detoxifying enzymes found in cells (eg., catalase, glutathione peroxidase), makes it very difficult to find any residues of peroxyacetic acid in or on foods (at the proposed use levels), by conventional analytical methods.

The proposed food contact applications utilize very low concentrations of peroxyacetic acid. Therefore, food residues produced by the proposed uses are expected to be short-lived, based on half-lives for peroxyacetic acid which can be as short as a few minutes. The primary degradates are acetic acid, oxygen, and water, and these degradates are not of toxicological concern.

2. There are acceptable acute generic data referenced in the Reregistration Eligibility Document for Peroxy Compounds (December 1993, Case 4072). Peroxyacetic acid was found to be corrosive and severely irritating to the eyes, skin, and mucous membranes but only when high concentrations were used. The proposed food contact use patterns are not expected to result in any residue levels of toxicological concern. The RED document waived all additional non-acute toxicology data requirements for peroxyacetic acid.

3. No data exists for the subchronic, chronic, carcinogenicity, mutagenicity, developmental and reproductive toxicity of peroxyacetic acid. However, peroxyacetic acid shares similar chemical characteristics with hydrogen peroxide which has a more extensive toxicology data base. For example, peroxyacetic acid and hydrogen peroxide both decompose into two identical degradates that do not pose any toxicological concern. These two degradates are oxygen and water. Acetic acid is the third additional residue degradate of peroxyacetic acid which also does not pose any toxicological concern.

Peroxyacetic acid and hydrogen peroxide also show similar chemical characteristics for corrosivity, pH, rapid peroxide bond dissociation, and production of oxygen molecules. Because of these similar chemical characteristics, and low expected exposures with the proposed uses, the dose-response toxicology relationships (i.e., adverse effects experienced only at very high doses) shown by the data for hydrogen peroxide, can also be expected with peroxyacetic acid. The remaining toxicology testing requirements for peroxyacetic acid were waived because of the similar chemical characteristics, similar expected dose-response relationships with hydrogen peroxide, low exposure levels under the proposed uses, and for the reasons given above.

The following generic acute toxicology data for peroxyacetic acid were cited in the 1993 RED document.

Acute studies for peroxyacetic acid—

i. A study on rats showed an acute oral LD_{50} of 1,540 milligrams/kilogram (mg/kg).

ii. A study on rabbits showed an acute dermal LD_{50} of 1,410 mg/kg.

iii. A study on rats showed an acute inhalation LC_{50} of 0.450 mg/L.

iv. An eye irritation study on rabbits produced severe irritation.

v. A dermal irritation study on rabbits showed hydrogen peroxide was corrosive.

B. Toxicological Endpoints

1. *Acute toxicity*. The Agency has concluded that with the proposed food contact uses of peroxyacetic acid, no apparent toxicity endpoint exists to suggest any evidence of significant toxicity from a one-day or single-event exposure.

2. *Short - and intermediate - term toxicity.* The Agency has concluded that for the proposed food contact uses of peroxyacetic acid, based on the similarity and commonality in the peroxide bond chemistry, residues, degradates, and also with the dose-response relationships with hydrogen peroxide, no apparent toxicity endpoint would be expected from short and intermediate term exposure.

3. *Chronic toxicity*. A RfD for peroxyacetic acid has not been established because of its short half life and lack of any residues and degradates of toxicological concern. As discussed in the December 1993 Reregistration Eligibility Document for Peroxy Compounds, and in this final rule, under the proposed and existing dietary related use patterns (i.e., raw and processed agricultural commodities, food processing equipment in breweries, wineries, and beverage plants), there is also expected to be a lack of any residues and degradates of toxicological concern.

4. *Carcinogenicity*. The Agency believes that based on the known chemistry of peroxy compounds, toxic effects occur as a result of species formed either during spontaneous decomposition or enzymatic conversion of the peroxy bond (i.e., O-O bond). These effects occur only after long term administration of high dose levels, where the parent compound is continually present. Available data show that peroxyacetic acid rapidly breaks down into oxygen, water, and acetic acid. Because of this rapid decomposition, the Agency does not expect residues of the parent compound on the treated comodities.

Based on the proposed use concentrations for peroxyacetic acid, and data indicating a lack of residues of concern on food, exposure to peroxyacetic acid under the proposed food contact use concentrations is not likely to result in any adverse clinical effects, including promotion of carcinogenisis. This conclusion is supported by the rapid decomposition of peroxyacetic acid into oxygen, water, and acetic acid, which are not of toxicological concern, and the existence of specific enzymes in the human body (i.e., catalase and glutathione peroxidase) which also can break down peroxyacetic acid.

C. Exposures and Risks

1. *From food and feed uses.* An exemption from the requirement of a tolerance is being established (40 CFR 180.1196) for the residues of peroxyacetic acid) up to 100 ppm, in or on a variety of (raw agricultural commodities, in processed commodities, when such residues result from the use of peroxyacetic acid as an antimicrobial agent on fruits, tree nuts, cereal grains, herbs, and spices.

There are no existing tolerances or exemptions from tolerances in title 40 of the CFR for peroxyacetic acid for direct food and feed contact uses. The following 21 CFR tolerances and/or exemptions from tolerances are noted:

Under 21 CFR 184.1005, the acetic acid degradate of peroxyacetic acid is GRAS as a direct food additive substance when used in baked goods, cheeses, dairy product analogs, chewing gum, condiments, relishes, fats, oils, gravies, sauces, and meat products. Under 21 CFR 178.1010, peroxyacetic acid is approved for use as a sanitizing solution for use on food processing equipment and utensils, and on dairy processing equipment. It is also approved for use in sterilizing polymeric food-contact surfaces. Under 21 CFR 173.315, peroxyacetic acid is approved for use in washing or to assist in the lye peeling of fruits and vegetables.

Risk assessments were conducted by EPA to assess dietary exposures and risks from peroxyacetic acid as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. No acute exposure and risk assessment is applicable for peroxyacetic acid because no acute toxicological effects of concern are anticipated with the proposed food contact uses for peroxyacetic acid. This is due to the lack of any residues of toxicological concern as a result of the rapid decomposition of peroxyacetic acid into acetic acid, oxygen, and water.

ii. *Chronic exposure and risk.* Residues of peroxyacetic acid are not expected to remain on the surface of materials which it contacts. Therefore, the risk from dietary exposure is expected to be negligible. No chronic exposure and risk assessment is applicable because no chronic toxicological effects are anticipated with the proposed food contact uses for peroxyacetic acid. This is due to the lack of any residues of toxicological concern as a result of the rapid decomposition of peroxyacetic acid into acetic acid, oxygen, and water.

2. *From drinking water.* Although the proposed food contact uses for peroxyacetic acid may result in transfer of peroxyacetic acid to potential drinking water sources, no risk assessment is applicable because of: (a) the rapid degradation of peroxyacetic acid into acetic acid, oxygen, and water, and (b) there are not expected to be any residues of toxicological concern. Information from the EPA Office of Water also indicates that when used for potable water disinfection, no measurable residues of peroxyacetic acid were present by the time the water is pumped through the distribution system and arrived at the tap.

3. *From non-dietary exposure.* Peroxyacetic acid is currently registered by EPA for a wide variety of uses including: agricultural premises and equipment; food handling/storage establishments premises and equipment; commercial, institutional and industrial premises and equipment; residential and public access premises; medical premises and equipment; materials preservation; and industrial processes and water systems. The Agency does not know of all approved or actual uses for peroxyacetic acid. However, non-dietary exposures are not expected to pose any quantifiable added risk because of the lack of any expected residues and degradates of toxicological concern. Minimal residues and degradates are expected due to previously discussed unique chemistry associated with peroxide bond chemistry.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

The Agency believes that ''available information'' in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way.

EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

The Agency does not at this time have data specifically either to support, or to refute a common mechanism of toxicity for peroxy compounds (i.e., hydrogen peroxide, peroxyacetic acid). The Agency believes that based on the known common chemistry of peroxy compounds, toxic effects occur as a result of species formed either during spontaneous decomposition or enzymatic conversion of the peroxy bond (i.e., O-O bond). These effects occur only after long term administration of high dose levels, where the parent compound is continually present. Although a common mechanism of toxicity may or may not be inferred, the Agency's concerns for cumulative risk is mitigated by the lack of any measurable residues of the parent compound (peroxyacetic acid) at proposed use levels, and by the rapid decomposition of the parent compound into products which are not of toxicological concern (i.e., oxygen and water). As data become available, the Agency may require further studies on the peroxy compounds to determine whether a cumulative risk assessment is warranted.

The Agency does not have, at this time, available data to determine whether peroxyacetic acid shares a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. For the purposes of this tolerance action, EPA has not assumed that peroxyacetic acid has a common mechanism of toxicity with other substances.

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute, short term and intermediate risk.* The Agency has concluded that no toxicological endpoint exists for peroxyacetic acid with the proposed food contact uses to suggest any evidence of significant toxicity from acute, short term or intermediate term exposures. Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure.

The Agency concludes that there is a reasonable certainty of no harm for acute, short term, and intermediate risk from aggregate exposure to peroxyacetic acid under the proposed use concentrations.

2. *Chronic risk.* Low residues of peroxyacetic acid are expected from the proposed food contact uses and these residues are expected to convert rapidly into the harmless degradates of acetic acid, oxygen, and water. Therefore, the chronic risk from dietary exposure is expected to be negligible. No chronic exposure and risk assessment is applicable because no chronic toxicological effects are anticipated with the proposed food contact uses for peroxyacetic acid.

The Agency concludes that there is a reasonable certainty of no harm for chronic risk from aggregate exposure to peroxyacetic acid under the proposed use concentrations.

E. Aggregate Cancer Risk for U.S. Population

The Agency believes that based on the known chemistry of peroxy compounds, toxic effects occur as a result of species formed either during spontaneous decomposition or enzymatic conversion of the peroxy bond (i.e., O-O bond). These effects occur only after long term administration of high dose levels, where the parent compound is continually present. Available data show that peroxyacetic acid rapidly breaks down into oxygen, water, and acetic acid. Because of this rapid decomposition, the Agency does not expect residues of the parent compound on the treated commodities.

Based on the proposed use concentrations for peroxyacetic acid, and data indicating a lack of residues of concern on food, exposure to peroxyacetic acid under the proposed food contact use concentrations is not likely to result in any adverse clinical effects, including promotion of carcinogenisis. This conclusion is supported by the rapid decomposition of peroxyacetic acid into oxygen, water, and acetic acid, which are not of toxicological concern, and the existence of specific enzymes in the human body (i.e., catalase and glutathione peroxidase) which also can break down peroxyacetic acid.

The Agency concludes that cancer cancer risk for the U.S. population from aggregate exposure to peroxyacetic acid is negligible under the proposed food contact use concentrations.

F. Aggregate Risks and Determination of Safety for Infants and Children

Safety factor for infants and children. In assessing the potential for additional sensitivity of infants and children to residues of peroxyacetic acid, EPA considered data from developmental and reproductive toxicity studies available on hydrogen peroxide from the scientific literature and summarized by the Office of Water. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database, unless EPA determines that a different margin

of safety will be safe for infants and children.

Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. In either case, EPA generally defines the level of appreciable risk as exposure that is greater than 1/100 of the NOEL in the animal study appropriate to the particular risk assessment. This 100-fold uncertainty factor/margin of exposure is designed to account for inter-species extrapolation and intra-species variability.

In the case of the proposed food contact uses for peroxyacetic acid, because of the lack of any significant residues of toxicological concern, a NOEL was not identified for risk assessment purposes, and the uncertainty (safety) factor approach was not used for assessing any risk level by peroxyacetic acid. For the same reason, an additional safety factor to protect infants and children is unnecessary. Additionally, based on the following information, no increased susceptibility to infants or children is expected to occur.

1. Three studies on the developmental and reproductive effects of hydrogen peroxide (and by similarity, peroxyacetic acid) are available. The data from these studies indicates that no apparent developmental or reproductive effects were observed from administration of hydrogen peroxide at concentrations up to 1% (1,000 mg/kg).

2. Peroxyacetic acid is a highly reactive and short lived molecule because of the inherent instability of the peroxide bond (i.e., the O-O bond). Agitation or contact with rough surfaces, sunlight, organics, and metals accelerates dissociation. The instability of peroxyacetic acid to exist as itself, along with natural detoxifying enzymes found in plant and animal cells (eg., catalase, glutathione peroxidase), makes it very difficult to find any residues of peroxyacetic acid in or on foods (at proposed use levels), by conventional analytical methods. The proposed food contact applications utilize very low concentrations of peroxyacetic acid (ppm). Food residues are expected to be short-lived and are not expected to accumulate. This is because peroxyacetic acid dissociates rapidly into acetic acid, oxygen, and water. The Agency has no toxicological concern with acetic acid, oxygen, and water.

3. A waiver was granted for all the remaining toxicology testing requirements because of the reasons given in items a and b above.

Therefore, because of the rapid decomposition of peroxyacetic acid residues into degradates that are of no toxicological concern (i.e., oxygen, water, acetic acid), the Agency concludes that there is a reasonable certainty of no harm for infants and children from exposure to peroxyacetic acid under the proposed food contact use concentrations.

III. Other Considerations

A. Endocrine Disruption

EPA is required to develop a screening program to determine whether certain substances (including all pesticides and inerts) ''may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect...'' The Agency is currently working with interested stakeholders, including other government agencies, public interest groups, industry and research scientists in developing a screening and testing program and a priority setting scheme to implement this program. Congress has allowed three years from the passage of the FQPA (August, 1999) to implement this program. At that time, the EPA may require further testing of this active ingredient and end use products for endocrine disrupter effects. There is no current evidence to suggest that peroxyacetic acid acts in a manner similar to any known hormone or that it acts as an endocrine disrupter.

B. Analytical Enforcement Methodology

Because an exemption from the requirement of a tolerance is being granted for peroxyacetic acid, an enforcement analytical method is not needed. However, an adequate analytical method (called QATM 202 by Ecolab, Inc., a redox titration procedure), is available in the interim. Because of the long lead time from establishing a tolerance or exemption of the requirement of a tolerance to publication of the enforcement methodology in the Pesticide Analytical Manual., Volume II, the analytical method is being made available to anyone interested in pesticide enforcement when requested from Norm Cook, Antimicrobials Division (7510W), Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Office location and telephone number: 2800 Crystal Drive, 6th Floor, Arlington, VA 22202, 703-308-6411.

C. Magnitude of Residues

Residues of peroxyacetic acid are short lived on treated crops and are not expected to bioaccumulate in livestock and/or poultry that consume treated feedstuffs. Because of the lack of any residues of toxicological concern, the Agency has waived this data requirement.

D. International Residue Limits

There are no Codex Alimentarius Commission (Codex) Maximum Residue Levels (MRLs) for peroxyacetic acid.

IV. Conclusion

Therefore, the exemption from the requirement of a tolerance is established for residues of peroxyacetic acid up to 100 ppm in or on raw agricultural commodities, in processed commodities, when such residues result from the use of peroxyacetic acid as an antimicrobial agent on fruits, tree nuts, cereal grains, herbs, and spices.

It should be understood that the Agency may take appropriate regulatory action, and/or require the submission of additional data to support the exemption from the requirement of a tolerance for peroxyacetic acid, if new relevant adverse effects information comes to the Agency's attention.

V. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by July 6, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25).

Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of

the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27).

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Docket

EPA has established a record for this rulemaking under docket control number [OPP–300654] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Electronic comment may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this document.

VII. Regulatory Assessment Requirements

This final rule establishes an exemption from the tolerance requirement under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since these tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950) and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

VIII. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 30, 1998.

Frank Sanders,

Director, Antimicrobials Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180— [AMENDED]

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

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1196 is added to read as follows:

§ 180.1196 Peroxyacetic acid; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of peroxyacetic acid up to 100 ppm in or on raw agricultural commodities, in processed commodities, when such residues result from the use of peroxyacetic acid as an antimicrobial agent on fruits, tree nuts, cereal grains, herbs, and spices.

[FR Doc. 98–12036 Filed 5–5–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300655; FRL–5789–4]

RIN 2070–AB78

Hydrogen Peroxide; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes an exemption from the requirement of a

tolerance for residues of the antimicrobial pesticide hydrogen peroxide up to 120 ppm, in or on raw agricultural commodities, in processed commodities, when such residues result from the use of hydrogen peroxide as an antimicrobial agent on fruits, tree nuts, cereal grains, herbs, and spices. Ecolab, Inc. requested this exemption under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996 (Pub. L. 104-170).

DATES: This regulation is effective May 6, 1998. Objections and requests for hearings must be received by EPA on or before July 6, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300655], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300655], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300655]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Marshall Swindell, Product Manager 33, Antimicrobials Division 7510W, Office of Pesticide Programs, Environmental Protection Agency, 401M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: 2800 Crystal Drive, 6th Floor, Arlington, VA, 22202, 703-308-6341, e-mail: swindell.marshall@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 14, 1998 (63 FR 2235) (FRL–5759–7), EPA, issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) announcing the filing of a pesticide petition (PP) 7F4834 for tolerance by Ecolab, Inc., 370 Wabasha Street, St. Paul, MN 55102. This notice included a summary of the petition prepared by Ecolab, Inc., the registrant. There were no comments received in response to the notice of filing.

Subsequently, the proposed tolerance exemption was amended to delete meat, meat by-products, poultry, milk, and eggs. This was done because at the low proposed use concentrations, no residues of toxicological concern are expected on any animal feeds that may be exposed to hydrogen peroxide. Therefore, no residues of toxicological concern are anticipated either in animals that may consume these feeds, or in associated animal by-products.

In addition, the proposed tolerance exemption was amended to include a maximum residue limit of 120 ppm for hydrogen peroxide. This limitation was added because of Agency concerns that a high use concentration could result in measurable residues of hydrogen peroxide. Residue data will be needed to increase or remove this limitation.

I. Risk Assessment and Statutory Findings

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

Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

A. Toxicity

1. *Threshold and non-threshold effects.* For many animal studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the ''no-observed effect level'' or ''NOEL'').

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health.

An uncertainty factor (sometimes called a ''safety factor'') of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted.

Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100% or less of the RfD) is generally considered acceptable by EPA. EPA generally uses the RfD to evaluate the chronic risks posed by pesticide exposure. For shorter term risks, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This 100-fold MOE is based on the same

rationale as the 100-fold uncertainty factor.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short-term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or MOE calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

2. *Differences in toxic effect due to exposure duration.* The toxicological effects of a pesticide can vary with different exposure durations. EPA considers the entire toxicity data base, and based on the effects seen for different durations and routes of exposure, determines which risk assessments should be done to assure that the public is adequately protected from any pesticide exposure scenario. Both short and long durations of exposure are always considered. Typically, risk assessments include ''acute,'' ''short-term,'' ''intermediate term,'' and ''chronic'' risks. These assessments are defined by the Agency as follows.

Acute risk, by the Agency's definition, results from 1-day consumption of food and water, and reflects toxicity which could be expressed following a single oral exposure to the pesticide residues. High end exposure to food and water residues are typically assumed.

Short-term risk results from exposure to the pesticide for a period of 1-7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enaction of the Food Quality Protection Act of 1996 (FQPA), this assessment has been expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In this assessment, risks from average food and water exposure, and high-end residential exposure, are aggregated.

High-end exposures from all three sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization.

Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1-7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

Intermediate-term risk results from exposure for 7 days to several months. This assessment is handled in a manner similar to the short-term risk assessment.

Chronic risk assessment describes risk which could result from several months to a lifetime of exposure. For this assessment, risks are aggregated considering average exposure from all sources for representative population subgroups including infants and children.

B. Aggregate Exposure

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, residues in groundwater or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children.

The TMRC is a ''worst case'' estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100% of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

Percent of crop treated estimates are derived from federal and private market survey data. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of percent of crop treated, the Agency is reasonably certain that exposure is not understated for any significant sub-population group. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant sub-populations including several regional groups, to pesticide residues. For hydrogen peroxide, based on the lack of any residues of toxicological concern, it is unlikely that significant exposure through the proposed use would occur to any sub-population although sensitive sub-populations may exist (eg.,catalase deficient individuals).

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action, EPA has sufficient data to assess the hazards of hydrogen peroxide and to make a determination on aggregate exposure, consistent with section 408(b)(2), for an exemption of a requirement for a tolerance for residues of hydrogen peroxide up to 120 ppm, in or on raw agricultural commodities, in processed commodities, when such residues result from the use of hydrogen peroxide as an antimicrobial agent on fruits, tree nuts, cereal grains, herbs, and spices. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the

sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by hydrogen peroxide (H_2O_2) are discussed below.

Ecolab, Inc. has requested a waiver of all toxicology testing requirements for hydrogen peroxide. This includes waivers for all acute, 90-day sub-chronic, chronic, oncogenicity, developmental, reproductive, mutagenicity, neurotoxicity and metabolism requirements for hydrogen peroxide. Ecolab's rationale for waivers in each of these areas is similar, and are summarized by the following four arguments:

1. Available data at the Agency are sufficient to estimate the potential human health hazard of the end use product.

2. Hydrogen peroxide is generally recognized as safe (GRAS) according to the Food and Drug Administration (21 CFR part 178) when used on food-processing equipment, utensils, and food contact articles.

3. Based on the chemical reactivity of this compound and its unstable nature, conduct of long term or metabolism studies would be extremely difficult and unreliable.

4. The published Reregistration Eligibility Document for Peroxy Compounds (Case 4072, December, 1993), has waived all further toxicology testing requirements for peroxy compounds.

The Agency has reviewed the data waivers requested and concurs that no generic toxicology testing will be needed for hydrogen peroxide for the following reasons.

1. Hydrogen peroxide is highly reactive and short lived because of the inherent instability of the peroxide bond (i.e., the O-O bond). Agitation or contact with rough surfaces, sunlight, organics and metals accelerates decomposition. The instability of hydrogen peroxide to exist as itself, along with detoxifying enzymes found in cells (eg., catalase, glutathione peroxidase), makes it very difficult to find any residues of hydrogen peroxide in or on foods (at proposed use levels), by conventional analytical methods.

The proposed food contact applications also utilize very low concentrations of hydrogen peroxide. Therefore, food residues are expected to be short-lived, based on half-lives for hydrogen peroxide as short as about 4 minutes under certain conditions. Residues are not of toxicological concern because hydrogen peroxide decomposes rapidly into oxygen and water. The Agency has no toxicological concern with oxygen and water.

2. There are acceptable acute generic data referenced in the Reregistration Eligibility Document for Peroxy Compounds (December 1993, Case 4072). Hydrogen peroxide was found to be corrosive and severely irritating to the eyes, skin, and mucous membranes but only when high concentrations were used. The proposed use patterns are expected to result in a lack of any residues of toxicological concern.

3. A waiver was granted for all the remaining toxicology testing requirements because of the reasons given above, and because there is an extensive data base assembled by the Agency's Office of Water. Although the Office of Water's data does show toxicological effects in experimental animals only at high concentrations, the Agency is not concerned because of the rapid decomposition of hydrogen peroxide into oxygen and water.

Therefore, the lack of any residues of toxicological concern and the existence of toxicological effects only at high dose levels in experimental animals minimizes any concern for exposure to the very low doses that may be present as a result of the proposed uses.

The Agency also recognizes that commercially available 3% hydrogen peroxide solutions have been used for many years for personal and medical uses. The use directions for some of these products state that these 3% solutions can be used as a sanitizing mouthwash. Other food contact and medicinal uses for hydrogen peroxide include applications for wines and liquors (artificial aging), dentrifices, sanitary lotions, and pharmaceutical preparations.

The long use history of hydrogen peroxide and weight of empirical evidence and experimental data has led the FDA to put hydrogen peroxide on the GRAS list when used on food processing equipment, utensils, and food contact articles (21 CFR 178). Potential symptoms of acute overexposure to medium or high concentrations of hydrogen peroxide include irritation of eyes, nose and throat, corneal ulceration, erythema, vesicles on skin, and bleaching of hair.

The following is a summary of the existing generic data base for acute, subchronic, chronic, mutagenic, developmental, reproductive, and carcinogenic effects of hydrogen peroxide in mammalian test animals. These data show that significant toxicological effects of hydrogen peroxide in mammalian test systems are measurable only at high doses. The proposed food contact use patterns are not expected to result in residues of toxicological concern due to the rapid decomposition of hydrogen peroxide into oxygen and water. The following generic acute toxicology data for hydrogen peroxide were cited in the 1993 RED for hydrogen peroxide. The subchronic, chronic, carcinogenicity, developmental, and reproductive toxicology, along with the mutagenicity data are summarized from the Office of Water data base.

1. *Acute studies*— i. A study on mice showed an acute oral LD_{50} of 2,000 milligrams/kilogram (mg/kg).

ii. A study on rats showed an acute dermal LD_{50} of 4,060 mg/kg.

iii. A study on mice showed an acute inhalation LC_{50} of 227 ul/L.

iv. An eye irritation study on rabbits produced severe irritation.

v. A dermal irritation study on rabbits showed hydrogen peroxide was corrosive.

2. *Subchronic exposure*— i. Weanling Osborne-Mendel rats were exposed to a 0.45% (560 mg/kg/day) aqueous solution of hydrogen peroxide in drinking water for 3 weeks. When corrected for differences observed in water intake between control and treated rats, there were no significant differences observed in absolute and relative organ weights of the kidney, spleen, heart, or testes. A NOEL of 560 mg/kg/day was determined, although a lowest-observed-effect level (LOEL) was not.

ii. Young male Holtzman rats were administered doses of 0, 500, 1,000, or 1,500 mg/kg/day hydrogen peroxide in water for 8 weeks. Increased mortality was noted at the high dose. Increased incidence of dental caries and pathological changes in the periodontium were also noted at the mid and high dose. A LOEL of 500 mg/kg/day was determined, but a NOEL was not established.

iii. Male and female C57BL/6N, DBA/2N, and BALB/cAnN mice were given hydrogen peroxide at 0, 0.1, or 0.4% in drinking water for 30 or 60 days. Equivalent doses (assuming water intake of 150 ml/kg/day) were 0, 150, or 600 mg/kg/day. The high dose resulted in erosion of the glandular stomach in 29% of mice treated for 30 days and in 40% of mice treated for 60 days. Duodenal lesions, but no frank nodules, were also observed at the high dose. A LOEL of 600 mg/kg/day was determined, but due to the lack of data reported at the 150 mg/kg/day dose, a NOEL could not be definitively assigned.

3. *Chronic exposure*— i. Wistar rats were administered 30 or 60 mg/kg/day hydrogen peroxide for 100 days by oral intubation. After 100 days, decreases in plasma protein, hematocrit, and plasma catalase were observed. Administration

of the same dose levels in feed had no effects. A NOEL of 30 mg/kg/day could be determined from this study.

ii. Three-week old mice (strain not specified) were administered 0.15% hydrogen peroxide in drinking water for 35 weeks, presumed equivalent to 150 mg/kg/day. Degenerative changes in the liver and kidney, as well as inflammation, irregularity and slight necrosis of the stomach wall were observed. The LOEL was determined to be 150 mg/kg/day in this study, but a NOEL was not identified.

iii. Male and female C57BL/6N mice were administered 0, 0.1, or 0.4% hydrogen peroxide in drinking water for up to 700 days. Doses of 0, 150, and 600 mg/kg/day were calculated based on assumed intake of 150 mL/kg/day water. The gastrointestinal tract was examined over the course of the study through serial sacrifice at time points between 90-700 days. Gastric lesions consisting of erosion and hyperplastic nodules were detected in the stomach and duodenum after 1-2 years exposure. The LOEL was determined to be 150 mg/kg/day from this study.

4. *Carcinogenicity*— i. Gastric carcinogenesis was investigated in male Wistar rats. Twenty-one rats received the initiator MNNG in drinking water for 8 weeks at 100 mg/L, while uninitiated rats (10 animals) received plain drinking water. After 8 weeks, both groups received 1% hydrogen peroxide in drinking water from week 8 through week 40. Two other groups (30 and 10 rats, respectively) were chosen as initiated and uninitiated controls. Surviving rats were sacrificed and necropsied at 40 weeks. Erosion and ulceration along the limiting ridge of the fundic mucosa was observed. Initiated rats showed an increased incidence of adenomatous hyperplasia in this stomach area. There were no adenocarcinomas induced in the stomach or duodenum. Papillomas of the forestomach were induced by hydrogen peroxide alone.

ii. Three month old Syrian hamsters were administered either: twice weekly applications of 30% hydrogen peroxide in the left buccal pouch, twice weekly buccal application of 0.25% 9,10 dimethyl-1,2-benzanthracene with either 30% or 3% hydrogen peroxide (hydrogen peroxide applied on a different day than the DMBA), or DMBA only. Buccal pouches were examined for tumor development at 19 and 22 weeks after sacrifice. No epidermoid carcinomas were observed after 22 weeks of treatment with hydrogen peroxide alone. All three groups receiving DMBA treatment did develop tumors. The tumors in the group receiving the 30% hydrogen peroxide and DMBA were reported to be more anaplastic with deeper penetration of tissue. It was concluded that hydrogen peroxide may augment oral carcinogenesis induced by DMBA.

iii. Male and female weanling C57Bl/6J mice were administered 0, 0.1, or 0.4% hydrogen peroxide in drinking water for up to 108 weeks. Erosion of the glandular stomach was observed in 20% and 42% of dosed mice at the 0.1% and 0.4% dose levels, respectively, compared to 4% in controls. Duodenal nodules were observed in treated mice and were classified into hyperplasia, adenoma, and carcinoma. Hyperplasia was significantly increased at the 0.1% and 0.4% dose levels (40% and 62% of treated mice respectively), as was the incidence of duodenal carcinoma, observed in 5 of 99 high dose animals, 1 of 101 low dose animals, and absent in controls.

iv. Various strains of mice (C57Bl/6N, DBA/2N, BALB/c) were exposed to 0.4% hydrogen peroxide in drinking water over their lifetime. Appearance of duodenal lesions (plaques and nodules) was noted in all strains after 90 days of treatment. Temporary withdraw of hydrogen peroxide produced apparent reversibility in C57BL/6N mice only after 30 days of no treatment. After 150 days of treatment, C57BL/6N mice appeared to have an increased incidence of duodenal lesions relative to the other two strains. After 420-740 days of treatment, the incidence of duodenal carcinoma was 0, 1%, and 5% in control, low, and high dose, respectively. This study did not present concurrent control data, and used varying numbers of mice for examination at the various time points. Therefore, results from this study are considered equivocal.

v. Strains of mice differing in catalase activities of the duodenum, blood, and liver (in order of decreasing activity: C3H/HeN, B6C3F1, C57BL/6N, C3H/C) were given a solution of 0.4% hydrogen peroxide in drinking water for approximately 6 months. The duodenum was examined for the incidence and total lesions in each strain. Approximately 18-22 mice per strain were examined. The data suggested that the number of duodenal lesions per mouse and total incidence was inversely correlated wi th catalase activity.

vi. Recent experimental evidence (Upham, et al., Carcinogenesis 18(1): 37-42, 1997) has implicated hydrogen peroxide in the inhibition of gap junctional intercellular communication in rat liver epithelial cells (a significant step in production of tumors). These recent data lend support to the above studies in the implication of high levels of hydrogen peroxide as a promotor of tumorigenesis. The International Agency for Research in Cancer (IARC) has designated hydrogen peroxide as not classifiable as to carcinogenicity, based on the data noted above.

5. *Developmental and reproductive toxicity*. Three older studies on the developmental and reproductive effects of hydrogen peroxide are available. These data indicate no apparent developmental or reproductive effects observed from administration of hydrogen peroxide at concentrations up to 1% (1000 mg/kg).

6. *Mutagenicity*— i. In a standard plate incorporation assay, hydrogen peroxide (concentrations not stated) was weakly mutagenic to strains TA98, TA97, and TA1537 for frame shift mutations and to strain TA102 for oxidative mutations, but was not mutagenic to strains TA100 and TA1538.

ii. Using isolated hepatocytes from Female Fischer rats, hydrogen peroxide was incubated at concentrations from 0.01 to 1.0mM for 1 hour at 37 degrees Celsius. Overt cytotoxicity was observed at 1mM. A concentration dependent increase in single strand DNA breaks was observed at all other exposure levels. No double strand DNA breaks or DNA cross-links were observed.

iii. In a human bronchial epithelial cell system, nucleic acid synthesis was observed to be significantly decreased after exposure to hydrogen peroxide at 1.2mM for six hours followed by a cell growth period of 7-9 days. At 100 m, single strand DNA breaks and DNA-protein cross links were observed, with single strand breaks predominating. DNA strand breakage has also been observed in other test systems (hamster V79 cells and bovine pulmonary artery and aortic endothelial cells).

iv. Cell killing and DNA damage were examined in Chinese hamster fibroblast cells (V79-379A). After incubation of cells with 1-100 mM hydrogen peroxide at ice cold temperatures for 10 or 20 minutes, single strand breaks were observed at 1 mM hydrogen peroxide. Double strand breaks and cell killing were observed at higher (10mM) concentrations of hydrogen peroxide.

B. Toxicological Endpoints

1. *Acute toxicity*. The Agency has concluded that for the proposed food contact uses, no apparent toxicity endpoint exists to suggest any evidence of significant toxicity from a one-day or single-event exposure.

2. *Short - and intermediate - term toxicity*. The Agency has concluded that

for the proposed food contact uses, no apparent toxicity endpoint exists to suggest any evidence of significant toxicity from short and intermediate term exposure.

3. *Chronic toxicity.* A RfD for hydrogen peroxide has not been established because of its short half life and lack of any residues of toxicological concern. As discussed in the December 1993 Reregistration Eligibility Document for Peroxy Compounds, and in this final rule, under the proposed and existing dietary related use patterns (i.e., raw and processed agricultural commodities, food processing equipment in breweries, wineries, and beverage plants), there is expected to be a lack of any residues of toxicological concern.

4. *Carcinogenicity.* The Agency believes that based on the known chemistry of peroxy compounds, toxic effects occur as a result of species formed either during spontaneous decomposition or enzymatic conversion of the peroxy bond (i.e., O-O bond). These effects occur only after long term administration of high dose levels, where the parent compound is continually present. Available data show that hydrogen peroxide rapidly breaks down into oxygen and water. Because of this rapid decomposition, the Agency does not expect residues of the parent compound on the treated comodities.

Based on the proposed use concentrations for hydrogen peroxide, and data indicating a lack of residues of concern on food, exposure to hydrogen peroxide under the proposed food contact use concentrations is not likely to result in any adverse clinical effects, including promotion of carcinogenisis. This conclusion is supported by the rapid decomposition of hydrogen peroxide into oxygen and water, which are not of toxicological concern, and the existence of specific enzymes in the human body (i.e., catalase and glutathione peroxidase) which also can break down hydrogen peroxide.

C. Exposures and Risks

1. *From food and feed uses.* An exemption from the requirement of a tolerance is being established (40 CFR 180.1197) for the residues of hydrogen peroxide) up to 120 ppm, in or on a variety of (raw agricultural commodities, in processed commodities, when such residues result from the use of hydrogen peroxide as an antimicrobial agent on fruits, tree nuts, cereal grains, herbs, and spices.

There are no existing food or feed use tolerances or exemptions from the requirement of a tolerance in title 40 of the CFR for hydrogen peroxide. The following 21 CFR tolerances and/or exemptions from tolerances are noted:

Under 21 CFR 184.1366, hydrogen peroxide is GRAS when used on milk intended for use in cheese making (maximum treatment level of 0.05%), whey, during preparation of modified whey by electrodialysis methods (maximum treatment level of 0.04%), dried eggs, dried egg whites, and dried egg yolks, tripe, beef feet, herring, wine, starch (maximum treatment level of 0.15%), instant tea, corn syrup (maximum treatment level of 0.15%), colored cheese whey (maximum treatment level of 0.05%), wine vinegar, and emulsifiers containing fatty acid esters (maximum treatment level of 1.25%).

Under 21 CFR 178.1010, hydrogen peroxide is approved for use as a sanitizing solution for use on food processing equipment and utensils, and on dairy processing equipment. It is also approved for use in sterilizing polymeric food-contact surfaces.

Under 21 CFR 173.315, hydrogen peroxide is approved for use in washing or to assist in the lye peeling of fruits and vegetables.

Risk assessments were conducted by EPA to assess dietary exposures and risks from hydrogen peroxide as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. No acute exposure and risk assessment is applicable because no acute toxicological effects of concern are anticipated with the proposed food contact uses for hydrogen peroxide. This is due to the lack of any residues of toxicological concern as a result of the automatic and rapid decomposition of hydrogen peroxide into oxygen and water.

ii. *Chronic exposure and risk.* Residues of hydrogen peroxide are not expected to remain on the surface of materials which it contacts. Therefore, the risk from dietary exposure is expected to be negligible. No chronic exposure and risk assessment is applicable because no chronic toxicological effects are anticipated with the proposed food contact uses for hydrogen peroxide. This is due to the lack of any residues of toxicological concern as a result of the automatic and rapid decomposition of hydrogen peroxide into oxygen and water.

2. *From drinking water.* Although the proposed food contact uses for hydrogen peroxide acid may result in transfer of minor amounts of residues to potential drinking water sources, no risk assessment is warranted because of: (i) the rapid degradation of hydrogen peroxide into oxygen, and water, and (ii) these degradates are not of toxicological concern. Information from the EPA Office of Water also indicates that when used for potable water disinfection, no residues of hydrogen peroxyide acid are present by the time the water is pumped through a distribution system.

3. *From non-dietary exposure.* Hydrogen peroxide is currently registered by EPA for a wide variety of uses including: agricultural premises and equipment; food handling/storage establishments premises and equipment; commercial, institutional and industrial premises and equipment; residential and public access premises; medical premises and equipment; materials preservation; and industrial processes and water systems.

Hydrogen peroxide is also approved for a variety of medicinal uses including sanitization of scrapes, cuts, and burns to human and animal skin, and as a human oral sanitizing mouthwash. It is also used by medical doctors for general cleansing and sanitization of surgical areas of the body after operations. Hydrogen peroxide use in homes is medicinal and exposures are expected to be infrequent and at extremely short topical duration. The Agency does not know of all approved or actual uses for hydrogen peroxide. However, non-dietary exposures are not expected to pose any quantifiable added risk because of a lack of any significant residues of toxicological concern.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

The Agency believes that ''available information'' in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning

common mechanism of toxicity in a meaningful way.

EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

The Agency does not at this time have data specifically either to support, or to refute a common mechanism of toxicity for peroxy compounds (i.e., hydrogen peroxide, peroxyacetic acid). The Agency believes that based on the known common chemistry of peroxy compounds, toxic effects occur as a result of species formed either during spontaneous decomposition or enzymatic conversion of the peroxy bond (i.e., O-O bond). These effects occur only after long term administration of high dose levels, where the parent compound is continually present. Although a common mechanism of toxicity may or may not be inferred, the Agency's concerns for cumulative risk is mitigated by the lack of residues of the parent compound (hydrogen peroxide) at proposed use levels, and by the rapid decomposition of the parent compound into products which are not of toxicological concern (i.e., oxygen and water). As data become available, the Agency may require further studies on the peroxy compounds to determine whether a cumulative risk assessment is warranted.

EPA does not have, at this time, available data to determine whether hydrogen peroxide has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, hydrogen peroxide does not appear to produce toxic metabolites. For the purposes of this exemption from the requirement of a tolerance, EPA has not assumed that hydrogen peroxide has a common mechanism of toxicity with other substances.

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute, short- and intermediate-term risk.* The Agency has concluded that no endpoint exists to suggest any evidence of significant toxicity from acute, short term or intermediate term exposures from the proposed food contact uses of hydrogen peroxide. Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure.

The Agency concludes that there is a reasonable certainty of no harm for acute, short term, and intermediate risk from aggregate exposure to hydrogen peroxide under the proposed use concentrations.

2. *Chronic risk.* Residues of hydrogen peroxide are expected to dissociate rapidly on the surface of materials which it contacts. Therefore, the chronic risk from dietary exposure is expected to be negligible. No chronic exposure and risk assessment is required because no chronic toxicological effects are anticipated with the proposed food contact uses for hydrogen peroxide. This is due to the lack of any residues of toxicological concern as a result of the automatic and rapid decomposition of hydrogen peroxide in air into oxygen and water.

The Agency concludes that there is a reasonable certainty of no harm for chronic risk from aggregate exposure to hydrogen peroxide under the proposed use concentrations.

E. Aggregate Cancer Risk for U.S. Population

Available data suggest that hydrogen peroxide acts as a promoter of carcinogenisis at relatively high doses (in excess of 600 mg/kg) after chronic administration in drinking water to experimental animals. Epidemiological reports indicate that the major effect from accidental ingestion of high doses of hydrogen peroxide in humans (i.e., 1,000 mg/kg) is acute and severe clinical toxicity, which in a few cases resulted in death.

Based on the proposed use concentrations for hydrogen peroxide, and data indicating negligible residues on food, exposure to hydrogen peroxide under the proposed food contact use concentrations is not likely to result in any adverse clinical effects, including promotion of carcinogenisis. This conclusion is supported further by the rapid decomposition of hydrogen peroxide into oxygen and water, which are not of toxicological concern, and the existence of specific enzymes (i.e., catalase and glutathione peroxidases) for breakdown of hydrogen peroxide.

The Agency concludes that the cancer risk for the U.S. population from aggregate exposure to hydrogen peroxide is negligible under the proposed food contact use concentrations.

F. Aggregate Risks and Determination of Safety for Infants and Children

Safety factor for infants and children. In assessing the potential for additional sensitivity of infants and children to residues of hydrogen peroxide, EPA considered data from developmental and reproductive toxicity studies available from the scientific literature and summarized by the Office of Water. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database, unless EPA determines that a different margin of safety will be safe for infants and children.

Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. In either case, EPA generally defines the level of appreciable risk as exposure that is greater than 1/100 of the NOEL in the animal study appropriate to the particular risk assessment. This 100-fold uncertainty factor/margin of exposure is designed to account for inter-species

extrapolation and intra-species variability.

In the case of the proposed food contact uses for hydrogen peroxide, because of the lack of any residues of toxicological concern, a NOEL was not identified for risk assessment purposes, and the uncertainty (safety) factor approach was not used for assessing any risk level by hydrogen peroxide. For the same reason, an additional safety factor to protect infants and children is unnecessary. Additionally, based on the following conditions, no increased susceptibility to infants or children is expected to occur.

1. Three older studies on the developmental and reproductive effects of hydrogen peroxide are available. The data from these studies indicates that no apparent developmental or reproductive effects were observed from administration of hydrogen peroxide at concentrations up to 1% (1,000 mg/kg).

2. Hydrogen peroxide is highly reactive and short lived because of the inherent instability of the peroxide bond (i.e., the O-O bond). Agitation or contact with rough surfaces and metals accelerates dissociation. The proposed food contact applications utilize very low concentrations of hydrogen peroxide (i.e., ppm). Food residues are expected to be short-lived and are not expected to accumulate. This is because hydrogen peroxide dissociates rapidly in air into oxygen and water. The Agency has no toxicological concern with oxygen and water.

3. A waiver was granted for all the remaining toxicology testing requirements because of the reasons given in items a and b above, and because there is an extensive data base assembled by the Agency's Office of Water showing toxicological effects in experimental animals only at high concentrations, which are not expected with the proposed use patterns.

4. The Agency also recognizes that commercially available 3% hydrogen peroxide solutions have been used for many years for personal and medical uses. The use directions for some of these products state that these solutions can be used as a sanitizing mouthwash. The long use history of hydrogen peroxide and weight of empirical and experimental data has led the FDA to put it on the Generally Recognized As Safe (GRAS) list when used on food processing equipment, utensils, and food contact articles (21 CFR part 178).

Therefore, because of the rapid decomposition of hydrogen peroxide residues into degradates that are of no toxicological concern (i.e., oxygen, water), the Agency concludes that there is a reasonable certainty of no harm for infants and children from exposure to hydrogen peroxide under the proposed food contact use concentrations.

III. Other Considerations

A. Endocrine Disruption

EPA is required to develop a screening program to determine whether certain substances (including all pesticides and inerts) ''may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect...'' The Agency is currently working with interested stakeholders, including other government agencies, public interest groups, industry and research scientists in developing a screening and testing program and a priority setting scheme to implement this program. Congress has allowed three years from the passage of the FQPA (August, 1999) to implement this program. At that time, the EPA may require further testing of this active ingredient and end use products for endocrine disrupter effects. There is no current evidence to suggest that hydrogen peroxide acts in a manner similar to any known hormone or that it acts as an endocrine disrupter.

B. Analytical Enforcement Methodology

Because an exemption from the requirement of a tolerance is being granted for hydrogen peroxide, an enforcement analytical method is not needed. However, an adequate analytical method (designated QATM 202 by Ecolab, Inc., a redox titration procedure) is available in the interim. Because of the long lead time from establishing a tolerance or exemption of the requirement of a tolerance to publication of the enforcement methodology in the Pesticide Analytical Manual., Volume II, the analytical method is being made available to anyone interested in pesticide enforcement when requested from Norm Cook, Antimicrobials Division (7510W), Office of Pesticide Programs, US Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Office location and telephone number: 2800 Crystal Drive, 6th Floor, Arlington, VA 22202, 703-308-6411.

C. Magnitude of Residues

Residues of hydrogen peroxide are short lived on treated crops and are not expected to bioaccumulate in livestock and/or poultry that consume treated feedstuffs. Because of the lack of any residues of toxicological concern, the Agency has waived this data requirement.

D. International Residue Limits

There are no Codex Alimentarius Commission (Codex) Maximum Residue Levels (MRLs) for hydrogen peroxide.

IV. Conclusion

Therefore, the exemption from the requirement of a tolerance is established for residues of hydrogen peroxide up to 120 ppm in or on raw agricultural commodities, in processed commodities, when such residues result from the use of hydrogen peroxide as an antimicrobial agent on fruits, tree nuts, cereal grains, herbs, and spices.

It should be understood that the Agency may take appropriate regulatory action, and/or require the submission of additional data to support the exemption from the requirement of a tolerance for hydrogen peroxide, if new relevant adverse effects information comes to the Agency's attention.

V. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by July 6, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25).

Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27).

A request for a hearing will be granted if the Administrator determines that the

material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Docket

EPA has established a record for this rulemaking under docket control number [OPP–300655] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this document.

VII. Regulatory Assessment Requirements

This final rule establishes an exemption from the requirement of a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993).

This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since these tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950) and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

VIII. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 30, 1998.

Frank Sanders,

Director, Antimicrobials Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180— [AMENDED]

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

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1197 is added to read as follows:

§ 180.1197 Hydrogen peroxide; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of hydrogen peroxide up to 120 ppm in or on raw agricultural commodities, in processed commodities, when such residues result from the use of hydrogen peroxide as an antimicrobial agent on fruits, tree nuts, cereal grains, herbs, and spices.

[FR Doc. 98–12037 Filed 5–5–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261 and 279

[FRL–5969–4]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Recycled Used Oil Management Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Today's direct final rule eliminates errors and clarifies ambiguities in the used oil management standards. Specifically, this rule clarifies when used oil contaminated with polychlorinated biphenyls (PCBs) is regulated under the used oil management standards and when it is not, that the requirements applicable to releases of used oil apply in States that

are not authorized for the RCRA base program, that mixtures of conditionally exempt small quantity generator (CESQG) wastes and used oil are subject to the used oil management standards irrespective of how that mixture is to be recycled, and that the initial marketer of used oil that meets the used oil fuel specification need only keep a record of a shipment of used oil to the facility to which the initial marketer delivers the used oil. Today's rule also amends three incorrect references to the pre-1992 used oil specifications in the provisions which address hazardous waste fuel produced from, or oil reclaimed from, oil bearing hazardous wastes from petroleum refining operations.

The U.S. Environmental Protection Agency (EPA) is issuing this regulation as a direct final rule. In the Proposed Rules section of today's **Federal Register**, EPA is proposing identical amendments and soliciting public comment on them. For more information on the direct final rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

DATES: This direct final rule will become effective on July 6, 1998 unless EPA is notified by May 20, 1998 that any person intends to submit relevant adverse comment and such comment is submitted by June 5, 1998. If the Agency receives such comment, it will publish timely notification in the **Federal Register** withdrawing the amendment(s) that was the subject of adverse comment.

ADDRESSES:

Intent To Submit Comments

Persons wishing to notify EPA of their intent to submit adverse comments on this action should contact Alex Schmandt by mail at Office of General Counsel (2366), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, by phone at (202) 260–1708, by fax at (202) 260–0584, or by Internet e-mail at schmandt.alex@epamail.epa.gov.

Submitting Comments

Commenters must send an original and two copies of their comments referencing docket number F–98–CUOP–FFFFF to: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Hand deliveries of comments should be made to the Arlington, VA, address below. Comments may also be submitted electronically through the Internet to: rcra-docket@epamail.epa.gov. Comments in electronic format should also be identified by the docket number F–98–CUOP–FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Commenters should not submit any confidential business information (CBI) electronically. An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Viewing Docket Materials

Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The Docket Identification Number is F–98–CUOP–FFFFF. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. The index and some supporting materials are available electronically. See the **SUPPLEMENTARY INFORMATION** section for information on accessing them.

FOR FURTHER INFORMATION CONTACT:

RCRA Hotline. For general information, contact the RCRA Hotline at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC metropolitan area, call (703) 412–9810 or TDD (703) 412–3323.

Rulemaking Details. For more detailed information on specific aspects of this rulemaking, contact Tom Rinehart by mail at Office of Solid Waste (5304W), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, by phone at (703) 308–4309, or by Internet e-mail at rinehart.tom@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Direct Final Rulemaking Process

EPA is issuing this regulation as a direct final rule. In the Proposed Rules section of today's **Federal Register**, EPA is proposing identical amendments and soliciting public comment on them. If relevant adverse comment is received on one or more of the amendments in the rulemaking, EPA will publish timely notification in the **Federal Register** withdrawing the amendment(s) that is the subject of adverse comment. Any amendments in today's rulemaking that do not receive relevant adverse comment will become effective on the date set out above, notwithstanding any adverse comment on other portions of today's rulemaking. A relevant comment will be considered to be any comment substantively criticizing an amendment. The accompanying notice of proposed rulemaking may serve as the basis of a subsequent final rule if an amendment that is the subject of adverse comment is withdrawn as described above. For instructions on notifying EPA of your intent to comment and for instructions on how to submit comments, please see the **ADDRESSES** section above.

Internet Availability

This rule and the following supporting materials are available on the Internet:

Docket Item: Petition for Review.
From: Edison Electric Institute, et al.
To: U.S. Court of Appeals for the District of Columbia Circuit.

Docket Item: Petitioners' Preliminary and Non-binding Statement of Issues to be Raised on Appeal.
From: Edison Electric Institute, et al.
To: U.S. Court of Appeals for the District of Columbia Circuit.

Docket Item: Letter describing Edison Electric Institute's outstanding issues and proposals for resolving these issues.
From: Edison Electric Institute, et al.
To: U.S. Environmental Protection Agency.

Docket Item: Letter describing Edison Electric Institute's issues including a request that EPA issue a technical correction to 40 CFR 279.10(i).
From: Edison Electric Institute, et al.
To: U.S. Environmental Protection Agency.

Docket Item: Letter requesting that EPA resolve outstanding issues.
From: Edison Electric Institute, et al.
To: U.S. Environmental Protection Agency.

Docket Item: Settlement Agreement.
From: Edison Electric Institute, et al, U.S. Environmental Protection Agency, and U.S. Department of Justice.
To: U.S. Court of Appeals for the District of Columbia Circuit.

Docket Item: Memorandum that describes an abbreviated state authorization revision application procedure for state rule changes in response to minor federal rule changes or corrections.
From: Michael Shapiro, Director, Office of Solid Waste.
To: Regional Waste Management Division Directors.

Follow these instructions to access this information electronically:

WWW URL: http://www.epa.gov/epaoswer/hazwaste/usedoil/index.htm.

FTP: ftp.epa.gov.

Login: anonymous.

Password: your Internet e-mail address.

Path: /pub/epaoswer.

Note: The official record for this action will be kept in paper form and maintained at the address in the **ADDRESSES** section above.

Outline of Today's Document

I. Authority
II. Background and Summary of Rule
III. Regulatory Amendments
A. Applicability of the Used Oil Management Standards to PCB Contaminated Used Oil
B. Response to Releases of Used Oil
C. Mixtures of CESQG Wastes and Used Oil
D. Reference to the Used Oil Fuel Specification
E. Clarification of the Recordkeeping Requirements for Marketers of On-Specification Used Oil
IV. State Authority
V. Regulatory Requirements
A. Executive Order No. 12866
B. Regulatory Flexibility Act
C. Paperwork Reduction Act
D. Unfunded Mandates Reform Act
E. Submission to Congress and the General Accounting Office
VI. Effective Date

I. Authority

These regulations are issued under the authority of sections 1004, 1006, 2002(a), 3001 through 3007, 3010, 3013, 3014, 3016 through 3018, and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and as amended by the Used Oil Recycling Act, as amended, 42 U.S.C. 6901, 6905, 6912(a), 6921 through 6927, 6930, 6934, 6935, 6937 through 6939 and 6974.

II. Background and Summary of Rule

Today's direct final rule provides technical corrections and clarifies ambiguities to existing regulatory language concerning used oil at 40 CFR part 279 and 40 CFR part 261. The clarification of the applicability of the used oil management standards to PCB contaminated used oil is undertaken as part of a settlement agreement in response to a lawsuit challenging EPA's final rule promulgated on May 3, 1993, (58 FR 26420). *Edison Electric Institute* v. *U.S. EPA* (D.C. Circuit No. 93–1474). The May 1993 rule corrected technical errors and provided clarifying amendments to the used oil management standards promulgated on September 10, 1992 (57 FR 41566). In addition, the Agency found several errors and ambiguities during review of the existing regulatory language concerning used oil. Today's rule eliminates these mistakes and clarifies ambiguities in the used oil management standards.

These clarifications and corrections are presented in four separate sections, through which the Agency is (1) clarifying that used oil containing 50 ppm or greater PCBs is not subject to regulation under the used oil management standards at 40 CFR Part 279; (2) clarifying that the response requirements at 40 CFR part 279 for releases of used oil apply in states without RCRA base program authorization; (3) clarifying that mixtures of CESQG waste and used oil are subject to the used oil management standards regardless of how that mixture is to be recycled; (4) amending the references to the used oil management standards in 40 CFR Part 261 to make them consistent with the standards at 40 CFR Part 279; and (5) clarifying that the initial marketer of used oil that meets the used oil fuel specification need only keep a record of a shipment of used oil to the facility to which the initial marketer delivers the used oil.

III. Regulatory Amendments

A. Applicability of the Used Oil Management Standards to PCB Contaminated Used Oil

Today's rule amends 40 CFR 279.10(i) to clarify the applicability of the used oil management standards of 40 CFR part 279 to used oil containing PCBs. The revised language reflects EPA's intent that used oil that contains less than 50 ppm of PCBs is subject to regulation under the used oil management standards. Used oil that contains 50 ppm or greater of PCBs is not subject to regulation under the used oil management standards, because the TSCA regulations at 40 CFR part 761 provide comprehensive management of such used oil.

Table 1 shows the applicability of the RCRA and TSCA regulations as they pertain to used oil containing PCBs that is to be burned for energy recovery. Used oil that contains PCBs in the range of 2 ppm and greater and less than 50 ppm that is burned for energy recovery is regulated by both the TSCA regulations at 40 CFR 761.20(e) and the used oil management standards at 40 CFR part 279. Please note, under the TSCA regulations at 40 CFR 761.20(e)(2), used oil that is to be burned for energy recovery is presumed to contain 2 ppm or greater of PCBs unless shown otherwise by testing or other information. Used oil that is to be burned for energy recovery and has been shown to contain less than 2 ppm PCBs is not regulated under TSCA and is solely regulated under RCRA.

TABLE 1.—REGULATION OF USED OIL CONTAINING PCBS THAT IS TO BE BURNED FOR ENERGY RECOVERY UNDER 40 CFR PART 279 OF RCRA AND 40 CFR PART 761 OF TSCA

Range of PCB contamination levels in used oil (ppm)	Does RCRA regulate this used oil if it is to be burned for energy recovery?	Does TSCA regulate this used oil if it is to be burned for energy recovery?
Demonstrated to contain less than 2	Yes	No.*
2 to less than 50	Yes	Yes.
50 and greater	No	Yes.

*Used oil that is to be burned for energy recovery is presumed to contain 2 ppm or greater of PCBs unless shown otherwise by testing or other information.

Used oil containing less than 50 ppm PCBs that is recycled other than being burned for energy recovery is not generally subject to the TSCA requirements. See 40 CFR 761.3 (definition of excluded PCB products); 761.20(a)(1); and 761.20(c). However, 40 CFR 761.20(d) prohibits the use of used oil that contains any detectable concentration of PCBs as a sealant, coating, or dust control agent. This prohibition specifically includes road oiling and general dust control. Use of used oil as a dust suppressant is prohibited under RCRA except in a state that has received authorization from EPA to allow use of used oil as a dust suppressant. Currently no states have

received such authorization. In the event that a state were authorized to use used oil as a dust suppressant pursuant to 40 CFR 279.82, the prohibition in 40 CFR 761.20(d) would still apply.

Used oil that contains PCBs may not be diluted to obtain PCB concentrations less than 50 ppm. See 40 CFR 761.1(b). PCB-containing used oils that have been diluted so that their concentrations are less than 50 ppm are still subject to regulation under TSCA as used oil that contains PCB concentrations of 50 ppm or greater. These diluted used oils are subject to comprehensive management under TSCA and, therefore, are not regulated under the RCRA used oil management standards.

RCRA's used oil management standards have historically applied to used oil containing less than 50 ppm PCBs and not to used oil containing concentrations of 50 ppm or greater. Prior to the promulgation of Part 279 in September 1992, the used oil management standards applied to used oil that contained less than 50 ppm PCBs pursuant to 40 CFR Part 266, subpart E. The preamble to the September 1992 rule that recodified the provisions from the old Part 266 clearly indicates EPA's intent not to regulate PCB-contaminated used oil at levels of 50 ppm and greater under the RCRA used oil management standards (see 57 FR 41566, 41569, 41583; September 10, 1992), but the text of the rule did not reference the 50 ppm standard. Instead, the regulatory text at 40 CFR 279.10(i) purported to exclude from the used oil management standards those PCB-contaminated used oils already ''regulated under'' the TSCA PCB regulations at 40 CFR Part 761, which as explained above is a potentially broader universe of material. Because the September 10, 1992 RCRA rule excluded PCB-contaminated used oil already ''regulated under'' the TSCA regulations, it could have been interpreted as excluding used oil containing PCBs at less than 50 ppm from the RCRA used oil management standards.

The May 3, 1993 RCRA rule (58 FR 26420) sought to clarify that the Part 279 standards apply to used oils containing less than 50 ppm PCBs, but did so in a manner that inadvertently created the impression that the used oil management standards also applied to PCB-contaminated used oils at levels of 50 ppm and greater. Today's rule clarifies the scope of the RCRA used oil management standards as EPA has consistently interpreted them.

B. Response to Releases of Used Oil

Today's rule amends 40 CFR 279.22(d), 279.45(h), 279.54(g) and 279.64(g) to clarify that the response requirements for releases of used oil apply in states that are not authorized for the RCRA base program pursuant to RCRA Section 3006, 42 U.S.C. 6926, and, hence, that are not authorized for the used oil management standards. (Base program authorization refers to the RCRA program initially made available for final authorization, reflecting Federal regulations as of July 26, 1982.) At this time, Alaska, Hawaii, Iowa, Puerto Rico, the Virgin Islands, the Northern Mariana Islands and American Samoa do not have an authorized RCRA base program.

The text and the 1992 preamble discussion of the four provisions enumerated above appear to limit the cleanup requirements for a release of used oil to those states and territories that have an authorized used oil management program. Specifically, §§ 279.22(d), 279.45(h), 279.54(g) and 279.64(g) provide that the cleanup requirements apply to releases of used oil that ''occurred after the effective date of the *authorized used oil program for the State* in which the release is located'' (emphasis added). Furthermore, the preamble discussion of these provisions state that ''[T]his requirement does not apply to past releases of used oil that occurred prior to the effective date of the used oil program within an *authorized state* in which the facility is located.'' 57 FR 41566 at 41586, 41592, 41596, 41600, September 10, 1992 (emphasis added).

Notwithstanding any ambiguity in the regulatory text, EPA's intent in limiting the cleanup requirements—to releases of used oil that occurred after the effective date of the *authorized used oil program for the State* in which the release is located—was to provide a temporal limitation on when the response to release requirements were to take effect. The federal used oil management standards incorporated into Part 279 created for the most part a new regulatory scheme for the management of used oil. (If these standards were to include cleanup requirements for spills of used oil it was important to clarify that such cleanup requirements would only apply to spills that occurred after the new requirements were in effect.) The language in §§ 279.22(d), 279.45(h), 279.54(g) and 279.64(g) provided a temporal limitation by imposing the cleanup requirements on those releases that occur ''*after the effective date* of the authorized used oil program for the State in which the release is located.'' The 1992 preamble discussion of the response to releases requirements makes this point explicitly in stating that ''[T]his requirement does not apply to *past releases* of used oil that *occurred prior to the effective date* of the used oil program within an authorized state in which the facility is located.'' 57 FR 41566 at 41586, 41592, 41596, 41600, September 10, 1992. The language, therefore, clarified that the regulation applied prospectively only and that other authorities would be used for pre-existing releases.

Today's rule clarifies that the cleanup requirements apply to releases of used oil that occurred after the effective date of the *recycled used oil management program in effect in the State* in which the facility is located. In states that do not have RCRA authorization, the recycled used oil management program in effect is the federal program of used oil management standards at 40 CFR Part 279, which became effective in these states on March 8, 1993. See 58 FR 26420, May 3, 1993. In authorized RCRA states, only states that are authorized for the used oil management standards have a recycled used oil management program in effect; these programs take effect on the effective date of the final rule that authorizes the state for the used oil management standards.

C. Mixtures of CESQG Wastes and Used Oil

Today's rule harmonizes the applicability of 40 CFR Part 261 and Part 279 to mixtures of conditionally exempt small quantity generators (CESQG) wastes and used oil that are to be recycled. Although CESQG wastes are not regulated as hazardous wastes, mixtures of CESQG wastes and used oil that are to be recycled are regulated as used oil under the used oil management standards. Notwithstanding EPA's regulatory intent, the CESQG provision, 40 CFR 261.5(j), that references the applicability of the used oil management standards to mixtures of CESQG wastes and used oil that are to be recycled, appears to limit the applicability of the used oil management standards to mixtures that are to be recycled *by burning for energy recovery.* Section 261.5(j), therefore, incorrectly suggests that mixtures of CESQG wastes and used oil that are to be recycled in a manner other than by burning for energy recovery, such as by re-refining, would not be subject to the used oil management standards. Indeed, because CESQG wastes are not regulated as hazardous wastes, § 261.5(j) would suggest that such mixtures that are re-refined would not be subject to

regulation under RCRA Subtitle C or the used oil management standards.

The used oil management standards, however, apply to used oil to be recycled irrespective of what form of recycling is to be employed. By its terms, the presumption in 40 CFR 279.10(a) that used oil is to be recycled (such that used oil is presumptively subject to the used oil management standards, unless it is disposed or sent for disposal), encompasses any type of recycling. The recycling presumption does not, for instance, condition the applicability of the used oil management standards on whether used oil is recycled by burning for energy recovery or by re-refining. To the extent that Part 279 applies to used oil that is to be recycled without regard to how the used oil is to be recycled, Part 279 applies equally to mixtures of used oil and CESQG wastes that are to be recycled irrespective of how that mixture is to be recycled.

The regulatory provisions that address mixtures of CESQG wastes and used oil to be recycled, § 261.5(j) and § 279.10(b)(3), are both intended to clarify that mixtures of CESQG wastes and used oil are subject to the used oil management standards, notwithstanding the conditional exemption of small quantity generator wastes from regulation as a hazardous waste. The apparent limitation contained in § 261.5(j), which would limit the applicability of the used oil management standards to mixtures to be burned for energy recovery, is an artifact of the pre-1992 used oil regulations at 40 CFR Part 266, which only regulated the burning of used oil. When the expanded used oil management standards were promulgated on September 10, 1992, the Agency inadvertently failed to amend § 261.5(j) to reflect the broader scope of the new Part 279. Indeed, the corresponding provision in Part 279 that addresses mixtures of CESQG wastes and used oil to be recycled, § 279.10(b)(3), does not contain the apparent limitation found in § 261.5(j) that would limit the applicability of the used oil management standards to mixtures to be burned for energy recovery. Today's rule amends § 261.5(j) as it should have been amended in 1992 to reflect the greater scope of Part 279 and to eliminate any potential ambiguity over the applicability of the used oil management standards to mixtures of CESQG wastes and used oil to be recycled.

D. References to the Used Oil Fuel Specification

Today's rule amends 40 CFR 261.6(a)(3)(iv)(A)–(C) to reflect the recodification of the used oil requirements at 40 CFR Part 279. The three provisions address hazardous waste fuel produced from, or oil reclaimed from, oil bearing hazardous wastes from petroleum refining operations. All three provisions incorrectly reference the pre-1992 used oil fuel specification provision, § 266.40(e), which was recodified in 1992 at § 279.11. These provisions should have been amended in 1992.

E. Clarification of the Recordkeeping Requirements for Marketers of On-Specification Used Oil

Today's rule amends 40 CFR 279.74(b) to clarify that the marketer who first claims that used oil that is to be burned for energy recovery meets the fuel specification (on-specification used oil) must only keep a record of a shipment of used oil to the facility to which the initial marketer delivers the used oil. The preamble to the November 29, 1985 rule (50 FR 49164 at 49189) clearly describes the agency's intent to only track on-specification used oil that is to be burned for energy recovery one step beyond the initial marketer. When these recordkeeping requirements were recodified at 40 CFR 279.74(b) (57 FR 41566, September 10, 1992), the regulations required that a marketer must keep a record of each shipment of used oil to an on-specification used oil burner. However, the marketer who first claims that used oil that is to be burned for energy recovery meets the fuel specification might choose not to market the used oil directly to an on-specification used oil burner (i.e. a non-industrial oil burner). Instead, the on-specification used oil might be marketed to a fuel oil distributor for subsequent sale as fuel oil. In this situation, § 279.74(b) could be interpreted to require the initial marketer of the on-specification used oil to keep a record of all subsequent shipments of that used oil until the on-specification used oil reaches a used oil burner. Today's rule clarifies that the initial marketer of on-specification used oil must only keep a record of a shipment of used oil to the facility to which the initial marketer delivers the used oil. The initial marketer need not keep a record of any subsequent transfers of this used oil. For example, the initial marketer would need to keep a record of a shipment of on-specification used oil to a fuel oil distributor, but the initial marketer would not need to keep records of shipments of this used oil from the fuel oil distributor to fuel oil burners or other fuel oil distributors.

IV. State Authority

Under Section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. Following authorization, EPA retains enforcement authority under Sections 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility. The standards and requirements for authorization are found in 40 CFR part 271.

Today's amendments are not imposed pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA). Therefore, these corrections and clarifications will become effective immediately only in those States without interim or final authorization, not in authorized States.

Today's rule corrects and clarifies the scope of certain regulatory requirements and is, therefore, considered to be no more stringent than the existing federal standards. Authorized States are only required to modify their programs when EPA promulgates federal regulations that are more stringent or broader in scope than the existing federal regulations. Therefore, States that are authorized for the used oil management standards are not required to modify their programs to adopt today's rule. However, EPA strongly urges States to do so.

Given the minor scope of today's amendments, those States that are authorized for the used oil management standards may submit an abbreviated authorization revision application to the Region for today's amendments. This application should consist of a letter from the State to the appropriate Regional office, certifying that it has adopted provisions equivalent to and no less stringent than today's final rule (see the December 19, 1994, memorandum from Michael Shapiro, Director of the Office of Solid Waste, to the EPA Regional Division Directors that is in the docket for today's rule). The State should also submit a copy of its final rule or other authorizing authority. Revisions to the revised Program Description, Memorandum of Agreement, and Attorney General's statement are not necessary because today's rule merely corrects and clarifies the scope of certain regulatory requirements (§ 271.21(b)(1)). EPA expects that this simplified process will expedite the review of the authorization submittal for this rule.

V. Regulatory Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant'' regulatory action as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

OMB has reviewed this rule and has determined it to be ''not significant'' under the terms of the Executive Order.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–602, requires that Federal agencies examine the impacts of their regulations on ''small entities''. If a rulemaking will have a significant impact on a substantial number of small entities, agencies must consider regulatory alternatives that minimize economic impact.

EPA believes that today's rule will not impact any small entity because it does not impose regulatory requirements or otherwise substantively change existing requirements. Today's rule eliminates errors and clarifies ambiguities in the used oil management standards so as to restore the Agency's intended result. Therefore, I certify pursuant to 5 U.S.C. 601 *et seq.*, that this rule will not have a significant impact on a substantial number of small entities.

C. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, EPA must consider the paperwork burden imposed by any information collection request in a proposed or final rule. This rule will not impose any new information collection requirements.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When a written statement is needed for any EPA rule, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector because it does not impose regulatory requirements or otherwise substantively change existing requirements. Today's rule eliminates errors and clarifies ambiguities in the used oil management standards so as to restore the Agency's intended result. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. Similarly, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

VI. Effective Date

Because the regulated community does not need 6 months to come into compliance with this rule, EPA finds, pursuant to RCRA section 3010(b)(1), that this rule can be made effective in less than six months.

List of Subjects

40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 279

Conditionally exempt small quantity generator (CESQG), Environmental protection, Hazardous waste, Polychlorinated biphenyls (PCBs), Solid waste, Recycling, Response to releases, Used oil, Used oil specification.

Dated: April 20, 1998.

Carol Browner,

Administrator.

For the reasons set out in the preamble, Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

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

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

§ 261.5 [Amended]

2. Section 261.5(j) is amended by removing both phrases, ''if it is destined to be burned for energy recovery''.

§ 261.6 [Amended]

3. In § 261.6 paragraphs (a)(3)(iv)(A)–(C) are amended by revising the reference ''266.40(e)'' to read ''279.11''.

PART 279—STANDARDS FOR THE MANAGEMENT OF USED OIL

4. The authority citation for part 279 continues to read as follows:

Authority: Sections 1006, 2002(a), 3001 through 3007, 3010, 3014, and 7004 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6905, 6912(a), 6921 through 6927, 6930, 6934, and 6974); and Sections 101(37) and 114(c) of CERCLA (42 U.S.C. 9601(37) and 9614(c)).

5. Section 279.10 is amended by revising paragraph (i) to read as follows:

§ 279.10 Applicability.

* * * * *

(i) *Used oil containing PCBs.* Used oil containing PCBs (as defined at 40 CFR 761.3) at any concentration less than 50 ppm is subject to the requirements of this part. Used oil subject to the requirements of this Part may also be subject to the prohibitions and requirements found at 40 CFR Part 761, including § 761.20(d) and (e). Used oil containing PCBs at concentrations of 50 ppm or greater is not subject to the requirements of this part, but is subject to regulation under 40 CFR part 761.

6. Section 279.22 is amended by revising paragraph (d) to read as follows:

§ 279.22 Used oil storage.

* * * * *

(d) *Response to releases.* Upon detection of a release of used oil to the environment that is not subject to the requirements of part 280, subpart F of this chapter and which has occurred after the effective date of the recycled used oil management program in effect in the State in which the release is located, a generator must perform the following cleanup steps:

(1) Stop the release;

(2) Contain the released used oil;

(3) Clean up and manage properly the released used oil and other materials; and

(4) If necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.

7. Section 279.45 is amended by revising paragraph (h) to read as follows:

§ 279.45 Used oil storage at transfer facilities.

* * * * *

(h) *Response to releases.* Upon detection of a release of used oil to the environment that is not subject to the requirements of part 280, subpart F of this chapter and which has occurred after the effective date of the recycled used oil management program in effect in the State in which the release is located, the owner/operator of a transfer facility must perform the following cleanup steps:

(1) Stop the release;

(2) Contain the released used oil;

(3) Clean up and manage properly the released used oil and other materials; and

(4) If necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.

8. Section 279.54 is amended by revising paragraph (g) to read as follows:

§ 279.54 Used oil management.

* * * * *

(g) *Response to releases.* Upon detection of a release of used oil to the environment that is not subject to the requirements of part 280, subpart F of this chapter and which has occurred after the effective date of the recycled used oil management program in effect in the State in which the release is located, an owner/operator must perform the following cleanup steps:

(1) Stop the release;

(2) Contain the released used oil;

(3) Clean up and manage properly the released used oil and other materials; and

(4) If necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.

* * * * *

9. Section 279.64 is amended by revising paragraph (g) to read as follows:

§ 279.64 Used oil storage.

* * * * *

(g) *Response to releases.* Upon detection of a release of used oil to the environment that is not subject to the requirements of part 280, subpart F of this chapter and which has occurred after the effective date of the recycled used oil management program in effect in the State in which the release is located, a burner must perform the following cleanup steps:

(1) Stop the release;

(2) Contain the released used oil;

(3) Clean up and manage properly the released used oil and other materials; and

(4) If necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.

10. Section 279.74 is amended by revising paragraph (b) to read as follows:

§ 279.74 Tracking.

* * * * *

(b) *On-specification used oil delivery.* A generator, transporter, processor/re-refiner, or burner who first claims that used oil that is to be burned for energy recovery meets the fuel specifications under § 279.11 must keep a record of each shipment of used oil to the facility to which it delivers the used oil. Records for each shipment must include the following information:

(1) The name and address of the facility receiving the shipment;

(2) The quantity of used oil fuel delivered;

(3) The date of shipment or delivery; and

(4) A cross-reference to the record of used oil analysis or other information used to make the determination that the oil meets the specification as required under § 279.72(a).

* * * * *

[FR Doc. 98–11376 Filed 5–5–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 206

RIN 3067–AC67

Disaster Assistance; Public Assistance Program Appeals; Hazard Mitigation Grant Program Appeals

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Correction of final rule.

SUMMARY: This document corrects the final rule published on Wednesday, April 8, 1998 (63 FR 17108). The rule pertains to review and disposition of appeals related to Public Assistance grants and the Hazard Mitigation Grant Program.

EFFECTIVE DATE: May 8, 1998.

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, about HMGP appeals; or Melissa M. Howard, Response and Recovery Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3053, facsimile (202) 646–3304, about Public Assistance appeals.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency published a final rule on April 8, 1998 that changed from three to two the number of appeals allowed from decisions made about Public Assistance grants and the Hazard Mitigation Grant Program. As published the final rule contained two incorrect citations, the one in the Supplementary Information, and the other in the rule. In the Background statement of the Supplementary Information, the text read 44 CFR 202.206 and should have read 44 CFR 206.206. In the rule, § 206.206(e)(2) read 44 CFR 206.440 and should have read 44 CFR 206.206.

Accordingly, the final rule published as FR Doc. 98–9207 on April 8, 1998, 63 FR 17108, is corrected as follows:

(a) On page 17108, in the third column, under Supplementary Information, Background, in the first paragraph the second sentence is corrected to read as follows:

Background

* * * * *

Current FEMA regulations at 44 CFR 206.206 and 206.440 provide for a three-stage appellate process, with appeals directed to the Regional Director, the Associate Director, and to the Director.

* * * * *

(b) On page 17111, in the first column, § 206.206(e)(2) is corrected to read as follows:

§ 206.206 Appeals

* * * * *

(e) * * *

(2) Appeals pending from a decision of an Associate Director/Executive Associate Director before May 8, 1998 may be appealed to the Director in accordance with 44 CFR 206.206 as it existed before May 8, 1998 (44 CFR, revised as of October 1, 1997).

* * * * *

Dated: April 28, 1998.

James L. Witt,

Director.

[FR Doc. 98–12007 Filed 5–5–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket Nos. 94–76, 94–77, and 95–51, RMs–8470, 8477, 8523, 8524, and 8591]

Radio Broadcasting Services; Chester, Shasta Lake City, Alturas, McCloud, Weaverville, and Shingletown, California.

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: The Commission denied the petitions for reconsideration, filed by JAYNE sawyer d/b/a m. JAYNE enterprises of the *Report and Order* in MM Dockets No. 94–76 and 94–77, 61 FR 24242, published May 14, 1996, and of the *Report and Order* in MM Docket 95–51, 61 FR 40746, published August 6, 1996. It also affirms both *Report and Orders* and their respective allotting of FM channels to six California communities, which accommodated all requests for FM channels made by each of the petitioners for rule making. With this action, the proceeding is terminated.

EFFECTIVE DATE: May 6, 1998.

FOR FURTHER INFORMATION CONTACT: J. Bertron Withers, Jr., Mass Media Bureau, (202) 418–2180.

SUPPLEMENTAL INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order*, MM Docket Nos. 94–76, 94–77, and 95–51, adopted April 15, 1998 and released April 24, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Charles W. Logan,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–11950 Filed 5–5–98; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 660

[Docket No.971229312–7312–01; I.D. 042398C]

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Trip Limit Increases

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

ACTION: Fishing restrictions; request for comments.

SUMMARY: NMFS announces changes to the restrictions to the Pacific Coast groundfish limited entry and open access fisheries for widow rockfish, yellowtail rockfish, Dover sole, thornyheads, and sablefish (taken with trawl or fixed gear); and in the open access fishery for bocaccio taken with hook-and-line or pot gear, and for thornyheads caught in the pink shrimp trawl fishery. These restrictions are intended to extend the fisheries as long as possible during the year and to keep landings within the 1998 harvest guidelines (HGs) and allocations for these species. This document also corrects an error in the annual specifications and management measures for the Pacific Coast fishery published January 6, 1998.

DATES: Effective 0001 hours local time (l.t.) May 1, 1998, except for the trip limit for vessels operating in the ''B'' platoon, which will become effective at 0001 hours l.t. May 16, 1998. Effective at 0001 hours l.t. May 3, 1998, for vessels operating in the limited entry, fixed gear sablefish fishery south of 36° N. lat. These changes are in effect, unless modified, superceded or rescinded, until the effective date of the 1999 annual specifications and management measures for the Pacific Coast Groundfish fishery, which will be published in the **Federal Register**. Comments will be accepted through May 21, 1998.

ADDRESSES: Submit comments to William Stelle, Jr., Administrator, Northwest Region (Regional Administrator), NMFS, 7600 Sand Point Way NE., BIN C15700, Bldg. 1, Seattle, WA 98115–0070; or William Hogarth, Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: William L. Robinson, Northwest Region, NMFS, 206–526–6140; or Svein Fougner, Southwest Region, NMFS, 562–980–4040.

SUPPLEMENTARY INFORMATION: The following changes to current management measures were recommended by the Pacific Fishery Management Council (Council), in consultation with the States of Washington, Oregon, and California, at its April 6 to 10, 1998, meeting in Portland, OR.

Increases to Limited Entry 2-Month Cumulative Limits

El Nino climate changes have created unusually severe winter weather conditions off the Pacific Coast. Hazardous weather has led to lower groundfish landings than the Council had expected when it recommended the 1998 limited entry cumulative trip limits at its November 1997 meeting. Preliminary landing estimates for the first quarter of 1998 indicate, that if the fishery were to continue under current restrictions, the groundfish fleet would not achieve the HGs or allocations for several of the groundfish species managed with cumulative trip limits. For this reason, the Council recommended at its April 1998 meeting to raise the 2-month cumulative trip limits by 20 percent for some of the major groundfish species landed by the limited entry fishery, which also results in increases to the 60 percent limits in the limited entry fishery and to the 50 percent limits in the open access fishery. (For more information, see

annual specifications at 63 FR 419, January 6, 1998.) The adjusted trip limits are calculated to provide a year-long fishing opportunity. Pacific coast groundfish landings will be monitored throughout the year, and further adjustments to the cumulative trip limits will be made as necessary.

Widow Rockfish

The limited entry fishery for widow rockfish currently is managed under a 2-month cumulative trip limit of 25,000 lb (11,340 kg). The best available information at the April 1998 Council meeting indicated that 464 mt of widow rockfish had been taken through March 31, 1998, and that the 4,276 mt HG would not be met by the end of 1998 at the current cumulative trip limit level. Therefore, the Council recommended for the above reasons that the 2-month cumulative trip limit for widow rockfish be increased coastwide on May 1, 1998, to 30,000 lb (13,608 kg).

The Sebastes Complex (Including Yellowtail Rockfish, Canary Rockfish, and Bocaccio)

The limited entry fishery for the *Sebastes* complex currently is managed under 2-month cumulative trip limits of yellowtail rockfish (north of Cape Mendocino), 11,000 lb (4,990 kg); canary rockfish (coastwide), 15,000 lb (6,804 kg), and bocaccio (south of Cape Mendocino), 2,000 lb (907 kg). The overall 2-month cumulative trip limit for the *Sebastes* complex north of Cape Mendocino is 40,000 lb (18,144 kg). South of Cape Mendocino, the *Sebastes* complex 2-month cumulative trip limit is 150,000 lb (68,039 kg). The best available information at the April 1998 Council meeting indicated that 259 mt of yellowtail rockfish had been taken through March 31, 1998, and that the HG for yellowtail rockfish would not be met by the end of 1998 at the current cumulative trip limit levels. Therefore, the Council recommended that the 2-month cumulative trip limit for yellowtail rockfish landed north of Cape Mendocino be increased on May 1, 1998, to 13,000 lb (5,897 kg). The 40,000 lb (18,144 kg) cumulative limit for the *Sebastes* complex north of Cape Mendocino will not increase.

DTS Complex (Dover Sole, Thornyheads, and Trawl-caught Sablefish)

The limited entry fishery for the Dover sole, thornyheads, and trawl-caught sablefish (DTS complex) is managed under 2-month cumulative trip limits of Dover sole, 18,000 lb (8,165 kg); longspine thornyheads, 10,000 lb (4,536 kg); shortspine thornyheads, 4,000 lb (1,814 kg), and trawl-caught sablefish, 5,000 lb (2,268 kg). There is an overall DTS complex 2-month cumulative trip limit of 37,000 lb (16,783 kg). The best available information at the April 1998 Council meeting indicated that 292 mt of trawl-caught sablefish, 1,678 mt of Dover sole, 361 mt of longspine thornyheads, and 178 mt of shortpine thornyheads had been taken through March 31, 1998. Landing levels for each of these species are well below November 1997 projections for landings in this fishery during the January through March 1998 period. Therefore, the Council recommended increasing the 2-month cumulative limits within the DTS complex on May 1, 1998 to: Dover sole, 22,000 lb (9,979 kg); longspine thornyheads, 12,000 lb (5,443 kg); shortspine thornyheads 5,000 lb (2,268 kg), and; trawl-caught sablefish, 6,000 lb (2,722 kg).

At the April 1998 Council meeting, the Council's Enforcement Consultants also noted that having an overall cumulative limit for the DTS complex could lead to double prosecutions where fishers are cited for both exceeding the cumulative trip limit of a species within the DTS complex and for exceeding the overall DTS complex cumulative trip limit. For this reason, and because the Council saw no merit in retaining an overall DTS complex limit that equals the sum of the cumulative trip limits of the species in the complex, the Council recommended removing the overall DTS complex cumulative limit from the annual specifications and management measures.

Changes to Limited Entry and Open Access Fixed Gear Limits for Sablefish, North and South of 36°00' N. lat.

Limited Entry North of 36°00 N. Lat.

The limited entry, fixed gear sablefish fishery is managed with a short, intense primary season consisting of two openings (regular and mop-up), during which the majority of the limited entry, fixed gear sablefish allocation is taken for the year. Outside the regular and mop-up seasons, there is a small daily trip limit fishery to allow fixed gear vessels to make incidental sablefish landings throughout the year. Currently, the limited entry, fixed gear sablefish fishery north of 36°00' N. lat. is managed with a 300–lb (136–kg) daily trip limit and a cumulative limit of 1,500 lb (680 kg) per 2-month period (excluding any harvest in the regular or mop-up seasons). As with the limited entry trawl fisheries, landings have been low in this fishery due to the severe winter weather. For this reason, the Council recommended increasing the limited entry, fixed gear cumulative limit to 1,800 lb (816 kg) per 2-month period, beginning on May 1, 1998, but retaining the 300 lb (136 kg) daily limit.

Limited Entry South of 36° N. Lat.

The limited entry, fixed gear fishery for sablefish south of 36° N. lat. is currently managed with a daily trip limit of 350 lb (159 kg). There is no cap on the amount of sablefish that can be landed under the daily trip limit in the area south of 36° N. lat. At the April 1998 Council meeting, fixed gear fishers who take sablefish south of 36° N. lat. asked the Council to reinstate a management measure from 1997, where a vessel was allowed to choose to either land up to 350 lb (159 kg) per day or to make one landing per week above 350 lb (159 kg) but not to exceed 1,050 lb (476 kg). This choice of limits was successful in 1997 as it did not result in increased fishing pressure and allowed fish to be landed that otherwise would have been discarded. The Council recognized that this measure would allow greater flexibility for fixed gear fishers who target groundfish on fishing trips of several days in duration, but that it would not be so liberal as to allow fishers to exceed the 425 mt HG for this area. Therefore, the Council recommended allowing limited entry fixed gear fishers landing sablefish south of 36° N. lat to choose each week whether to make landings of sablefish of up to 350 lb (159 kg) per day or to make a single landing exceeding 350 lb (159 kg), but not to exceed 1,050 lb (476 kg), beginning on May 3, 1998. For the purposes of this measure, a week is 7 consecutive days, from 0001 hours l.t. Sunday through 2400 hours l.t. Saturday. The projected limited entry and open access sablefish landings in the area south of 36° N. lat. will be monitored throughout the year. This weekly landing option may be revised or rescinded if projected landings for the area south of 36° N. lat. increase to a level where it is anticipated that the HG would be achieved before the end of the year. Because this measure offers an option for fishers to make a single large landing within a week that begins at 0001 hours l.t. on Sunday, this measure will not take effect until May 3, 1998, at 0001 hours l.t.

Open Access North of 36° N. Lat.

Currently, the open access, fixed gear sablefish fishery north of 36°00' N. lat. is managed with a 300–lb (136–kg) daily trip limit and a cumulative limit of 600 lb (171 kg) per 2-month period (excluding any harvest in the regular or

mop-up seasons). As with the limited entry, fixed gear fishery for sablefish, landings have been low in this fishery due to the severe winter weather. For this reason, the Council recommended increasing the open access, fixed gear cumulative limit to 700 lb (318 kg) per 2-month period, beginning on May 1, 1998. This change is unusual because it does not allow another full daily trip limit to be landed within the 2-month period, although it does reflect the Council's intent to retain the incidental harvest character of open access sablefish landings. The Council determined that, while the pace of open access sablefish landings in the January-March 1998 period had been slow enough to allow an increase in the cumulative limit level, there was not enough sablefish in the open access allocation north of 36° N. lat. to increase the 2-month cumulative limit to 900 lb (408 kg), which would accommodate another complete daily trip limit.

Groundfish Other Than Sablefish Taken in Open Access Fisheries

Bocaccio Taken by Hook-and-Line or Pot Gear

Landings in the open access fishery for yellowtail, canary rockfish, bocaccio, and the *Sebastes* complex as a whole are constrained by the 50–percent monthly limit, which counts toward the open access limit for rockfish. However, there are additional restrictions specific to hook-and-line or pot gear landing rockfish in the open access fishery that include (1) a 10,000 lb (4,536 kg) limit of rockfish per vessel per fishing trip, and (2) south of Cape Mendocino, a 1-month cumulative trip limit for bocaccio of 1,000 lb (454 kg) (the 50 percent monthly trip limit), and a per trip limit of 250 lb (113 kg) of bocaccio. At the April 1998 Council meeting, the Council recommended to increase the per trip limit for bocaccio to 500 lb (227 kg) on May 1, 1998, to reduce discards for those fishers whose incidental bocaccio catch exceeds 250 lb (113 kg). The 1-month cumulative limit of 1,000 lb (454 kg) would remain in place.

Thornyheads Landed in the Pink Shrimp Trawl Fishery Open access. Currently, a vessel engaged in fishing for pink shrimp may land, per trip, up to 500 lb (227 kg) of groundfish, multiplied by the number of days of the fishing trip, and with a daily trip limit of 300 lb (136 kg) for sablefish coastwide and a daily trip limit of 50 lb (23 kg) for thornyheads landed south of Pt. Conception. The daily trip limits for sablefish and thornyheads may not be multiplied by the number of days of the fishing trip. No open access landings of thornyheads currently are allowed north of Pt. Conception. At the April 1998 Council meeting, the Oregon Department of Fish and Wildlife (ODFW) noted that the prohibition on landing thornyheads north of Pt. Conception is leading to thornyhead discards in the pink shrimp trawl fishery. ODFW further noted that, under a 100 lb (45 kg) trip limit, only 2 mt of shortspine thornyheads would be landed, accounting for 94 percent of the shortspine thornyheads that currently are caught and discarded due to the prohibitions against landing thornyheads in the pink shrimp fishery. Therefore, the open access shortspine thornyhead allocation of 3 mt would not be exceeded if vessels fishing for pink shrimp were allowed to land thornyheads under a limit of 100 lb (45 kg) per trip. Therefore, the Council recommended setting a limit of 100 lb (45 kg) per trip for vessels engaged in fishing for pink shrimp, which would be counted against the overall groundfish trip limit, beginning on May 1, 1998. The 100 lb (45 kg) per trip limit for thornyheads would not be multiplied by the number of days in the fishing trip.

In rule document 97–34234, on page 440, in the issue of January 6, 1998 (63 FR 419), make the following correction:

1. In the first column, in paragraph (A), in the tenth line, ''(V.A.(1)(c)(i)do not apply'') should read ''(IV.A.(1)(c)(i) do not apply'').

NMFS Action

For the reasons stated above, NMFS concurs with the Council's recommendations and announces the following changes to the 1998 annual management measures (63 FR 419, January 6, 1998 as amended). The trip limit changes for the limited entry fishery may also affect the open access fishery, including exempt trawl gear used to harvest pink shrimp and prawns, California halibut, and sea cucumbers. As stated in paragraph III. of the annual management measures: ''[A] vessel operating in the open access fishery, besides being constrained by specific open access limits, must not exceed in any calendar month 50 percent of any 2-month cumulative trip limit for the same area in the limited entry fishery, called the ''50–percent monthly limit.'' The annual management measures are modified as follows:

1. In section IV, under B. *Limited Entry Fishery*, paragraphs B.(i); (2)(b) and (2)(c); (4)(c)(i) and (ii); (4)(d)(ii)(A) and (4)(d)(ii)B are revised to read as follows:

B. Limited Entry Fishery

(1) *Widow Rockfish* (commonly called brownies). The cumulative trip limit for widow rockfish is 30,000 lb (13,608 kg) per vessel per 2-month period. The 60–percent monthly limit, which is the maximum amount of widow rockfish that may be taken and retained, possessed, or landed in either month in a 2-month period, is 18,000 lb (8,165 kg).

* * * * *

(2) * * *

(b) *Cumulative trip limits*. The cumulative trip limit for the *Sebastes* complex is 40,000 lb (18,144 kg) north of Cape Mendocino or 150,000 lb (68,039 kg) south of Cape Mendocino, per vessel per 2-month period. Within the cumulative trip limit for the *Sebastes* complex, no more than 13,000 lb (5,897 kg) may be yellowtail rockfish taken and retained north of Cape Mendocino, no more than 2,000 lb (907 kg) may be bocaccio taken and retained south of Cape Mendocino, and no more than 15,000 lb (6,804 kg) may be canary rockfish.

(c) The 60–percent monthly limits, which are the maximum amounts that may be taken and retained, possessed, or landed in either month in a 2-month period, are: For the *Sebastes* complex, 24,000 lb (10,866 kg) north of Cape Mendocino, and 90,000 lb (40,823 kg) south of Cape Mendocino; for yellowtail rockfish, 7,800 lb (3,538 kg) north of Cape Mendocino; for bocaccio, 1,200 lb (5,443 kg) south of Cape Mendocino; and for canary rockfish coastwide, 9,000 lb (4,082 kg).

* * * * *

(4) * * *

(c) * * *

(i) The 2-month cumulative trip limits for species in the Dover sole, thornyheads, and trawl-caught sablefish complex are: for Dover sole, 22,000 lb (9,979 kg); for longspine thornyheads, 12,000 lb (5,443 kg); for shortspine thornyheads, 5,000 lb (2,268 kg); for trawl-caught sablefish, 6,000 lb (2,722 kg).

(ii) The 60–percent monthly limits, which are the maximum amounts that may be taken and retained, possessed or landed in either month in a 2-month period, are: for trawl-caught sablefish, 3,600 lb (1,633 kg); for Dover sole, 13,200 lb (5,987 kg); for longspine thornyheads, 7,200 lb (3,266 kg); and for shortspine thornyheads, 3,000 lb (1,361 kg).

* * * * *

(d) * * *

(ii) * * *

(A) The daily trip limit for sablefish taken and retained with nontrawl gear

north of 36° N. lat. is 300 lb (136 kg), which counts toward a cumulative trip limit of 1,800 lb (816 kg) per 2 month period. (Landings from the regular or mop-up seasons do not count toward this cumulative limit, and the 60–percent monthly limits described at paragraph IV.A.(1)(c)(i) do not apply.)

(B) The daily trip limit for sablefish taken and retained with nontrawl gear south of 36° N. lat. is (1) 350 lb (159 kg) with no cumulative limit on the amount of sablefish that may be retained in a month; or (2) one landing of sablefish per week above 350 lb (159 kg) but not to exceed 1,050 lb (476 kg). A week is 7 consecutive days, from 0001 hours l.t. Sunday through 2400 hours l.t. Saturday.

* * * * *

2. In section IV, under C. *Trip limits in the Open Access Fishery*, the following paragraphs: C.(1)(a)(i),(ii), and (iv)(A); the first two sentences of (1)(b)(i); paragraphs (2)(a)(i) and (2)(b); and paragraphs (4) and (5) introductory text and (5) (a) are revised to read as follows.

C. Trip Limits in the Open Access Fishery

* * * * *

(1) * * *

(a) * * *

(i) *Thornyheads*. Thornyheads (shortspine and longspine) may not be taken and retained, possessed, or landed north of Pt. Conception, the daily trip limit for thornyheads is 100 lb (45 kg) for vessels engaged in fishing for pink shrimp. South of Pt. Conception, the daily trip limit for thornyheads is 50 lb (23 kg). (The 50–percent monthly limit is not relevant for thornyheads taken in the open access fishery because it is much larger than the amount that could be taken under daily trip limits.)

(ii) *Widow rockfish*. The 50–percent monthly limit for widow rockfish is 15,000 lb (6,804 kg).

* * * * *

(iv) * * *

(A) *Yellowtail rockfish*. The 50–percent monthly limit for yellowtail rockfish is 6,500 lb (2,948 kg).

* * * * *

(b)* * *

(i) *Hook-and-line or pot gear*: 10,000 lb (4,536 kg) of rockfish per vessel per fishing trip, of which no more than 500 lb (227 kg) may be bocaccio taken and retained south of Cape Mendocino. As stated in paragraph IV.C (1) (iv)(B) above, no more than 1,000 lb (454 kg) cumulative per month may be bocaccio taken and retained south of Cape Mendocino. * * *

* * * * *

(2) * * *

(a) * * *

(i) *North of 36°00' N. lat*. North of 36°00' N. lat., the daily trip limit for sablefish is 300 lb (136 kg), which counts toward a cumulative trip limit of 700 lb (318 kg) per 2-month period. The 2-month cumulative trip limit may be taken at any time during the 2-month period; there is no 60–percent monthly limit for the open access fishery.

* * * * *

(b) *Exempted trawl gear*. The 50–percent monthly limit of 3,000 lb (1,361 applies to sablefish taken and retained with exempted trawl gear.

* * * * *

(4) *Dover sole*. The 50–percent monthly trip limit for Dover sole is 11,000 lb (4,990 kg), and applies to all open access gear.

(5) *Groundfish taken by shrimp or prawn trawl*. The daily trip limits, which count toward the trip limit for groundfish, are: For sablefish coastwide, 300 lb (136 kg); and for thornyheads south of Pt. Conception, 50 lb (23 kg). The limits in paragraphs IV.C(1)(a), (2)(b), (3), and (4) also apply.

(a) *Pink shrimp*. The trip limit for a vessel engaged in fishing for pink shrimp is 500 lb (227 kg) of groundfish. multiplied by the number of days of the fishing trip. The daily trip limits for sablefish and thornyheads may not be multiplied by the number of days of the fishing trip. North of 36° N. lat., a trip limit of 100 lb (45 kg) of thornyheads also applies, which may not be multiplied by the number of days of the fishing trip, and is counted toward the groundfish trip limit.

* * * * *

Classification

These actions are authorized by the regulations implementing the Pacific Coast Groundfish Fishery Management Plan. The determination to take these actions is based on the most recent data available. The aggregate data upon which the determinations are based are available for public inspection at the office of the Administrator, Northwest Region, NMFS (see **ADDRESSES**) during business hours. Because of the need for immediate action to implement these changes at the beginning of the May through June 2-month cumulative limit period and because the public had an opportunity to comment on the action at the April 1998 Council meeting, NMFS has determined that good cause exists for this document to be published without affording a prior opportunity for public comment or a 30-day delayed effectiveness period. These actions are taken under the authority of 50 CFR 660.323 (b)(1), and are exempt from review under E.O. 12866.

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

Dated: April 30, 1998.

Gary C. Matlock,

Director, Office of Sustainable Fisheries.

[FR Doc. 98–11964 Filed 5–1–98; 3:28 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 980429110–8110–01; I.D. 042398B]

RIN 0648–AK25

Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; 1998 Management Measures

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

ACTION: Annual management measures for the ocean salmon fishery; request for comments.

SUMMARY: NMFS establishes fishery management measures for the ocean salmon fisheries off Washington, Oregon, and California for 1998 and 1999 salmon seasons opening earlier than May 1, 1999. Specific fishery management measures vary by fishery and by area. The measures establish fishing areas, seasons, quotas, legal gear, recreational fishing days and catch limits, possession and landing restrictions, and minimum lengths for salmon taken in the exclusive economic zone (3–200 nautical miles) off Washington, Oregon, and California. These management measures are intended to prevent overfishing and to apportion the ocean harvest equitably among treaty Indian and non-treaty commercial and recreational fisheries. The measures are also intended to allow a portion of the salmon runs to escape the ocean fisheries in order to provide for spawning escapement and inside fisheries.

DATES: Effective from 0001 hours Pacific Daylight Time (P.d.t.), May 1, 1998, until the effective date of the 1999 management measures, as published in the **Federal Register**. Comments must be received by May 15, 1998.

ADDRESSES: Comments on the management measures and the related

environmental assessment (EA) may be sent to William Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way N.E., Seattle, WA 98115–0070; or William Hogarth, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213. Copies of the EA and other documents cited in this document are available from Larry Six, Executive Director, Pacific Fishery Management Council, 2130 S.W. Fifth Ave., Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: William Robinson at 206–526–6140, or Svein Fougner at 562–980–4040.

SUPPLEMENTARY INFORMATION:

Background

The ocean salmon fisheries off Washington, Oregon, and California are managed under a ''framework'' fishery management plan entitled the Pacific Coast Salmon Plan (FMP). Regulations at 50 CFR part 660, subpart H, provide the mechanism for making preseason and inseason adjustments to the management measures, within limits set by the FMP, by notification in the **Federal Register**.

These management measures for the 1998 and pre-May 1999 ocean salmon fisheries were recommended by the Pacific Fishery Management Council (Council) at its April 6 to 10, 1998, meeting.

Schedule Used To Establish 1998 Management Measures

In accordance with the FMP, the Council's Salmon Technical Team (STT) and staff economist prepared several reports for the Council, its advisors, and the public. The first report, ''Review of 1997 Ocean Salmon Fisheries,'' summarizes the 1997 ocean salmon fisheries and assesses how well the Council's management objectives were met in 1997. The second report, ''Preseason Report I Stock Abundance Analysis for 1998 Ocean Salmon Fisheries'' (PRE I), provides the 1998 salmon stock abundance projections and analyzes the impacts on the stocks and Council management goals if the 1997 regulations or regulatory procedures were applied to the 1998 stock abundances.

The Council met from March 9 to 13, 1998, in Millbrae, CA, to develop proposed management options for 1998. Three commercial and three recreational fishery management options were proposed for analysis and public comment. These options presented various combinations of management measures designed to protect numerous weak stocks of coho and chinook salmon and to provide for ocean harvests of more abundant stocks. After the March Council meeting, the STT and Council staff economist prepared a third report, ''Preseason Report II Analysis of Proposed Regulatory Options for 1998 Ocean Salmon Fisheries'' (PRE II), which analyzes the effects of the proposed 1998 management options. This report also was made available to the Council, its advisors, and the public.

Public hearings on the proposed options were held on March 30, 1998 in Westport, WA, North Bend, OR, and Moss Landing, CA; on March 31, 1998 in Tillamook, OR and Eureka, CA; and on April 1, 1998 in Sacramento, CA.

The Council met on April 6 to 10, 1998, in Portland, OR, to adopt its final 1998 recommendations. Following the April Council meeting, the STT and Council staff economist prepared a fourth report, ''Preseason Report III Analysis of Council-Adopted Management Measures for 1998 Ocean Salmon Fisheries'' (PRE III), which analyzes the environmental and socio-economic effects of the Council's final recommendations. This report also was made available to the Council, its advisors, and the public.

Resource Status

Aside from salmon species listed and proposed for listing under the Endangered Species Act (ESA) discussed below, the primary resource concerns are for Klamath River fall chinook, lower Columbia River fall chinook stocks, Oregon coastal natural coho, and Washington coastal and Puget Sound natural coho. Management of all of these stocks is affected by interjurisdictional agreements among tribal, State, Federal, and/or Canadian managers.

Chinook Salmon Stocks

California Central Valley fall chinook stocks are abundant compared to other chinook stocks of the Pacific coast. The Central Valley Index of abundance of combined Central Valley chinook stocks is projected to be 1,051,000 for 1998, the highest ever predicted and about the same as the postseason estimate of the index for 1997 (PRE I, February 1998). The spawning escapement of Sacramento River adult fall chinook was 323,900 adults in 1997 (PRE III, May 1998), well above the escapement goal range of 122,000 to 180,000 adult spawners.

Winter chinook from the Sacramento River are listed under the ESA as an endangered species (59 FR 440, January 4, 1994). The 1997 spawning run size was estimated to be approximately 480 adults, 3.1 times the estimated 1994 adult escapement. Neither preseason nor postseason estimates of ocean abundance are available for winter chinook; however, the run is expected to remain depressed in 1998 (PRE I).

Klamath River fall chinook ocean abundance is projected to be 126,600, age-3 and age-4, fish at the beginning of the fishing season. The abundance forecast is 19 percent below the 1997 pre-season abundance estimate and 49 percent below the average of post-season estimates for 1988–1997 (PRE I). The spawning escapement goal for the stock is 33 to 34 percent of the potential natural adults, but no fewer than 35,000 natural spawners (fish that spawn outside of hatcheries). The natural spawning escapement in 1997 was 46,000 adults (PRE III).

Oregon coastal chinook stocks include south-migrating and localized stocks primarily from southern Oregon streams and north-migrating chinook stocks which generally originate in central and northern Oregon streams. Abundance of south-migrating and localized stocks is expected to be similar to the levels observed in 1997 (PRE I). These stocks are important contributors to ocean fisheries off Oregon and northern California. The generalized expectation for north-migrating stocks is for an above-average abundance of age-5 fish and a below-average abundance of age-3 and age-4 fish (PRE I). These stocks contribute primarily to ocean fisheries off British Columbia and Alaska. It is expected that the aggregate Oregon coastal chinook spawning escapement goal of 150,000 to 200,000 naturally spawning adults will be met in 1998 (PRE I).

Estimates of Columbia River chinook abundance vary by stock as follows:

(1) *Upper Columbia River spring and summer chinook.* Numbers of upriver spring chinook predicted to return to the river in 1998 are 36,200 fish, less than one-third of the 1997 return of 114,100 adult fish (PRE I). The 1998 forecast indicates a return to recent year escapement levels and the continued depressed status of this stock. In recent years, the natural component of this stock generally has comprised less than one-third of the upriver spring chinook run, compared to approximately 70 percent of the run when the original escapement goal was developed. The 1997 return of 114,100 fish was at least two-thirds of hatchery origin. The natural stock component remains severely depressed, with Snake River spring/summer chinook listed as threatened under the ESA. The 1997 return of 28,000 adult summer chinook

was 68 percent above the preseason expectation and the largest return since 1990 (PRE III). Expected ocean escapement of adult upriver summer chinook is 11,200 adult fish (PRE III). The 1998 stock status remains extremely depressed, with a forecast return of 11,200 fish being only 14 percent of the lower end of the spawning escapement goal range of 80,000 to 90,000 adults counted at Bonneville Dam. Upriver summer chinook migrate to the far north and are not a major contributor to ocean fisheries off Washington and Oregon. Snake River spring and summer chinook are listed as threatened under the ESA (57 FR 14653, April 22, 1992).

(2) *Willamette River spring chinook.* Willamette River spring chinook returns are projected to be 32,800 fish, close to the 1997 return of 34,300 fish (PRE I), and the fifth consecutive year that the adult return is less than 50,000 fish. Lower Columbia River spring chinook stocks are important contributors to Council area fishery catches north of Cape Falcon; Willamette River spring chinook stocks generally contribute to Canadian and Alaskan ocean fisheries.

(3) *Columbia River fall chinook.* Abundance estimates are made for five distinct fall chinook stock units, as follows:

(a) Upriver bright fall chinook ocean escapement is expected to be 141,800 adults, 15 percent below the 1997 observed return of 167,900 adults (PRE III). This stock has a northern ocean migratory pattern and constitutes less than 10 percent of Council area fisheries north of Cape Falcon.

(b) Lewis River wild chinook ocean escapement is forecast at 7,000 adults, 49 percent below the 1997 run size of 13,800 adults (PRE III).

(c) Lower river hatchery (Tules) fall chinook ocean escapement is forecast at 22,500 adults, 60 percent below the 1997 observed return of 56,700 adults (PRE III). This stock has declined sharply since the record high return in 1987. Lower Columbia River fall chinook stocks normally account for more than half the total catch in Council area fisheries north of Cape Falcon, with lower river hatchery fall chinook being the single largest contributing stock.

(d) Spring Creek hatchery (Tules) fall chinook ocean escapement is projected to be 14,200 adults, 44 percent below the 1997 observed return of 25,200 adults (PRE III). The Spring Creek hatchery fall chinook stock generally has been rebuilding slowly since the record low return in 1987, but this year's projection of 14,200 adults is very low.

(e) Mid-Columbia bright fall chinook ocean escapement is projected to be 44,900 adults, 21 percent below the 1997 return of 57,000 adults (PRE III).

(4) *Snake River wild fall chinook.* Snake River wild fall chinook are listed under the ESA as a threatened species (57 FR 14653, April 22, 1992). Information on the stock's ocean distribution and fishery impacts are not available. Attempts to evaluate fishery impacts on Snake River fall chinook have used the Lyons Ferry Hatchery stock to represent Snake River wild fall chinook. The Lyons Ferry stock is widely distributed and harvested by ocean fisheries from southern California to Alaska.

Washington coastal and Puget Sound chinook generally migrate to the far north and are affected insignificantly by ocean harvests from Cape Falcon to the U.S.-Canada border.

Coho Salmon Stocks

There are indications that the 1997 preseason abundance predictors for coho were optimistic, because they did not anticipate abnormally low marine survival associated with the current El Niño event. Postseason estimates of abundance for Columbia River, Washington Coastal, and Puget Sound stocks were substantially below expectations after allowances for lower than anticipated impacts by ocean fisheries were considered.

Impacts on growth and survival prior to the fall of 1997 returns were automatically incorporated into sibling-based predictors currently employed for several stocks. For instance, jack returns for most Columbia River chinook and coho stocks were at, or near, record low levels, and fish condition was noticeably poor. During the 1982–1983 El Niño, the STT incorporated an adjustment factor in anticipation of abnormally high over-winter mortality with widely varying success. The STT considered and rejected incorporating a 1998 adjustment factor to compensate for abnormally high over-winter mortality that may result from the current El Niño event. The current El Niño developed more rapidly and at different times than previous events so there is a general lack of information that can be usefully employed to quantify the degree to which adjustments should be made to the estimates of survival of salmon stocks. The STT, however, was of the opinion that the abundance forecasts presented for this season's report for coho and Columbia River chinook stocks could likely prove to be optimistic.

Central California coast coho and southern Oregon/northern California coast coho are listed as threatened species under the ESA (61 FR 56138, October 31, 1996, and 62 FR 24588, May 6, 1997). Coho populations in California have not been monitored closely in the past, and no forecasts of the ocean abundance of listed coho originating from California are available; these runs have been generally at low abundance levels for many years.

Oregon coastal and Columbia River coho stocks are the primary components of the Oregon Production Index (OPI), an annual index of coho abundance from Leadbetter Point, WA, to the U.S.-Mexico border. The 1998 OPI is forecast to be 136,500 coho, 71 percent below the 1997 preseason forecast of 463,800 coho, and 44 percent below the 1997 observed level of 243,400 coho (PRE I). The 1998 estimate for OCN is 47,200 coho, 45 percent below the 1997 preseason forecast of 86,400 coho, and 70 percent above the 1997 observed level of 27,800 coho (PRE I). The 1997 spawning escapement of the OCN stock was 27,800 fish, the smallest for at least the last 5 years.

Most Washington coastal natural coho stocks and Puget Sound combined natural coho stocks are expected to be less abundant in 1998 than forecast in 1997. The 1998 Willapa Bay hatchery total ocean stock abundance forecast is 20,800 adults, approximately 71 percent less than 1997 (PRE I). The prediction is based upon an average terminal area return per release (1992–1997) adjusted by a mean jack return rate for the same brood years. Willapa Bay coho production is predominately hatchery origin, and until 1998, only hatchery abundance was predicted. This year, the estimate of natural coho is 3,300. The estimate of Grays Harbor natural stock ocean abundance for 1998 is 30,100 adults, an increase of 15 percent from the 1997 preseason expected abundance (PRE I). The estimate of hatchery stock ocean abundance is 25,600 adults, a decrease of 75 percent from the preseason 1997 estimate (PRE I). The Quinault natural coho ocean run size is 6,500 fish, an increase of 225 percent from the 1997 projected level (PRE I). The Quinault hatchery coho ocean run size is forecast at 3,900 fish, a decrease of 24 percent compared to the 1997 level (PRE I). The Queets natural coho ocean run size is 4,200 fish, a decrease of 2 percent from the 1997 projected level (PRE I). The Queets hatchery coho ocean run size is forecast at 4,600 fish, a decrease of 71 percent compared to the 1997 level (PRE I). The Hoh River natural coho ocean run size is 3,400 fish, an increase of 21 percent from the 1997 projected level (PRE I). There is no hatchery production projected for the Hoh system for 1998. The 1998 forecast abundance of Quillayute River natural

and hatchery components are 10 percent and 52 percent, respectively, below the 1997 forecast levels (PRE I).

Pink Salmon Stocks

Major pink salmon runs return to the Fraser River and Puget Sound only in odd-numbered years. In 1997, abundance was 8.2 million Fraser River pink salmon, Puget Sound pink salmon abundance is not yet available.

Management Measures for 1998

The Council recommended allowable ocean harvest levels and management measures for 1998 designed to apportion the burden of protecting the weak stocks previously discussed equitably among ocean fisheries and to allow maximum harvest of natural and hatchery runs surplus to inside fishery and spawning needs. NMFS finds the Council's recommendations responsive to the goals of the FMP, the requirements of the resource, and the socio-economic factors affecting resource users. The recommendations are consistent with the requirements of the Magnuson-Stevens Act and other applicable law, including the ESA and U.S. obligations to Indian tribes with Federally recognized fishing rights. Accordingly, NMFS hearby adopts them.

North of Cape Falcon, Oregon, the management measures implement the smallest chinook and coho quotas since 1994 to protect depressed Washington coastal, Puget Sound, and Oregon Coastal Natural (OCN) coho stocks. South of Cape Falcon, the retention of coho is prohibited for the fourth consecutive year, and chinook fisheries are constrained primarily to meet the Klamath River fall chinook natural spawner escapement floor and ESA standards for Sacramento River winter chinook. These constraints also limit impacts on threatened Snake River fall chinook, Southern Oregon/Northern California Coast coho, and Central California coho. Size limit, gear, and seasonal restrictions are intended to reduce harvest impacts on endangered Sacramento River winter chinook. The management measures include a small selective recreational fishery for marked hatchery coho in the ocean off the mouth of the Columbia River.

A. South of Cape Falcon

In the area south of Cape Falcon, the management measures in this rule reflect primarily the need to achieve the minimum spawning escapement goal floor for Klamath River fall chinook and the ESA requirements for Sacramento River winter chinook, southern Oregon/northern California coast coho and central California coast coho.

Since completion of the April 30, 1997, supplement to the March 8, 1996, opinion, NMFS has listed four populations of steelhead as threatened under the ESA (62 FR 43937, August 18, 1997, and 63 FR 13347, March 19, 1998) and proposed seven populations of chinook for listing (63 FR 11482, March 9, 1998). In a March 4, 1998, letter to the Council, NMFS provided guidance on protective measures for listed species for the 1998 season. NMFS required that Council fisheries be managed so that the total ocean exploitation rate on listed coho from the California component of the southern Oregon/northern California coast coho environmentally significant unit be constrained to 13 percent or less, the lowest exploitation rate specified under the rebuilding provisions of the Council's recommended Amendment 13 to the FMP. In addition, the retention of coho in recreational and commercial fisheries off California is prohibited. In accordance with the NMFS guidance, the Council's recommendations result in a 12-percent exploitation rate impact for Rogue/Klamath coho, and retention of coho south of Cape Falcon is prohibited for the fourth consecutive year.

Sacramento River winter chinook are listed as an endangered species under the ESA. A March 8, 1996, biological opinion and a February 18, 1997, addendum require that NMFS reduce all harvest-related impacts to the Sacramento River winter chinook salmon population by a level that would achieve at least a 31-percent increase in the spawner-to-spawner replacement rate over a base period of 1989 through 1993. The increase in the spawner-to-spawner replacement rate projected for 1998 is 31.1 percent, which achieves the minimum 31 percent rate over the base period.

NMFS concluded that incidental fishery impacts that occur in the ocean salmon fishery proposed for the period from May 1, 1998, through April 30, 1999 (or until the effective date of the 1999 management measures), will not jeopardize the continued existence of populations of chinook proposed for listing.

The Council recommended the continued use of an increase in the minimum size limit in the recreational fishery to 24 inches (61.0 cm) south of Horse Mountain in conjunction with restricted seasons to reduce incidental ocean harvest of Sacramento River winter chinook. The Council reviewed a recent California Department of Fish and Game study on the mortality rate of salmon released in the California recreational fishery and revised the hooking mortality rates associated with mooching using circle and J hooks consistent with the study results. The Council recommended the continuation of gear restrictions for recreational fisheries off California, with certain modifications, to minimize hooking mortality.

The Council recommended a July 1 through September 7 recreational fishery between Point Arena and Pigeon Point in which the bag limit will be the first two fish caught (excluding coho) with no minimum size limit. Any coho salmon caught must be released.

The Council also recommended a commercial troll test fishery operating inside six nautical miles from July 5 through July 31 between Fort Ross and Point Reyes under a 3,000 fish quota. The test fishery is designed to assess the relative contribution of Klamath River fall chinook to the catch of a near-shore commercial fishery in the test area.

Commercial Troll Fisheries

Retention of coho salmon is prohibited in all areas south of Cape Falcon. All seasons listed below are restricted to all salmon species except coho salmon. Off California, no more than six lines are allowed per vessel. Off Oregon, no more than four spreads are allowed per line.

From Point Sur, CA, to the U.S.-Mexico border, the commercial fishery will open May 1 through September 30.

From Point San Pedro, CA, to Point Sur, CA, the commercial fishery will open May 1 through May 31, then reopen June 16 through September 30.

From Point Reyes to Point San Pedro, CA, the commercial fishery will open July 1 through September 30.

From Fort Ross (38°31′00″ N. lat.) to Point Reyes, CA, a test troll commercial fishery inside 6 nautical miles will open July 5 through the earlier of July 31 or an overall 3,000 chinook quota. For all salmon except coho, the season is to be opened as follows: July 5 through the earlier of July 11 or 1,000 chinook quota; July 12 through the earlier of July 18 or 1,000 chinook quota; and July 19 through the earlier of July 25 or the lesser of a 1,000 chinook quota or the remainder of the overall 3,000 chinook quota. If sufficient overall quota remains, the fishery will reopen on July 26 through the earlier of July 31 or achievement of the overall 3,000 chinook quota. There is a landing limit of no more than 30 fish per day. All fish caught in this area must be landed in Bodega Bay within 24 hours of each closure. Fish taken outside this test fishery may not be landed at Bodega Bay during the time authorized for the test fishery landings. These restrictions are necessary to assure the data collected from the test fishery are valid.

From Point Arena to Point Reyes, CA, the commercial fishery will open August 1 through September 30.

From Horse Mountain to Point Arena, CA, the commercial fishery will open September 1 through September 30.

From the Oregon-California border to Humboldt South Jetty, CA, the commercial fishery will open September 1 and continue through the earlier of September 30 or attainment of the 6,000 chinook quota. Restrictions include a landing limit of no more than 30 fish per day; all fish caught in this subarea must be landed within the subarea; and closure of the Klamath Control Zone. Under the State of Oregon regulations, vessels with fish on board from this area that are temporarily moored in Brookings, Oregon, prior to landing in California must first notify the Chetco River Coast Guard Station via VHF channel 22A between the hours of 0500 and 2200 and provide the name of the vessel, number of fish on board, and estimated time of arrival.

From Sisters Rocks to Mack Arch, OR, the commercial fishery will open August 1 and continue through the earlier of August 31 or attainment of the 1,400 chinook quota. The fishery will follow a cycle of 2 days open and 2 days closed. The days open may be adjusted inseason, if necessary, to manage the fishery. The open area is restricted to only 0 to 4 nautical miles (7.4 km) off shore. All salmon must be landed and delivered to Gold Beach, Port Orford, or to Brookings within 24 hours of each closure.

From Humbug Mountain, OR, to the Oregon-California border, the commercial fishery opened April 15 and will continue through the earlier of May 31 or attainment of the 3,600 chinook quota.

From Heceta Banks (43°58′00″ N. lat.) to Humbug Mountain, OR, the commercial fishery opened April 15 and will continue through June 30, then reopen August 1 through August 26, and then reopen September 1 through October 31.

From Cape Falcon to Heceta Banks (43°58′00″ N. lat.), the commercial fishery opened on April 15 and will continue through June 30, then reopen August 1 through August 28, and then reopen September 1 through October 31. See Oregon State regulations for a description of the time and area closures at the mouth of Tillamook Bay.

Recreational Fisheries

Retention of coho salmon is prohibited in all areas south of Cape Falcon. All seasons listed below are restricted to all salmon species except coho salmon. North of Point Conception, persons fishing for salmon and persons fishing from a boat with salmon on board are restricted to no more than one rod per angler. From Horse Mountain to Point Conception, CA, the following restrictions apply:

If angling by any other means than trolling, then no more than two single point, single shank, barbless circle hooks shall be used. The distance between the two hooks must not exceed 5 in (12.7 cm) when measured from the top of the eye of the top hook to the inner base of the curve of the lower hook, and both hooks must be permanently tied in place (hard tied). A circle hook is defined as a hook with a generally circular shape and a point which turns inwards, pointing directly to the shank at a 90 degree angle. Trolling is defined as: Angling from a boat or floating device that is moving forward by means of a source of power (other than drifting by means of the prevailing water current or weather conditions) except when landing a fish.

Exception: Circle hooks are not required when artificial lures are used without bait.

From Pigeon Point, CA, to the U.S.-Mexico border, the recreational fishery which opened on March 14 will continue through September 7 with a 2-fish daily bag limit and a 24 in (61.0 cm) minimum size limit.

From Point Arena to Pigeon Point, CA, the recreational fishery which opened on March 28 will continue through November 1 with a 2-fish daily bag limit and a 24 in (61.0 cm) minimum size limit. Except from July 1 through September 7, the bag limit will be the first two fish other than coho and no size limit. Sacramento Control Zone will be closed from the season opening through March 31.

From Horse Mountain to Point Arena, CA, the recreational fishery which opened on February 14 will continue through July 5, then reopen August 1 through November 15 (the nearest Sunday to November 15) with a 2-fish daily bag limit and a 24 in (61.0 cm) minimum size limit for both seasons.

From Humbug Mountain, OR, to Horse Mountain, CA, the recreational fishery will open May 23 through June 10, then reopen June 21 through July 5 and August 11 through September 13. All seasons include a one-fish daily bag limit, but no more than four fish in seven consecutive days; the Klamath Control Zone closed in August.

From Cape Falcon to Humbug Mountain, OR, the recreational fishery, which opened April 15, will continue through July 5, then reopen August 1 through October 31. Both seasons include a 2-fish daily bag limit, but no more than six fish in 7 consecutive days. Legal gear is limited to artificial lures and plugs of any size, or bait no less than 6 inches (15.2 cm) long (excluding hooks and swivels). All gear must have no more than two single point, single shank barbless hooks; divers are prohibited; and flashers may be used only with downriggers.

B. North of Cape Falcon

From the U.S.-Canada border to Cape Falcon, ocean fisheries are managed to protect depressed lower Columbia River fall chinook salmon and Washington coastal and Puget Sound natural coho salmon stocks and to meet ESA requirements for Snake River fall chinook salmon. Ocean treaty and non-treaty harvests and management measures were based in part on negotiations between Washington State fishery managers, commercial and recreational fishing groups, and the Washington coastal, Puget Sound, and Columbia River treaty Indian tribes as authorized by the U.S. District Court in *U.S.* v. *Washington, U.S.* v. *Oregon,* and *Hoh Indian Tribe* v. *Baldrige.*

All non-treaty commercial troll and recreational ocean fisheries will be limited by either an overall 10,000 chinook quota, or impacts on critical Washington coastal and Puget Sound natural stocks equivalent to the preseason coho quota of 16,000. A preseason trade was made of 4,000 coho from the commercial troll fishery to the recreational fishery for 1,500 chinook. Between Leadbetter Point and Cape Falcon, the recreational coho fishery will be a selective fishery for marked hatchery coho.

Commercial Troll Fisheries

The commercial troll fishery for all salmon except coho will open between the U.S.-Canada border and Cape Falcon, OR, on May 1 and continue through June 15 or attainment of the 6,500 chinook quota. The Columbia Control Zone is closed.

Recreational Fisheries

Recreational fisheries are divided into four subareas: Opening dates, subarea quotas, bag limits, and area and gear restrictions are described below. The fisheries in open subareas will begin on August 3 and continue through the earlier of September 24 or attainment of the respective subarea coho quota. The recreational fisheries will be limited by overall catch quotas of 3,500 chinook and 16,000 coho. Chinook guidelines for the three subareas between Cape Alava, WA, and Cape Falcon, OR, will provide a basis for inseason management

measures to restrain chinook harvest but will not serve as quotas.

From Leadbetter Point, WA, to Cape Falcon, OR, the fishery will be for all salmon with a 8,000 coho subarea quota (1,000 coho of this quota are allocated to hook-and-release mortality due to the selective fishery regulation), open Sunday through Thursday only, with a 2-fish daily bag limit, but no more than 1 chinook a day. All retained coho must have a healed adipose fin clip, no more than four fish may be retained in a calender week (Sunday through Saturday), and the area is closed in the Columbia Control Zone. Inseason management may be used to sustain season length and keep harvest within a guideline of 1,050 chinook.

From the Queets River to Leadbetter Point, WA, the fishery will be for all salmon with a 7,400 coho subarea quota, open Sunday through Thursday only, with a two-fish daily bag limit, but no more than 1 chinook and no more than four fish in a calender week (Sunday through Saturday), and closed 0 to 3 miles (4.8 km) off shore. Inseason management may be used to sustain season length and keep harvest within a guideline of 2,350 chinook.

From Cape Alava to the Queets River, WA, the fishery will be for all salmon with a 600 coho subarea quota, open 7 days per week with a 2-fish daily bag limit. Inseason management may be used to sustain season length and keep harvest within a guideline of 100 chinook.

From the U.S.-Canada border to Cape Alava, WA, the fishery will be closed.

Treaty Indian Fisheries

Ocean salmon management measures proposed by the treaty Indian tribes are part of a comprehensive package of treaty Indian and non-treaty salmon fisheries in the ocean and inside waters agreed to by the various parties. Treaty troll seasons, minimum length restrictions, and gear restrictions were developed by the tribes and agreed to by the Council. Treaty Indian troll fisheries north of Cape Falcon are governed by quotas of 15,000 chinook (10,000 for the May-June chinook-directed fishery and 5,000 for the August-September all-salmon fishery) and 10,000 coho. The all-salmon-except-coho seasons open May 1 and extend through June 30 or until the overall harvest guideline of 10,000 chinook is reached, whichever is earlier. The all-salmon seasons open August 1 and extend through the earliest of September 15 or attainment of the chinook or coho quotas. If the chinook quota from the May-June fishery is not fully utilized, the excess fish may not be rolled into the later all-salmon season. The minimum length restrictions for all treaty ocean fisheries, excluding ceremonial and subsistence harvest, is 24 in (61.0 cm) for chinook and 16 in (40.6 cm) for coho.

1999 Fisheries

The timing of the March and April Council meetings makes it impracticable for the Council to recommend fishing seasons that begin before May 1, of the same year. Therefore, 1999 fishing season openings earlier than May 1 are also established in this notification. The Council recommended and NMFS concurs that the following seasons will open off California in 1999. The following recreational seasons have two-fish daily bag limits and a minimum size limit of 24 in (61.0 cm) for chinook salmon (see special gear restrictions B.5). From Pigeon Point to the U.S.-Mexico border, a recreational fishery for all salmon except coho will open on March 13. From Point Arena to Pigeon Point, a recreational fishery for all salmon, except coho, will open on March 27. From Horse Mountain to Point Arena, a recreational fishery for all salmon, except coho, will open on February 13. An experimental fishery will open between Point Sur and the U.S.-Mexico Border for all salmon, except coho, from April 2 through the earlier of April 29 or achievement of a chinook quota. The experimental fishery is intended to evaluate the contribution of Sacramento River winter chinook to the commercial catch south of Point Sur during the month of April. Details regarding the season, the chinook quota, and participating vessels will be determined through an inseason recommendation of the Council at the November 1998 meeting. At the March 1999 meeting, the Council will consider in season recommendations to establish or modify management measures for an all-salmon-except-coho fishery prior to May 1, in areas off Oregon.

The following tables and text are the management measures recommended by the Council and approved by NMFS for 1998 and, as specified, for 1999.

TABLE 1.—COMMERCIAL MANAGEMENT MEASURES FOR 1998 OCEAN SALMON FISHERIES

[**Note:** This table contains important restrictions in parts A, B, C, and D which must be followed for lawful participation in the fishery.]

A. SEASON DESCRIPTION

North of Cape Falcon

U.S.-Canada Border to Cape Falcon

May 1 through earlier of June 15 or 6,500 chinook quota. All salmon except coho. Following any closure of this fishery, vessels must land and deliver the fish within 48 hours of the closure. Columbia Control Zone is closed (C.7.).

South of Cape Falcon

Cape Falcon to Heceta Banks (43°58′00″ N. lat.)

April 15 through June 30; August 1 through August 28; and September 1 through October 31. All salmon except coho. See Oregon State regulations for a description of the time and area closures at the mouth of Tillamook Bay. See gear restriction (C.3.a.).

Heceta Banks (43°58′00″ N. lat.) to Humbug Mountain

April 15 through June 30; August 1 through August 26; and September 1 through October 31. All salmon except coho. See gear restriction (C.3.a.).

Humbug Mountain to the Oregon-California Border

April 15 through earlier of May 31 or 3,600 chinook quota. All salmon except coho. See gear restriction (C.3.a.).

Sisters Rocks to Mack Arch

August 1 through earlier of August 31 or 1,400 chinook quota. All salmon except coho. Season to follow a cycle of 2 days open/2 days closed (August 1–2; 5–6; 9–10; 13–14; 17–18; etc.) and may be modified inseason. Open only 0–4 nautical miles (7.4 km) off shore. All salmon must be landed and delivered to Gold Beach, Port Orford or Brookings within 24 hours of each closure. See gear restriction (C.3.a.).

Oregon-California Border to Humboldt South Jetty

TABLE 1.—COMMERCIAL MANAGEMENT MEASURES FOR 1998 OCEAN SALMON FISHERIES—Continued

[**Note:** This table contains important restrictions in parts A, B, C, and D which must be followed for lawful participation in the fishery.]

September 1 through earlier of September 30 or 6,000 chinook quota. All salmon except coho. Landing limit of no more than 30 fish per day. Klamath Control Zone closed (C.7.). All fish caught in this area must be landed within this area. Under the State of Oregon regulations, vessels with fish on board from this area that are temporarily moored in Brookings, Oregon prior to landing in California must first notify the Chetco River Coast Guard Station via VHF channel 22A between the hours of 0500 and 2200 and provide the name of the vessel, number of fish on board, and estimated time of arrival. See gear restriction (C.3.b.).

Horse Mountain to Point Arena

September 1 through September 30. All salmon except coho. See gear restriction (C.3.b.).

Point Arena to Point Reyes

August 1 through September 30. All salmon except coho. See gear restriction (C.3.b.).

Fort Ross (38°31′00″ N. lat.) to Point Reyes (test fishery inside 6 nautical miles (11.1 km))

July 5 through earlier of July 31 or an overall 3,000 chinook quota. All salmon except coho. Season to be opened as follows: July 5 through earlier of July 11 or 1,000 chinook quota; July 12 through earlier of July 18 or 1,000 chinook quota; and July 19 through earlier of July 25 or the lesser of a 1,000 chinook quota or the remainder of the overall 3,000 chinook quota. If sufficient overall quota remains, the fishery will reopen on July 26 through the earlier of July 31 or achievement of the overall quota. Open only inside 6 nautical miles (11.1 km) off shore. Landing limit of no more than 30 fish per day. All fish caught in this area must be landed in Bodega Bay within 24 hours of each closure. Fish taken outside the test fishery may not be landed at Bodega Bay during the time authorized for test fishery landings. See gear restriction (C.3.b.).

Point Reyes to Point San Pedro

July 1 through September 30. All salmon except coho. See gear restriction (C.3.b.).

Point San Pedro to Point Sur (36°18′00″ N. lat.)

May 1 through May 31; June 16 through September 30. All salmon except coho. See gear restriction (C.3.b.).

Point Sur (36°18′00″ N. lat.) to U.S.-Mexico Border

May 1 through September 30. All salmon except coho. See gear restriction (C.3.b.).

Point Sur (36°18′00″ N. lat.) to U.S.-Mexico Border in 1999

April 2 through the earlier of April 29 or achievement of a chinook quota. All salmon except coho. The details of the season and the chinook quota will be determined through an inseason recommendation of the Council at its November 1998 meeting. See gear restriction (C.3.b.).

B. MINIMUM SIZE LIMITS (INCHES)

Area (when open)	Chinook		Coho		Pink
	Total length	Head-off	Total length	Head-off	
North of Cape Falcon	28.0	21.5	.....	.....	None.
Cape Falcon to Oregon-California Border*	*26.0	*19.5	.....	.....	None.
South of Oregon-California Border*	*26.0	*19.5	.....	.....	None.

*Chinook not less than 26 inches (19.5 inches head-off) taken in open seasons south of Cape Falcon may be landed north of Cape Falcon only when the season is closed north of Cape Falcon.

Metric equivalents for chinook: 28.0 inches=71.1 cm, 26.0 inches=66.0 cm, 21.5 inches=54.6 cm, 19.5 inches=49.5 cm.

C. SPECIAL REQUIREMENTS, DEFINITIONS, RESTRICTIONS, OR EXCEPTIONS

C.1. *Hooks*—Single point, single shank barbless hooks are required.

C.2. *Spread*—A single leader connected to an individual lure or bait.

C.3. *Line, Spread and Gear Restrictions:*

a. Off Oregon south of Cape Falcon, no more than 4 spreads are allowed per line.

b. Off California, no more than 6 lines are allowed per vessel.

C.4. *Compliance with Minimum Size or Other Special Restrictions*—All salmon on board a vessel must meet the minimum size or other special requirements for the area being fished and the area in which they are landed if that area is open. Salmon may be landed in an area that is closed only if they meet the minimum size or other special requirements for the area in which they were caught.

C.5. *Transit Through Closed Areas with Salmon on Board*—It is unlawful for a vessel to have troll gear in the water while transiting any area closed to salmon fishing while possessing salmon.

C.6. *Notification When Unsafe Conditions Prevent Compliance with Regulations*—A vessel is exempt from meeting special management area landing restrictions if prevented by unsafe weather conditions or mechanical problems from meeting those restrictions, and it complies with the State of Washington's, Oregon's, or California's requirement to notify the U.S. Coast Guard and receive acknowledgement of such notification prior to leaving the area. This notification shall include the name of the vessel, port where delivery will be made, approximate amount of salmon (by species) on board and the estimated time of arrival.

C.7. *Control Zone Definitions:*

Columbia Control Zone—The ocean area at the Columbia River mouth bounded by a line extending for 6 nautical miles (11.1km) due west from North Head along 46°18′00″ N. lat. to 124°13′18″ W. long., then southerly to 46°13′24″ N. lat. and 124°11′00″ W. long. (green, Columbia River Entrance Lighted Bell Buoy #1), then southerly to 46°13′06″ N. lat. and 124°11′00″ W. long. (red, Columbia River Approach Lighted Whistle Buoy), then northeast along red buoy line to the tip of the south jetty.

Klamath Control Zone—The ocean area at the Klamath River mouth bounded on the north by 41°38′48″ N. lat. (approximately 6 nautical miles (11.1 km) north of the Klamath River mouth), on the west by 124°23′00″ W. long. (approximately 12 nautical miles (22.2 km) off shore), and on the south by 41°26′48″ N. lat. (approximately 6 nautical miles (11.1 km) south of the Klamath River mouth).

C.8. *Incidental Halibut Harvest*—The operator of a vessel that has been issued an incidental halibut harvest license may retain Pacific halibut caught incidentally in Area 2A, during authorized periods, while trolling for salmon. Incidental harvest is authorized only during May and June troll seasons and after July 31 if quota remains and if announced on the NMFS hotline (phone 800–662–9825).

Incidental harvest: license holders may land no more than 1 halibut per each 8 chinook, except 1 halibut may be landed without meeting the ratio requirement, and no more than 25 halibut may be landed per trip. Halibut retained must meet the minimum size limit of 32 inches (81.3 cm). The Oregon Department of Fish and Wildlife and the Washington Department of Fish and Wildlife will monitor landings and if they are projected to exceed the 25,344 pound (11.5 mt) preseason allocation or the Area 2A non-Indian commercial total allowable catch of halibut, NMFS will take inseason action to close the incidental halibut fishery.

License applications for incidental harvest must be obtained from the International Pacific Halibut Commission (phone 206–634–1838). Applicants must apply prior to April 1 of each year.

C.9. *Inseason Management*—In addition to standard inseason actions or inseason modifications already noted under the season description, the Council will consider inseason recommendations to: (1) establish the chinook quota season opening April 2 and modify other season restrictions for the fishery off California between Point Sur and the U.S.-Mexico border, and (2) open the commercial season for all salmon except coho prior to May 1 in areas off Oregon.

C.10. Consistent with Council management objectives, the State of Oregon may establish additional late-season, chinook-only fisheries in state waters. Check state regulations for details.

C.11. For the purposes of California Department of Fish and Game Code, Section 8232.5, the definition of the Klamath management zone for the ocean salmon season shall be that area from Humbug Mountain, Oregon to Horse Mountain, California.

D. QUOTAS

D.1. *North of Cape Falcon*—All non-treaty troll and recreational ocean fisheries will be limited by overall quotas of either 10,000 chinook or 16,000 coho. Preseason species trade of 4,000 coho to the recreational fishery for 1,500 chinook to the commercial fishery. Therefore, the troll fishery will be limited by overall catch quotas of 6,500 chinook and 0 coho.

D.2. *Humbug Mountain to Oregon-California Border*—The troll fishery will be limited by a catch quota of 3,600 chinook.

D.3. *Sisters Rocks to Mack Arch*—The troll fishery will be limited by a catch quota of 1,400 chinook.

D.5. *Oregon-California Border to Humboldt South Jetty*—The troll fishery will be limited by a catch quota of 6,000 chinook.

D.6. *Fort Ross to Point Reyes*—The troll fishery will be limited by an overall catch quota of 3,000 chinook.

D.7. *Point Sur to U.S.-Mexico Border*—The troll fishery in April 1999 will be limited by a chinook catch quota to be determined by the Council at its November 1998 meeting.

TABLE 2.—RECREATIONAL MANAGEMENT MEASURES FOR 1998 OCEAN SALMON FISHERIES

[**Note:** This table contains important restrictions in parts A, B, C, and D which must be followed for lawful participation in the fishery.]

A. SEASON DESCRIPTION

North of Cape Falcon

U.S.-Canada Border to Cape Alava

Closed.

Cape Alava to Queets River

August 3 through earlier of September 24 or 600 coho subarea quota. All salmon. Open 7 days per week. 2 fish per day. 1 rod per angler. Inseason management (C.6.) may be used to sustain season length and keep harvest within a guideline of 100 chinook.

Queets River to Leadbetter Point

August 3 through earlier of September 24 or 7,400 coho subarea quota. All salmon. Open Sunday through Thursday 2 fish per day, but no more than 1 chinook per day and no more than 4 fish per calendar week (Sunday through Saturday). Closed 0–3 miles (4.8 km) off shore. 1 rod per angler. Inseason management (C.6.) may be used to sustain season length and keep harvest within a guideline of 2,350 chinook.

Leadbetter Point to Cape Falcon

August 3 through earlier of September 24 or 7,000 coho subarea quota (D.2.). All salmon. Open Sunday through Thursday 2 fish per day, but no more than 1 chinook per day and all retained coho must have a healed adipose fin clip. No more than 4 fish per calendar week (Sunday through Saturday). 1 rod per angler. Columbia Control Zone is closed (C.5.). Inseason management (C.6.) may be used to sustain season length and keep harvest within a guideline of 1,050 chinook.

South of Cape Falcon

Cape Falcon to Humbug Mountain

April 15 through July 5 and August 1 through October 31. All salmon except coho. Two fish per day. No more than 6 fish in 7 consecutive days. 1 rod per angler. Legal gear limited to: artificial lures and plugs of any size or bait no less than 6 inches (15.2 cm) long (excluding hooks and swivels). All gear must have no more than 2 single point, single shank barbless hooks. Divers are prohibited and flashers may only be used with downriggers. See Oregon State regulations for a description of a closure at the mouth of Tillamook Bay.

In 1999, the season does not open until May 1, or another date specified in the 1999 management measures, unless it is opened by inseason management (C.6.).

Humbug Mountain to Horse Mountain

May 23 through June 10; June 21 through July 5; August 11 through September 13. All salmon except coho. One fish per day. No more than 4 fish in 7 consecutive days. Klamath Control Zone (C.5.) closed in August. One rod per angler (C.2.).

Horse Mountain to Point Arena

February 14 through July 5 and August 1 through November 15 (nearest Sunday to November 15). All salmon except coho. 2 fish per day. Chinook minimum size limit 24 inches. Special gear restriction C.3. (number and type of hooks when angling by means other than trolling). One rod per angler (C.2.).

In 1999, the season will open February 13 (nearest Saturday to February 15) through April 30 for all salmon except coho, 2 fish per day, same gear and minimum size restrictions as in 1998.

Point Arena to Pigeon Point

March 28 through November 1 (nearest Sunday to November 1). All salmon except coho. 2 fish per day, chinook minimum size limit 24 inches, except—from July 1 through September 7, the bag limit will be the first 2 fish (excluding coho)(no size limit). One rod per angler (C.2.). Sacramento Control Zone (C.5.) closed from season opening through March 31. Special gear restriction C.3. (number and type of hooks when angling by means other than trolling).

In 1999, the season will open March 27 (last Saturday in March) through April 30 with the same regulations that were in effect at the end of 1998.

TABLE 2.—RECREATIONAL MANAGEMENT MEASURES FOR 1998 OCEAN SALMON FISHERIES—Continued

[**Note:** This table contains important restrictions in parts A, B, C, and D which must be followed for lawful participation in the fishery.]

Pigeon Point to U.S.-Mexico Border

March 14 through September 7. All salmon except coho. Two fish per day. Chinook minimum size limit 24 inches. One rod per angler north of Point Conception (C.2.). Special gear restriction north of Point Conception C.3. (number and type of hooks when angling by means other than trolling).

In 1999, the season will open March 13 (nearest Saturday to March 15) through April 30 with the same regulations that were in effect at the end of 1998.

B. MINIMUM SIZE LIMITS

Area (when open)	Chinook	Coho	Pink
North of Cape Falcon	24.0	16.0	None.
Cape Falcon to Horse Mountain	20.0	.....	None, except 20.0 off California.
South of Horse Mountain*	*24.0	.....	20.0.

*Except July 1 through September 7 during the ''first 2 fish bag limit'' south of Point Arena to Pigeon Point.

Metric equivalents for chinook: 24.0 inches=61.0 cm, 20.0 inches=50.8 cm.
Metric equivalents for coho: 16.0 inches=40.6 cm.
Metric equivalents for pink: 20.0 inches=50.8 cm.

C. SPECIAL REQUIREMENTS, DEFINITIONS, RESTRICTIONS, OR EXCEPTIONS

C.1. *Hooks*—Single point, single shank barbless hooks are required for all fishing gear north of Point Conception, California. Oregon Department of Fish and Wildlife regulations in the state-water fishery off Tillamook Bay may allow the use of barbed hooks to be consistent with inside regulations.

C.2. *Restriction on Number of Fishing Rods North of Point Conception, California*—All persons fishing for salmon, and all persons fishing from a boat with salmon on board, may use no more than one rod per angler.

C.3. *Special Gear Restrictions Between Horse Mountain and Point Conception, California:*

If angling by any other means than trolling, then no more than 2 single point, single shank, barbless circle hooks shall be used. The distance between the 2 hooks must not exceed 5 inches (12.7 cm) when measured from the top of the eye of the top hook to the inner base of the curve of the lower hook, and both hooks must be permanently tied in place (hard tied). A circle hook is defined as a hook with a generally circular shape and a point which turns inwards, pointing directly to the shank at a 90° angle. *Trolling defined:* Angling from a boat or floating device that is moving forward by means of a source of power (other than drifting by means of the prevailing water current or weather conditions) except when landing a fish.

Exception: Circle hooks are not required when artificial lures are used *without* bait.

C.4. *Compliance with Minimum Size or Other Special Restrictions*—All salmon on board a vessel must meet the minimum size or other special requirements for the area being fished. Salmon may be landed in an area that is closed only if they meet the minimum size or other special requirements for the area in which they were caught.

C.5. *Control Zone Definitions:*

Columbia Control Zone—The ocean area at the Columbia River mouth bounded by a line extending for 6 nautical miles (11.1 km) due west from North Head along 46°18′00″ N. lat. to 124°13′18″ W. long., then southerly to 46°13′24″ N. lat. and 124°11′00″ W. long. (green, Columbia River Entrance Lighted Bell Buoy #1), then southerly to 46°11′06″ N. lat. and 124°11′00″ W. long. (red, Columbia River Approach Lighted Whistle Buoy), then northeast along red buoy line to the tip of the south jetty.

D. QUOTAS

Klamath Control Zone—The ocean area at the Klamath River mouth bounded on the north by 41°38′48″ N. lat. (approximately 6 nautical miles (11.1 km) north of the Klamath River mouth), on the west by 124°23′00″ W. long. (approximately 12 nautical miles (22.2 km) off shore), and on the south by 41°26′48″ N. lat. (approximately 6 nautical miles (11.1 km) south of the Klamath River mouth).

Sacramento Control Zone—The ocean area bounded by a line commencing at Bolinas Point (Marin County, 37°54′17″ N. lat., 122°43′35″ W. long.) southerly to Duxbury Buoy (37°51′37″ N. lat., 122°41′43″ W. long.) to Channel Buoy 1 (37°46′10″ N. lat., 122°37′56″ W. long,) to Channel Buoy 2 (37°45′48″ N. lat., 122°37′44″ W. long,) to Point San Pedro (San Mateo County, 37°35′40″ N. lat., 122°31′10″ W. long.).

C.6. *Inseason Management*—Regulatory modifications may become necessary inseason to meet preseason management objectives such as quotas, harvest guidelines and season duration. Actions could include modifications to bag limits or days open to fishing, and extensions or reductions in areas open to fishing. At the March 1999 meeting, the Council will consider an inseason recommendation to open seasons for all salmon except coho prior to May 1 in areas off Oregon.

The procedure for inseason coho transfer among recreational subareas north of Cape Falcon will be:

After conferring with representatives of the affected ports and the Salmon Advisory Subpanel recreational representatives north of Cape Falcon, NMFS may transfer coho inseason among recreational subareas to help meet the recreational season duration objectives (for each subarea). Any transfers between subarea quotas of 5,000 fish or less shall be done on a fish-for-fish basis.

C.7. *Additional Seasons in State Territorial Waters*—Consistent with Council management objectives, the states of Washington and Oregon may establish limited seasons in state waters. Oregon state-water fisheries are limited to chinook salmon. Check state regulations for details.

D.1. *North of Cape Falcon*—All non-treaty troll and recreational ocean fisheries will be limited by overall quotas of either 10,000 chinook or 16,000 coho. Preseason species trade: 1,500 chinook to the commercial fishery are exchanged for 4,000 coho to the recreational fishery. Therefore, the recreational fishery will be limited by overall catch quotas of 3,500 chinook and 16,000 coho.

Note: A coho allocation for the subarea from the U.S.-Canada border to Cape Alava would be too small to allow a one-day fishery. Representatives from this subarea agreed to allocate all of the ocean quota of coho for the subarea north of the Queets River to the subarea from Cape Alava to the Queets River in view that the area north of Cape Alava has access to the fishery in Washington State Statistical Area 4B.

D.2. *Leadbetter Point to Cape Falcon*—The coho allocation for this subarea is 8,000 coho. However, 1,000 coho of this quota are allocated to hook-and-release mortality due to the selective fishery regulation. Therefore, the recreational fishery will be limited by a subarea catch quota of 7,000 coho.

TABLE 3.—TREATY INDIAN MANAGEMENT MEASURES FOR 1998 OCEAN SALMON FISHERIES

[**Note:** This table contains important restrictions in parts A, B, and C which must be followed for lawful participation in the fishery.]

A. SEASON DESCRIPTIONS

Tribe and area boundaries	Open seasons	Salmon species	Minimum size limit (inches *)		Special restrictions by area
			Chinook	Coho	
MAKAH—That portion of the Fishery Management Area north of 48°02′15″ N. lat. (Norwegian Memorial) and east of 125°44′00″ W. long.	May 1 through earlier of June 30 or chinook quota.	All except coho	24	.....	Barbless hooks. No more than 8 fixed lines per boat or no more than 4 hand-held lines per person.
	August 1 through earliest of September 15 or chinook or coho quota.	All	24	16	
QUILEUTE—That portion of the FMA between 48°07′36″ N. lat. (Sand Pt.) and 47°31′42″ N. lat. (Queets River) and east of 125°44′00″ W. long.	May 1 through earlier of June 30 or chinook quota.	All except coho	24	.....	Barbless hooks. No more than 8 fixed lines per boat.
	August 1 through earliest of September 15 or chinook or coho quota.	All	24	16	
HOH—That portion of the FMA between 47°54′18″ N. lat. (Quillayute River) and 47°21′00″ N. lat. (Quinault River) and east of 125°44′00″ W. long.	May 1 through earlier of June 30 or chinook quota.	All except coho	24	.....	Barbless hooks. No more than 8 fixed lines per boat.
	August 1 through earliest of September 15 or chinook or coho quota.	All	24	16	
QUINAULT—That portion of the FMA between 47°40′06″ N. lat. (Destruction Island) and 46°53′18″ N. lat. (Point Chehalis) and east of 125°44′00″ W. long.	May 1 through earlier of June 30 or chinook quota.	All except coho	24	.....	Barbless hooks. No more than 8 fixed lines per boat.
	August 1 through earliest of September 15 or chinook or coho quota.	All	24	16	

*Metric equivalents: 24 inches=61.0 cm, 16 inches=40.6 cm.

B. SPECIAL REQUIREMENTS, RESTRICTIONS, AND EXCEPTIONS

B.1. All boundaries may be changed to include such other areas as may hereafter be authorized by a federal court for that tribe's treaty fishery.

B.2. Applicable lengths, in inches, for dressed, head-off salmon, are 18 inches (45.7 cm) for chinook and 12 inches (30.5 cm) for coho. Minimum size and retention limits for ceremonial and subsistence harvest are as follows:

Makah Tribe—None

Quileute, Hoh and Quinault tribes—Not more than 2 chinook longer than 24 inches in total length may be retained per day. Chinook less than 24 inches total length may be retained.

B.3. The area within a 6-mile (9.7 km) radius of the mouths of the Queets River (47°31′42″ N. lat.) and the Hoh River (47°45′12″ N. lat.) will be closed to commercial fishing. A closure within 2 miles (3.2 km) of the mouth of the Quinault River (47°21′00″ N. lat.) may be enacted by the Quinault Nation and/or the State of Washington and will not adversely affect the Secretary of Commerce's management regime.

C. QUOTAS

C.1. The overall treaty troll ocean quotas are 15,000 chinook and 10,000 coho. The overall chinook quota is divided into 10,000 chinook for the May–June all-salmon-except-coho fishery and 5,000 chinook for the August–September all-salmon season. If the chinook quota from the May-June fishery is not fully utilized, the excess fish may not be rolled into the later all-salmon season. These quotas include troll catches by the S'Klallam and Makah tribes in Washington State Statistical Area 4B.

Halibut Retention

Under the authority of the Northern Pacific Halibut Act, regulations governing the Pacific halibut fishery were published in the **Federal Register** on March 18, 1997 (62 FR 12759). These regulations appear at 50 CFR part 300. The regulations state that vessels participating in the salmon troll fishery in Area 2A (all waters off the States of Washington, Oregon, and California), which have obtained the appropriate International Pacific Halibut Commission (IPHC) license, may retain halibut caught incidentally during authorized periods in conformance with provisions published with the annual salmon management measures. A salmon troller may participate in the halibut incidental catch fishery during the salmon troll season or in the directed commercial fishery targeting halibut, but not both.

The following measures have been approved. The operator of a vessel who has been issued an incidental halibut harvest license by the IPHC may retain Pacific halibut caught incidentally in Area 2A, during authorized periods, while trolling for salmon. Incidental harvest is authorized only during May and June troll seasons and after July 31 if halibut quota remains and if announced on the NMFS hotline (phone 800–622–9825). License holders may land no more than 1 halibut per each 8 chinook, except 1 halibut may be landed without meeting the ratio requirement, and no more than 25 halibut may be landed per trip. Halibut retained must meet the minimum size limit of 32 inches (81.3 cm). The Oregon Department of Fish and Wildlife and Washington Department of Fish and Wildlife will monitor landings and, if they are projected to exceed the 25,344-pound (11.5-mt) preseason allocation or the Area 2A non-Indian commercial total allowable catch of halibut, NMFS will take inseason action to close the incidental halibut fishery. License

applications for incidental harvest must be obtained from the IPHC. Applicants must apply prior to April 1 of each year.

Gear Definitions and Restrictions

In addition to the gear restrictions shown in Tables 1, 2, and 3, the following gear definitions and restrictions will apply.

Troll Fishing Gear

Troll fishing gear for the fishery management area (FMA) is defined as one or more lines that drag hooks behind a moving fishing vessel.

In that portion of the FMA off Oregon and Washington, the line or lines must be affixed to the vessel and must not be intentionally disengaged from the vessel at any time during the fishing operation.

Recreational Fishing Gear

Recreational fishing gear for the FMA is defined as angling tackle consisting of a line with no more than one artificial lure or natural bait attached.

In that portion of the FMA off Oregon and Washington, the line must be attached to a rod and reel held by hand or closely attended; the rod and reel must be held by hand while playing a hooked fish. No person may use more than one rod and line while fishing off Oregon or Washington.

In that portion of the FMA off California, the line must be attached to a rod and reel held by hand or closely attended. Weights directly attached to a line may not exceed 4 pounds (1.8 kg). While fishing off California north of Point Conception, no person fishing for salmon and no person fishing from a boat with salmon on board may use more than one rod and line.

Fishing includes any activity that can reasonably be expected to result in the catching, taking, or harvesting of fish.

Geographical Landmarks

Wherever the words ''nautical miles off shore'' are used in this document, the distance is measured from the baseline from which the territorial sea is measured.

Geographical landmarks referenced in this document are at the following locations:

Cape Alava	48°10′00″ N. lat.
Queets River	47°31′42″ N. lat.
Leadbetter Point	46°38′10″ N. lat.
Cape Falcon	45°46′00″ N. lat.
Heceta Banks	43°58′00″ N. lat.
Humbug Mountain	42°40′30″ N. lat.
Sisters Rocks	42°35′45″ N. lat.
Mack Arch.	42°13′40″ N. lat.
Oregon-California Border.	42°00′00″ N. lat.
Humboldt South Jetty	40°45′53″ N. lat.
Horse Mountain	40°05′00″ N. lat.
Point Arena	38°57′30″ N. lat.
Fort Ross	38°31′00″ N. lat.
Point Reyes	37°59′44″ N. lat.
Point San Pedro	37°35′40″ N. lat.
Pigeon Point	37°11′00″ N. lat.
Point Sur	36°18′00″ N. lat.
Point Conception	34°27′00″ N. lat.

Inseason Notice Procedures

Actual notice of inseason management actions will be provided by a telephone hotline administered by the Northwest Region, NMFS, 206–526–6667 or 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts. These broadcasts are announced on Channel 16 VHF–FM and 2182 KHz at frequent intervals. The announcements designate the channel or frequency over which the Notice to Mariners will be immediately broadcast. Inseason actions will also be filed with the **Federal Register** as soon as practicable. Since provisions of these management measures may be altered by inseason actions, fishermen should monitor either the telephone hotline or Coast Guard broadcasts for current information for the area in which they are fishing.

Classification

This notification of annual management measures is exempt from review under E.O. 12866.

Section 660.411 of title 50, Code of Federal Regulations, requires NMFS to publish an action implementing management measures for ocean salmon fisheries each year and, if time allows, invite public comment prior to the effective date. Section 660.411 further states that if, for good cause, an action must be filed without affording a prior opportunity for public comment, the measures will become effective; however, public comments on the action will be received for a period of 15 days after filing of the action with the Office of the Federal Register.

Because many ocean salmon seasons are scheduled to start May 1, the management measures must be in effect by this date. Each year the schedule for establishing the annual management measures begins in February with the compilation and analysis of biological and socio-economic data for the previous year's fishery and salmon stock abundance estimates for the current year. These documents are made available and distributed to the public for review and comment. Two meetings of the Council follow, one in March and one in April. These meetings are open to the public and public comment on the salmon management measures is encouraged. In 1998, the Council recommended management measures near the conclusion of its meeting on April 10, which resulted in a short time frame for implementation.

In some areas, the season in 1998, compared with 1997, starts later than May 1; the season starts on May 1 in 1998 where no season existed in 1997; or the season started before May 1 in 1998 and continuing regulations are required to prevent disruption of the fishery. A delay in implementation of the management measures would allow inappropriate openings or closures in some areas, thereby disregarding the needs of the various stocks and causing adverse impacts not contemplated in the design of the 1998 management measures. In light of the limited available time and the adverse effect of delay, it is contrary to the public interest to delay implementation of the management measures. Therefore, NMFS has determined that good cause exists to waive the requirements of 50 CFR 660.411 and 5 U.S.C. 553(b) for prior notice and opportunity for prior public comments. For the same reasons, NMFS has determined that good cause exists under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness. For this action, NMFS will receive public comments for 15 days from the date of filing this action with the Office of the Federal Register.

The Council's Salmon Technical Team (STT) analyzed the impact of the ocean commercial and recreational salmon seasons on the Sacramento River winter chinook (listed as endangered in January 1994), Snake River wild fall chinook (listed as threatened in April 1992), and southern Oregon/northern California coast coho (listed as threatened in April 1997).

In a March 8, 1996, biological opinion and in a February 18, 1997, addendum, NMFS considered the impacts to salmon species listed under the ESA resulting from fisheries conducted in conformance with the FMP. A supplemental biological opinion and conference were issued April 30, 1997, which addressed impacts to newly listed species of coho and steelhead for the period May 1, 1997, through April 30, 1998. Since the issuance of the April 30, 1997, opinion, NMFS has listed four additional populations of steelhead as threatened under the ESA and proposed seven populations of chinook for listing. NMFS prepared a supplemental biological opinion dated April 30, 1998, which addresses the potential effects of ocean salmon fisheries to newly listed species under the ESA, which concludes that incidental fishery impacts that occur in the ocean salmon fishery will not jeopardize the continued existence of central California coast coho, southern Oregon/northern

California coast coho, Umpqua River searun cutthroat trout, or any of the listed populations of steelhead. In addition, NMFS sent a March 4, 1998, letter to the Council, summarizing its guidance on protective measures for listed species and species that may be listed during the 1998 fishing season.

The Council's recommended management measures comply with NMFS guidance, reasonable and prudent alternatives of jeopardy decisions, and the incidental take conditions in the biological opinions. For Snake River fall chinook, the STT estimated a 53 percent Snake River fall chinook index for the ocean exploitation rate for all ocean fisheries under the Council's recommended management measures compared to NMFS jeopardy standard of ≤±70 percent of the 1988–1993 average. For Sacramento River winter chinook, it is expected that the required 31 percent increase in the spawner-to-spawner replacement rate over the 1989–1993 base period will be achieved. The Council's recommended management measures result in a 12 percent exploitation rate for Rogue/Klamath hatchery coho stocks, and no retention of coho in all areas south of Cape Falcon for the fourth consecutive year.

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

Dated: April 30, 1998.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 98–11957 Filed 4–30–98; 4:34 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971208297–8054–02; I.D. 050198A]

Fisheries of the Economic Exclusive Zone Off Alaska; Shallow-water Species Fishery by Vessels using Trawl Gear in the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for species that comprise the shallow-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA), except for vessels fishing for pollock using pelagic trawl gear in those portions of the GOA open to directed fishing for pollock. This action is necessary because the second seasonal bycatch allowance of Pacific halibut apportioned to the shallow-water species fishery in the GOA has been caught.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), May 2, 1998, until 1200 hrs, A.l.t., July 1, 1998.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7447.

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

The prohibited species bycatch mortality allowance of Pacific halibut for the GOA trawl shallow-water species fishery, which is defined at § 679.21(d)(3)(iii)(A), was established by the Final 1998 Harvest Specifications of Groundfish for the GOA (63 FR 12027, March 12, 1998) for the second season, which ends June 30, 1998, as 100 mt.

In accordance with § 679.21(d)(7)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the second seasonal apportionment of the 1998 Pacific halibut bycatch mortality allowance specified for the trawl shallow-water species fishery in the GOA has been caught. Consequently, NMFS is prohibiting directed fishing for the shallow-water species fishery by vessels using trawl gear in the GOA, except for vessels fishing for pollock using pelagic trawl gear in those portions of the GOA open to directed fishing for pollock. The species and species groups that comprise the shallow-water species fishery are: pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, and ''other species''.

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

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to prevent overharvesting the second seasonal bycatch allowance of Pacific halibut apportioned to the shallow-water species fishery in the GOA. A delay in the effective date is impracticable and contrary to the public interest. The fleet has already taken the second seasonal bycatch allowance of Pacific halibut. Further delay would only result in the 1998 Pacific halibut bycatch allowance specified for the trawl shallow-water species fishery in the GOA being exceeded. NMFS finds for good cause that the implementation of this action can not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

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

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

Dated: May 1, 1998.

Richard W. Surdi,

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

[FR Doc. 98–12002 Filed 5–1–98; 3:00 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 63, No. 87
Wednesday, May 6, 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 AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271, 278 and 279

RIN 0584–AC46

Food Stamp Program: Retailer Integrity, Fraud Reduction and Penalties

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed Rule

SUMMARY: The purpose of this proposed rule is to implement the Food Stamp Program retailer provisions included in the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996, as well as the retailer provision included in the Federal Agriculture Improvement and Reform Act. While a number of amendments to the current regulations are proposed in order to meet the objectives of streamlining the regulations in response to the Departmental review of the regulations, the majority of the proposed changes included in this proposal are derived from the retailer provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. Most of the provisions in this proposed rule are nondiscretionary and required by law. The intent of this rule is to strengthen integrity and eliminate fraud in the Food Stamp Program by ensuring that only legitimate stores participate in the program, by improving the Department's ability to monitor authorized firms, and by strengthening penalties against firms that violate program rules.

DATES: Comments must be received by July 6, 1998 to be assured of consideration. Comments on the discretionary provisions identified in this rule are encouraged. Comments will not affect implementation of those provisions identified as nondiscretionary that are mandated by law and over which the Secretary has no discretion.

ADDRESSES: Comments should be addressed to Suzanne Fecteau, Chief, Redemption Management Branch, Food and Nutrition Service, 3101 Park Center Drive, Alexandria, Virginia 22302–1594. All written comments will be open for public inspection at the office of the Food and Consumer Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) in Room 706, 3101 Park Center Drive, Alexandria, Virginia.

FOR FURTHER INFORMATION CONTACT: Questions regarding this rulemaking should be addressed to Suzanne Fecteau, Chief, Redemption Management Branch, Benefit Redemption Division, Food Stamp Program, 3101 Park Center Drive, Alexandria, Virginia 22302, or by telephone at (703) 305–2418.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be not significant under Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule and related notice(s) to 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. § 601–612). Yvette S. Jackson, the Administrator of the Food and Nutrition Service, has certified that this rule does not have a significant economic impact on a substantial number of small entities. This rule may have an effect on a limited number of retail food stores and other entities that are shown to be negligent in effectuating the purposes of the FSP by committing violations or fraud in the program. However, we do not believe this will have a significant effect on most small businesses.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, this notice announces our intent to submit revised application procedures and associated burden estimates to OMB for approval relative to the application(s) completed by retail food stores and meal service providers to request authorization and/or continued authorization to participate in the Food Stamp Program (FSP). We also intend to request OMB approval of the revised estimates for 3 years.

Comments on this notice must be submitted by July 6, 1998.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the 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 through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to Laura Oliven, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20502 (a copy may also be sent to Suzanne M. Fecteau, Chief, Redemption Management Branch, Benefit Redemption Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Va. 22302. **FOR FURTHER INFORMATION,** or for copies of the information collection, please contact Ms. Fecteau at the above address.)

All responses to this notice will be summarized and included in the request for OMB approval, and will become a matter of public record.

For Further Information Contact: Suzanne M. Fecteau, (703) 305–2418.

Title: Food Stamp Program Store Applications.

OMB Number: 0584–0008.

Type of Request: Revision of a currently approved collection.

Abstract: The Food and Nutrition Service (FNS) of the U.S. Department of Agriculture is the Federal agency responsible for the FSP. The Food

Stamp Act of 1977, as amended (the Act) (7 U.S.C. 2011–2036), requires that the Agency determine the eligibility of firms and certain food service organizations to accept and redeem food stamp benefits and to monitor them for compliance and continued eligibility.

Part of FNS' responsibility is to accept applications from retail food establishments and meal service programs that wish to participate in the FSP, review the applications in order to determine whether or not applicants meet eligibility requirements, and make determinations whether to grant or deny authorization to accept and redeem food stamp benefits. FNS is also responsible for requiring updates to application information and reviewing that information to determine whether or not the firms or services continue to meet eligibility requirements.

There are currently 3 application forms approved under OMB No. 0584–0008. Together these forms are used by retailers, wholesalers, meal service providers, certain types of group homes, shelters, and state-contracted restaurants, to apply to FNS for authorization to participate in the FSP. Form FNS–252, Food Stamp Application For Stores, is generally used by stores, excluding facilities which provide meal services such as communal dining, shelters, restaurant and other meal service programs, which are newly applying for authorization; Form FNS–252R, Food Stamp Program Application For Stores-Reauthorization, is used by the majority of currently authorized stores to apply for reauthorization, excluding facilities which provide meal services such as communal dining, shelters, restaurants and other meal service programs; and Form FNS–252–2, Application to Participate in the Food Stamp Program for Communal Dining Facility/Others, generally used by communal dining and restaurant facilities and other food service programs which are newly applying or applying for reauthorization. In a few cases, at the discretion of the FNS field offices, some stores would be required to complete Form FNS–252 to apply for reauthorization. Section 9(c) of the Act provides the necessary authorization(s) to collect the information contained in these forms.

The proposed revisions to the authorization process contained in § 278.1(a) of this proposed rule do not impose new information collection, reporting or recordkeeping requirements. There are 3 application forms used by firm's who wish to participate in the program. These forms and associated burden hours have been approved by OMB under OMB No. 0584–0008 through October 31, 1999. We are proposing to adjust the current burden estimates based on more recent data and a technical correction to capture a change in application requirements for private restaurants that was inadvertently omitted from the hourly burden estimates when last submitted to OMB and an error in estimating the average hourly burden time for Form FNS–252–2. Comments are solicited on the adjusted burden estimates as discussed in the following paragraphs and reflected in the summary chart at the end of this section of the preamble.

We do not collect information on the number of FSP applications received annually. Current burden estimates associated with these 3 application forms are determined from information maintained in STARS (Store Tracking and Redemption System) based on the total number of currently authorized stores or the number of newly authorized stores. The number of expected applications is divided between initial applications from new applicants and applications for reauthorization from currently authorized stores.

Adjustments—Re-estimates Based on More Recent Data and Corrections

For burden estimates associated with new applicants (initial authorizations), we used the number of stores (all types) newly authorized/approved currently estimated at 20,696; (rounded to 20,700) based on FY 1997 year-end data from STARS and inflated this number by 10% (2,070) to capture a total of 22,770 applications expected to be received and processed from stores annually. It is estimated that 98% (22,315) of the 22,770 applications expected to be received would be on Form FNS–252 and 2% (455) would be on Form FNS–252–2. Due to a technical correction discussed later in this section of the preamble, the number of expected applications would be further changed to reflect an expected total of 22,347 applications using Form FNS–252 and 423 applications using Form FNS–252–2.

For burden estimates associated with applications for reauthorization, we used the total number of stores (all types) authorized (184,300) as of December 1997. Generally, authorized stores are subject to reauthorization at least once every 4 years. Thus, it is estimated that 25% (46,000) of all authorized stores would be subject to reauthorization in any given year. Using, the number of authorized stores as of December 1997, it is estimated that 46,000 reauthorization applications would be expected to be received annually. Of the 46,000 reauthorization applications expected, it is estimated that 96% (44,160) will be on Form FNS–252R, 3% (1,380) will be on Form FNS–252–2, and 1% (460) will be on Form FNS–252.

Hourly burden time per response varies by type of application and includes the time to review instructions, search existing data resources, gather and copy the data needed, complete and review the application, and submit the form and documentation to FNS. It should be noted that the number of applicant and authorized stores has been declining over the past few years due to several program changes, such as changes in eligibility requirements, stronger sanctions against violators, and implementation of Electronic Benefit Transfer systems. These declines have resulted in a reduction in the overall number of respondents and ultimately a reduction in the overall proposed burden hours reflected in the following summary chart.

Currently, private restaurants applying for FSP participation in the State-administered special restaurant program use Form FNS–252–2 to apply for participation. This category of applicant represents about 7% of the number of current applicants using Form FNS–252–2. Over time, it has been determined that we need additional information from such private restaurants to ensure that they meet necessary requirements of operation to carry out the intent of the FSP. The additional information needed would be captured by having these respondents, estimated at about 32, complete Form FNS–252 rather than Form FNS–252–2. We estimate that these restaurants will spend an estimated 10 minutes of additional burden time using the longer Form FNS–252, however, this contributes to a negligible amount to the increase in the average hourly burden rate reflected in the summary chart because the number of respondents is so small. This change is a technical correction rather than a re-estimate based on more recent data, and is reflected in the number of initial applications expected to be received as shown in the summary chart.

As currently approved by OMB, the hourly burden rate per response for Form FNS–252 is 20 to 68 minutes, with the average being 27 minutes and 10 to 20 minutes for Form FNS 252–2, with the average being 10 minutes. These hourly burden rates are not affected by the re-estimated number of applications expected to be received or the technical correction. However, previous estimates

to OMB erroneously reflected the average burden time for Form FNS–252–2 as 10 minutes. The average time is 12 minutes and this correction appears in the proposed estimates in the summary chart.

Total number of respondents completing at least one of the 3 applications in question, taking into consideration the adjustments discussed above, would be as follows:

FNS–252:		
New authorizations	22,347	(22,770 × .98 + 32)
Reauthorizations	460	(184,000 × .25 × .01)
	22,807	
FNS–252–2:		
New authorizations	434	(22,770 × .02 − 32)
Reauthorizations	1,380	(184,000 × .25 × .03)
	1,803	
FNS–252R:		
Reauthorizations	44,160	(184,000 × .25 × .01 − 1,380 − 460)
Total Responses	68,770	

The existing estimates, as approved by OMB through May 1999 and shown on the following chart, reflect the total annual number of responses as 80,613 and the annual burden hours as 18,396. The proposed number of responses would be 68,700 with total burden hours of 15,777 hours. The net effect of the proposed burden estimates is an overall decrease in burden hours of 2,619 hours annually.

Affected Public: Food Retail and Wholesale Firms, Meal Service Programs, certain types of Group Homes, Shelters, and State-contracted Restaurants.

Estimated Number of Respondents: 68,770.

Estimated Number of Responses per respondent: 1.

Estimated Time per Response: 0.229416.

Estimated Total Annual Burden: 15,777.

SUMMARY OF PROPOSED BURDEN ESTIMATES FOR FORMS FNS–252, 252–2 AND 252R

Title	Number of respondents	Responses per respondent	Total annual responses	Burden hours per response	Total annual burden hours
Form FNS–252:					
Existing	26,431	1	26,431	.4500	11,894
Proposed	22,807	1	22,807	.4500	10,263
Difference	−3,624	1	−3,624	.....	−1,631
Form FNS–252–2:					
Existing	2,592	1	2,592	.1855	481
Proposed	1,803	1	1,803	.2000	361
Difference	−789	.....	−789	+.0145	−120
Form FNS–252R:					
Existing	51,590	1	51,590	.1167	6,021
Proposed	44,160	1	44,160	.1167	5,153
Difference	−7,430	.....	−7,430	.....	−868
Totals:					
Existing	80,613	.....	80,613	.....	18,396
Proposed	68,770	.....	68,770	.....	15,777
Difference	−11,843	.....	−11,843	.....	−2,619

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect except as specified in the ''Effective Date'' paragraph of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the Food Stamp Program, the administrative procedures are as follows: (1) for Program benefit recipients—State administrative procedures issued pursuant to 7 U.S.C. 2020 (e)(10) and 7 CFR 273.15; (2) for State agencies—administrative procedures issued pursuant to 7 U.S.C. § 2023 set out at 7 CFR 276.7 (for rules related to non-quality control (QC) liabilities) or 7 CFR 283 (for rules related to QC liabilities); (3) for program retailers and wholesalers-administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8.

Unfunded Mandate Reform Act of 1995

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Pub.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments, and the private sector. Under section 202 of the UMRA, FNS generally must prepare a written statement, including a cost-benefit

analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule. This proposed rule contains no Federal mandates under the regulatory provision of Title II of the UMRA for State, local and tribal governments or the private sector of $100 million or more in any one year. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Background

Pub. L. 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) was enacted on August 22,1996, and contains a number of provisions directly affecting the participation of retailers, wholesalers and other entities eligible to be authorized to participate in the Food Stamp Program (FSP). All of the provisions of the law addressed in this rulemaking were effective on the date of enactment. Five of the provisions are nondiscretionary and were immediately implemented in the program through an implementing memorandum issued on September 16, 1996. While these five provisions are incorporated into this proposed rule, they are identified as nondiscretionary in this preamble. Such nondiscretionary provisions are statutory requirements that the Secretary has no authority to change; therefore, such provisions or their implementation cannot be modified by public comment. The PRWORA provides discretion in the implementation of the remaining provisions of the law, and these provisions are being proposed for public comment in this proposed rulemaking. The Department encourages all interested parties to comment on the discretionary provisions as set forth in this proposed rule.

The PRWORA and this proposed rulemaking include the following discretionary and nondiscretionary provisions:

- Revision in the definition of ''coupon'' (nondiscretionary);
- Establishment of a minimum six month waiting period before stores that initially fail to meet authorization criteria can reapply to participate in the program (nondiscretionary), and the establishment of longer periods of time, including permanent prohibition from participation, which reflects the severity of the basis for the denial of the firm's application or a firm's reauthorization in the program (discretionary);
- Requirement that USDA, or its designees, conduct preauthorization visits to applicant firms as specified by the Secretary (discretionary);
- Authority for USDA to disqualify firms based on inconsistent redemption data and suspicious account activity as documented through EBT system data (nondiscretionary);
- Authority to suspend the program participation of violating firms subject to a permanent disqualification pending the outcome of administrative or judicial review (nondiscretionary);
- Authority for USDA to establish authorization periods for the participation of retailers in the program (discretionary);
- Authority to disqualify retailers who intentionally submit falsified applications, including permanent disqualification of such retailers (discretionary); and
- Authority to disqualify retailers that have been disqualified by State agencies responsible for the administration of USDA's Special Supplemental Nutrition Program for Women, Infants and Children (WIC) (discretionary), extension of the periods for disqualification of such FSP retailers and elimination of the FSP administrative and judicial review rights of such retailers (nondiscretionary).

This proposed rulemaking also includes a provision of the Federal Agriculture Improvement and Reform Act (FAIR), Pub.L. 104–127, which provides a limitation on the mandatory permanent disqualification actions that may be taken by USDA for retailers found to be trafficking. Conforming and minor editorial revisions in response to the National Performance Review Regulatory Planning and Reform Initiative are also included in this rule.

FAIR Provision—Eligibility for Trafficking Civil Money Penalties

Section 401 of the FAIR limits mandatory permanent disqualifications for food coupon trafficking (with no possibility of avoiding disqualification by paying a trafficking civil money penalty) to instances in which (1) owners are aware of violations or participate in the conduct of such food coupon trafficking violations or (2) it is the second investigation in which a trafficking violation was committed by firm management.

This provision amends the current automatic ineligibility of a firm for a civil money penalty (CMP) in lieu of permanent disqualification if the ownership or management of the firm was aware of, approved, benefited from or was involved in the conduct of the food coupon trafficking violations (§ 278.6(i)). The FAIR amendment expands the number of firms that may be eligible for such a CMP in lieu of permanent disqualification. The law provides that if such a violation represents first-time management food coupon trafficking, the firm may be considered eligible for the imposition of a CMP, if the firm documents that it meets all of the eligibility requirements for the CMP as specified in § 278.6 (i).

This rulemaking proposes that the provision be applicable to firm management in general, regardless of whether or not the same individual manager committed trafficking violations previously. For example, if an individual manager previously was dismissed from the position for committing trafficking violations, but a different manager of the same firm subsequently commits food coupon trafficking violations, the firm would not be eligible for a second CMP in lieu of permanent disqualification. However, the expansion of eligibility for a CMP in lieu of permanent disqualification as stipulated in the FAIR does not apply to firms where it is shown that ownership or management was involved in trafficking in ammunition, firearms, explosives or controlled substances.

This provision was effective on April 4,1996, the date of enactment of the statute. It was implemented upon the date on which Food and Nutrition Service (FNS) offices received the implementing memorandum, and is applicable to all firms issued a final determination letter subsequent to receipt of the implementing memorandum by FNS offices. The implementing memorandum was issued on September 16, 1996. The amendment to § 278.6(i) of this proposed regulation reflects this change. Comments are invited, however, on the proposed restriction which prohibits a CMP in lieu of permanent disqualification the second time management personnel of a firm commit trafficking violations, regardless of whether it was the same person in the management position that committed the previous violation(s).

Provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA)

The provisions of the PRWORA related to retailer participation in the FSP represent a three-tiered approach to

enhancing retailer compliance and integrity in order to further the purposes of the FSP and to reduce fraud in this critically important domestic food program. The provisions greatly reinforce USDA's efforts to effectively administer the FSP by improving the ability of the Department to screen applicant retailers prior to authorization, to control retailer performance subsequent to FSP authorization and to impose stiffer penalties against those firms found to be violating the public trust by committing FSP violations and defrauding the program.

Pre-Authorization Screening

The participation of retailers in the FSP is a privilege, not a right. The PRWORA and the provisions of this proposed rulemaking will serve to increase the Department's ability to cut off fraud and abuse at the source by allowing more in-depth pre-authorization screening of applicant firms and verification of the qualifications and continued eligibility of currently authorized firms to participate in the FSP.

Condition Precedent for Approval of Retail Food Stores and Wholesale Food Concerns

Section 831 of the PRWORA provides authority for USDA, its designee or State or local government officials designated by the Department, to conduct preauthorization visits to selected firms, and provides discretion to the Secretary to designate such firms on the basis of size, location and types of items sold. Amendments to § 278.1(a) of the regulation reflect the Secretary's authority to conduct such preauthorization visits as contained in the statute. It is anticipated that firm types subject to preauthorization visits will be determined by the FNS on an annual basis, as priorities and resources permit.

Waiting Period for Firms That Fail To Meet Authorization Criteria

Section 834 of the PRWORA amends section 9(d) of the Food Stamp Act to require that a firm that does not qualify for authorization because the firm fails to meet the eligibility criteria for approval be prohibited from submitting a new application to participate in the FSP for a minimum period of 6 months. The statute also allows the Secretary to establish longer time periods, including a permanent prohibition from participation, that is reflective of the severity of the basis for the denial of the application.

Section 278.1(k) of the regulation is proposed to be revised to include the minimum 6-month prohibition from reapplication, which applies to those firms that are shown to not meet Criterion A or Criterion B of the eligibility requirements of the Food Stamp Act, (7 U.S.C. 2012(k)) and, for co-located wholesale/retail firms, the requirements of § 278.1(b)(1)(iv). Criteria A and B were incorporated into the definition of ''retail food store'' in the Food Stamp Act, as amended by the Pub. L. 103–225, the Food Stamp Program Improvements Act of 1994. While this change in the definition was effective immediately upon enactment of the law and has been implemented, a proposed rule incorporating this statutory change specifically in the regulations is currently in Departmental clearance.

Currently, there is no waiting period for stores that wish to reapply to participate in the FSP after their application is denied because the stores fail to meet basic eligibility criteria for authorization. Such stores can adjust the types of staple food items that they offer for sale in order to meet minimal standards and reapply immediately, and then decrease their inventory after obtaining authorization. Such firms tend to be stores that do not effectuate the purpose of the FSP. The implementation of the 6-month waiting period will reduce the number of firms that temporarily stock minimum requirements of food items solely for the purpose of becoming authorized in the program and then engage in food stamp trafficking as their primary business. This provision applies to initial applicants as well as to those firms being reviewed for the purpose of reauthorization, or any other purpose, that are found not to meet program eligibility requirements. At the time of initial application and reauthorization, firms will be provided notice of this provision. This 6-month prohibition is nondiscretionary.

This rulemaking also proposes to implement the Secretary's authority to establish longer periods of time during which a firm would be restricted from reapplying for program authorization. Section 834 of the PRWORA provides that the Secretary may establish such time restrictions, up to a permanent denial, of a firm's ability to reapply for program authorization depending upon the severity of the reason for the denial of such a firm's initial application or subsequent application for authorization or reauthorization. Section 278.1(b)(3) sets out the criteria discussed below that are proposed to be used by FNS to make determinations regarding reapplication restrictions against firms that are denied authorization or reauthorization, or are otherwise withdrawn from the program. Section 278.1(k) details the proposed periods of time for which a firm will be denied authorization in the program in response to the criteria set out in § 278.1(b)(3). It is proposed that these provisions be applicable to denials of initial authorization and reauthorization in the FSP, as well as to the continued authorization of a firm for participation in the program.

Section 9 of the Food Stamp Act, as amended, provides the Secretary with the authority to consider the business integrity and reputation of program applicants when determining the qualifications of such applicants for participation in the program. The business integrity of a firm is critically important to the effective operation of the FSP. Therefore, the criteria in this proposed rulemaking focus on the business integrity and reputation of the ownership, management and other personnel of those firms seeking authorization or reauthorization in the program. Fraudulent activity in the FSP or other government programs, or in business-related activities in general, reflects on the ability of a firm to effectuate the purposes of the FSP and abide by the rules governing the program. Therefore, this rulemaking proposes that a firm be permanently denied the opportunity for reapplication if a firm is denied authorization or reauthorization in the program on the basis of criminal convictions or a finding of civil liability of the ownership or management of an applicant firm for reasons that affect the business integrity of such firms. If personnel of the firm have been criminally convicted or found civilly liable for reasons related to business integrity, the firm will be denied the opportunity for reapplication to the program for as long as that person is employed by the firm. Examples of such business integrity matters include conviction or civil liability for offenses such as insurance fraud, tax fraud, and embezzlement.

In addition, this proposal stipulates that firms that have been removed from other federal, State or local government programs shall be prohibited from applying for the FSP during the period of removal from such programs. Such action in the FSP would be taken, for example, if a firm is removed from the WIC Program, or had their State or local liquor or lottery license suspended.

It is also proposed that firms for which it is found that an attempt has been made to circumvent a period of disqualification, a civil money penalty

or a fine imposed for FSP violations, or firms for which evidence exists of prior violative behavior which is not related to the FSP, shall be denied the opportunity to apply for the program for a period of 3 years. For example, a firm fined for lottery or liquor license infractions, but not removed from the State or local program through suspension, would be restricted from participation in the FSP for 3 years, commencing from the effective date of the FSP denial.

Further, this rulemaking proposes that firms in which violations of the program have been committed but a sanction has not been served, shall be denied the opportunity to apply for the program for a period of time equivalent to the appropriate sanction period that should have been served. This provision would apply, for example, when a firm goes out of business prior to FNS' sanctioning the firm for FSP violations that were uncovered prior to its going out of business. If the same owner seeks authorization for a different store, such a store would not be immediately authorized in the FSP and would be subject to a waiting period equivalent to the period of time that the previously investigated firm under that ownership would have been disqualified. This waiting period would be applicable whether or not the previously investigated firm was authorized in the FSP or was an unauthorized firm found to be violating the FSP.

This provision also applies to persons who are owners or officers of multi-unit firms, as well as management and personnel who are employed by the owner of a multi-unit firm. If an owner or officer of a multi-unit firm personally committed FSP violations at one unit of a multi-unit firm, and a sanction was not served, it is proposed that an applicant firm under that same ownership would be denied authorization for a period of time that should have been served for the previously committed violations. Moreover, as currently provided in the FSP regulations, the authorization of other units of such multi-unit firms may be withdrawn in response to violations of the FSP by ownership.

If management or personnel of such multi-unit firms commit sanctionable violations at more than one location, this would indicate that such actions are reflective of the overall operating practice of the firm, thus indicating a lack of business integrity on the part of ownership. If such violations occur and an appropriate penalty was not served, the applicant firm will be denied or restricted from applying for authorization in the FSP for the period of time that should have been served by the firm for violations committed at these other locations under the same ownership. The period would be equivalent to the longest sanction period that would have been served for the most serious of violations committed by any one of the associated firms.

Finally, it is proposed that firms for which any other evidence exists that negatively impacts on the business integrity or reputation of the firm shall be denied the opportunity to apply for authorization in the FSP for one year from the effective date of the denial. Firms adversely affected by any such actions would be entitled to appeal rights provided by section 14 of the Food Stamp Act.

This proposal also makes an editorial change unrelated to the PRWORA provisions to conform the language of § 278.1(k), *Denying authorization.* and § 278.1(l), *Withdrawing authorization.* An additional editorial change is also being made to § 278.1(m) so as to conform this section with § 278.1(k) and § 278.1(l). These revisions do not result in any substantive change in the program, but simply clarify the intent that the provisions are applicable to both denials and withdrawals in the program. In addition, language is proposed to be added in § 278.1(k) and § 278.1(l) that reflects the current prohibition against participation in the program as specified in the current rule at § 278.6(f)(4), which prohibits authorization for participation of firms that have outstanding transfer of ownership civil money penalties owed to FNS.

Authority To Establish Authorization Periods

Section 832 of the PRWORA provides authority for the Secretary to establish specific periods of time during which a firm may be authorized to accept food stamps. The intent of this provision is to eliminate the current open-ended authorization of firms in the program. Further, it is intended to protect the integrity of the FSP by requiring a firm to re-apply periodically for continued participation and thereby ensuring that only legitimate and eligible firms are authorized to accept FSP benefits.

It is proposed that no firm be assigned an authorization period for participation in the FSP for longer than 5 years. Moreover, the FNS Officer in Charge may assign a lesser period of authorization, depending on the circumstances. Such circumstances may include the fact that a store is a new firm with unknown sales history, an additional outlet of a chain grocery store with an inconsistent FSP compliance record or a firm that only minimally meets the eligibility criteria for participation in the FSP.

The Department believes that the five year maximum authorization period, after which a firm is required to apply to be reauthorized in the program, is reasonable and necessary for the effective administration of the program, and will ensure that the eligibility of all firms are routinely and periodically reviewed.

The specification of an authorization period in no way precludes FNS from periodically requesting information from a firm or concern for purposes of reauthorization in the program or from withdrawing or terminating the authorization of a firm in accordance with program regulations. The Department will develop administrative procedures to ensure that, prior to the time of expiration of a firm's authorization period, the firm will be provided with reauthorization materials and be given the opportunity to submit such materials and information to enable FNS to evaluate the firm's qualifications for continued participation in the FSP. This proposal is included in § 278.1(j) of the regulation.

Post-Authorization Controls and Stiffer Penalties in the Program

Retailers that abuse the privilege of authorization in the FSP will have that privilege revoked. The PRWORA includes a number of significant tools that will enhance the Department's ability to enforce the effectiveness of the FSP and the monitoring of retailers.

Authority to Suspend Stores Violating Program Requirements Pending Administrative and Judicial Review

Section 845 of the PRWORA amends section 14 of the Food Stamp Act to require that a permanent disqualification of a firm from the FSP be effective from the date of the firm's receipt of the notice of disqualification. The PRWORA also provides that if such an administrative action by FNS is reversed through administrative or judicial review, the Secretary is not liable for the value of any revenues lost by the firm during such a disqualification period. This provision is nondiscretionary and was effective upon the date of enactment of the law. This provision pertains to firms that are subject to permanent disqualification for trafficking in the program, as well as to those firms subject to permanent disqualification for having been sanctioned twice before for violations of the program. Changes reflecting this

provision of the law have been made at § 278.6(b). Editorial revisions have also been made to § 278.8(a), § 279.7(a) and § 279.10(d). Since this provision is nondiscretionary, its implementation cannot be affected by public comment. It is important to note that the statute specifically refers only to permanent disqualification actions. Therefore, firms that request and are found to be eligible for a civil money penalty in lieu of permanent disqualification for trafficking are not affected by the immediate suspension requirement of the statute nor would such firms be expected to pay the civil money penalty pending appeal and may continue to participate in the program pending appeal.

Investigations

Section 278.6(a) of the regulation is proposed to be amended in accordance with section 841 of the PRWORA to make an editorial change that stipulates that findings of program violations and the subsequent suspension or disqualification of a firm may be made based on evidence established through on-site investigations, inconsistent redemption data, or evidence obtained through a transaction report under an electronic benefit transfer system. This supports current practice in the program and the current authority provided to the Secretary to enforce program compliance. The provision is nondiscretionary.

Disqualification of Retailers Disqualified From the WIC Program

Section 843 of the PRWORA amends section 12 of the Food Stamp Act to require the Secretary to develop standards by which firms disqualified from the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) are to be reciprocally *disqualified* from participation in the FSP. Currently, FSP regulations provide for the withdrawal of such firms from the FSP in response to WIC disqualification action. Such withdrawals must run for a concurrent period of time. This has proven to be problematic in that it is sometimes difficult for the Food Stamp withdrawal action to catch up to the WIC disqualification, particularly if the WIC disqualification is for a 6 month period or less. Under the current regulations, a firm has the right to appeal the Food Stamp action, and often, by the time the firm has appealed the FSP withdrawal, the WIC disqualification period is ending. Thus, the impact of reciprocal withdrawal is not significant. The change in the law provides that the FSP disqualification period (1) shall be for the same period of time as the WIC disqualification period; (2) may run consecutive to the WIC disqualification; and (3) shall not be subject to FSP administrative or judicial review. These provisions of the statute are nondiscretionary.

In addition, the law stipulates that the Secretary establish criteria for such reciprocal disqualification actions. Current regulations set forth the types of WIC violations that will result in withdrawal of a firm from participation in the FSP.

The Department proposes to retain these same criteria, with some editorial changes to ensure that trafficking violations are fully covered in the listed violations. The WIC violations included here, therefore, represent very serious violations of the WIC Program that are comparable to serious violations of the FSP. These violations best represent the potential risk of violations of a similar nature being committed by unscrupulous firms in the FSP, thus necessitating reciprocal FSP action to protect the integrity of the FSP. The Department solicits comments on the reciprocal disqualification standards set out in § 278.6(e)(8).

Conforming changes to restrict those firms subject to reciprocal disqualification from eligibility for FSP administrative and judicial review are made to § 278.6(n), § 278.8(a), § 279.3(a)(2) and § 279.10(a) of this regulation. The changes made to these sections are nondiscretionary and will not be affected by public comment.

Disqualification of Retailers Who Intentionally Submit Falsified Applications

Section 842 of the PRWORA amends section 12(b) of the Food Stamp Act to authorize the Secretary to disqualify, including permanently disqualify, participating retailers who knowingly submit applications that contain false information about substantive issues. This proposed rule proposes to subject a firm to permanent disqualification if it is found that false information directly related to the eligibility of the firm for authorization is knowingly submitted on the application. In addition, this rule proposes that in cases in which any false information is knowingly submitted that would impact on the ability of FNS to monitor and identify potentially violative firms, the firm shall be disqualified for three years.

This proposed rule outlines examples of the type of information that would be considered ''substantive'' for the purpose of determining eligibility, as well as the type of information that is considered to be substantive from a monitoring standpoint. These examples, however, are not inclusive of all of the information that, if fraudulently submitted, may result in disqualification of a firm.

This rule also proposes to deny authorization of any such firm which is found to have knowingly submitted such false information on the application at the time of initial application processing. It is proposed that such firms be denied for the same period of time for which they would be disqualified under § 278.6(e). The Department encourages comments on this discretionary provision.

List of Subjects

7 CFR Part 271

Administrative practice and procedure, Food stamps, Grant programs—social programs.

7 CFR Part 278

Administrative practice and procedure, Banks, banking, Claims, Food stamps, Groceries—retail, Groceries, General line—wholesaler, Penalties.

7 CFR Part 279

Administrative practice and procedure, Food stamps, Groceries—retail, Groceries, General line—wholesaler.

Accordingly, 7 CFR parts 271, 278 and 279 are proposed to be amended as follows:

1. The authority citation for parts 271, 278 and 279 continues to read as follows:

Authority:
7 U.S.C. 2011–2032.

PART 271—GENERAL INFORMATION AND DEFINITIONS

2. In § 271.2, the definition of ''coupon'' is revised to read as follows:

§ 271.2 Definitions.

* * * * *

Coupon means any coupon, stamp, type of certificate, authorization card, cash or check issued in lieu of a coupon, or access device, including an electronic benefit transfer card or personal identification number issued pursuant to the provisions of the Food Stamp Act of 1977, as amended, for the purchase of eligible food.

* * * * *

PART 278—PARTICIPATION OF RETAIL FOOD STORES, WHOLESALE FOOD CONCERNS AND INSURED FINANCIAL INSTITUTIONS

3. In § 278.1:

a. Paragraph (a) is revised;

b. Paragraph (b)(3) is revised;

c. Paragraph (j) is revised;

d. Paragraph (k) is amended by revising the first sentence of paragraph (k)(2) and redesignating the paragraph (k)(2) as paragraph (k)(7), and adding new paragraphs (k)(2), (k)(3), (k)(4), (k)(5) and (k)(6);

e. Paragraph (l) is amended by redesignating paragraphs (l)(1)(iii) through (l)(1)(v) as (l)(1)(v) through (l)(1)(vii), respectively, revising newly redesignated paragraph (l)(1)(vi), and adding new paragraphs (l)(1)(iii) and (l)(1)(iv);

f. The introductory text of paragraph (m) is revised;

g. Paragraph (o) is removed, and paragraphs (p) through (u) are redesignated as paragraphs (o) through (t), respectively; and

h. Newly redesignated paragraph (o) is revised and newly redesignated paragraph (q) is amended by removing references to (r)(2), (r)(3), (r)(1)(ii), (r)(1)(i), (r)(2)(ii), (r)(2)(iv), (r)(3)(iv) and (r), wherever they appear, and adding in their place references to (q)(2), (q)(3), (q)(1)(ii), (q)(1)(i), (q)(2)(ii), (q)(2)(iv), (q)(3)(iv) and (q), respectively.

The revisions and additions read as follows:

§ 278.1 Approval of retail food stores and wholesale food concerns.

(a) *Application.* Any firm desiring to participate or continue to be authorized in the program shall file an application as prescribed by FNS. Such an application shall contain information which will permit a determination to be made as to whether such an applicant qualifies, or continues to qualify, for authorization under the provisions of the program. FNS may require that a retail food store or wholesale food concern be visited to confirm eligibility for program participation prior to such store or concern being authorized or reauthorized in the program. FNS shall determine, based on factors that include size, location, and types of items sold, which stores or concerns shall be visited. Required visits shall be conducted by an authorized employee of the Department, a designee of the Secretary, or an official of the State or local government designated by the Secretary. FNS shall deny or approve the application, or request additional information from the applicant firm, within 30 days of receipt of the initial application.

(b) *Determination of authorization.* * * *

(3) *The business integrity and reputation of the applicant.* FNS shall deny the authorization of any firm from participation in the program for a period of time as specified in paragraph (k) of this section based on consideration of information regarding the business integrity and reputation of the firm as follows:

(i) Criminal conviction records reflecting on the business integrity of owners, officers, managers, or other personnel of the applicant firm;

(ii) Judicial determinations in civil litigation adversely reflecting on the business integrity of owners, officers, managers or other personnel of the applicant firm;

(iii) Official records of removal of the applicant firm from other Federal, State or local government programs;

(iv) Evidence of an attempt by the applicant firm to circumvent a period of disqualification, a civil money penalty or fine imposed for violations of the Food Stamp Act and program regulations;

(v) Evidence (other than a record of a civil or criminal conviction) of prior fraudulent behavior of owners, officers, managers, or other personnel of the applicant firm that is not Food Stamp Program related for which a Food Stamp Program sanction had not been previously imposed and satisfied;

(vi) Previous Food Stamp Program violations by owners, officers, managers, or other personnel of the applicant firm for which a sanction had not been previously imposed and satisfied;

(vii) Evidence of prior Food Stamp Program violations personally committed by the owner(s) or the officer(s) of the firm at one or more units of a multi-unit firm, or evidence of prior Food Stamp Program violations committed by management or other personnel at other units of multi-unit firms which would indicate a lack of business integrity on the part of ownership and for which sanctions had not been previously imposed and satisfied; or

(viii) Any other evidence adversely reflecting on the business integrity or reputation of the applicant firm.

* * * * *

(j) *Authorization.* Upon approval, FNS shall issue a nontransferable authorization card to the firm. The authorization card shall be valid only for the time period for which the firm is authorized to accept and redeem coupons under the program. The authorization card shall be retained by the firm until such time as the authorization period has ended, authorization in the program is superseded, or the card is surrendered or revoked as provided in this part. No firm may be assigned an authorization period in the program of longer than 5 years; however, the FNS Officer in Charge may assign a lesser period for authorization of a firm, depending on the circumstances of such firm. The specification of an authorization period in no way precludes FNS from periodically requesting information from a firm or concern for purposes of reauthorization in the program or from withdrawing or terminating the authorization of a firm in accordance with this part.

(k) *Denying authorization.* * * *

(2) The firm has failed to meet the eligibility requirements for authorization under Criterion A or Criterion B, as specified in the Food Stamp Act of 1977, as amended; or, for co-located wholesale/retail firms, the firm fails to meet the requirements of paragraph (b)(1)(iv) of this section. Any firm that has been denied authorization on these bases shall not be eligible to submit a new application for authorization in the program for a minimum period of six months from the effective date of the denial;

(3) The firm has been found to lack the necessary business integrity and reputation to further the purposes of the program. Such firms shall be denied authorization in the program for the following period of time:

(i) Firms for which criminal conviction records reflecting on the business integrity of owners, officers, or managers exist shall be denied authorization permanently; firms for which such records exist with regard to other personnel employed by the firm shall be denied for as long as such person continues to be employed by the firm;

(ii) Firms for which judicial determinations in civil litigation adversely reflecting on the business integrity of owners, officers or managers of the firm have been made shall be denied authorization permanently; firms for which such determinations have been made with regard to other personnel employed by the firm shall be denied authorization for as long as such person continues to be employed by the firm;

(iii) Firms which have been officially removed from other Federal, State or local government programs shall be denied for a period equivalent to the period of removal from any such programs;

(iv) Firms for which evidence exists of an attempt to circumvent a period of disqualification, a civil money penalty or fine imposed for violations of the Food Stamp Act and program regulations shall be denied for a period

of three years from the effective date of denial;

(v) Firms for which evidence exists of prior fraudulent behavior of owners, officers, or managers of the firm which is not Food Stamp Program related and for which a Food Stamp Program sanction had not been previously imposed and satisfied shall be denied for a period of three years from the effective date of denial; firms for which such fraudulent behavior was committed by personnel employed by the firm shall be denied authorization for as long as such person continues to be employed by the firm;

(vi) Firms for which evidence exists of prior Food Stamp Program violations by owners, officers, managers, or other personnel of the firm for which a sanction had not been previously imposed and satisfied shall be denied for a period of time equivalent to the appropriate disqualification period for such previous violations, effective from the date of denial;

(vii) Firms for which evidence exists of prior Food Stamp Program violations at other units of multi-unit firms for which a sanction had not been previously imposed and satisfied shall be denied for a period of time equivalent to the appropriate disqualification period for such previous violations, effective from the date of denial;

(viii) Firms for which any other evidence exists which reflects negatively on the business integrity or reputation of the applicant firm shall be denied for a period of one year from the effective date of denial;

(4) The firm has filed an application that contains false or misleading information about a substantive matter, as specified in § 278.6(e). Such firms shall be denied authorization for the periods specified in § 278.6(e)(1) or § 278.6(e)(3);

(5) The firm's participation in the program will not further the purposes of the program;

(6) The firm has been found to be circumventing a period of disqualification or a civil money penalty through a purported transfer of ownership;

(7) The firm has failed to pay in full any fiscal claim assessed against the firm under § 278.7, any fines assessed under § 278.6(l) or § 278.6(m), or a transfer of ownership civil money penalty assessed under § 278.6(f). * * *

(l) *Withdrawing authorization.* (1) * * *

(iii) The firm fails to meet the requirements for eligibility under Criterion A or Criterion B, as specified in the Food Stamp Act of 1977, as amended, or, for co-located wholesale/retail firms, the firm fails to meet the requirements of paragraph (b)(1)(iv) of this section, for the time period specified in paragraph (k)(2) of this section;

(iv) The firm fails to maintain the necessary business integrity to further the purposes of the program, as specified in paragraph (b)(3) of this section. Such firms shall be withdrawn for lack of business integrity for periods of time in accordance with those stipulated in paragraph (k)(3) of this section for specific business integrity findings;

* * * * *

(vi) The firm has failed to pay in full any fiscal claim assessed against the firm under § 278.7 or any fines assessed under § 278.6(l) or § 278.6(m) or a transfer of ownership civil money penalty assessed under § 278.6(f) or

* * * * *

(m) *Refusal to accept correspondence or to respond to inquiries.* FNS may withdraw or deny the authorization of any firm which:

* * * * *

(o) *Applications containing false information.* The filing of any application containing false or misleading information may result in the denial of approval for participation in the program, as specified in paragraph (k) of this section, or disqualification of a firm from participation in the program, as specified in § 278.6, and may subject the firm and persons responsible to civil or criminal action.

* * * * *

4. In Section 278.6:

a. Paragraph (a) is revised;

b. Paragraph (b)(1) is amended by adding one new sentence to the end of the paragraph;

c. Paragraph (b)(2)(i) is amended by adding two new sentences to the end of the paragraph;

d. Paragraph (c) is amended by adding three new sentences to the end of the paragraph;

e. Paragraph (e) is amended by adding new paragraphs (e)(1)(iii), (e)(3)(vi) and (e)(8);

f. Paragraph (i) is amended by removing the first sentence of Criterion 4 and adding three new sentences in its place, and by removing the words ''or management'' in paragraph (i)(1)(v); and

g. Paragraph (n) is revised.

The revisions and additions read as follows:

§ 278.6 Disqualification of retail food stores and wholesale food concerns, and imposition of civil money penalties in lieu of disqualifications.

(a) *Authority to disqualify or subject to a civil money penalty.* FNS may disqualify any authorized retail food store or authorized wholesale food concern from further participation in the program if the firm fails to comply with the Food Stamp Act or this part. Such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through on-site investigations, inconsistent redemption data, evidence obtained through a transaction report under an electronic benefit transfer system, or the disqualification of a firm from the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), as specified in paragraph (e)(8) of this section. Disqualification shall be for a period of 6 months to 5 years for the firm's first sanction; for period of 12 months to 10 years for a firm's second sanction; and disqualification shall be permanent for a disqualification based on paragraph (e)(1) of this section. Any firm which has been disqualified and which wishes to be reinstated at the end of the period of disqualification or at any later time shall file a new application under § 278.1 so that FNS may determine whether reauthorization is appropriate. The application may be filed no earlier than 10 days before the end of the period of disqualification. FNS may, in lieu of a disqualification, subject a firm to a civil money penalty of up to $10,000 for each violation if FNS determines that a disqualification would cause hardship to participating households. FNS may impose a civil money penalty of up to $20,000 for each violation in lieu of a permanent disqualification for trafficking, as defined in § 271.2 of this chapter, in accordance with the provisions of paragraphs (i) and (j) of this section.

(b) *Charge letter.* (1) * * * In the case of a firm for which action is taken in accordance with paragraph (e)(8) of this section, the charge letter shall inform such firm that the disqualification action is not subject to administrative or judicial review, as specified in paragraph (e)(8) of this section.

(2) *Charge letter for trafficking.* (i) * * * The charge letter shall also advise the firm that the permanent disqualification shall be effective immediately upon the date of receipt of the notice of determination, regardless of whether a request for review is filed in accordance with § 279.5 of this chapter. If the disqualification is

reversed through administrative or judicial review, the Secretary shall not be liable for the value of any sales lost during the disqualification period.

* * * * *

(c) * * * In the case of a firm subject to permanent disqualification under paragraph (e)(1) of this section, the determination shall inform such a firm that action to permanently disqualify the firm shall be effective immediately upon the date of receipt of the notice of determination from FNS, regardless of whether a request for review is filed in accordance with § 279.5 of this chapter. If the disqualification is reversed through administrative or judicial review, the Secretary shall not be liable for the value of any sales lost during the disqualification period. In the case of a firm for which action is taken in accordance with paragraph (e)(8) of this section, the determination notice shall inform such firm that the disqualification action is not subject to administrative or judicial review, as specified in paragraph (e)(8) of this section.

* * * * *

(e) *Penalties.* * * *

(1) * * *

(iii) It is determined that personnel of the firm knowingly submitted information on the application that contains false information of a substantive nature that could affect the eligibility of the firm for authorization in the program, such as, but not limited to, information related to:

(A) Eligibility requirements under § 278.1(b),(c),(d),(e),(f),(g) and (h);

(B) Staple food stock;

(C) Annual gross sales for firms seeking to qualify for authorization under Criterion B as specified in the Food Stamp Act, as amended;

(D) Annual staple food sales;

(E) Total annual gross retail food sales for firms seeking authorization as co-located wholesale/retail firms;

(F) Ownership of the firm;

(G) Employer Identification Numbers and Social Security Numbers;

(H) Food Stamp Program history, business practices, business ethics, WIC disqualification or authorization status, when the store did (or will) open for business under the current ownership, business, health or other licenses, and whether or not the firm is a retail and wholesale firm operating at the same location; or

(I) Any other information of a substantive nature that could affect the eligibility of a firm.

* * * * *

(3) * * *

(vi) Personnel of the firm knowingly submitted information on the application that contained false information of a substantive nature related to the ability of FNS to monitor compliance of the firm with FSP requirements, such as, but not limited to, information related to:

(A) Annual eligible retail food sales;

(B) Store location and store address and mailing address;

(C) Financial institution information; or

(D) Store name, type of ownership, number of cash registers, and non-food inventory and services.

* * * * *

(8) FNS shall disqualify from the Food Stamp Program any firm which is disqualified from the WIC Program:

(i) Based in whole or in part on any act which constitutes a violation of that program's regulation and which is shown to constitute a misdemeanor or felony violation of law, or for any of the following specific program violations:

(A) Claiming reimbursement for the sale of an amount of a specific food item which exceeds the store's documented inventory of that food item for a specified period of time;

(B) Exchanging WIC food instruments for cash, credit or consideration other than eligible food; or the exchange of firearms, ammunition, explosives or controlled substances, as defined in section 802 of title 21 of the United States Code, for food instruments;

(C) Receiving, transacting and/or redeeming WIC food instruments outside of authorized channels;

(D) Accepting WIC food instruments from unauthorized persons;

(E) Exchanging non-food items for a WIC food instrument;

(F) Charging WIC customers more for food than non-WIC customers or charging WIC customers more than the current shelf price; or

(G) Charging for food items not received by the WIC customer or for foods provided in excess of those listed on the food instrument.

(ii) FNS shall not disqualify a firm from the Food Stamp Program on the basis of a WIC disqualification unless:

(A) Prior to the time prescribed for securing administrative review of the WIC disqualification action, the firm was provided individual and specific notice that it could be disqualified from the Food Stamp Program based on the WIC violations committed by the firm;

(B) A signed and dated copy of such notice is provided to FNS by the WIC administering agency; and

(C) A determination is made in accordance with § 278.6(a) that such action will not cause a hardship for participating Food Stamp households.

(iii) Such a Food Stamp disqualification:

(A) Shall be for the same length of time as the WIC disqualification;

(B) May begin at a later date than the WIC disqualification; and

(C) Shall not be subject to administrative or judicial review under the Food Stamp Program.

* * * * *

(i) *Criteria for eligibility for a civil money penalty in lieu of permanent disqualification for trafficking.* * * *

Criterion 4. Firm ownership was not aware of, did not approve, did not benefit from, or was not in any way involved in the conduct or approval of trafficking violations; or it is only the first occasion in which a member of firm management was aware of, approved, benefited from, or was involved in the conduct of any trafficking violations by the firm. Upon the second occasion of trafficking involvement by any member of firm management uncovered during a subsequent investigation, a firm shall not be eligible for a civil money penalty in lieu of permanent disqualification. Notwithstanding the above provision, if trafficking violations consisted of the sale of firearms, ammunition, explosives or controlled substances, as defined in 21 U.S.C. 802, and such trafficking was conducted by the ownership or management of the firm, the firm shall not be eligible for a civil money penalty in lieu of permanent disqualification.

* * * * *

(n) *Review of determination.* The determination of FNS shall be final and not subject to further administrative or judicial review unless a written request for review is filed within the period stated in § 279.5. Notwithstanding the aforementioned, any FNS determination made on the basis of paragraph (e)(8) of this section shall not be subject to further administrative or judicial review.

* * * * *

5. In § 278.8, paragraph (a) is revised to read as follows:

§ 278.8 Administrative review—retail food stores and wholesale food concerns.

(a) *Requesting review.* A food retailer or wholesale food concern aggrieved by administrative action under § 278.1, § 278.6 or § 278.7 may, within the period stated in § 279.5 of this chapter, file a written request for review of the administrative action with the review officer, except that disqualification actions taken against firms in accordance with § 278.6(e)(8) shall not be subject to administrative or judicial review. On receipt of the request for review, the questioned administrative action shall be stayed pending disposition of the request for review by the review officer, except in the case of a permanent disqualification as

specified in § 278.6(e)(1). A disqualification for failure to pay a civil money penalty shall not be subject to administrative review.

* * * * *

PART 279—ADMINISTRATIVE AND JUDICIAL REVIEW—FOOD RETAILERS AND FOOD WHOLESALERS

6. In § 279.3, paragraph (a)(2) is revised to read as follows:

§ 279.3 Authority and jurisdiction.

(a) *Jurisdiction.* * * *

(2) Imposition of a fine under § 278.6(l) of this chapter or § 278.6 (m) of this chapter or disqualification from participation in the program or imposition of a civil money penalty under § 278.6 of this chapter, except for disqualification actions imposed under § 278.6(e)(8) of this chapter;

* * * * *

7. In § 279.7, paragraph (a) is amended to add two new sentences after the first sentence to read as follows:

§ 279.7 Action upon receipt of a request for review.

(a) *Holding action.* * * * However, in cases of permanent disqualification under § 278.6(e)(1) of this chapter, such administrative action shall not be held in abeyance pending such a review determination. If the disqualification is reversed through administrative or judicial review, the Secretary shall not be held liable for the value of any sales lost during the disqualification period. * * *

* * * * *

8. In § 279.10, the first sentence of paragraph (a) and paragraph (d) are revised to read as follows:

§ 279.10 Judicial review.

(a) *Filing for judicial review.* Except for firms disqualified from the program in accordance with § 278.6(e)(8) of this chapter, a firm aggrieved by the determination of the food stamp review officer may obtain judicial review of the determination by filing a complaint against the United States in the U.S. district court for the district in which the owner resides or is engaged in business, or in any court of record of the State having competent jurisdiction. * * *

* * * * *

(d) *Stay of action.* During the pendency of any judicial review, or any appeal therefrom, the administrative action under review shall remain in force unless the firm makes a timely application to the court and after hearing thereon, the court stays the administrative action after a showing that irreparable injury will occur absent a stay and that the firm is likely to prevail on the merits of the case. However, permanent disqualification actions taken in accordance with § 278.6(e)(1) of this chapter shall not be subject to such a stay of administrative action. If the disqualification action is reversed through administrative or judicial review, the Secretary shall not be liable for the value of any sales lost during the disqualification period.

Dated: April 24, 1990.

Yvette S. Jackson,

Administrator, Food and Nutrition Service.

[FR Doc. 98–12038 Filed 5–5–98; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Parts 1710 and 1714

Prioritizing the Queue for Hardship Rate and Municipal Rate Loans to Electric Borrowers

AGENCY: Rural Utilities Service, Agriculture.

ACTION: Extension of public comment period.

SUMMARY: On April 8, 1998, the Rural Utilities Service (RUS) published in the **Federal Register** an Advanced Notice of Proposed Rulemaking for Prioritizing the Queue for Hardship Rate and Municipal Rate Loans to Electric Borrowers. RUS wishes to extend the comment period for this proposed rule.

The RUS makes hardship rate and municipal rate loans to electric borrowers who meet certain statutory requirements. All applicants from borrowers for these loans are usually considered for approval on a first-come first-served basis. RUS now has a significant shortfall between the total dollar amount of qualified applicants and loan authority for both hardship rate and municipal rate loans. This shortfall has resulted in long waits in the queues for loan approval. RUS is considering making changes to its administrative procedures to prioritize the applications for hardship rate and municipal rate loans, separately, in order to offer these loans to borrowers in greater need of assistance before offering them to other borrowers in the loan queues.

DATES: The date by which written comments must arrive at the address given below is extended from May 8, 1998, to June 8, 1998.

ADDRESSES: Submit written comments to F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, U.S. Department of Agriculture, Rural Utilities Service, Stop 1522, 1400 Independence Avenue, SW, Washington, D.C. 20250–1522. RUS requires, in hard copy, a signed original and 3 copies of all comments (7 CFR 1700.4(e)). Comments will be available for public inspection during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Alex M. Cockey, Jr., Deputy Assistant Administrator-Electric Program, U.S. Department of Agriculture, Rural Utilities Service, Stop 1560, 1400 Independence Avenue, SW., Washington, D.C. 20250–1560. Telephone: 202–720–9545. FAX: 202–690–0717.

Blaine C. Stockton,

Acting Administrator, Rural Utilities Service.

[FR Doc. 98–11995 Filed 5–5–98; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AEA–02]

Proposed Amendment to Class E Airspace; Philadelphia, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Philadelphia, PA. The amendment of a Standard Instrument Approach Procedure (SIAP) based on an Instrument Landing System (ILS) at Philadephia International Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before June 5, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 98–AEA–02, F.A.A. Eastern Region, Federal Building #111, John. F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Airspace Branch, AEA–520, F.A.A. Eastern region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520 F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

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, 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. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 98–AEA–02.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the 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 Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Class E airspace area at Philadelphia, PA. The ILS RWY 9R SIAP has been amended for the Philadelphia International Airport. Additional controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP and for IFR operations at the airport. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 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 the 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 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

1. The authority citation for 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 Federal Aviation Administration Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, is proposed to be amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA PA E5 Philadelphia, PA [Revised]

Philadelphia International Airport, PA
(Lat 39°52′13″ N., long 75°14′42″ W.)

That airspace extending upward from 700 feet above the surface within a 10-mile radius of Philadelphia International Airport extending clockwise from the 095° bearing from the airport to the 225° bearing from the airport and within a 15-mile radius of Philadelphia International Airport extending from the 225° bearing from the airport clockwise to the 095° bearing from the airport, excluding the portions that coincide with the Berlin, NJ, Cross Keys, NJ, Wrightstown, NJ, Toughkenamon, PA, North Philadelphia, PA, and Wilmington, DE, Class E airspace areas.

* * * * *

Issued in Jamaica, New York, on April 10, 1998.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–12041 Filed 5–5–98; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Ch. I

Interpretation of Rules and Guides for Electronic Media; Request for Comment

AGENCY: Federal Trade Commission.

ACTION: Notice. Request for public comments.

SUMMARY: The Federal Trade Commission (''Commission'') seeks comment on its proposal to issue a policy statement regarding the applicability of its rules and guides to newer forms of electronic media, such as e-mail, CD-ROMs, and the Internet (hereinafter collectively referred to as ''electronic media''). This **Federal Register** Notice (hereinafter ''Notice'') does not contain a proposed policy statement. This Notice is intended to provide a discussion of the issues that would be addressed in a future policy statement and to solicit public comment on these issues. The Commission believes that such a policy statement would (1) clarify the extent to which the Commission's rules and guides apply to representations disseminated through, and activities occurring on, electronic media; (2) provide guidance to the public as to how to comply with the Commission's rules and guides in

advertising products and services and conducting commercial activities using electronic media; (3) interpret certain terms in light of the use of electronic media and provide guidance regarding how electronic media could be used to comply with the affirmative disclosure requirements of the rules and guides; and (4) advise how disclosures required or recommended by the Commission's rules and guides should be made in advertising and other commercial transactions in electronic media. The Commission also solicits comment regarding interest in participating in or attending a workshop to discuss the issues raised in this Notice.

DATES: Comments must be submitted on or before July 7, 1998.

ADDRESSES: Written comments should be submitted to: Secretary, Federal Trade Commission, Room H–159, Sixth Street and Pennsylvania Ave., N.W., Washington, D.C. 20580. The Commission requests that the original comment be filed with five copies, if feasible. The Commission also requests, if possible, that the comment be submitted in electronic form on a computer disk. (Programs based on DOS or Windows are preferred. Files from other operating systems should be submitted in ASCII text format.) The disk label should identify the commenter's name and the name and version of the word processing program used to create the comment. Alternatively, the Commission will accept comments submitted to the following e-mail address <ElecMedia@ftc.gov>. All submissions should be captioned: ''Interpretation of Rules and Guides for Electronic Media—Comment, FTC File No. P974102.''

FOR FURTHER INFORMATION CONTACT: Laura J. DeMartino, Attorney, Federal Trade Commission, Sixth Street and Pennsylvania Ave., N.W., Washington, D.C. 20580, telephone (202) 326–3030, e-mail (for questions or information only) <Ldemartino@ftc.gov> .

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission proposes issuing a policy statement in the future regarding the applicability of its rules and guides to electronic media. The Commission is using the term ''electronic media'' in this Notice to refer to the newer forms of electronic media, such as e-mail, CD-ROMs, and the Internet.[1] This Notice does not contain a proposed policy statement. It is intended to provide a discussion of the issues that would be addressed in an expected policy statement and to solicit public comment on these issues. The purpose of the proposed policy statement would be to eliminate or reduce any uncertainty as to whether the Commission's rules and guides apply to electronic media.[2]

The proposed policy statement also would clarify how the rules and guides apply to these new media. Many of the Commission's rules and guides, for example, use terms that may be more commonly associated with print media. The Commission, however, believes these terms apply to electronic media. The proposed policy statement also would discuss the use of electronic media as a means of complying with some of the requirements or recommendations of the rules and guides.[3]

The unique features of electronic media present special challenges and opportunities for making disclosures effectively. The proposed policy statement, therefore, would provide guidance on how the Commission would evaluate whether disclosures in electronic media are clear and conspicuous. The Commission believes that such guidance will encourage voluntary compliance by industry and promote industry self-regulation. This Notice discusses the Commission's approach to achieve these goals, which would form the basis of a future policy statement.

The issue of Commission guidance and public input on electronic media issues arose during the Commission's review of the Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992 (''900-Number Rule''), 16 CFR part 308.[4] During a public workshop on the 900-Number Rule, workshop participants suggested that the Commission conduct a separate proceeding that would address the issue of making clear and conspicuous disclosures on the Internet and provide an opportunity for all interested parties to submit comments.[5] Accordingly, the Commission has determined to publish this notice and seek public comment from all interested parties on the Commission's proposed policy statement. The Commission believes that public comment will be helpful because of the challenging issues presented by electronic media and the pace at which technological developments are occurring.[6]

A. Background

1. Technological Advances

Significant technological advances in recent years are dramatically changing the global marketplace. With approximately 62 million people in the United States having access to the Internet, it is becoming an increasingly popular medium for advertising goods and services and for conducting commercial transactions.[7] It is estimated that businesses spent $906.5 million for advertising on the Internet in 1997.[8] Advertisements on the World Wide Web (''Web''), the graphical segment of the Internet, often contain ''pages'' which may contain text, pictures, video, sound, interactive graphics, or a combination of all of these features.[9]

[1] The Internet encompasses the World Wide Web as well as other electronic information-exchanging features, including ''Telnet,'' ''FTP'' (File Transfer Protocol), and USENET newsgroups. The Commission is using the term the ''Internet'' to encompass the Internet and proprietary online services, such as America Online and Prodigy.

[2] Some traditional forms of electronic media, such as television and radio, have been used for advertising and marketing purposes for years. This Notice is not intended to affect the requirements of the Commission's rules and guides for television or radio advertisements.

[3] Other federal agencies, such as the U.S. Securities and Exchange Commission, also have considered whether new technology may be used to comply with the laws they enforce, and have issued interpretive guidance and rule amendments to clarify these issues and assist industry. *See, e.g.,* 60 FR 53458 (Oct. 13, 1995); 61 FR 24652 (May 15, 1996).

[4] 62 FR 11749 (Mar.12, 1997) (soliciting comment, *inter alia,* on whether the 900-Number Rule's disclosure requirements are adequate for Internet advertisements).

[5] Transcript of the Workshop on the 900-Number Rulemaking (Day 2, June 20, 1997), Volume 2, pp. 559–579. The transcript is available in the Public Reference Room, Room 130, of the Commission and on the Commission's Web site <http://www.ftc.gov>. Some commenters stated that the Commission's determination regarding how clear and conspicuous disclosures should be made in Internet advertisements pursuant to the 900-Number Rule would have broad implications for all Internet advertisements. Therefore, it was argued that all interested parties, and not simply those persons interested in the 900-Number Rule, should have notice of the review of this issue and the opportunity to submit comments. *Id.*

[6] The Commission recognizes the usefulness of maintaining a dialogue with the public regarding these issues in order to benefit both consumers and industry. *See* Commission staff report, Anticipating the 21st Century: Consumer Protection Policy in the New High-Tech Global Marketplace, p. 7 (May 1996) (summarizing testimony presented during hearings regarding the need for a continuing dialogue).

[7] IntelliQuest Information Group, Inc. (Feb. 5, 1998) <http://www.intelliquest.com> (number of users as of the fourth quarter, 1997).

[8] Internet Advertising Bureau (Apr. 6, 1998) <http://www.iab.net/news/ breaksource.html>.

[9] A ''Web site'' is a collection of linked electronic ''pages.'' The main ''page'' within the Web site is often referred to as a ''home page,'' from which links are provided to electronic pages within the overall Web site. Frequently, the home page or other pages within the site will provide links to other Web sites as well. This linkage is possible because the Web allows users to navigate or transfer from one electronic document to another—in actually viewing files stored on various

Continued

Consumers are able to purchase goods or services directly over the Internet.[10] Businesses also use CD-ROMs to disseminate information about their products to consumers. In addition, businesses use e-mail and facsimiles to communicate directly with consumers.

2. The Commission's Role in the New Marketplace

The Commission believes that the use of this new technology should be encouraged. The Internet provides consumers and businesses with access to a global marketplace. Consumers have instant access to a large amount of information and a greater array of products and services. These newer forms of electronic media also provide businesses with different ways of advertising, selling goods, and communicating with customers. At the same time, the use of this new technology for commercial activities raises consumer protection concerns.[11] The Commission agrees with the statement by the Interagency Working Group on Electronic Commerce, that ''[i]n order to realize the commercial and cultural potential of the Internet, consumers must have confidence that the goods and services offered are fairly represented, that they will get what they pay for, and that recourse or redress is available if they do not.''[12] As a result, the Commission believes that enforcement of consumer protection laws is necessary to ensure the vitality and viability of the Internet as a new marketplace.[13]

3. Legal Authority

This Notice addresses the applicability of certain rules and guides issued pursuant to section 5 of the Federal Trade Commission Act (''FTC Act''), 15 U.S.C. 45(a), and other statutes enforced by the Commission to electronic media. Section 5 of the FTC Act gives the Commission broad authority over the advertising and marketing of products and services through its prohibition on ''unfair or deceptive acts or practices in or affecting commerce.'' The Commission has issued policy statements to provide guidance on how it evaluates whether acts or practices are ''unfair or deceptive'' under section 5 of the FTC Act and on how it will enforce the legal requirement that advertisers possess a reasonable basis for objective claims about their products and services.[14]

The Commission rules addressed in this Notice prohibit specific unfair or deceptive acts or practices and ''may include requirements prescribed for the purpose of preventing such acts or practices.'' [15] The Commission may initiate civil actions, seeking civil penalties, against any person who violates a rule ''with actual knowledge or knowledge fairly implied on the basis of objective circumstances that such act is unfair or deceptive and is prohibited by such rule.'' [16] The Commission also promulgates rules pursuant to specific Acts of Congress.[17] The remedies available to enforce these rules vary.

The Commission's guides are ''administrative interpretations of the laws administered by the Commission'' and are intended to assist the public in voluntarily complying with the law (*e.g.*, by providing guidance on how to avoid unfair or deceptive acts or practices).[18] Although guides do not have the force and effect of law, failure to comply with them may result in corrective action under applicable statutory provisions (e.g., a proceeding pursuant to section 5(a) of the FTC Act).[19]

B. Scope of the Proposed Policy Statement

The proposed policy statement would address those rules and guides issued by the Commission that solely pertain to consumer protection issues.[20] These rules and guides are listed in the Appendix. Other consumer protection rules and guides will not be addressed in this proceeding.[21] These rules and guides either may not apply to electronic media or contain provisions that preclude uniform treatment in a

computers—through the use of electronically coded links called hypertext.

[10] Estimates of online sales vary dramatically. One survey, however, estimates that as of the fourth quarter, 1997, 37.2 million users were shopping online and 10.5 million users were purchasing online. IntelliQuest Information Group, Inc. (Feb. 5, 1998) <http://www.intelliquest.com>.

[11] The Commission examined consumer protection issues raised by technological developments during hearings in November 1995. The Commission staff report on the hearings describes the technological developments, the challenges faced by law enforcement agencies to address consumer protection issues without stifling the use of new technology, and various proposed strategies for resolving consumer protection concerns. Commission staff report, Anticipating the 21st Century: Consumer Protection Policy in the New High-Tech Global Marketplace (May 1996).

[12] A Framework for Global Electronic Commerce, p. 17 (July 1, 1997) <http://www.whitehouse.gov/WH/New/Commerce>. ''Truthful and accurate advertising shall be the cornerstone of advertising on all media, including the Internet.'' *Id.* at 16.

[13] *See* Commission staff report, Anticipating the 21st Century: Consumer Protection Policy in the New High-Tech Global Marketplace, pp. 27, 30–31 (May 1996). The Commission already has brought a number of cases against companies engaged in unfair or deceptive practices on the Internet. *See, e.g., Global World Media Corp.*, Docket No. C–3772 (Oct. 17, 1997) (alleged false claims about an herbal supplement in advertising on the Internet and other media); *FTC v. Audiotex Connection, Inc.*, CV–97–0726 (E.D.N.Y. filed Feb. 13, 1997) (Internet Web site program allegedly disconnected consumer's access provider without consent or adequate disclosure and re-connected computer to an international access provider that billed consumers over $2 per minute); *FTC v. Fortuna Alliance, L.L.C.*, Civ. No. C96–799M (W.D. Wash. filed May 23, 1996) (alleged illegal pyramid investment scheme marketed on the Internet); *FTC* v. *Brandzel*, 96C 1440 (N.D. Ill. filed Mar. 13, 1996) (computer memory chips advertised on the Internet allegedly were paid for but not delivered in violation of section 5 of the FTC Act and the Mail or Telephone Order Merchandise Rule, 16 CFR part 435).

[14] Federal Trade Commission Policy Statement on Deception, *appended to Cliffdale Associates, Inc.*, 103 F.T.C. 110, 174 (1984) (hereinafter ''*Deception Statement*''); Federal Trade Commission Policy Statement on Unfairness *appended to International Harvester Co.*, 104 F.T.C. 949 1070 (1984) (superseded by 15 U.S.C. 45(n)); Federal Trade Commission Policy Statement Regarding Advertising Substantiation, 48 FR 10471 (Mar. 11, 1983).

[15] 15 U.S.C. 57a(a)(1)(B). The Commission is empowered to promulgate rules which define with specificity unfair or deceptive acts or practices when it has reason to believe that certain unfair or deceptive acts or practices are prevalent. *Id.*

[16] 15 U.S.C. 45(m)(1)(A). The Commission also may seek redress for consumers. 15 U.S.C. 57b(a)(1).

[17] For example, the Energy Policy and Conservation Act, 42 U.S.C. 6201, *et seq.*, as amended, requires the Commission to prescribe rules for energy consumption and efficiency labeling of certain appliances. *See* Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act (''Appliance Labeling Rule''), 16 CFR part 305.

[18] 16 CFR 1.5. Section 18(a)(1)(A) of the FTC Act authorizes the Commission to issue ''interpretative rules and general statements of policy with respect to unfair or deceptive acts or practices in or affecting commerce.'' 15 U.S.C. 57a(a)(1)(A).

[19] 16 CFR 1.5.

[20] The Commission is not addressing antitrust issues or the Guides for Advertising Allowances and Other Merchandising Payments and Services, 16 CFR part 240, in this Notice. Further, this Notice does not address the Commission's rules of practice, 16 CFR parts 1–4. Other issues relating to the use of electronic media generally, such as privacy and electronic payment technologies, are being examined in different proceedings. *See* 62 FR 10271 (Mar. 6, 1997) (regarding previous Commission workshops on consumer information privacy issues and children's online privacy); 62 FR 19173 (Apr. 18, 1997) and 62 FR 29392 (May 30, 1997) (discussing public meetings held by the inter-agency Consumer Electronic Payments Task Force on consumer issues raised by emerging electronic money and payment technology).

[21] Rule and Regulations Under the Hobby Protection Act (16 CFR part 304); Regulations under the Comprehensive Smokeless Tobacco Health Education Act of 1986 (16 CFR part 307); Test Procedures and Labeling Standards for Recycled Oil (16 CFR part 311); Unfair or Deceptive Advertising and Labeling of Cigarettes in Relation to the Health Hazards of Smoking (16 CFR part 408); Care Labeling of Textile Wearing Apparel and Certain Piece Goods (16 CFR part 423); Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations (16 CFR part 429); Funeral Industry Practices Rule (16 CFR part 453); Ophthalmic Practice Rules (16 CFR part 456); Rules, Regulations, Statements of General Policy or Interpretation and Exemptions Under the Fair Packaging and Labeling Act (16 CFR parts 500–503); and Procedures for State Application for Exemption from the Provisions of the Fair Debt Collection Practices Act (16 CFR part 901).

policy statement and need to be examined separately. The Commission also is not addressing regulations issued by the Federal Reserve Board and enforced by the Commission.[22]

In addition, the Commission is currently reviewing certain rules and guides as a part of its ongoing regulatory review process.[23] In some of these reviews, the Commission is examining, among other things, the effect of new technology on the provisions of those rules and guides.[24] Comments regarding specific amendments to those rules and guides in light of new technology should be submitted in the course of those particular reviews. To the extent that the broad policy issues addressed in this Notice impact on those rules or guides, however, interested persons also should submit comments in this proceeding. For example, if a rule or guide under review requires or recommends that disclosures be clear and conspicuous (which will be addressed in the context of electronic media in this proposal), commenters should provide a submission in this proceeding even if they have already commented in the other review.

This Notice and the proposed policy statement also are not intended to address all of the substantive issues specific to certain rules or guides that may arise because of the use of electronic media. For example, this Notice addresses the applicability of the Guides Concerning Use of Endorsements and Testimonials in Advertising (''Endorsement Guides''), 16 CFR part 255, to electronic media and proposes factors the Commission would use to evaluate the effectiveness of disclosures that accompany endorsements in electronic media. Developments in electronic media, however, may raise new issues unique to the Endorsement Guides regarding what is—or is not—an ''endorsement.'' The Commission will address issues that are unique to a particular rule or guide on a case-by-case basis or during the regular review of the rule or guide.

The Commission does not consider the issuance of this proposal, or any future policy statement that may result from this proceeding, to constitute either a new rule or a substantive amendment of its current rules. The policy statement would not create any new rights, duties, obligations, or defenses, but instead would clarify the rights, duties, obligations, or defenses that currently exist pursuant to the rules and guides. Further, the Commission would retain its discretion for determining how to proceed in particular cases. The Commission will follow the rulemaking procedures required to substantively amend a rule, if such amendments are necessary to extend a particular rule's coverage to electronic media. Additionally, this proposal or any future policy statement will not affect the Commission's jurisdiction.[25]

C. Public Workshop

To assist in developing its proposed enforcement policy statement, the Commission is soliciting comment from all interested parties regarding the issues raised in this Notice. The Commission also seeks comment as to the advisability of convening a public workshop to discuss the issues raised in this Notice. A workshop would afford Commission staff and interested parties a further opportunity to discuss issues related to the applicability of the Commission's rules and guides to electronic media. The workshop would not be intended to achieve a consensus among participants, or between participants and Commission staff, with regard to any issue raised in this Notice. Persons interested in attending or participating in such a workshop are requested to notify Commission staff in the comment submitted in response to this proposal. If the Commission decides to convene a public workshop, it will announce the date, time and location of the workshop in a separate Notice in the **Federal Register**.

II. Proposals for an Enforcement Policy Statement

A. The Applicability of Rules and Guides to New Forms of Electronic Media

One objective of the proposed policy statement would be to reduce any uncertainty regarding whether specific Commission rules and guides apply to electronic media. The Commission's rules and guides generally address representations made about certain products or services[26] and other commercial activities.[27] The proposed policy statement would clarify that (1) rules and guides that apply to representations generally without reference to, or limitation on, the medium used to disseminate them apply equally to representations disseminated through electronic media; and (2) rules and guides that specify how or where representations are disseminated are broad enough to apply to representations disseminated through electronic media.

1. Rules and Guides That Apply to Representations Generally

Many rules and guides are not limited to any media or mode of dissemination. Rather, they apply generally to representations or any form of advertising.

Example 1: The Guides for the Jewelry, Precious Metals, and Pewter Industries (''Jewelry Guides''), 16 CFR 23.0(c), apply to ''claims and representations about industry products included in labeling, advertising, promotional materials, and all other forms of marketing * * *.''

Example 2: The Guides for Select Leather and Imitation Leather Products (''Leather Guides''), 16 CFR 24.2(g), state that disclosures should be made ''in all advertising of such products irrespective of the media used.''

Example 3: The Rule Concerning Deceptive Advertising as to Sizes of Viewable Pictures Shown by Television Receiving Sets (''TV Picture Size Rule''), 16 CFR 410.1, addresses ''designations'' used to refer to television picture sizes without specifying how or where the designation is made (*e.g.*, orally, in television advertisements, in print advertisements, etc.).

For this category, the plain language of each rule and guide applies to

[22] Regulation B, 12 CFR part 202; Regulation E, 12 CFR part 205; Regulation M, 12 CFR part 213; Regulation Z, 12 CFR part 226. The Federal Reserve Board has issued an interim rule amending Regulation E and proposed rules amending Regulations B, E, M and Z regarding the use of electronic disclosures for matters covered by those Regulations. 63 FR 14528, 14538, 14548, 14552, 14555 (Mar. 25, 1998).

[23] In 1992, the Commission implemented a regulatory reform program to assess, at least once every ten years, the continued need and usefulness of its rules and guides and revise or, as necessary, rescind outdated rules and guides. *See* 63 FR 1802 (Jan. 12, 1998). To date under this program, the Commission has reviewed 19 guides of which it has repealed 15, and 28 rules of which it has repealed 13. Many of the retained rules and guides have been amended to reduce compliance burdens while still achieving their intended purpose.

[24] *See* 900-Number Rule, 16 CFR part 308, 62 FR 11749 (Mar. 12, 1997); Rule Regarding the Use of Negative Option Plans by Sellers in Commerce, 16 CFR part 425, 62 FR 15135 (Mar. 31, 1997); Rule Regarding Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures, 16 CFR part 436, 62 FR 9115 (Feb. 28, 1997).

[25] *See* 15 U.S.C. 44, 45(a)(2); Section 2 of the McCarran-Ferguson Act, 15 U.S.C. 1012(b)

[26] *See, e.g.*, Guides for the Use of Environmental Marketing Claims, 16 CFR part 260 (addressing environmental claims made about products and services).

[27] *See, e.g.*, Rule Concerning the Preservation of Consumers' Claims and Defenses, 16 CFR part 433 (requiring that consumer credit contracts contain certain provisions).

representations and claims in any medium, including electronic media. The policy statement would merely clarify that when a rule or guide does not limit how covered representations are communicated to consumers, how advertising is disseminated, or where commercial activities occur, the provisions of the rule or guide apply to such activities in electronic media.[28]

2. Rules and Guides Referencing Specific Modes of Communication

Some rules and guides specify where or how representations or other information are disseminated, *e.g.*, referring to ''written'' advertisements or ''direct mail promotional materials,'' or specifying that information needs to be provided to others ''in writing.''

Example 1: The disclosure obligations of the Telemarketing Sales Rule, 16 CFR part 310, are triggered when consumers call telemarketers in response to direct mail solicitations (unless certain disclosures appear in the direct mail solicitation).[29] The term ''direct mail solicitations'' is not defined in the Rule. (*See,* discussion at II. B. 2.)

Example 2: The Rule Concerning Labeling Requirements for Alternative Fuels and Alternative Fueled Vehicles (''Alternative Fuels Rule''), 16 CFR 309.11, 309.13, requires industry members to certify the fuel rating of certain alternative fuels when they transfer fuel to anyone who is not a consumer.[30] The Rule states that certifications may be made by delivery ticket, or by a letter or ''written statement.''

As discussed in greater detail below, the Commission believes that these illustrated specifications include the use of electronic media and that such inclusion is consistent with the intention of rules and guides containing such specifications. Moreover, in certain instances, it may be beneficial for firms to use electronic media to comply with the requirements of the rules and guides. Thus, it is proposed that the policy statement would clarify that those rules and guides apply equally to electronic media.

B. Interpretation of Terms Used in Rules and Guides

The Commission's rules and guides use certain terms that may be more commonly used in a paper-based context. With the increasing use of computers, the meaning of such terms already has evolved to take into account new technologies. The proposed policy statement would clarify that the Commission interprets these terms in light of the use of new technologies so that industry members understand their obligations under the Commission's rules and guides.

1. The Terms ''Writing,'' ''Written'' and ''Printed''

Many of the Commission's rules and guides use the terms ''writing,'' ''written,'' or ''printed'' with reference to certain documents.[31] For example, the Appliance Labeling Rule, 16 CFR 305.4(d), states that it is unfair or deceptive to make any representation ''in writing (including a representation on a label) or in any broadcast advertisement,'' with respect to energy use or efficiency of certain products, unless the product has been tested in accordance with the Rule.[32] Neither the Rule nor the enabling statute, the Energy Policy and Conservation Act, defines the term ''in writing.'' The Appliance Labeling Rule also requires that certain disclosures be made in catalogs, which are defined as ''printed material which contains the terms of sale, retail price, and instructions for ordering, from which a retail consumer can order a covered product.'' 16 CFR 305.2(m), 305.14. The Rule does not define the term ''printed.''

With the use of new technology, the terms ''writing,'' ''written,'' and ''printed'' are not merely associated with communications on paper. The proposed policy statement would clarify that, when used in the Commission's rules and guides, the terms ''written,'' ''writing,'' and ''printed'' refer to information that is capable of being preserved in a tangible form and read, as opposed to an oral statement that is intangible and transitory. As with information presented on paper, consumers using electronic media can read the information and preserve it for possible later review either by printing it on paper, saving it on disk, or by some other means.

Using this interpretation, the Appliance Labeling Rule's substantiation requirements for energy efficiency representations made ''in writing * * * or in any broadcast advertisement'' would apply to representations in electronic media that are capable of being preserved and read, such as representations on CD–ROMs or on the Internet. Further, the Commission would interpret the Rule's definition of catalog (''printed material'') to include any material that is capable of being preserved in tangible form and read, and that also meets the remainder of the Rule's definition (e.g., from which a retail consumer can order a covered product).

The Commission solicits comment on its proposed interpretation of the terms ''written,'' ''writing,'' and ''printed'' that apply to the use of electronic media. The Commission seeks information on whether the interpretation adequately reflects the understanding of the terms and the underlying purpose of the rules and guides that use them, and accounts for technological developments.

2. The Term ''Direct Mail''

The understanding of other terms also has evolved with the advent of new technology. The concept of ''mail,'' for example, is understood to encompass electronic mail through the Internet as well as traditional mail delivery.[33] Some of the Commission's rules and guides refer to ''direct mail,'' in the context of direct mail solicitations. For example, the Telemarketing Sales Rule, 16 CFR 310.6(e), applies to telephone calls initiated by consumers in response to ''direct mail solicitations,'' unless specified information is disclosed in the solicitation.[34]

Where the Commission's rules or guides refer to ''direct mail,'' the

[28] The Mail and Telephone Order Merchandise Rule (''Mail Order Rule''), 16 CFR part 435, applies to orders for merchandise made using certain media, such as the telephone. The Mail Order Rule defines the term ''telephone'' broadly, so that the Rule covers orders placed by facsimile or by computer through telephone modems. 16 CFR 435.2(b). Thus, this Rule expressly encompasses electronic media because information is transmitted over the telephone infrastructure. Another provision of the Mail Order Rule states that mail or telephone order sales occur regardless of ''the method used to solicit the order.'' 16 CFR 435.2(a). Thus, the Rule covers any means of soliciting orders, including those solicitations via electronic media.

[29] During the promulgation of the Telemarketing Sales Rule, the Commission stated that it did not have sufficient information to justify coverage of online services under the Rule's requirements, and thus, this Rule does not apply to transactions conducted entirely on the Internet. 60 FR 30406, 30411 (June 8, 1995). Any modification to this general coverage will be handled separately, if needed.

[30] The Rule also requires labels to be placed on fuel dispensers and on alternative fueled vehicles. Since these requirements do not raise concerns regarding the use of electronic media, they are not addressed in this Notice.

[31] The rules and guides discussed in this section are used as examples and not as an exhaustive list of the rules and guides that use the described terms.

[32] This provision simply restates section 323(c) of the Energy Policy and Conservation Act, 42 U.S.C. 6201, which states that such representations are considered unfair or deceptive acts or practices in violation of the FTC Act.

[33] Traditional mail includes mail delivered by the United States Postal Service as well as by private mail carriers.

[34] The Rule always applies to consumer telephone calls in response to direct mail solicitations for certain types of products and services, regardless of the disclosures made in the solicitation. *See* 16 CFR part 310 for the full text of the Rule.

proposed policy statement would state that the term refers to private communications, *i.e.*, traditional mail as well as electronic communications that are individually addressed and capable of being received privately. This interpretation would clarify that direct mail includes those communications that are directed to particular individuals, such as facsimiles or e-mail, but not directed to the public at large, as are Internet bulletin boards.[35]

E-mail, for example, requires that the sender address the message to individual recipients' e-mail addresses (which is true even if the sender addresses a single e-mail to multiple individuals at their personal e-mail addresses) and is capable of being received privately by the recipients. Therefore, telemarketers or sellers who send individually addressed e-mail that provides a telephone number for consumers to call may be subject to the provisions of the Telemarketing Sales Rule, 16 CFR part 310.

The Commission solicits comment regarding whether its proposed interpretation of the term ''direct mail'' adequately reflects the understanding of the term and appropriately encompasses the electronic equivalents of ''direct mail.'' The Commission also solicits comment on whether targeted advertising on the Internet should be considered as the electronic equivalent of ''direct mail.'' For example, some Internet advertisers track users' interests through their click patterns or use of search terms. These advertisers may then target advertisements to a particular user. Although this advertising appears on a Web site, which generally may be considered to be a public forum, the targeted advertisement is addressed to a particular user's computer and is capable of being received privately by that user.

3. Use of Electronic Media To Comply With Affirmative Requirements

Some rules and guides require or recommend that businesses provide information in writing to another person. The Commission recognizes that it may be easier, more efficient and less costly for industry members to comply with various requirements by using electronic media. This is consistent with the Commission's intention that its rules and guides should not discourage the use of electronic media.

The Automotive Fuel Ratings, Certification and Posting Rule, 16 CFR 306.6, for example, requires that industry members certify the fuel's octane rating when they transfer fuel to anyone who is not a consumer.[36] The Rule permits industry members to do this in two ways: Members may include with each transfer, a delivery ticket or other paper such as an invoice or ''any other written proof of transfer,'' or they may ''(g)ive the person a letter or other written statement'' that contains certain information. 16 CFR 306.6(a) and (b). With the Commission's interpretation of the term ''written,'' described above, the transferor could deliver information in a form that is capable of being preserved in a tangible form and read. Thus, the transferor could use electronic media, such as e-mail or facsimile, to give the person ''a letter or other written statement.''[37]

The requirement that certain information should be provided to another person implies that such information actually be received by that person. Therefore, although it may be advantageous to use new technology to comply with affirmative requirements, industry members should be mindful of certain issues. For example, the requirement to give, mail, deliver or furnish information would not be met if the intended recipient does not have the technological capabilities of receiving or viewing the information. In certain circumstances, industry members may need to obtain the recipient's consent to deliver information by a certain electronic method, inform the recipient of any particular media applications needed to view the information, or deliver the information on paper. Because there may be technological difficulties that could impede the electronic delivery of information, it may be necessary for industry members to confirm that the recipient in fact received the information. Most facsimile machines routinely confirm when the facsimile has been successfully transmitted. Senders, for example, might require recipients to confirm receipt by return e-mail or verify in some manner the recipients' access to information posted on a Web site. The Commission seeks comment on what, if any, guidance is necessary regarding the use of electronic media to comply with affirmative disclosure requirements.

4. Other Terms

Where other terms are reasonably susceptible of being interpreted as applying to, or occurring within the realm of, electronic media, the proposed policy statement would clarify that the terms are to be read broadly and inclusively so as to apply to electronic media. The Guides Against Bait Advertising (''Bait Advertising Guides''), 16 CFR 238.1, for example, advise that advertisements containing an offer to sell a product should not be published unless the offer is a bona fide effort to sell the advertised product. The Commission interprets the term ''publish'' to include information that is made available to the public in online catalogs or other Web pages.[38] The Commission solicits comment on this general proposal and whether there are additional terms that should be specifically addressed by the Commission in a policy statement.

C. Clear and Conspicuous Disclosures in Electronic Media

The application of the Commission's rules and guides to electronic media advertising presents new issues regarding the evaluation of disclosures.[39] Many rules and guides contain disclosure requirements mandating or advising that disclosures be ''clear and conspicuous.'' Numerous Commission precedents offer guidance on the meaning of the clear and conspicuous standard in traditional advertising media. Electronic media advertisements, however, incorporate both traditional and unique features that raise new issues in evaluating the effectiveness of disclosures. In proposing guidance in this area, the Commission is attempting to provide consumers with comprehensible disclosures to prevent deception, while not imposing undue burdens or restrictions on businesses in complying with the disclosure requirements.

1. Disclosures Required or Advised by Rules and Guides

The rules and guides that contain disclosure requirements generally require or recommend that material information be disclosed to consumers to prevent deception, to ensure that consumers receive complete information regarding the terms of a transaction, or to further public policy goals. For example, the Endorsement Guides, 16 CFR 255.2, protect against

[35] Messages posted on Internet bulletin boards, however, may be considered to be advertising for the purposes of the Telemarketing Sales Rule, 16 CFR 310.6(e), and other rules and guides.

[36] As mentioned above, the Alternative Fuels Rule, 16 CFR part 309, contains a similar requirement.

[37] Even if electronic media is used to provide certain ''written'' information, the Rule's record-keeping requirements would continue to apply.

[38] This interpretation is consistent with the Guides' definition of the term ''advertising'' as including ''any form of public notice however disseminated or utilized.'' 16 CFR 238, n. 1.

[39] The Commission discusses the Internet specifically in this section because the examples are most pertinent to disclosures on Web sites. The guidance proposed by the Commission below, however, also may be applicable to disclosures in other electronic media.

deception by advising that advertisers disclose what performance consumers can generally expect with a product when an endorsement is not representative of that performance. In addition, the Guides for the Advertising of Warranties and Guarantees (''Warranty Guides''), 16 CFR 239.2(a), provide for complete disclosure of warranty information by advising that if an advertisement mentions a product warranty, a disclosure should be made that consumers may review the complete details of the warranty prior to purchase at the place where the product is sold. The required energy efficiency disclosures in the Appliance Labeling Rule, 16 CFR 305.4, further the statutory policy goal of promoting energy conservation.

Some disclosures are required when a certain term, representation or claim (*i.e.*, a ''triggering representation'') is made. The Leather Guides, 16 CFR 24.2, for example, advise that the term ''leather'' (the triggering term) be qualified when used to describe a product that is not composed in all substantial parts of leather. Other disclosure requirements may not be linked to a specific triggering term, but nonetheless are necessary to prevent deception, *e.g.*, the Guides for the Rebuilt, Reconditioned and Other Used Automobile Parts Industry (''Used Auto Parts Guides'') 16 CFR 20.1(b), advise that it is unfair or deceptive to offer for sale or sell used auto parts unless the fact that the parts are used is disclosed in advertising and on invoices. In other cases, rules and guides advise that information be disclosed to consumers prior to the completion of the transaction, *e.g.*, the Credit Practices Rule, 16 CFR 444.3, requires that certain information be disclosed to a cosigner prior to becoming obligated.

2. The Clear and Conspicuous Standard in Traditional Media

In all cases the required or advised disclosures must be effectively communicated to consumers. To achieve this general performance standard, the Commission's rules and guides require that disclosures be ''clear and conspicuous,'' using that term or other conceptually similar articulations.[40] The Commission views such terms as synonymous, and this Notice collectively refers to them as the ''clear and conspicuous'' standard. Other, more specific disclosure standards, such as ''equally prominent,'' and ''in close proximity to,'' are discussed below.

In order to determine whether the disclosure is effectively communicated, the Commission considers the disclosure in the context of all of the elements of the advertisement.[41] Ordinarily, a disclosure is clear and conspicuous, and therefore is effectively communicated, when it is displayed in a manner that is readily noticeable, readable and/or audible (depending on the medium), and understandable to the audience to whom it is disseminated.[42]

The Commission examines a number of factors to determine whether disclosures in traditional media (*e.g.*, print, television, and radio) meet this general performance standard. Thus, in print or other visual media, the Commission may consider a disclosure's type size, placement, color contrast to background, duration, and timing, as well as the existence of any images that detract from the effectiveness of the message. In audio messages, such as those delivered over the radio, the Commission may examine the volume, cadence, and placement of a disclosure, as well as the existence of any sounds that detract from the effectiveness of the message.[43] In all media, the Commission further evaluates the language and syntax of the disclosure to determine whether it is likely to be understood by the relevant audience.

3. Special Issues in Electronic Media

Because the newer forms of electronic media transmit information in writing and through audio and visual messages, the same factors considered by the Commission in applying the clear and conspicuous standard in traditional media apply. The special attributes of advertising on electronic media, however, may call for additional guidance. Many Internet advertisements, for example, include scroll bars to maneuver down pages that usually exceed one screen in length. They also often include hyperlinks, both to other pages on a Web site as well as directly to other Web sites. On the Internet and in other electronic media, new graphics technologies create messages that scroll, blink, spin, pop-up, relocate, etc.

These unique features may require the Commission to give special consideration to certain factors in determining whether a disclosure is effectively communicated on electronic media.[44] As is true for any medium, the specific elements necessary to effectively communicate a disclosure may vary depending on the nature of the advertisement and the nature of the claim.[45] The focus on, or the weight given to, any specific factor will vary accordingly.

4. Factors Used To Evaluate Clear and Conspicuous Disclosures on Electronic Media

a. Unavoidability. The Commission believes that, to ensure effectiveness, disclosures ordinarily should be unavoidable by consumers acting reasonably. On the Internet or other electronic media, this means that consumers viewing an advertisement should necessarily be exposed to the disclosure in the course of a communication without having to take affirmative action, such as scrolling down a page, clicking on a link to other

[40] The following are examples of other articulations found in the Commission's rules and guides: ''clearly, adequately, and conspicuously,'' ''clearly, conspicuously, and non-deceptively,'' ''adequate and non-deceptive'' (Guides for the Nursery Industry (''Nursery Guides''), 16 CFR 18.8(b)); ''sufficiently clear and prominent'' (Jewelry Guides, 16 CFR 23.1 n.2); ''of such conspicuousness and clarity'' (Leather Guides, 16 CFR 24.2(g), and Guides for the Watch Industry, 16 CFR 245.3(o)); ''clearly and adequately'' (Tire Advertising and Labeling Guides (''Tire Guides''), 16 CFR 228.14(b)(3); Bait Advertising Guides, 16 CFR 238.3(c); Retail Food Store Advertising and Marketing Practices Rule, 16 CFR 424.1); ''of sufficient clarity and conspicuousness'' (Guides for the Decorative Wall Paneling Industry (''Wall Paneling Guides''), 16 CFR 243.1(c)(4)); ''legible and conspicuous'' (Rules and Regulations Under Fur Products Labeling Act, 16 CFR 301.38(a)(1)); and ''conspicuous'' (Tire Guides, 16 CFR 228.11).

[41] This approach is set out in the Commission's general policy on deception. ''[T]he Commission will find deception if there is a representation, omission or practice that is likely to mislead the consumer acting reasonably in the circumstances to the consumer's detriment.'' *Deception Statement*, 103 F.T.C. at 176. In evaluating an advertisement or other promotional message, the Commission focuses not on the individual elements of the message in isolation, but on its ''overall'' or ''net'' impression. *Id.* at 175, n. 4. *See also American Home Products*, 98 F.T.C. 136, 374 (1981), *aff'd* 695 F.2d 681 (3d Cir. 1982).

[42] *Deception Statement*, 103 F.T.C. at 180–181, ''Qualifying disclosures must be legible and understandable. In evaluating such disclosures, the Commission recognizes that in many circumstances, reasonable consumers do not read the entirety of an ad or are directed away from the importance of the qualifying phrase by the acts or statements of the seller.''

[43] *E.g.*, *Kraft, Inc.*, 114 F.T.C. 40, 124 (1991), *aff'd*, 970 F.2d 311 (7th Cir. 1992), *cert. denied*, 507 U.S. 909 (1993); *Thompson Medical Co.*, 104 F.T.C. 648, 797–98 (1984), *aff'd*, 791 F.2d 189 (D.C. Cir. 1986), *cert. denied*, 479 U.S. 1086 (1987); *See also* Commission consent orders in *European Body Concepts, Inc.*, Docket No. C–3590 (June 23, 1995); *Eggland's Best, Inc.*, Docket No. C–3520 (Aug. 15, 1994).

[44] Certain rules and guides expressly include factors that are analyzed in determining the adequacy of a disclosure. For example, the Used Auto Parts Guides require that disclosures be ''of such size or color contrast and so placed as to be readily noticeable.'' 16 CFR 20.1(b)(2). Such specific articulations are consistent with the general ''clear and conspicuous'' standard and would continue to inform the analysis of whether the disclosure is effectively communicated.

[45] For example, some e-mail messages or facsimiles may contain only text, while Web pages or CD–ROMs may contain text, graphics, video and audio.

pages, activating a ''pop up,'' or entering a search term to view the disclosure.

b. Access to Disclosures. The Commission believes that in order to be effectively communicated, disclosures should remain accessible by consumers at all times during the communication. Therefore, after initially viewing a Web page that contains disclosures, a consumer who hyperlinks to another page should not be prevented from returning to the page containing the disclosures.

c. Proximity and Placement. Internet and other electronic media advertisements often include many pages and the length of each individual page can far exceed that of a traditional off-line page. Consumers may choose not to scroll completely through each page and not to link to each available page on the Web site, thus possibly missing important disclosures.

Based on its experience in evaluating disclosures in traditional media, the Commission believes that the effectiveness of disclosures is ordinarily enhanced by their proximity to the representation they qualify. This is especially important for disclosures that are made because of a triggering representation. For example, disclosures on the same screen as the triggering representation are likely to be more effective than those on separate screens. For those disclosures that are not required in response to a triggering representation, the disclosure nevertheless is likely to be more effective if it is proximate to relevant information.

The Commission also recognizes that electronic media offers new ways of placing claims in advertisements as compared to advertisements on paper. For example, some Web pages may use frames to separate the screen. Although a consumer may scroll down the Web page, a frame can remain constant on the side, top or bottom of the screen. The Commission solicits comment on whether consumers generally notice disclosures placed within a separate frame and the effectiveness of such placement as compared to disclosures that appear elsewhere on a Web page.

d. Prominence. Disclosures that are large in size and/or emphasized through a sharply contrasting color, and remain visible or audible for a sufficiently long duration, are likely to be more effective than those lacking such prominence. Electronic media affords new possibilities for adding to (or detracting from) the prominence of disclosures through animated graphics, graphics that facilitate segregating certain claims, and displays that remain on the screen for a long or indefinite duration. Disclosures that are supported by new display technologies such as animation, or that are distinguished from (*i.e.*, not embedded within) surrounding text, such as within a border, may or may not be more prominent. The Commission solicits comment on whether these technologies, and other technologies unique to electronic media advertisements add to or detract from the prominence of disclosures.

e. Non-Distracting Factors. Even if a disclosure is large in size and long in duration, other elements of an advertisement may distract consumers so that they fail to notice, read, or listen to the disclosure. For example, Web pages may contain large flashing images, background sounds, or other items that are separate from the disclosure and may reduce the prominence of the disclosure. The Commission solicits comment on whether there are specific display technologies that distract consumers and reduce the effectiveness of disclosures.

f. Repetition. The repetition of a disclosure in conjunction with the claim that triggers it tends to enhance the likelihood of consumers noticing and understanding them. This is particularly relevant to Internet advertisements which can be extremely lengthy, with many and/or long Web pages.

g. Audio and Visual Presentation. Some electronic media advertisements contain both visual [46] and audio elements. The Commission believes that disclosures are likely to be more effective if they are presented in the same mode (audio or visual) in which a triggering or relevant claim is presented. In addition, research suggests that disclosures that are made in both visual and audio modes generally are more effectively communicated than disclosures made in either mode alone.[47] Therefore, the Commission also believes that the display of disclosures both visually and in audio, for those promotions that are presented in both modes, is likely to be more effective than disclosures in only one.

The Commission solicits comment on all of the factors set forth above. In particular, the Commission solicits comment on (1) its underlying assumptions about consumer perceptions regarding Internet and other electronic media advertisements, (2) the discussion of the state of technology, including any existing or reasonably foreseeable technology that is not addressed in this Notice, and (3) the costs and benefits of applying the factors discussed above. The Commission also requests comment on specific questions listed in Part III, below.

5. Additional Specific Standards Contained in Rules and Guides

Some of the Commission's rules and guides specify in more detail the manner in which the disclosure should be made, instead of simply stating that the disclosure should be clear and conspicuous. In these instances, the underlying objective of the rule or guide is the same: the effective communication of the disclosure. Thus, the Commission intends to draw on the factors described above, as embellished by the specific requirements of the individual rule or guide, in evaluating compliance with the disclosure provisions of the rules and guides in advertising on electronic media.

For example, certain rules and guides specify a particular type-size in which the disclosure should appear or contain language such as ''of equal size and conspicuousness,'' ''of equal conspicuousness,'' and ''more prominently.'' [48] The Commission proposes that these rules and guides be interpreted as requiring compliance with the general effective communication performance standard, as well as the specific size and prominence criteria listed in the rule or guide. Other rules and guides state that disclosures should be clear and conspicuous and in close conjunction or proximity to a designated claim.[49] The Commission will evaluate whether the disclosure is effectively communicated, following the factors described above, with a special focus on the placement of the disclosure.

[46] The Commission is using the term ''visual'' in this Notice to include both static visual displays (*e.g.*, a fixed image) and non-static video displays (*e.g.*, moving video clips).

[47] Mariea Grubbs Hoy & Michael J. Stankey, *Structural Characteristics of Televised Advertising Disclosures: A Comparison with the FTC Clear and Conspicuous Standard*, J. Advertising, June 1993, at 47, 50; Todd Barlow & Michael S. Wogalter, *Alcoholic Beverage Warnings in Magazine and Television Advertisements*, 20 J. Consumer Res. 147, 151, 153 (1993); Noel M. Murray, et al., *Public Policy Relating to Consumer Comprehension of Television Commercials: A Review and Some Empirical Results*, 16 J. Consumer Pol'y 145, 164 (1993).

[48] *See, e.g.*, Rule Concerning the Preservation of Consumers' Claims and Defenses, 16 CFR 433; Rules and Regulations Under the Textile Fiber Products Identification Act, 16 CFR 303.41(b); Jewelry Guides, 16 CFR 23.4; and Rule Concerning Power Output Claims for Amplifiers Utilized in Home Entertainment Products, 16 CFR 432.2.

[49] *See, e.g.*, Leather Guides, 16 CFR 24.2(g); Guides Against Deceptive Labeling and Advertising of Adhesive Compositions, 16 CFR 235.7; Wall Paneling Guides, 16 CFR 243.1(c)(4); Guides for the Household Furniture Industry, 16 CFR 250.1(b)(2); and Guide Concerning Use of the Word ''Free'' and Similar Representations, 16 CFR 251.1(c).

With respect to rules and guides that call for the placement of certain disclosures in a specific context, the Commission will consider interpreting the language in these rules and guides to permit alternate ways of disclosing information using electronic media, so long as the disclosure is effectively communicated to consumers and is consistent with the underlying objective of the rule or guide.[50]

Similarly, when rules and guides contain specific disclosure provisions that may not translate precisely to the Internet, the Commission proposes to interpret these requirements for Internet advertising in a manner that is consistent, to the extent possible, with both the requirements of the rule or guide and the underlying objective of effective communication.[51]

The Commission solicits comment on these approaches to applying specific standards in rules and guides to electronic media marketing, and whether additional guidance regarding the specific standards is necessary.

6. Perspective of the Reasonable Consumer

In determining if representations or practices are deceptive, in any and all media, the Commission examines them from the perspective of a reasonable consumer. A representation or practice directed to a particular group, such as children, is evaluated from the perspective of a reasonable consumer within that group.[52] The same ''reasonable consumer'' standard applies to disclosures required by the rules and guides in electronic media advertising.

III. Request for Comments

The Commission solicits comments on the issues discussed in this Notice. Comments should, if appropriate, suggest specific alternatives to various proposals and indicate why alternative approaches would better serve the Commission's statutory mandate of protecting consumers against unfairness and deception. The Commission also seeks comment on the following specific questions:

Applicability of Rules and Guides to Electronic Media

1. Does the Commission's proposal to clarify the applicability of its rules and guides to electronic media provide adequate guidance to industry and to the public?

2. What are the costs and benefits to consumers of the Commission's proposed policy regarding the applicability of its rules and guides to electronic media?

3. What significant burdens or costs, including costs of compliance, would the proposed policy impose on firms subject to the provisions of a rule or guide? Would the proposed policy provide benefits to such firms?

a. What are the costs, burdens, and benefits of the proposed policy for small businesses in particular?

b. What changes should be made to the proposal to reduce the burdens or costs imposed on firms subject to the admonitions of the rules and guides?

c. How would these changes affect the benefits provided by the proposal?

Interpretations of Terms

4. Do the Commission's proposed interpretations of the terms ''written,'' ''writing,'' ''printed,'' and ''direct mail'' provide adequate guidance to the public?

5. What are the costs and benefits of the proposed interpretations?

6. Do the Commission's proposed interpretations of the terms listed encompass all the newer forms of electronic media?

7. Are there more appropriate alternatives to the various interpretations of the terms proposed by the Commission? If so, please explain the alternative interpretation and the benefits of the alternative.

8. Does the Commission's discussion of ''direct mail'' adequately address the various new means of electronic communication, *e.g.*, e-mail, facsimiles or list servers, and adequately account for the differences inherent in these various formats?

9. Should the Commission's interpretation of the term ''direct mail'' be limited to communications that are capable of being received privately? Should individually addressed communications posted on Internet Bulletin Boards or USENET groups be considered ''direct mail''?

10. Should Web page or banner advertisements that are targeted to certain consumers on consumer preference information be characterized as ''direct mail''? If so, are such advertisements adequately addressed by the Commission's proposed interpretation? To what extent should specific forms of online targeted marketing (*e.g.*, push technology or consumer-selected ''channels'') be considered ''direct mail''?

11. What issues, if any, need to be addressed by the Commission regarding the use of electronic media to deliver information required to be provided in writing by a rule or guide?

a. How should the Commission address those issues?

b. Under what circumstances, if any, should the Commission advise that information be provided on paper and not electronically?

12. Are there other terms in the rules and guides that should be specifically addressed by the Commission in the context of electronic media? If so, how should the terms be interpreted and why?

Disclosures

13. Do the proposed factors for evaluating disclosures provide adequate guidance to industry regarding making disclosures in electronic media?

14. What are the costs and benefits of applying the factors proposed by the Commission to evaluate disclosures required or recommended by the rules and guides?

15. To what extent will an individual consumer's Web browser or computer capabilities affect the format of an advertisement (*e.g.*, Web page), and therefore, the format of a disclosure? Should the Commission advise that advertisers take these differences into account in designing their advertising to ensure that disclosures are clear and conspicuous?

16. What technologies exist to prevent or hinder consumers from accessing a disclosure after initially viewing it? What are the costs and benefits of advising against their use?

17. Are the Commission's underlying assumptions about consumers' perceptions with respect to Internet and other electronic media advertisements accurate? Are there surveys, copytests,

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[50] For example, in the consent orders issued in *America Online, Inc.*, Docket No. C–3787, *Prodigy Services Corporation*, Docket No. C–3788, and *CompuServe, Inc.*, Docket No. C–3789, (Mar. 16, 1998), advertisements of a ''free'' offer must contain a disclosure directing consumers to the location where the terms and conditions of the offer can be found, and full disclosure of the terms, conditions, and obligations of the offer can occur during the online registration process, prior to consumers incurring any financial obligation.

[51] For example, the TV Picture Size Rule, 16 CFR 410.1, n. 2, prohibits the disclosure of required information in a footnote to which reference is made by an asterisk. Following the principles stated herein, this Rule would be interpreted as not allowing asterisked footnotes as well as their functional Internet equivalent—placing the disclosure in a separate location accessed by clicking on an icon or hyperlinking to a separate page. This is consistent with the Commission's proposal, discussed above, that disclosures should be unavoidable by consumers acting reasonably.

[52] *Deception Statement*, 103 F.T.C. at 175, 179. Some rules and guides define the relevant audience for analyzing the adequacy of disclosures, *e.g.*, ''purchasers or prospective purchasers,'' ''purchasers and prospective purchasers . . . casually reading, or listening to, such advertising,'' and ''prospective purchasers.'' *See* Nursery Guides, 16 CFR 18.2; Leather Guides, 16 CFR 24.2(g); and Warranty Guides, 16 CFR 239.2(b), respectively. Other rules and guides do not address the issue.

or other direct evidence of consumer behavior that will aid the analysis?

a. How do consumers behave in navigating through a Web site, reading e-mail or viewing a CD–ROM?

i. Do consumers generally scroll completely through Web pages or e-mail?

ii. Do consumers generally link to each available page on the Web site?

b. Under what circumstances are consumers more likely to examine the top of a Web page, rather than the middle or the bottom of a Web screen or page?

c. Are consumers more likely to notice information that is placed within a separate frame on a Web page or in other electronic media advertisements?

d. In what circumstances, if any, must a disclosure appear multiple times to be effectively communicated?

18. What features and technologies particular to advertising on electronic media enhance or detract from the prominence, and therefore the effectiveness, of a disclosure?

a. Do disclosures with graphical elements, such as pop-up features, animation, blinking, or borders surrounding disclosures, enhance or detract from the effectiveness of disclosures?

b. What features can appear in Internet advertisements that may distract consumers from noticing, reading, or listening to disclosures?

19. Could the interactive nature of the Internet present an opportunity to assure that disclosures are noticed and understood by the consumer (*i.e.*, could a consumer be required to click on an ''Understood'' button following the disclosure before being permitted to link to other information)? What are the costs and benefits of using such features?

General

21. Are there new technologies that are not adequately addressed by the Commission's proposals? If so, how should these technological changes be addressed by the Commission?

22. Are there other issues that the Commission should address in clarifying the applicability of its rules and guides to electronic media?

By direction of the Commission.

Donald S. Clark,

Secretary.

APPENDIX

Titles	CFR parts
Guides for the Nursery Industry	16 CFR 18
Guides for the Rebuilt, Reconditioned and Other Used Automobile Parts Industry	16 CFR 20
Guides for the Jewelry, Precious Metals, and Pewter Industries	16 CFR 23
Guides for Select Leather and Imitation Leather Products	16 CFR 24
Tire Advertising and Labeling Guides	16 CFR 228
Guides Against Deceptive Pricing	16 CFR 233
Guides Against Deceptive Labeling and Advertising of Adhesive Compositions	16 CFR 235
Guides Against Bait Advertising	16 CFR 238
Guides for the Advertising of Warranties and Guarantees	16 CFR 239
Guides for the Dog and Cat Food Industry	16 CFR 241
Guides for the Decorative Wall Paneling Industry	16 CFR 243
Guides for the Watch Industry	16 CFR 245
Guides for the Household Furniture Industry	16 CFR 250
Guide Concerning Use of the Word ''Free'' and Similar Representations	16 CFR 251
Guides for the Feather and Down Products Industry	16 CFR 253
Guides for Private Vocational and Home Study Schools	16 CFR 254
Guides Concerning Use of Endorsements and Testimonials in Advertising	16 CFR 255
Guides for the Law Book Industry	16 CFR 256
Guides Concerning Fuel Economy Advertising for New Automobiles	16 CFR 259
Guides for the Use of Environmental Marketing Claims	16 CFR 260
Rules and Regulations Under the Wool Products Labeling Act of 1939	16 CFR 300
Rules and Regulations Under Fur Products Labeling Act	16 CFR 301
Rules and Regulations Under the Textile Fiber Products Identification Act	16 CFR 303
Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act.	16 CFR 305
Automotive Fuel Ratings, Certification and Posting	16 CFR 306
Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992	16 CFR 308
Labeling Requirements for Alternative Fuels and Alternative Fueled Vehicles	16 CFR 309
Telemarketing Sales Rule	16 CFR 310
Deceptive Advertising as to Sizes of Viewable Pictures Shown by Television Receiving Sets	16 CFR 410
Retail Food Store Advertising and Marketing Practices	16 CFR 424
Use of Negative Option Plans by Seller in Commerce	16 CFR 425
Power Output Claims for Amplifiers Utilized in Home Entertainment Products	16 CFR 432
Preservation of Consumers' Claims and Defenses	16 CFR 433
Mail or Telephone Order Merchandise Rule	16 CFR 435
Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures	16 CFR 436
Credit Practices Rule	16 CFR 444
Used Motor Vehicle Trade Regulation Rule	16 CFR 455
Labeling and Advertising of Home Insulation	16 CFR 460
Interpretations of Magnuson-Moss Warranty Act	16 CFR 700
Disclosure of Written Consumer Product Warranty Terms and Conditions	16 CFR 701
Pre-Sale Availability of Written Warranty Terms	16 CFR 702
Informal Dispute Settlement Procedures	16 CFR 703

[FR Doc. 98–11942 Filed 5–5–98; 8:45 am]

BILLING CODE 6750–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 22 and 59

[FRL–6010–2]

RIN 2020–AA13

Reopening of Public Comment Period for Proposed Revisions of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; reopening of comment period.

SUMMARY: EPA is reopening the comment period for the proposed rule entitled ''Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits'' that was published in the **Federal Register** of February 25, 1998. Several commenters requested additional time to analyze the proposed changes. In response, the Agency is reopening the comment period. The original comment period closed April 27, 1998.

DATES: Written comments must be submitted on or before June 5, 1998.

ADDRESSES: Comments should be submitted in writing to Enforcement and Compliance Docket and Information Center (2201A), Office of Enforcement and Compliance Assurance, Office of Regulatory Enforcement, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460 or via electronic mail to crop-comments@epamail.epa.gov. Comments submitted on paper must be submitted in triplicate.

EPA will make available, both in paper form and on the internet, a record of comments received in response to this document. The official docket will be a paper record of all comments received in writing or by electronic mail. This record may be reviewed at room 4033 of the Ariel Rios Federal Building, 1200 Pennsylvania Avenue, N.W., Washington, DC 20044. Persons interested in reviewing the comments must make advance arrangements to do so by calling 202–564–2614. A reasonable fee may be charged by EPA for copying docket materials. The Agency also will publish a copy of the official docket on the Office of Enforcement and Compliance Assurance's internet home page at http://www.epa.gov/oeca/regstat2.html. The Agency intends that this internet docket should duplicate the official paper record, however, if technological or resource limitations make it infeasible to include one or more comments on the internet docket, the internet docket will identify those comments available only in the official paper docket.

FOR FURTHER INFORMATION CONTACT: Scott Garrison (202–564–4047), Office Enforcement and Compliance Assurance, Office of Regulatory Enforcement (2248A), U.S. Environmental Protection Agency, Washington, D.C. 20460.

List of Subjects

40 CFR Part 22

Environmental protection, Administrative practice and procedure.

40 CFR Part 59

Environmental protection, Administrative practice and procedure, Rules governing hearings on field citations.

Dated: April 28, 1998.

Eric V. Schaeffer,

Director, Office of Regulatory Enforcement, Office of Enforcement and Compliance Assurance.

[FR Doc. 98–12034 Filed 5–5–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261 and 279

[FRL–5969–3]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Recycled Used Oil Management Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Today's proposal would eliminate errors and clarify ambiguities in the used oil management standards. Today's proposal, if promulgated, would make clear when used oil contaminated with polychlorinated biphenyls (PCBs) is regulated under the used oil management standards and when it is not, that the requirements applicable to releases of used oil apply in States that are not authorized for the RCRA base program, that mixtures of conditionally exempt small quantity generator (CESQG) wastes and used oil are subject to the used oil management standards irrespective of how that mixture is to be recycled, and that the initial marketer of used oil that meets the used oil fuel specification need only keep a record of a shipment of used oil to the facility to which the initial marketer delivers the used oil. Today's proposal would also amend three incorrect references to the pre-1992 used oil specifications in the provisions which address hazardous waste fuel produced from, or oil reclaimed from, oil bearing hazardous wastes from petroleum refining operations.

In the Final Rules section of today's **Federal Register**, the U.S. Environmental Protection Agency (EPA) is also publishing a parallel direct final rule containing identical amendments which will become effective unless relevant adverse comments are received in response to this rulemaking. For more information on the direct final rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

DATES: Comments on this proposed rule must be received on or before June 5, 1998 and notice of intent to file adverse comments must be received on or before May 20, 1998.

ADDRESSES:

Intent To Submit Comments

Persons wishing to notify EPA of their intent to submit adverse comments on this action should contact Alex Schmandt by mail at Office of General Counsel (2366), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, by phone at (202) 260–1708, by fax at (202) 260–0584, or by Internet e-mail at schmandt.alex@epamail.epa.gov.

Submitting Comments

Commenters must send an original and two copies of their comments referencing docket number F–98–CUOP–FFFFF to: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Hand deliveries of comments should be made to the Arlington, VA, address below. Comments may also be submitted electronically through the Internet to: rcra-docket@epamail.epa.gov. Comments in electronic format should also be identified by the docket number F–98–CUOP–FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Commenters should not submit any confidential business information (CBI) electronically. An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Viewing Docket Materials

Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The Docket Identification Number is F–98–CUOP–FFFFF. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. The index and some supporting materials are available electronically. See the **SUPPLEMENTARY INFORMATION** section for information on accessing them.

FOR FURTHER INFORMATION CONTACT:

RCRA Hotline. For general information, contact the RCRA Hotline at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call (703) 412–9810 or TDD (703) 412–3323.

Rulemaking Details. For more detailed information on specific aspects of this rulemaking, contact Tom Rinehart by mail at Office of Solid Waste (5304W), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, by phone at (703) 308–4309, or by Internet e-mail at rinehart.tom@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Direct Final Rulemaking Process

In the Final Rules Section of today's **Federal Register**, EPA is issuing a direct final rule with identical amendments which will become effective unless relevant adverse comments are received in response to this rulemaking. If relevant adverse comment is received on one or more of the amendments, EPA will publish timely notification in the **Federal Register** withdrawing the amendment(s) that is the subject of adverse comment. Any amendments in this rulemaking that do not receive relevant adverse comment will become effective on the date set out in the accompanying direct final rule, notwithstanding any adverse comment on other portions of this rulemaking. A relevant comment will be considered to be any comment substantively criticizing an amendment. This notice of proposed rulemaking may serve as the basis of a subsequent final rule if an amendment that is the subject of adverse comment is withdrawn as described above. For instructions on notifying EPA of your intent to comment and for instructions on how to submit comments, please see the **ADDRESSES** section above.

Internet Availability

This proposed rule and the following supporting materials are available on the Internet:

Docket Item: Petition for Review.
From: Edison Electric Institute, et al.
To: U.S. Court of Appeals for the District of Columbia Circuit.

Docket Item: Petitioners' Preliminary and Non-binding Statement of Issues to be Raised on Appeal.
From: Edison Electric Institute, et al.
To: U.S. Court of Appeals for the District of Columbia Circuit.

Docket Item: Letter describing Edison Electric Institute's outstanding issues and proposals for resolving these issues.
From: Edison Electric Institute, et al.
To: U.S. Environmental Protection Agency.

Docket Item: Letter describing Edison Electric Institute's issues including a request that EPA issue a technical correction to 40 CFR 279.10(i).
From: Edison Electric Institute, et al.
To: U.S. Environmental Protection Agency.

Docket Item: Letter requesting that EPA resolve outstanding issues.
From: Edison Electric Institute, et al.
To: U.S. Environmental Protection Agency.

Docket Item: Settlement Agreement.
From: Edison Electric Institute, et al. U.S. Environmental Protection Agency, and U.S. Department of Justice.
To: U.S. Court of Appeals for the District of Columbia Circuit.

Docket Item: Memorandum that describes an abbreviated state authorization revision application procedure for state rule changes in response to minor federal rule changes or corrections.
From: Michael Shapiro, Director, Office of Solid Waste.
To: Regional Waste Management Division Directors.

Follow these instructions to access this information electronically:

WWW URL: http://www.epa.gov/epaoswer/hazwaste/usedoil/index.htm.
FTP: ftp.epa.gov.
Login: anonymous.
Password: your Internet e-mail address.
Path: /pub/epaoswer.

Official Record

The official record for this action will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

Response to Comments

EPA responses to comments, whether the comments are written or electronic, will be in a notice in the **Federal Register** or in a response to comments document placed in the official record for this rulemaking. EPA will not immediately reply to commenters electronically other than to seek clarification of electronic comments that may be garbled in transmission or during conversion to paper form, as discussed above.

Outline of Today's Document

I. Authority
II. Background and Summary of Proposed Rule
III. Regulatory Amendments
  A. Applicability of the Used Oil Management Standards to PCB Contaminated Used Oil
  B. Response to Releases of Used Oil
  C. Mixtures of CESQG Wastes and Used Oil
  D. Reference to the Used Oil Fuel Specification
  E. Clarification of the Recordkeeping Requirements for Marketers of On-Specification Used Oil
IV. Regulatory Requirements
  A. Executive Order No.12866
  B. Regulatory Flexibility Act
  C. Paperwork Reduction Act
  D. Unfunded Mandates Reform Act

I. Authority

These regulations are issued under the authority of sections 1004, 1006, 2002(a), 3001 through 3007, 3010, 3013, 3014, 3016 through 3018, and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and as amended by the Used Oil Recycling Act, as amended, 42 U.S.C. 6901, 6905, 6912(a), 6921 through 6927, 6930, 6934, 6935, 6937 through 6939 and 6974.

II. Background and Summary of Proposed Rule

Today's proposal would make technical corrections and clarify ambiguities to existing regulatory language concerning used oil at 40 CFR Part 279 and 40 CFR Part 261. The

clarification of the applicability of the used oil management standards to PCB contaminated used oil is undertaken as part of a settlement agreement in response to a lawsuit challenging EPA's final rule promulgated on May 3, 1993, (58 FR 26420). *Edison Electric Institute* v. *U.S. EPA* (D.C. Circuit No. 93–1474). The May 1993 rule corrected technical errors and provided clarifying amendments to the used oil management standards promulgated on September 10, 1992 (57 FR 41566). In addition, the Agency found several errors and ambiguities during review of the existing regulatory language concerning used oil. Today's proposal would eliminate these mistakes and clarify ambiguities in the used oil management standards.

These clarifications and corrections are presented in four separate sections, through which the Agency proposes to (1) clarify that used oil containing 50 ppm or greater PCBs is not subject to regulation under the used oil management standards at 40 CFR Part 279; (2) clarify that the response requirements at 40 CFR Part 279 for releases of used oil apply in states without RCRA base program authorization; (3) clarify that mixtures of CESQG waste and used oil are subject to the used oil management standards regardless of how that mixture is to be recycled; (4) amend the references to the used oil management standards in 40 CFR Part 261 to make them consistent with the standards at 40 CFR Part 279; and (5) clarify that the initial marketer of used oil that meets the used oil fuel specification need only keep a record of a shipment of used oil to the facility to which the initial marketer delivers the used oil.

III. Regulatory Amendments

A. Applicability of the Used Oil Management Standards to PCB Contaminated Used Oil

Today's proposal would amend 40 CFR 279.10(i) to clarify the applicability of the used oil management standards of 40 CFR Part 279 to used oil containing PCBs. The proposed language reflects EPA's intent that used oil that contains less than 50 ppm of PCBs is subject to regulation under the used oil management standards. Used oil that contains 50 ppm or greater of PCBs is not subject to regulation under the used oil management standards, because the TSCA regulations at 40 CFR Part 761 provide comprehensive management of such used oil. The history of, and rationale for, this change are discussed in the recycled used oil notice in the Final Rule section of today's **Federal Register**.

B. Response to Releases of Used Oil

Today's proposal would amend 40 CFR 279.22(d), 279.45(h), 279.54(g) and 279.64(g) to clarify that the response requirements for releases of used oil apply in states that are not authorized for the RCRA base program pursuant to RCRA Section 3006, 42 U.S.C. 6926, and, hence, that are not authorized for the used oil management standards. (Base program authorization refers to the RCRA program initially made available for final authorization, reflecting Federal regulations as of July 26, 1982.) At this time, Alaska, Hawaii, Iowa, Puerto Rico, the Virgin Islands, the Northern Mariana Islands and American Samoa do not have an authorized RCRA base program. The history of, and rationale for, these changes are discussed in the recycled used oil notice in the Final Rule section of today's **Federal Register**.

C. Mixtures of CESQG Wastes and Used Oil

Today's proposal would amend 40 CFR 261.5(j) to clarify that the regulatory provisions that address mixtures of CESQG wastes and used oil that are to be recycled, § 261.5(j) and § 279.10(b)(3), do not limit the applicability of the used oil management standards to such mixtures. Both provisions are intended to indicate that mixtures of CESQG wastes and used oil are subject to the used oil management standards, notwithstanding the conditional exemption of small quantity generator wastes from regulation as a hazardous waste. The history of, and rationale for, this change are discussed in the recycled used oil notice in the Final Rule section of today's **Federal Register**.

D. Reference to Used Oil Fuel Specification

Today's proposal would amend 40 CFR 261.6(a)(3)(iv)(A)–(C) to reflect the recodification of the used oil requirements at 40 CFR part 279. The three provisions address hazardous waste fuel produced from, or oil reclaimed from, oil bearing hazardous wastes from petroleum refining operations. All three provisions incorrectly reference the pre-1992 used oil fuel specification provision, § 266.40(e), which was recodified in 1992 at § 279.11. These provisions should have been amended in 1992.

E. Clarification of the Recordkeeping Requirements for Marketers of On-Specification Used Oil

Today's proposal would amend 40 CFR 279.74(b) to clarify that the marketer who first claims that used oil that is to be burned for energy recovery meets the fuel specification (on-specification used oil) must only keep a record of a shipment of used oil to the facility to which the initial marketer delivers the used oil. The history of, and rationale for, this change are discussed in the recycled used oil notice in the Final Rule section of today's **Federal Register**.

IV. Regulatory Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant'' regulatory action as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

OMB has reviewed this rule and has determined it to be not significant under the terms of the Executive Order.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–602, requires that Federal agencies examine the impacts of their regulations on ''small entities''. If a rulemaking will have a significant impact on a substantial number of small entities, agencies must consider regulatory alternatives that minimize economic impact.

EPA believes that today's proposal will not impact any small entity because it does not impose regulatory requirements or otherwise substantively change existing requirements. Today's proposal eliminates errors and clarifies ambiguities in the used oil management standards so as to restore the Agency's

intended result. Therefore, I certify pursuant to 5 U.S.C. 601 *et seq.*, that this rule will not have a significant impact on a substantial number of small entities.

C. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, EPA must consider the paperwork burden imposed by any information collection request in a proposed or final rule. This proposal will not impose any new information collection requirements.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When a written statement is needed for any EPA rule, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

Today's proposal contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector because it does not impose regulatory requirements or otherwise substantively change existing requirements. Today's proposal would eliminate errors and clarifies ambiguities in the used oil management standards so as to restore the Agency's intended result. Thus, today's proposal is not subject to the requirements of sections 202 and 205 of the UMRA. Similarly, EPA has determined that this proposal contains no regulatory requirements that might significantly or uniquely affect small governments.

List of Subjects

40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 279

Conditionally exempt small quantity generator (CESQG), Hazardous waste, Polychlorinated biphenyls (PCBs), Solid waste, Recycling, Response to releases, Used oil, Used oil specification.

Dated: April 20, 1998.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, chapter I of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

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

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

§ 261.5 [Amended]

2. Section 261.5(j) is amended by removing both phrases, ''if it is destined to be burned for energy recovery''.

§ 261.6 [Amended]

3. In § 261.6 paragraphs (a)(3)(iv)(A)–(C) are amended by revising the reference ''266.40(e)'' to read ''279.11''.

PART 279—STANDARDS FOR THE MANAGEMENT OF USED OIL

4. The authority citation for part 279 continues to read as follows:

Authority: Sections 1006, 2002(a), 3001 through 3007, 3010, 3014, and 7004 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6905, 6912(a), 6921 through 6927, 6930, 6934, and 6974); and Sections 101(37) and 114(c) of CERCLA (42 U.S.C. 9601(37) and 9614(c)).

5. Section 279.10 is amended by revising paragraph (i) to read as follows:

§ 279.10 Applicability.

* * * * *

(i) *Used oil containing PCBs.* Used oil containing PCBs (as defined at 40 CFR 761.3) at any concentration less than 50 ppm is subject to the requirements of this Part. Used oil subject to the requirements of this Part may also be subject to the prohibitions and requirements found at 40 CFR Part 761, including § 761.20(d) and (e). Used oil containing PCBs at concentrations of 50 ppm or greater is not subject to the requirements of this Part, but is subject to regulation under 40 CFR Part 761.

6. Section 279.22 is amended by revising paragraph (d) to read as follows:

§ 279.22 Used oil storage.

* * * * *

(d) *Response to releases.* Upon detection of a release of used oil to the environment that is not subject to the requirements of Part 280, Subpart F of this chapter and which has occurred after the effective date of the recycled used oil management program in effect in the State in which the release is located, a generator must perform the following cleanup steps:

(1) Stop the release;

(2) Contain the released used oil;

(3) Clean up and manage properly the released used oil and other materials; and

(4) If necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.

7. Section 279.45 is amended by revising paragraph (h) to read as follows:

§ 279.45 Used oil storage at transfer facilities.

* * * * *

(h) *Response to releases.* Upon detection of a release of used oil to the environment that is not subject to the requirements of part 280, subpart F of this chapter and which has occurred after the effective date of the recycled used oil management program in effect in the State in which the release is located, the owner/operator of a transfer facility must perform the following cleanup steps:

(1) Stop the release;

(2) Contain the released used oil;

(3) Clean up and manage properly the released used oil and other materials; and

(4) If necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.

8. Section 279.54 is amended by revising paragraph (g) to read as follows:

§ 279.54 Used oil management.

* * * * *

(g) *Response to releases.* Upon detection of a release of used oil to the

environment that is not subject to the requirements of part 280, subpart F of this chapter and which has occurred after the effective date of the recycled used oil management program in effect in the State in which the release is located, an owner/operator must perform the following cleanup steps:

(1) Stop the release;

(2) Contain the released used oil;

(3) Clean up and manage properly the released used oil and other materials; and

(4) If necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.

* * * * *

9. Section 279.64 is amended by revising paragraph (g) to read as follows:

§ 279.64 Used oil storage.

* * * * *

(g) *Response to releases.* Upon detection of a release of used oil to the environment that is not subject to the requirements of part 280, subpart F of this chapter and which has occurred after the effective date of the recycled used oil management program in effect in the State in which the release is located, a burner must perform the following cleanup steps:

(1) Stop the release;

(2) Contain the released used oil;

(3) Clean up and manage properly the released used oil and other materials; and

(4) If necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.

10. Section 279.74 is amended by revising paragraph (b) to read as follows:

§ 279.74 Tracking.

* * * * *

(b) *On-specification used oil delivery.* A generator, transporter, processor/re-refiner, or burner who first claims that used oil that is to be burned for energy recovery meets the fuel specifications under § 279.11 must keep a record of each shipment of used oil to the facility to which it delivers the used oil. Records for each shipment must include the following information:

(1) The name and address of the facility receiving the shipment;

(2) The quantity of used oil fuel delivered;

(3) The date of shipment or delivery; and

(4) A cross-reference to the record of used oil analysis or other information used to make the determination that the oil meets the specification as required under § 279.72(a).

* * * * *

[FR Doc. 98–11377 Filed 5–5–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 206

RIN 3067–AC82

Extensions of the Application Period for Temporary Housing Assistance

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize the Associate Director/Executive Associate Director for Response and Recovery to extend beyond the standard 60-day limit the application period for assistance provided under the Disaster Housing Program.

DATES: Comments will be accepted until July 6, 1998.

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

FOR FURTHER INFORMATION CONTACT: Laurence W. Zensinger, Response and Recovery Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3642, (facsimile) 202–646–2730.

SUPPLEMENTARY INFORMATION: 44 CFR 206.101(e) currently provides that the Regional Director may grant additional time to submit applications for temporary housing ''in order to achieve uniformity of application periods in contiguous States'' (44 CFR 206.101 (e)(1)). There are, however, other disaster-specific circumstances under which an extension of the application period would be appropriate, including when the volume of anticipated applicants in a catastrophic disaster cannot be registered within 60 days or when disaster-related damage may not be ascertained sooner than 60 days from the declaration date. This proposed rule would provide the Associate Director/Executive Associate Director with the authority to extend the application period for disaster housing assistance when circumstances warrant this measure and, thereby, would better serve the disaster-affected public. For consistency of implementation, this ad hoc authority will be given to the Associate Director/Executive Associate Director, Response and Recovery Directorate at FEMA Headquarters.

National Environmental Policy Act.

This proposed rule would be categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Executive Order 12866, Regulatory Planning and Review.

This proposed rule would not be a significant regulatory action within the meaning of § 2(f) of E.O. 12866 of September 30, 1993, 58 FR 51735. To the extent possible, this proposed rule adheres to the regulatory principles set forth in E.O. 12866 and the Office of Management and Budget has not reviewed it under the provisions of E.O. 12866.

Paperwork Reduction Act.

This proposed rule would not contain a collection of information requirement as described in section 3504(h) of the Paperwork Reduction Act.

Executive Order 12612, Federalism

This proposed rule would not involve any policies that have federalism implications under E.O. 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule would meet the applicable standards of § 2(b)(2) of E.O. 12778.

List of Subjects in 44 CFR Part 206

Administrative practice and procedure, Disaster assistance, Housing.

Accordingly, FEMA proposes to amend 44 CFR part 206 as follows:

PART 206—FEDERAL DISASTER ASSISTANCE FOR DISASTERS DECLARED ON OR AFTER NOVEMBER 23, 1988

Subpart D—Temporary Housing Assistance

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.

Section 206.101(e)(1) is revised to read as follows:

§ 206.101 Temporary housing assistance.

* * * * *

(e) *Applications*—(1) *Application period.* In general, applications for disaster housing assistance will be the 60 days following the date an incident is declared a major disaster or an

emergency by the President. The Mortgage and Rental Assistance application period will be a 6-month period following the declaration. When warranted by disaster-specific circumstances, the Associate Director/Executive Associate Director may extend the application periods as appropriate. Applications filed after the established period will not be processed unless the applicant can provide justification for the delay in applying.

* * * * *

Dated: April 30, 1998.

Lacy E. Suiter,

Executive Associate Director, Response and Recovery.

[FR Doc. 98–12006 Filed 5–5–98; 8:45 am]

BILLING CODE 6718–02–P

Notices

Federal Register

Vol. 63, No. 87

Wednesday, May 6, 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

Office of the Secretary

Determination of Total Amount and Quota Period for Tariff-Rate Quota for Raw Cane Sugar

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: This notice sets forth the establishment of the aggregate quantity of 1,600,000 metric tons, raw value, of raw cane sugar that may be entered under subheading 1701.11.10 during fiscal year (FY) 1998, with 400,000 metric tons subject to possible cancellation. This notice does not affect the previously established aggregate quantity of 50,000 metric tons (raw value basis) for certain sugars, syrups and molasses that may be entered under subheadings 1701.12.10, 1701.91.10, 1701.99.10, 1702.90.10, and 2106.90.44 of the Harmonized Tariff Schedule of the United States (HTS) during FY 1998.

EFFECTIVE DATE: May 6, 1998.

ADDRESSES: Inquiries may be mailed or delivered to the Import Policy and Programs Division Director, Foreign Agricultural Service, Room 5531, South Building, U.S. Department of Agriculture, Washington, D.C. 20250–1000.

FOR FURTHER INFORMATION CONTACT: Stephen Hammond (Division Director, Import Policies and Programs Division), 202–720–2916.

SUPPLEMENTARY INFORMATION: Paragraph (a)(i) of additional U.S. note 5 to chapter 17 of the HTS provides, in pertinent part, as follows:

The aggregate quantity of raw cane sugar entered, or withdrawn from warehouse for consumption, under subheading 1701.11.10, during any fiscal year, shall not exceed in the aggregate an amount (expressed in terms of raw value), not less than 1,117,195 metric tons, as shall be established by the Secretary of Agriculture * * *, and the aggregate quantity of sugars, syrups and molasses entered, or withdrawn from warehouse for consumption, under subheadings 1701.12.10, 1701.91.10, 1701.99.10, 1702.90.10 and 2106.90.44, during any fiscal year, shall not exceed in the aggregate an amount (expressed in terms of raw value), not less than 22,000 metric tons, as shall be established by the Secretary. With either the aggregate quantity for raw cane sugar or the aggregate quantity for sugars, syrups and molasses other than raw cane sugar, the Secretary may reserve a quota quantity for the importation of specialty sugars as defined by the United States Trade Representative.

These provisions of paragraph (a)(i) of additional U.S. note 5 to chapter 17 of the HTS authorize the Secretary of Agriculture to establish the total amounts (expressed in terms of raw value) for imports of raw cane sugar and certain other sugars, syrups, and molasses that may be entered under the subheadings of the HTS subject to the lower tier of duties of the tariff-rate quotas for entry during the fiscal year beginning October 1.

The Secretary originally established the FY 1998 raw sugar TRQ at 1,800,000 metric tons raw value. Of that quantity, the U.S. Trade Representative allocated 1,200,000 metric tons on September 17, 1997, and the remaining 600,000 metric tons was held in reserve for the allocation or cancellation of 200,000 metric tons in January, March, and May. The stocks-to-use ratio published in the January 1998 World Agricultural Supply and Demand Estimates report was 15.7 percent. Because this stocks-to-use ratio is greater than 15.5 percent, 200,000 metric tons of the reserved quantity for raw cane sugar has been canceled. The size of the raw cane TRQ is now being established at 1,600,000 metric tons. Of that quantity, 400,000 metric tons is being held in reserve for the allocation or cancellation of 200,000 metric tons in March and May.

Notice

Notice is hereby given that I have determined, in accordance with paragraph (a) of additional U.S. note 5 to chapter 17 of the HTS, that an aggregate quantity of up to 1,600,000 metric tons, raw value, of raw cane sugar described in subheading 1701.11.10 of the HTS may be entered or withdrawn from warehouse for consumption during the period from October 1, 1997, through September 30, 1998. Of this quantity, 1,200,000 metric tons was allocated by the United States Trade Representative, and the remaining 400,000 metric tons will be held in reserve.

If the stocks-to-use ratio published in the March 1998 World Agricultural Supply and Demand Estimates (WASDE) is equal to, or less than, 15.5 percent (rounded to the nearest tenth), an additional 200,000 metric tons of the reserved quantity for raw cane sugar will be available for allocation. If the stocks-to-use ratio published in the March 1998 WASDE is greater than 15.5 percent, 200,000 metric tons of the reserved quantity for raw cane sugar will automatically be canceled without further notice.

If the stocks-to-use ratio published in the May 1998 WASDE is equal to, or less than, 15.5 percent, an additional 200,000 metric tons of the reserved quantity for raw cane sugar will be available for allocation. If the stocks-to-use ratio published in the May 1998 WASDE is greater than 15.5 percent, 200,000 metric tons of the reserved quantity for raw cane sugar will automatically be canceled without further notice.

I will issue Certificates of Quota Eligibility (CQEs) to allow the Philippines, Brazil, and the Dominican Republic to ship up to 25 percent of each country's allocation at the low-tier tariff during each quarter of FY 1998. Australia, Guatemala, Argentina, Peru, Panama, El Salvador, Colombia, South Africa, and Nicaragua will be allowed to ship up to 50 percent of their initial allocations in the first six months of FY 1998. Unentered allocations, during any quarter or six month period, may be entered in any subsequent period. For all other countries, CQEs corresponding to each country's allocation may be entered at the low-tier tariff at any time during the fiscal year. Should country allocations result from the March, and May blocks, they may be entered subsequent to their allocation by the United States Trade Representative.

Signed at Washington, DC, on April 29, 1998.

Dan Glickman,

Secretary of Agriculture.

[FR Doc. 98–11994 Filed 5–5–98; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. CN–98–005]

Advisory Committee on Universal Cotton Standards; Meeting

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the Agricultural Marketing Service (AMS) announces a forthcoming meeting of the Advisory Committee on Universal Cotton Standards.

DATES: June 11, 1998, at 9:00 a.m. to 5:00 p.m. and on June 12, 1998, at 9:00 a.m. until the review is complete.

PLACE: June 11, Peabody Hotel, 149 Union Avenue, Memphis, Tennessee 38103. Phone (901) 529–4000.

June 12 at USDA, Agricultural Marketing Service, Cotton Programs offices at 3275 Appling Road, Memphis, Tennessee 38133. Phone (901) 384–3000. The meeting is open to the public.

FOR FURTHER INFORMATION, CONTACT: Don West, Standardization and Quality Assurance Branch, Cotton Programs, AMS, USDA, 3275 Appling Road, Memphis, Tennessee 38133; Phone: (901) 384–3015.

SUPPLEMENTARY INFORMATION: The committee includes representatives of all segments of the U.S. cotton industry and the twenty-one overseas associations that are signatories to the Universal Cotton Standards Agreement which is authorized under the United States Cotton Standards Act (U.S.C. 51–65). The purpose of the meeting is: (1) to recommend to the Secretary of Agriculture any changes considered necessary to the Universal Standards; and (2) to review freshly prepared sets of Universal Cotton Standards for conformity with existing standards.

The meeting is open to the public. Written comments may be submitted in advance or following the meeting to Mr. West. Notice of this meeting is provided in accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law No. 92–463).

Dated: April 15, 1998.

Mary E. Atienza,

Deputy Administrator, Cotton Program.

[FR Doc. 98–11993 Filed 5–5–98; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF AGRICULTURE

Forest Service

California Coast Province Advisory Committee (PAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The California Coast Province Advisory Committee (PAC) will meet on May 28 and 29, 1998, at the Mateel Community Center in Redway, CA. The meeting will be held from 8:30 a.m to 5:00 p.m. May 28 and 8:30 a.m. to 4:30 p.m. May 29. The Mateel Community Center is located at 59 Rusk Lane in Redway. Agenda items to be covered include: (1) Subcommittee meetings; (2) Coho Subcommittee report and recommendations; (3) Recreation/tourism Subcommittee report and recommendations; (4) PAC/SCERT Subcommittee report; (5) 3 PAC meeting follow-up; (6) Monitoring Subcommittee report and recommendations; (7) Presentation on 15% retention guidelines; (8) Work on the Ground Subcommittee report and recommendations; (9) Public/Private/Tribal Partnership Opportunities Subcommittee report and recommendations; (10) Presentation on Forest Service roads policy; and (11) Open public forum. All California Coast Province Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Daniel Chisholm, USDA, Forest Supervisory, Mendocino National Forest, 825 N. Humboldt Avenue, Willows, CA, 95988, (530) 934–3316 or Phebe Brown, Province Coordinator, USDA, Mendocino National Forest, 825 N. Humboldt Avenue, Willows, CA, 95988, (530) 934–3116.

Dated: April 28, 1998.

Daniel K. Chisholm,

Forest Supervisor.

[FR Doc. 98–11939 Filed 5–5–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Atlantic Bluefin Tuna Mandatory Catch Reporting.

Agency Form Number: None.

OMB Approval Number: 0648–0328 and merges 0648–0339 and 0648–0238.

Type of Request: Revision of a currently approved collection.

Burden: 723 hours.

Avg. Hours Per Response: Ranges between 5 and 10 minutes depending on the reporting requirement.

Number of Respondents: 7,735.

Needs and Uses: The purpose of this collection of information is to comply with the United States' obligations under the Atlantic Tunas Convention Act of 1975. As a member nation of the International Commission for the Conservation of Atlantic Tunas, the U.S. is required to take part in the collection of biological statistics for research purposes. The information collection for the mandatory catch reporting program (0648–0328) would be extended to include the reporting of trophy-size Atlantic bluefin tuna throughout the recreational fishery (currently cleared under 0648–0239). In addition, the North Carolina catch card program currently cleared under 0648–0339 would be merged into this collection. Anglers reporting under the North Carolina program will be exempt from the normal call-in-requirements. The angler reports provides essential information for management of the fishery and ensures that the U.S. complies with its international obligations.

Affected Public: Individuals.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20230.

Dated: April 30, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer

[FR Doc. 98–11998 Filed 5–5–98; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Recovery and Implantation of Archival Tags.

Agency Form Number: N/A.

OMB Approval Number: 0648–0338.

Type of Request: Revision of a currently approved collection.

Burden: 14 hours.

Avg. Hours Per Response: 1.5 hours for implantation of tags and 30 minutes for report on recovery of a tag.

Number of Respondents: 18.

Needs and Uses: To investigate the migratory patterns of Atlantic bluefin tuna, a program has been undertaken to implant archival tags in selected tuna. Under a scientific research exemption, any person may catch, possess, retain, and land any regulated species in which an archival tag has been affixed or implanted, provided that the person immediately reports the landing of such fish. In addition, any person affixing or implanting an archival tag into a regulated species is required to provide written notification to the National Marine Fisheries Service in advance of commencing the activity, and upon completion of the activity, must provide a written report.

Affected Public: Individuals, businesses or other for-profit organizations, and not-for-profit institutions.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, N.W., Washington, D.C. 20230.

Dated: April 30, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–11999 Filed 5–5–98; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Generic Clearance for Customer Satisfaction Surveys

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, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 6, 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 Joanne Dickinson, U.S. Bureau of the Census, Room 3019–3, Washington, DC 20233–0800, and 301–457–4081.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau is requesting an extension of the generic clearance to conduct customer satisfaction research surveys which may be in the form of mailed or electronic questionnaires and/or focus groups or personal interviews.

The Census Bureau has ranked a customer focused environment as one of its most important strategic planning objectives. The Bureau routinely needs to collect and analyze customer feedback about its products and services to better align them to its customers' needs and preferences. Several products and distribution channels have been designed/redesigned based on feedback from its various customer satisfaction research efforts.

Each research design is reviewed for content, utility, and user-friendliness by a variety of appropriate staff (including research design and subject-matter specialists). The concept and design are tested by internal staff and a select sample of respondents to confirm its appropriateness, user-friendliness, and to estimate burden (including hours and cost) of the proposed collection of information. Collection techniques are discussed and included in the research concept design discussions to define the most time-, cost-efficient and accurate collection media.

The clearance operates in the following manner: a block of hours is reserved at the beginning of each year, and the particular activities that will be conducted under the clearance are not specified in advance. The Census Bureau provides information to OMB about the specific activities on a flow basis throughout the year. OMB is notified of each activity in a letter that gives specific details about the activity, rather than by means of individual clearance packages. At the end of each year, a report is submitted to OMB that summarizes the number of hours used as well as the nature and results of the activities completed under the clearance.

Some modifications of the clearance from previous years are planned. The number of hours is expanded from 3,500 per year to 3,750 to allow for larger-scale research efforts with increased analytical power. In addition, incentives as a survey procedure may also be the subject of research under the clearance.

II. Method of Collection

This research may be in the form of mailed or electronic questionnaires and/or focus groups or personal interviews.

III. Data

OMB Number: 0607–0760.

Form Number: Various.

Type of Review: Regular.

Affected Public: Individuals or households, State or local governments, farms, businesses or other for-profit organizations, Federal agencies or employees, Non-profit institutions, Small businesses or organizations.

Estimated Number of Respondents: 45,000.

Estimated Time Per Response: 5 minutes.

Estimated Total Annual Burden Hours: 3,750 hours.

Estimated Total Annual Cost: There is no cost to respondents, except for their time to answer the questions posed.

Respondent's Obligation: Voluntary.

Legal Authority: Executive Order 12862.

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 30, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–12000 Filed 5–5–98; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Information Systems Technical Advisory Committee; Notice of Closed Meeting

A meeting of the Information System Technical Advisory Committee (ISTAC) will be held May 21, 1998, 9:00 a.m., in the Herbert C. Hoover Building, Room 1617M–2, 14th Street between Pennsylvania Avenue and Constitution Avenue, NW, Washington, DC. The ISTAC advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to information systems equipment and technology.

The Committee will meet only in Executive Session to discuss matters properly classified under Executive order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on October 3, 1997, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and 10(a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, DC 20230. For further information, contact Lee Ann Carpenter on (202) 482–2583.

Dated: April 30, 1998.

Lee Ann Carpenter,

Director, Technical Advisory Committee Unit.

[FR Doc. 98–12008 Filed 5–5–98; 8:45 am]

BILLING CODE 3510–33–M

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 98–022. *Applicant:* Texas A&M University, Plant Genome Mapping Laboratory, Heep Center for SCSC, Room 610, College Station, TX 77843–2474. *Instrument:* Robot, Model X8000. *Manufacturer:* Genetix Ltd., United Kingdom. *Intended Use:* The instrument is intended to be used for studies of recombinant bacteria containing cloned DNA inserts from flowering plants (for example cotton, sorghum or rice) or other non-infectious sources. Experiments will be conducted which involve the identification of specific bacterial clones that contain DNA which corresponds to particular genes or related DNA elements previously assigned to a ''map position'' along the chromosomes of the source organism (flowering plant). In addition, the instrument will be used for educational purposes in the courses: (a) GENE 485: Undergraduate Research, (b) GENE 691: Postgraduate Research and (C) GENE 654: Analysis of Complex Genomes. Application accepted by Commissioner of Customs: April 20, 1998.

Docket Number: 98–023. *Applicant:* University of Iowa, Department of Ophthalmology, 200 Hawkins Drive, 11190E PFP, Iowa City, IA 52242. *Instrument:* Electron Microscope, Model JEM–1220. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* The instrument is intended to be used for studies of ocular tissues and cells from humans and animals to determine the extent of, and to quantitate, pathological changes in ocular tissues of human donors afflicted with age-related macular degeneration and animal models of this disease. Application accepted by Commissioner of Customs: April 21, 1998.

Frank W. Creel

Director, Statutory Import Programs Staff.

[FR Doc. 98–12046 Filed 5–5–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041598A]

Small Takes of Marine Mammals Incidental to Specified Activities; Offshore Seismic Activities in the Beaufort Sea

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

ACTION: Notice of receipt of application and proposed authorization for a small take exemption; request for comments.

SUMMARY: NMFS has received a request from the BP Exploration (Alaska), 900 East Benson Boulevard, Anchorage, AK 99519 (BPXA) for a renewal of an authorization to take small numbers of marine mammals by harassment incidental to conducting seismic surveys in the Beaufort Sea in state and Federal waters. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to authorize BPXA to incidentally take, by harassment, small numbers of bowhead whales and other marine mammals in the above mentioned areas during the open water period of 1998.

DATES: Comments and information must be received no later than June 5, 1998.

ADDRESSES: Comments on the application should be addressed to

Michael Payne, Chief, Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3225. A copy of the application, a 1996 environmental assessment (EA), the 1997 informal section 7 consultation, BPXA's 1997 90-day Report, and a list of references used in this document may be obtained by writing to this address or by telephoning one of the contacts listed here.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, (301) 713–2055, Brad Smith, (907) 271–5006.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth.

On April 10, 1996 (61 FR 15884), NMFS published an interim rule establishing, among other things, procedures for issuing incidental harassment authorizations under section 101(a)(5)(D) of the MMPA for activities in Arctic waters. For additional information on the procedures to be followed for this authorization, please refer to that document.

Summary of Request

On March 26, 1998, NMFS received an application from BPXA requesting a 1-year renewal of its authorization for the harassment of small numbers of several species of marine mammals incidental to conducting seismic surveys during the open water season in the Beaufort Sea between Harrison Bay and Camden Bay/Flaxman Island, AK. Weather permitting, the survey is expected to take place between approximately July 1 and October 20, 1998. A detailed description of the work proposed for 1998 is contained in the application (BPXA, 1998) and is available upon request (see **ADDRESSES**).

Description of Habitat and Marine Mammal Affected by the Activity

A detailed description of the Beaufort Sea ecosystem and its associated marine mammals can be found in the EA prepared for this authorization (BPXA, 1996b) or in other documents (Minerals Management Service (MMS), 1992, 1996). This information is incorporated by reference and need not be repeated here. A copy of the EA is available upon request (see **ADDRESSES**).

Marine Mammals

The Beaufort/Chukchi Seas support a diverse assemblage of marine mammals, including bowhead whales (*Balaena mysticetus*), gray whales (*Eschrichtius robustus*), belukha (*Delphinapterus leucas*), ringed seals (*Phoca hispida*), spotted seals (*Phoca largha*) and bearded seals (*Erignathus barbatus*). Descriptions of the biology and distribution of these species and of others can be found in several other documents (BPXA, 1996b, 1998; Lentfer, 1988; MMS, 1992, 1996; Small and DeMaster, 1995; Hill *et al.*, 1997). Please refer to those documents for information on these species.

Potential Effects of Seismic Surveys on Marine Mammals

Disturbance by seismic noise is the principal means of taking by this activity. Support vessels and aircraft will provide a secondary source of noise. The physical presence of vessels and aircraft could also lead to non-acoustic effects involving visual or other cues.

Seismic surveys are used to obtain data about formations several thousands of feet deep. The proposed seismic operation is an ocean bottom cable (OBC) survey. OBC surveys involve dropping cables from a ship to the ocean bottom, forming a patch consisting of 6 cables 5.9 kilometers (km) (3.7 mi) long, separated 660 m (2,165 ft) from each other. Sensors (hydrophones) are attached to the cables. These hydrophones are used to detect seismic energy reflected back from underground rock strata. The original source of this energy is a submerged acoustic source, called a seismic airgun array, that releases compressed air into the water, creating an acoustical energy pulse that is directed downward toward the seabed. Normally, 27 seismic lines are run for each patch, covering an area 7.3 km by 8.6 km (4.5 mi by 5.3 mi), centered over the patch.

After sufficient data have been recorded to allow accurate mapping of the rock strata, the cable is lifted onto the deck of a cable-retrieval vessel, moved to a new location (ranging from several hundred to a few thousand feet away), and placed onto the seabed again. For a more detailed description of the seismic operation, including the sizes of the various airguns, and for numbers of vessels planned for this survey, please refer to the application (BPXA, 1998).

Depending upon ambient conditions and the sensitivity of the receptor, underwater sounds produced by open water seismic operations may be detectable a substantial distance away from the activity. Any sound that is detectable is (at least in theory) capable of eliciting a disturbance reaction by a marine mammal or of masking a signal of comparable frequency (BPXA, 1998). An incidental harassment take is presumed to occur when marine mammals in the vicinity of the seismic source, the seismic vessel, other vessels, or aircraft react to the generated sounds or to visual cues.

Seismic pulses are known to cause bowhead whales to behaviorally respond within a distance of several kilometers (Richardson *et al.*, 1995). Although some limited masking of low-frequency sounds (e.g., whale calls) is a possibility, the intermittent nature of seismic source pulses (1 second in duration every 6 to 12 seconds) will limit the extent of masking. Bowhead whales are known to continue calling in the presence of seismic survey sounds, and their calls can be heard between seismic pulses (Richardson *et al.*, 1986). Masking effects are expected to be absent in the case of belukhas, given that sounds important to them are predominantly at much higher frequencies than are airgun sounds (BPXA, 1998).

Hearing damage is not expected to occur during the project. It is not known whether a marine mammal very close to an airgun array would be at risk of temporary or permanent hearing impairment, but temporary threshold shift is a theoretical possibility for animals within a few hundred meters (Richardson et al., 1995) of the source. However, planned monitoring and mitigation measures (described later in this document) are designed to detect marine mammals occurring near the array and to avoid exposing them to sound pulses that have any possibility of causing hearing damage.

When the received levels of noise exceed some behavioral reaction threshold, cetaceans will show disturbance reactions (BPXA, 1998). The levels, frequencies, and types of noise that will elicit a response vary between

and within species, individuals, locations, and seasons. Behavioral changes may be subtle alterations in surface, respiration, and dive cycles. More conspicuous responses include changes in activity or aerial displays, movement away from the sound source, or complete avoidance of the area. The reaction threshold and degree of response are related to the activity of the animal at the time of the disturbance. Whales engaged in active behaviors, such as feeding, socializing, or mating, are less likely than resting animals to show overt behavioral reactions, unless the disturbance is directly threatening (BPXA, 1998).

Bowhead Whales

Various studies (Reeves *et al.*, 1984, Fraker et al., 1985, Richardson *et al.*, 1986, Ljungblad *et al.*, 1988) have reported that, when an operating seismic vessel approaches within a few kilometers, most bowhead whales exhibit strong avoidance behavior and changes in surfacing, respiration, and dive cycles. Bowheads exposed to seismic pulses from vessels more than 7.5 km (4.5 mi) away rarely showed observable avoidance of the vessel, but their surface, respiration, and dive cycles appeared altered in a manner similar to that observed in whales exposed at a closer distance (BPXA, 1996a, 1996b, 1998).

Within a 6–99 km (3.7–60 mi) range, it has not been possible to determine a specific distance at which subtle behavioral changes no longer occur (Richardson and Malme, 1993), given the high variability observed in bowhead whale behavior (BPXA, 1996a, 1996b). Analysis of the results from BPXA's 1996 seismic monitoring program does not provide conclusive evidence about the radius of avoidance of bowheads to the seismic program. The peak number of bowhead sightings was 10–20 km (6.2–12.3 mi) from shore during no-seismic periods and 20–30 km (12.3–18.6 mi) from shore during periods that may have been influenced by seismic noise. This difference was not statistically significant, but the low numbers of sightings preclude meaningful interpretation (BPXA, 1998).

Inupiat whalers believe that migrating bowheads are sometimes displaced at distances considerably greater than 6 to 8 km (3.7 to 5.0 mi)(Rexford, 1996). Scientific studies done to date have limitations as discussed in part by Moore and Clark (1992) and MMS (1996). It is possible that, when additional data are available, it will be demonstrated that bowheads sometimes do avoid seismic vessels at distances beyond 6 to 8 km (3.7 to 5.0 mi). Also, whalers have mentioned that bowheads sometimes seem more ''skittish'' and more difficult to approach when seismic exploration is underway in the area. This ''skittish'' behavior may be related to the observed subtle changes in the behavior of bowheads exposed to seismic pulses from distant seismic vessels (Richardson *et al.*, 1986).

Gray Whales

The reactions of gray whales to seismic pulses are similar to those of bowheads. Migrating gray whales along the California coast were noted to slow their speed of swimming, turn away from seismic noise sources, and increase their respiration rates. Malme *et al.* (1983, 1984, 1988) concluded that approximately 50 percent showed avoidance when the average received pulse level was 170 dB (re 1 μPa @ 1 m). By some behavioral measures, clear effects were evident at average pulse levels of 160+dB; less consistent results were suspected at levels of 140–160 dB.

Belukha

The belukha is the only species of toothed whale (Odontoceti) expected to be encountered in the Beaufort Sea. Because their hearing threshold at frequencies below 100 Hz (where most of the energy from airgun arrays is concentrated) is poor (125 dB re 1 μPa @ 1 m) or more depending upon frequency (Johnson *et al.*, 1989; Richardson *et al.*, 1991, 1995), belukha are not predicted to be strongly influenced by seismic noise. However, because of the high source levels of seismic pulses, airgun sounds may be audible to belukha at distances of 100 km (Richardson and Wursig, 1997). The reaction distance for belukha, although presently unknown, is expected to be less than that for bowheads, given the presumed poorer sensitivity of belukhas than that of bowheads for low-frequency sounds (BPXA, 1998).

Ringed, Largha and Bearded Seals

No detailed studies of reactions by seals to noise from open water seismic exploration have been published (Richardson *et al.*, 1995). However, there are some data on the reactions of seals to various types of impulsive sounds (J. Parsons as quoted in Greene, *et al.* 1985; Anon., 1975; Mate and Harvey, 1985). These studies indicate that ice seals typically either tolerate or habituate to seismic noise produced from open water sources.

Underwater audiograms have been obtained using behavioral methods for three species of phocinid seals, ringed, harbor, and harp seals (*Pagophilus groenlandicus*). These audiograms were reviewed in Richardson *et al.* (1995). Below 30–50 kHz, the hearing threshold of phocinids is essentially flat down to at least 1 kHz and ranges between 60 and 85 dB (re 1 μPa @ 1 m). There are few data on hearing sensitivity of phocinid seals below 1 kHz. NMFS considers harbor seals to have a hearing threshold of 70–85 dB at 1 kHz (60 FR 53753, October 17, 1995), and recent measurements for a harbor seal indicate that, below 1 kHz, its thresholds deteriorate gradually to 97 dB (re 1 μPa @ 1 m) at 100 Hz (Kastak and Schusterman, 1995a, b).

Because no studies to date have focused on pinniped reaction to underwater noise from pulsed, seismic arrays in open water (Richardson *et al.*, 1991, 1995), as opposed to in-air exposure to continuous noise, substantive conclusions are not possible at this time. However, assuming a sound pressure level of 80–100 dB over its threshold is needed in order to cause annoyance and 130 dB for injury (pain), as is the current thought based upon human studies (Advanced Research Projects Agency and NMFS, 1995), it appears unlikely that pinnipeds would be harassed or injured by low frequency sounds from a seismic source unless they were within close proximity of the array. For permanent injury, pinnipeds would likely need to remain in the high-noise field for extended periods of time. Existing evidence also suggests that, while they may be capable of hearing sounds from seismic arrays, seals appear to tolerate intense pulsatile sounds without known effect once they learn that there is no danger associated with the noise (see, for example, NMFS/Washington Department of Wildlife, 1995). In addition, they will apparently not abandon feeding or breeding areas due to exposure to these noise sources (Richardson *et al.*, 1991) and may habituate to certain noises over time. Since seismic work is fairly common in Beaufort Sea waters, pinnipeds have been previously exposed to seismic noise and may not react to it after initial exposure.

Other Effects

For a discussion on the anticipated effects of ships, boats, aircraft, and smaller acoustic devices, such as single airguns, sparkers, sub-bottom profilers, side-scan sonar, and bathymetric sounders, on marine mammals and their food sources, please refer to the application (BPXA, 1998). Information on these effects is incorporated in this document by reference (see BPXA, 1998). Numbers of Marine Mammals Expected to be Taken

BPXA estimates that the following numbers of marine mammals may be subject to Level B harassment, as defined in 50 CFR 216.3:

Species	Population size	Harassment takes in 1998	
		Possible	Probable
Bowhead	8,000	800	<400
Gray whale	23,000	<10	0
Belukha	41,610	250	<150
Ringed seal	1–1.5 million	400	<400
Spotted seal	>200,000	10	<5
Bearded seal	>300,000	50	<30

Effects of Seismic Noise and Other Activities on Subsistence Needs

The disturbance and potential displacement of marine mammals by sounds from seismic activities are the principle concerns related to subsistence use of the area. The harvest of marine mammals (mainly bowhead whales, ringed seals, and bearded seals) is central to the culture and subsistence economies of the coastal North Slope communities (BPXA, 1998). In particular, if migrating bowhead whales are displaced farther offshore by elevated noise levels, the harvest of these whales could be more difficult and dangerous for hunters. The harvest could also be affected if bowheads become more skittish when exposed to seismic noise (BPXA, 1998).

Nuiqsut is the community closest to the area of the proposed activity, and it harvests bowhead whales only during the fall whaling season. In recent years, Nuiqsut whalers typically take zero to four whales each season (BPXA, 1998). Nuiqsut whalers concentrate their efforts on areas north and east of Cross Island, generally in water depths greater than 20 m (65 ft). Cross Island, the principle field camp location for Nuiqsut whalers, is located within the general area of the proposed seismic area. Thus, the possibility and timing of potential seismic operations in the Cross Island area requires BPXA to provide NMFS with a Plan of Cooperation (also called the Communications and Avoidance Agreement) with North Slope Borough residents to avoid any unmitigable adverse impact on subsistence needs.

Whalers from the village of Kaktovik search for whales east, north, and west of the village. Kaktovik is located 60 mi (38 km) east of the easternmost end of the planned seismic exploration area. The westernmost reported harvest location was about 21 km (13 mi) west of Kaktovik, near 70°10′N, 144°W (Kaleak, 1996). That site is approximately 40 km (25 mi) east of the closest part of the planned seismic exploration area for 1998 (BPXA, 1998).

Whalers from the village of Barrow search for bowhead whales much further from the planned seismic area, >200 km (>125 mi) west (BPXA, 1998).

The location of the proposed seismic activity is south of the center of the westward migration route of bowhead whales, but there is some overlap. BPXA (1998) believes that, although whales may be able to hear the sounds emitted by the seismic array out to a distance of 50 km (30 mi) or more, it is unlikely that changes in migration route will occur at distances of >25 km (>15 mi). Alternatively, whalers believe that bowheads begin to divert from their normal migration path more than 48 km (35 mi) away (MMS, 1996).

It is recognized that it is difficult to determine the maximum distance at which reactions occur (Moore and Clark, 1992). As a result, BPXA is developing a Communications and Avoidance Agreement with the whalers to reduce potential interference with the hunt. Also, it is believed that the monitoring plan proposed by BPXA (LGL Ltd. and Greeneridge Sciences Inc, 1998) will provide information that will help resolve uncertainties about the effects of seismic exploration on the accessibility of bowheads to hunters.

While seismic exploration has some potential to influence subsistence seal hunting activities, the peak season for seal hunting is during the winter months when the harvest consists almost exclusively of ringed seals (BPXA, 1998). In summer, boat crews hunt ringed, spotted and bearded seals (BPXA, 1998). The most important sealing area for Nuiqsut hunters is off the Colville delta, extending as far west as Fish Creek and as far east as Pingok Island (BPXA, 1998). This area overlaps with the westernmost portion of the planned seismic area. In this area, during summer, sealing occurs by boat when hunters apparently concentrate on bearded seals (BPXA, 1998).

Mitigation

BPXA proposes to continue the mitigation program carried out in 1996 and 1997. BPXA plans to use biological observers to monitor marine mammal presence in the vicinity of the seismic array. To avoid the potential for serious injury to marine mammals, BPXA will power down the seismic source if pinnipeds are sighted within the area delineated by the 190 dB isopleth or:

(1) within 60 m (197 ft) of a single airgun or an array of ≤60 in^3.

(2) within 110 m (361 ft) of an array >60 in^3 and ≤720 in^3 at <2.5 m (8.3 ft) depth;

(3) within 190 m (623 ft) of an array >60 in^3 and ≤720 in^3 operating at ≥2.5 m (8.3 ft) depth;

(4) within 150 m (492 ft) of an array >720 in^3 and ≤840 in^3 operating at <2.5 m (8.3 ft) depth;

(5) within 250 m (820 ft) of an array >720 in^3 and ≤840 in operating at ≥2.5 m (8.3 ft) depth;

(6) within 260 m (853 ft) of an array >840 in^3 operating at ≥2.5 m (8.3 ft) depth; and

(7) within 130 m (426 ft) of an array >840 in^3 operating at >2.5 m (8.3 ft) depth.

BPXA will power down the seismic source if bowhead, gray, or belukha whales are sighted within the area delineated by the 180 dB isopleth or:

(1) within 160 m (525 ft) of a single airgun or an array of ≤60 in^3;

(2) within 600 m (1,928 ft) of an array >60 in^3 and ≤720 in^3 at >2.5 m (8.3 ft) depth;

(3) within 800 m (2,625 ft) of an array >60 in^3 and ≤720 in^3 operating at ≤2.5 m (8.3 ft) depth;

(4) within 700 m (2,298 ft) of an array >720 in^3 and ≤840 in^3 operating at <2.5 m (8.3 ft) depth;

(5) within 900 m (2,953 ft) of an array >720 in^3 and ≤840 in^3 operating at ≤2.5 m (8.3 ft) depth;

(6) within 1020 m (3,346 ft) of an array >840 in^3 operating at ≥2.5 m (8.3 ft) depth; and

(7) within 640 m (2,100 ft) of an array >840 in^3 operating at >2.5 m (8.3 ft) depth.

In addition, BPXA proposes to ramp-up the seismic source to operating levels at a rate no greater than 6 dB/min. If the array includes airguns of different sizes, the smallest gun will be fired first. Additional guns will be added at intervals appropriate to limit the rate of increase in source level to a maximum of 6 dB/min.

Monitoring

As part of its application, BPXA provided a monitoring plan for assessing impacts to marine mammals from seismic surveys in the Beaufort Sea. This monitoring plan is described in detail in BPXA (1998) and LGL Ltd. and Greeneridge Sciences Inc. (1998). As required by the MMPA, this monitoring plan will be subject to a peer-review panel of technical experts prior to formal acceptance by NMFS.

Preliminarily, BPXA plans to conduct the following

Vessel-Based Visual Monitoring

A minimum of two biologist-observers aboard each seismic vessel will search for and observe marine mammals whenever seismic operations are in progress, and for at least 30 minutes prior to planned start of shooting. These observers will scan the area immediately around the vessels with reticulated binoculars during the daytime and with night-vision equipment during the night (prior to mid-August, there are no hours of darkness). Individual watches will normally be limited to no more than 4 consecutive hours. [1]

When mammals are detected within a safety zone designated to prevent injury to the animals (see Mitigation), the geophysical crew leader will be notified so that shutdown procedures can be implemented immediately.

Aerial Surveys

From September 1, 1998, until 3 days after the seismic program ends, aerial surveys will be conducted daily, weather permitting. The primary objective will be to document the occurrence, distribution, and movements of bowhead and belukha whales in and near the area where they might be affected by the seismic pulses. These observations will be used to estimate the level of harassment takes and to assess the possibility that seismic operations affect the accessibility of bowhead whales for subsistence hunting. Pinnipeds will be recorded when seen. Aerial surveys will be at an altitude of 300 m (1,000 ft) above sea level. BPXA proposes to avoid overflights of the Cross Island area where whalers from Nuiqsut are based during their fall whale hunt.

Consistent with the 1996 and 1997 aerial surveys, the daily aerial surveys are proposed to cover two grids: (1) A grid of 12 north-south lines spaced 8 km (5 mi) apart and extending from about 20 km (12.5 mi) west of the western side of the then-current seismic exploration area to 50 km (30 mi) east of its eastern edge, and from the barrier islands north to approximately the 100 m (328 ft) depth contour; and (2) a grid of 4 survey lines within the above region, also spaced 8 km (5 mi) apart and mid-way between the longer lines, to provide more intensive coverage of the area of the seismic operations and immediate surrounding waters.

When the seismic program is relocated east or west along the coast during the 1998 season, both survey grids will be relocated a corresponding distance along the coast. Information on the survey program can be found in BPXA (1998) and in LGL Ltd. and Greeneridge Sciences Inc. (1998), which are incorporated herein by reference.

Acoustical Measurements

The acoustic measurement program proposed for 1998 is designed to be a sequel to the program conducted in 1996 and 1997 (see BPXA, 1996a, 1997, and 1998; LGL Ltd. and Greeneridge Sciences Inc., 1996, 1997, and 1998). The acoustic measurement program is planned to include (1) retrieval of autonomous seafloor acoustic recorders (ASARs) deployed and not recovered in 1997 and analysis of usable data contained in those recorders, (2) deployment of ASARs during the 1998 seismic program to provide continuous acoustic data for extended periods, (3) boat-based acoustic measurements, (4) OBC-based acoustic measurements, and (5) use of air-dropped sonobuoys.

The boat-based acoustical measurement program is proposed for a 7-day period in August 1998. The objectives of this survey will be as follows: (1) To measure the levels and other characteristics of the horizontally propagating seismic survey sounds from the type(s) of airgun array(s) to be used in 1998 as a function of distance and aspect relative to the seismic source vessel(s) and to water depth.

(2) To measure the levels and frequency composition of the vessel sounds emitted by vessels used regularly during the 1998 program, excluding vessels whose sounds were characterized adequately in previous years.

(3) To obtain additional site-specific ambient noise data, which determine signal-to-noise ratios for seismic and other acoustic signals at various ranges from their sources. This aspect of the monitoring is described in more detail in BPXA (1998) and LGL Ltd. and Greeneridge Sciences Inc. (1998).

Estimates of Marine Mammal Take

Estimates of takes by harassment will be made through vessel and aerial surveys. Preliminarily, BPXA will estimate the number of (a) marine mammals observed within the area ensonified strongly by the seismic vessel; (b) marine mammals observed showing apparent reactions to seismic pulses (e.g., heading away from the seismic vessel in an atypical direction); (c) marine mammals subject to take by type (a) or (b) above when no monitoring observations were possible; and (d) bowheads displaced seaward from the main migration corridor.

Reporting

BPXA will provide an initial report on 1998 activities to NMFS within 90 days of the completion of the seismic program. This report will provide dates and locations of seismic operations, details of marine mammal sightings, estimates of the amount and nature of all takes by harassment, and any apparent effects on accessibility of marine mammals to subsistence users.

A final technical report will be provided by BPXA within 20 working days of receipt of the document from the contractor, but no later than April 30, 1999. The final technical report will contain a description of the methods, results, and interpretation of all monitoring tasks.

Consultation

Under section 7 of the Endangered Species Act (ESA), NMFS completed an informal consultation on the issuance of an incidental harassment authorization for this activity on June 26, 1997. A copy of that document is available upon request (see **ADDRESSES**). If an authorization to incidentally harass listed marine mammals is issued under the MMPA, NMFS will issue an Incidental Take Statement under section 7 of the ESA.

National Environmental Policy Act (NEPA)

In conjunction with the 1996 notice of proposed authorization (61 FR 26501,

[1] Because individual watches will normally be limited to no more than 4 consecutive hours, NMFS believes that no seismic vessel (including those conducting shallow-hazards surveys) will be able to operate with fewer than two observers, unless surveys are shorter than 4 consecutive hours.

May 28, 1996), NMFS released an EA that addressed the impacts on the human environment from issuance of the authorization and the alternatives to the proposed action. No comments were received on that document and, on July 18, 1996, NMFS concluded that neither implementation of the proposed authorization to BPXA for the harassment of small numbers of several species of marine mammals incidental to conducting seismic surveys during the open water season in the U.S. Beaufort Sea nor the alternatives to that action would significantly affect the quality of the human environment. As a result, the preparation of an environmental impact statement on this action is not required by section 102(2) of NEPA or its implementing regulations. A copy of the EA is available upon request (see **ADDRESSES**).

This year's activity is a continuation of the seismic work conducted in 1996 and 1997. For BPXA's 1998 application, NMFS has conducted a review of the impacts expected from the issuance of an Incidental Harassment Authorization in comparison to those impacts evaluated in 1996. As assessed in detail in this document, NMFS has preliminarily determined that there will be no more than a negligible impact on marine mammals from the issuance of the harassment authorization and that there will not be any unmitigable impacts to subsistence communities, provided the mitigation measures required under the authorization are implemented. Because the activity is substantially the same as the one conducted in 1996 and no new impacts on the environment have been identified, a new EA is not warranted.

Conclusions

NMFS has preliminarily determined that the short-term impact of conducting seismic surveys in the U.S. Beaufort Sea will result, at worst, in a temporary modification in behavior by certain species of cetaceans and possibly pinnipeds. While behavioral modifications may be made by these species to avoid the resultant noise, this behavioral change is expected to have a negligible impact on the animals.

As the number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals (which vary annually due to variable ice conditions and other factors) in the area of seismic operations, due to the distribution and abundance of marine mammals during the projected period of activity and the location of the proposed seismic activity in waters generally too shallow and distant from the edge of the pack ice for most marine mammals of concern, the number of potential harassment takings is estimated to be small. In addition, no take by injury and/or death is anticipated, and the potential for temporary or permanent hearing impairment will be avoided through the incorporation of the mitigation measures mentioned in this document. No rookeries, mating grounds, areas of concentrated feeding, or other areas of special significance for marine mammals occur within or near the planned area of operations during the season of operations.

Because bowhead whales are east of the seismic area in the Canadian Beaufort Sea until late August/early September, seismic activities are not expected to impact subsistence hunting of bowhead whales prior to that date. After August 31, 1998, BPXA will initiate aerial survey flights for bowhead whale assessments. Appropriate mitigation measures to avoid an unmitigable adverse impact on the availability of bowhead whales for subsistence needs will be the subject of consultation between BPXA and subsistence users.

Also, while open-water seismic exploration in the U.S. Beaufort Sea has some potential to influence seal hunting activities by residents of Nuiqsut, because (1) the peak sealing season is during the winter months, (2) the main summer sealing is off the Colville Delta), and (3) the zone of influence by seismic sources on belukha and seals is fairly small, NMFS believes that BPXA's seismic survey will not have an unmitigable adverse impact on the availability of these stocks for subsistence uses.

Proposed Authorization

NMFS proposes to issue an incidental harassment authorization for the 1998 Beaufort Sea open water season for a seismic survey provided the above mentioned mitigation, monitoring, and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed seismic activity would result in the harassment of only small numbers of bowhead whales, gray whales, and possibly belukha whales, bearded seals, and largha seals; would have a negligible impact on these marine mammal stocks; and would not have an unmitigable adverse impact on the availability of marine mammal stocks for subsistence uses.

Information Solicited

NMFS requests interested persons to submit comments, and information, concerning this request (see **ADDRESSES**).

Dated: May 1, 1998.

Patricia A. Montanio,

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

[FR Doc. 98–12001 Filed 5–5–98; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Thursday, May 28, 1998.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–12118 Filed 5–4–98; 10:46 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB review; comment request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Appendix I, Department of Defense Pilot Mentor-Protégé Program; OMB Number 0704–0332.

Type of Request: Extension.

Number of Respondents: 124.

Responses Per Respondent: 2.

Annual Responses: 248.

Average Burden Per Response: 1 hour response; 2 recordkeeping hours.

Annual Burden Hours: 496 (Includes 248 recordkeeping hours.)

Needs and Uses: In order to evaluate whether the purposes of the DoD Pilot Mentor-Protégé Program (established under Section 831 of Public Law 101–510, National Defense Authorization Act for Fiscal Year 1991, as amended) have been attained, Appendix I of the DFARS requires that companies participating in

the Program as mentors, keep records and report on progress in achieving the developmental assistance objectives under each mentor-protégé agreement. Participation in the program is voluntary and is open to companies with at least one active subcontracting plan negotiated with DoD or another Federal agency. The report is used by the Government to assess whether the purposes of the Program have been attained. It requires mentor firms to report semiannually by attaching to their SF 295, Summary Subcontract Report,: (1) A statement that includes the number of active mentor-protégé agreements in effect and the progress in achieving development assistance objectives under each agreement; and (2) a copy of the SF 294, Subcontracting Report for Individual Contracts, for each contract where developmental assistance was credited, with a statement identifying the amount of dollars credited to the small disadvantaged business subcontract goal as a result of developmental assistance; an explanation as to the relationship between the developmental assistance provided the protégé firm(s) under the Program and the activities under the contract covered by the SF 294(s); and the number and dollar value of subcontractors awarded to the protégé firm(s).

Affected Public: Business or other for-profit; not-for-profit institutions.

Frequency: Semiannually.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Peter N. Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written request for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: April 30, 1998.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–11985 Filed 5–5–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Defense Acquisition Reform (Phase IV), R&D Subpanel

ACTION: Notice of Advisory Committee meetings.

SUMMARY: The Defense Science Board Task Force on Defense Acquisition Reform (Phase IV), R&D Subpanel will meet in closed session on May 14–15, June 10–11, July 15–16, September 2–3, and October 20, at the Pentagon, Arlington, Virginia; and on August 10–11, 1998 at the Beckman Center, Irvin, California. The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will review the current status of reform implementation and appropriate set of metrics, and recommend further actions for the Department to accelerate progress. A particular focus of this effort should be the development and implementation of metrics that could be used by the DoD to periodically measure success in the effectiveness of the overall acquisition reform efforts.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that these DSB Task Force meetings, concerns matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly these meetings will be closed to the public.

Dated: May 1, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–12049 Filed 5–5–98; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Defense Acquisition Reform (Phase IV)

ACTION: Notice of Advisory Committee meetings.

SUMMARY: The Defense Science Board Task Force on Defense Acquisition Reform (Phase IV) will meet in closed session on May 13, June 12, July 17, September 4, October 19, December 14, 1998, and January 22, 1999 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will review the current status of reform implementation and appropriate set of metrics, and recommend further actions for the Department to accelerate progress. A particular focus of this effort should be the development and implementation of metrics that could be used by the DoD to periodically measure success in the effectiveness of the overall acquisition reform efforts.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that these DSB Task Force meetings, concerns matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly these meetings will be closed to the public.

Dated: May 1, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–12050 Filed 5–5–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 6, 1998.

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

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information

Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: May 1, 1998.

Hazel Fiers,

Acting Deputy Chief Information Officer, Office of the Chief Information Officer.

Office for Civil Rights

Type of Review: Reinstatement.

Title: Fall 1998 Elementary and Secondary School Civil Rights Compliance Report.

Frequency: Biennially.

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

Reporting and Recordkeeping Burden: Responses: 60,950. Burden Hours: 293,419.

Abstract: The Elementary and Secondary School Civil Rights Compliance Report is the vehicle for the Office for Civil Rights (OCR), U.S. Department of Education, to acquire source material in the form of data and information regarding the civil rights compliance issues in the nation's public elementary and secondary schools. Information from the Elementary and Secondary School Civil Rights Compliance Report is used by OCR field offices when they consider public school districts for compliance reviews, and as source material when civil rights compliance investigations are conducted.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: Talent Search and Educational Opportunity Centers Programs Annual Performance Report.

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Annual Reporting and Recordkeeping Hour Burden: Responses: 500. Burden Hours: 3,000.

Abstract: Talent Search and Educational Opportunity Centers grantees are required to submit annual performance reports to the Department so that ED personnel can evaluate the grantees' performance and assess prior experience points.

Office of Postsecondary Education

Type of Review: New.

Title: Study of the Outcomes of Diversity in Higher Education.

Frequency: One time.

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

Annual Reporting and Recordkeeping Hour Burden: Responses: 12,475. Burden Hours: 2,782.

Abstract: This study focuses on outcomes of diversity in higher education for students and faculty; it also examines the effect of diversity on institutional policies and programs. This is a three-year, 10-institution case study effort that includes interviews with administrators and faculty and focus group discussions with students, as well as a survey of samples of faculty and students.

Office of Educational Research and Improvement

Type of Review: Revision.

Title: 1998–1999 Field Test for Schools and Staffing Survey (SASS): Local Educational Agency (LEA), Administrator, School, Teacher and Library/Media Center, 1999–2000 Teacher Listing Form, 1999–2000 Full Scale SASS: LEA, Administrator, School, Teacher and Library/Media Center

Frequency: One time.

Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Reporting Burden and Recordkeeping: Responses: 104,341. Burden Hours: 107,802.

Abstract: The National Center for Education Statistics (NCES) will use the field test to assess data collection procedures and survey instruments that are planned for the full scale SASS in 1999–2000. Policy makers, researchers and practitioners at the national, state and local events use SASS data. Respondents include public and private school principals, teachers, and school, LEA and library/media center staff persons.

[FR Doc. 98–12005 Filed 5–5–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Intent to Prepare an Environmental Impact Statement for the Proposed Conveyance and Transfer of Certain Land Tracts Located at Los Alamos National Laboratory, Los Alamos and Santa Fe Counties, NM

AGENCY: U.S. Department of Energy.

ACTION: Notice of intent.

SUMMARY: The U.S. Department of Energy (DOE) announces its intent to prepare an environmental impact statement (EIS) to assess the potential environmental impacts of conveying and transferring certain land tracts located within the Incorporated Counties of Los Alamos and Santa Fe and at Los Alamos National Laboratory (LANL) in north central New Mexico. This EIS for the proposed Conveyance and Transfer of Certain Land Tracts (Conveyance and Transfer EIS) will evaluate the action mandated by Congress to convey fee title to lands allocated for conveyance to Los Alamos County (County) and transfer to the Secretary of the Interior, in trust for the San Ildefonso Pueblo (Pueblo), administrative jurisdiction of parcels of land to be determined by agreement pursuant to Section 632 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998, Public Law 105–119. The EIS will analyze the potential impacts of up to

three uses of land for the individual tracts: (1) Historic, cultural, or environmental preservation purposes, (2) economic diversification purposes, or (3) community self-sufficiency purposes. The EIS will also analyze any connected actions regarding the relocation of existing site tenants and the No Action Alternative of retaining the land tracts in their current state with the continuance of the existing uses of land. DOE invites individuals, organizations, and agencies to present oral or written comments concerning the scope of the EIS, including the environmental issues and alternatives that the EIS should address.

DATES: The public scoping period starts with the publication of this Notice in the **Federal Register** and will continue until June 30, 1998. DOE will consider all comments received or postmarked by that date in defining the scope of this EIS. Comments received or postmarked after that date will be considered to the extent practicable. Public scoping meetings are scheduled to be held as follows:

May 19, 1998, 2:00–5:00 p.m. and 6:00–8:00 p.m., U.S. Department of Energy, Los Alamos Area Office, 528 35th Street, Los Alamos, New Mexico.

May 20, 1998, 2:00–5:00 p.m. and 6:00–8:00 p.m., Double Tree Hotel, 3347 Cerrillos Road; Santa Fe, New Mexico.

May 21, 1998, 2:00–5:00 p.m. and 6:00–8:00 p.m., Northern New Mexico Community Center, 921 Paseo de Onate; Española, New Mexico.

The DOE will publish additional notices on the date, times, and location of the scoping meetings in local newspapers in advance of the scheduled meetings. Any necessary changes will be announced in the local media.

ADDRESSES: Written comments or suggestions concerning the scope of the Conveyance and Transfer EIS or requests for more information on the EIS and public scoping process should be directed to: Ms. Elizabeth Withers, EIS Document Manager, U.S. Department of Energy, Los Alamos Area Office, 528 35th Street, Los Alamos, New Mexico, 87544, facsimile at (505) 667–4872, or E-mail at ewithers@doe.lanl.gov.

In addition to providing oral comments at the public scoping meetings, all interested parties are invited to record their comments, ask questions concerning the EIS, or request to be placed on the EIS mailing or document distribution list by leaving a message on the EIS Hotline at (toll free) 1–800–791–2280. The Hotline will have instructions on how to record comments and requests.

FOR FURTHER INFORMATION CONTACT: For information on DOE's NEPA process, please contact: Carol Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–4600, or leave a message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION:

Background

Los Alamos National Laboratory (LANL) is located in north-central New Mexico, 60 miles north-northeast of Albuquerque, 25 miles northwest of Santa Fe, and 20 miles southwest of Española in Los Alamos and Santa Fe Counties. It is located between the Jemez Mountains to the west and the Sangre de Cristo Mountains and Rio Grande to the east. LANL occupies an area of approximately 27,832 acres or approximately 43 square miles and is operated for DOE by a contractor, the University of California. It is a multidisciplinary, multipurpose institution engaged in theoretical and experimental research and development. LANL has mission responsibilities in national security, energy resources, environmental quality, and science.

Section 632 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998, Public Law (P.L.) 105–119, enacted November 26, 1997, established certain actions and reports to be completed by the DOE. It requires that the Secretary of Energy (Secretary) take certain actions with respect to the conveyance of certain suitable tracts of land at or in the vicinity of LANL, which are under the jurisdiction or administrative control of the Secretary, to the Incorporated County of Los Alamos, or their designee in fee title, and that administrative jurisdiction over certain other of these tracts be transferred to the Secretary of the Interior in trust for the Pueblo of San Ildefonso. The legislation provides that the purpose of these conveyances and transfers is to fulfill the obligations of the United States with respect to LANL under sections 91 and 94 of the Atomic Energy Community Act of 1955 (42 U.S.C. 2391, 2394). Upon completion of these conveyances and transfers, the legislation also directs that the Secretary shall make no further payments with respect to LANL under sections 91 or 94 of the Atomic Energy Community Act of 1955.

The Secretary is required to undertake the preliminary identification of parcels of land under the jurisdiction or administrative control of the Secretary or in the vicinity of LANL for conveyance or transfer. The criteria established in Public Law 105–119 for land to be considered as being suitable for conveyance or transfer is that it is: (1) not required to meet the national security mission of the DOE or will not be required for that purpose before the end of a 10-year period beginning on the date of enactment of the law; (2) likely to be conveyable or transferable, as the case may be, not later than the end of such period; and (3) suitable for use either for historic, cultural, or environmental preservation purposes, for economic diversification purposes, or for community self-sufficiency purposes.

The Secretary of Energy has completed the preliminary identification of such parcels of land considered to be suitable and a report to Congress on this action was submitted in April 1998. The report, entitled Land Transfer, A Preliminary Identification of Parcels of Land in Los Alamos, New Mexico for Conveyance or Transfer, summarizes, for each of nine parcels identified for potential conveyance or transfer, the tract's location, size, boundaries, historical DOE use, existing use, functional support of LANL's mission, urban infrastructure present, known environmental and cultural issues associated with the tracts, economic potential, and estimated DOE preparation costs prior to transfer. The report includes maps of parcels with pertinent physical features (such as roads, topography, buildings, fences and major utility corridors). The total acreage of the tracts being considered for transfer is about 4,646 acres (roughly equal to about 16 percent of the DOE-controlled land in the LANL area). About 3,000 acres are located within Santa Fe County and about 1,646 acres are located within Los Alamos County. The nine parcels identified in the report are as follows:

1. The Technical Area (TA) 21 Tract consists of approximately 243.8 acres and is located east of the Los Alamos Townsite. This occupied site is remote from the main LANL area. Relocation of operations and site workers would need to take place.

2. The DP Road (North, South and West) Tract consists of 49.8 acres. It is generally undeveloped except for the West section where the LANL Archives are currently located.

3. The DOE Los Alamos Area Office Site Tract consists of 12.9 acres. It is also within the Los Alamos Townsite

and is readily usable. Relocation of site employees would need to take place.

4. The Airport Tract consists of 198 acres. Located east of the Los Alamos Townsite, it is close to the East Gate Business park.

5. The White Rock Site Tract consists of 98.7 acres. It is undeveloped except for utility lines and a water pump station.

6. Rendija Canyon Site Tract consists of 908.7 acres. The canyon is undeveloped except for the shooting range that serves the local community and is currently under lease from the DOE to the community.

7. The White Rock Y Site Tract consists of 435.1 acres. It is undeveloped and is associated with the major transportation routes connecting Los Alamos with northern New Mexico.

8. Two miscellaneous sites, Site 22 and The Manhattan Monument Site, consist of 0.27 acres. Site 22 is a small, Townsite parcel located on the edge of the mesa overlooking Los Alamos Canyon. The Manhattan site is a small, rectangular site located within Los Alamos County land and adjacent to Ashley Pond where most of the first Laboratory work was conducted.

9. The TA–74 Site Tract consists of 2,698.4 acres. It is a large, remote site located east of the Los Alamos Townsite. This parcel was restored to the public domain by Presidential Proclamation 3539 on May 27, 1963. Because it is public domain land, additional legislative action may be required to transfer it out of Federal government control.

A copy of the report may be obtained from Mr. Dennis Martinez, U.S. Department of Energy, Los Alamos Area Office, 528 35th Street, Los Alamos, New Mexico, 87544, telephone (505) 667–6146, or E-mail at dmartinez@doe.lanl.gov.

The Role of the Conveyance and Transfer EIS in the DOE NEPA Compliance Strategy

The Conveyance and Transfer EIS will be prepared pursuant to the National Environmental Policy Act (NEPA) of 1969, (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality's (CEQ) NEPA regulations (40 CFR Parts 1500–1508), and the DOE NEPA regulations (10 CFR Part 1021). The purpose of this EIS is to provide DOE decisionmakers and stakeholders with information on the projected environmental impacts that would result from the proposed conveyance and transfer of certain land tracts to the County and to the Pueblo respectively, as prescribed by Congress in P.L. 105–119, for the following future uses: (1) historic, cultural, or environmental preservation, (2) economic diversification, or (3) community self-sufficiency. Specific future land uses associated with each broad use category will be established through consultation with the recipient parties.

The EIS will provide an analysis of any reasonable alternatives identified through public scoping. The EIS will provide a baseline for DOE to use as a basis of comparison for environmental effects of proposed future changes in programs and activities, and could be a tiering (reference) document for future NEPA analysis of agency plans, functions, programs, and resource utilization.

Proposed Action and Alternatives

The proposed action is to convey and transfer land that is not required to meet the national security mission of DOE or will not be required for that purpose within the next 10 years. An alternative under consideration is the Conveyance and Transfer of All Tracts Alternative, which would be to convey and transfer to the County and/or the Pueblo all of the land identified. Another alternative, the Partial Conveyance and Transfer of Tracts Alternative, would involve the conveyance and transfer of most of the tracts with the retention by DOE of any land that cannot be cleaned up within the next 10 years. As information is obtained through the analysis process, the Partial Conveyance and Transfer of Tracts Alternative may be refined and analyzed thoroughly or it may be eliminated from detailed analysis. Each alternative would analyze the impacts of up to three potential uses of land depending on information on the intended use provided by the County and Pueblo. The following future uses could be analyzed for each land tract: (1) historic, cultural, or environmental preservation purposes, (2) economic diversification purposes, or (3) community self-sufficiency purposes. Follow-on actions involving the relocation of current tenants will be analyzed to the extent that the information is available. As required by the CEQ NEPA regulations, a No Action alternative will also be evaluated. The No Action alternative would be to continue the current use of the land tracts without the conveyance or transfer of any of the tracts to the identified parties.

Potential Issues for Analysis

Issues tentatively identified for analysis in this EIS include the socioeconomic impacts of development of the land tracts and their subsequent use; potential impacts to protected threatened, endangered, or sensitive species of animal or plants, or their critical habitat; potential impacts to cultural or historic resources; potential human health impacts to site occupants and the general public; potential effects on air, soil, and water quality from development and cleanup of the subject parcels and subsequent anticipated uses; potential irreversible and irretrievable commitment of resources, including the ultimate loss of LANL lands and land occupied and used as a result of conveyance and transfer actions; potential effects on members of the public, including minority and low-income populations from the development of the subject parcels and subsequent anticipated uses; and cumulative environmental impacts related to past, present and future development of the land and actions anticipated by neighboring land managers.

Related NEPA Reviews

Following is a summary of recent NEPA documents that may be considered in the preparation of this EIS and from which this EIS may be tiered. The Conveyance and Transfer EIS will include relevant information from each of these documents.

The Los Alamos National Laboratory (LANL) Draft Site-Wide Environmental Impact Statement (SWEIS) (DOE/EIS–0238) (in preparation). The Draft SWEIS analyzes four levels of operations alternatives for LANL to meet its existing and potential future program assignments: the No Action Alternative, the Expanded Operations Alternative, the Reduced Operations Alternative, and the Greener Alternative. The SWEIS also provides project specific analysis for two proposed projects: the Expansion of TA–54/Area G Low Level Waste Disposal Area; and Enhancement of Plutonium Pit Manufacturing. The SWEIS does not analyze changing the size or configuration of the LANL reserve through land conveyance or transfer.

The DP Road Tract EA (DOE/EA–1184) analyzed the proposed transfer of 28 acres of land located along the south side of DP Road next to the Los Alamos Townsite. The property is currently part of LANL's TA–21 and has been used most recently as a vacant buffer area. Previous uses of the tract include use of part of the tract as a mobile home park and playground. Portions of the tract are now wooded with mixed saplings and mature trees; the portion of the tract contiguous with DP Road is covered with native grasses and broadleaf plants. Should this land tract be transferred to the County, the County has indicated

that its preferred use of the land tract would be to develop the property within 5 to 10 years for its own use with the construction of a new office building to house County employees, paved parking areas, and new warehouses, garages, and support buildings for the transfer of the school bus yard, equipment maintenance, and school supply warehousing activities to the site. A maximum of about 800 employees would be expected to occupy the site. A Finding of No Significant Impact (FONSI) was issued on January 23, 1997, although no action has yet taken place.

The Research Park EA (DOE/EA–1212) analyzed the proposed lease of about 60 acres of land located next to the main administration portion of LANL, at the edges of TA–3 and TA–62. The property is currently a combination of wooded land and land used for parking lots. This tract is bounded in general by Diamond Drive on the east, West Jemez Road on the south, West Road on the west, and Los Alamos Canyon on the north. The land would be leased to the County to establish a research park. The term of the lease is expected to be 55 years with options for renewal depending upon final agreements between the County and DOE. The tract of land would be developed by the County or third parties within 5 to 10 years of the date of the lease. Research parks are professional developments that allow a wide range of companies to work within the same geographic location and to benefit from a well-planned environment suited to business needs. The County recommended that the type of research park best suited for Los Alamos would include freestanding buildings with landscaping and a possible atrium arrangement between related structures. About 10 buildings are planned for the research park and about 1,500 employees would be expected to occupy the site. A FONSI was issued on October 8, 1997, although no action has yet taken place.

Scoping Process

The scoping process is an opportunity for the public to assist the DOE in determining the alternatives and issues for analysis. The purpose of the scoping meetings is to receive oral and written comments from the public. The meetings will use a format to facilitate dialogue between DOE and the public and will be an opportunity for individuals to provide written or oral statements. DOE welcomes specific comments or suggestions on the content of these alternatives, or on other alternatives that could be considered. The above list of issues to be considered in the EIS analysis is tentative and is intended to facilitate public comment on the scope of this EIS. It is not intended to be all-inclusive, nor does it imply any predetermination of potential impacts. The Conveyance and Transfer EIS will describe the potential environmental impacts of the alternatives, using available data where possible and obtaining additional data where necessary. Copies of written comments and transcripts of oral comments will be available at the following locations: Los Alamos Outreach Center, 1350 Central Avenue, Suite 101, Los Alamos, New Mexico, 87544; and the Albuquerque Technical-Vocational Institute (TVI), Montoya Campus Library, 4700 Morris NE, Albuquerque, New Mexico 87111.

Issued in Washington, D.C., this 30th day of April 1998.

Peter N. Brush,

Acting Assistant Secretary Environment, Safety and Health.

[FR Doc. 98–11990 Filed 5–5–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Civilian Radioactive Waste Management; Safe Routine Transportation and Emergency Response Training; Technical Assistance and Funding; Correction

AGENCY: Department of Energy.

ACTION: Notice of revised proposed policy and procedures; Correction.

Correction

In notice document 98–11520, beginning on page 23753, in the issue of Thursday, April 30, 1998, make the following corrections:

1. On page 23754, first column, 2nd paragraph beginning with Note:, in the 2nd line, change the words ''final policy'' to read ''revised proposed policy'.

2. On page 23765, third column, last heading, beginning with Appendix, in the 2nd line, change the words ''Notice of Final Policy'' to read ''Notice of Revised Proposed Policy and Procedures'.

Issued in Washington, D.C. on April 30, 1998.

Ronald A. Milner,

Acting Deputy Director, Office of Civilian Radioactive Waste Management.

[FR Doc. 98–11989 Filed 5–5–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–2045–000]

Conectiv Energy Supply, Inc.; Notice of Issuance of Order

April 30, 1998.

Conectiv Energy Supply, Inc. (CES) filed an application for authorization to engage in wholesale sales of electric capacity and/or energy at market-based rates, and for certain waivers and authorizations. In particular, CES requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by CES. On April 29, 1998, the Commission issued an Order Conditionally Accepting For Filing Proposed Tariff For Market-Based Power Sales And Reassignment Of Transmission And Ancillary Service Rights (Order), in the above-docketed proceeding.

The Commission's April 29, 1998 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (E), (F), and (H):

(E) Within 30 days of the date of this order, any person desiring to be heard or to pretest the Commission's blanket approval of issuances of securities or assumptions of liabilities by CES 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.

(F) Absent a request to be heard within the period set forth in Ordering Paragraph (E) above, CES 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 CES, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(H) 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 CES's issuance 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 29, 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. 98–11953 Filed 5–5–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–99–000]

Tennessee Gas Pipeline Company; Notice Following Technical Conference

April 30, 1998.

Following the technical conference held in this proceeding on April 8, 1998, Tennessee Gas Pipeline Company (Tennessee), circulated to the parties a memorandum dated April 22, 1998, which included *pro forma* tariff sheets revising its proposed Rate Schedule FT–BH. Tennessee requested that the Commission establish a procedural schedule for initial and reply comments regarding its revised proposal.

Tennessee is directed to file its *pro forma* tariff sheets with the Commission and to serve the *pro forma* tariff sheets on the parties to this proceeding no later than May 7, 1998. The parties may file initial comments concerning Tennesee's proposal no later than May 13, 1998, and reply comments may be filed no later than May 30, 1998.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–11954 Filed 5–5–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG98–66–000, et al.]

Electric Rate and Corporate Regulation Filings; Geddes Cogeneration Corporation, et al.

April 29, 1998.

Take notice that the following filings have been made with the Commission:

1. Geddes Cogeneration Corporation

[Docket No. EG98–66–000]

Take notice that on April 24, 1998, Geddes Cogeneration Corporation (Geddes), of One Upper Pond Road, Parsippany, New Jersey, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Applicant is a New York corporation which is a general partner of Onondaga Cogeneration Limited Partnership, a New York limited partnership which owns a topping-cycle cogeneration facility (the Facility). All electricity produced by the Facility is sold at wholesale to Niagara Mohawk Power Corporation.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Indiana Michigan Power Company

[Docket No. ER98–443–000 and ER98–444–000]

Take notice that on April 24, 1998, Indiana Michigan Power Company submitted for filing proposed accounting procedures for settlement proceeds in compliance with the Commission's March 25, 1998, order in the above dockets.

AEP requests an effective date of March 1, 1998. Copies were served upon the parties to these dockets and the Public Service Commissions of Indiana and Michigan.

Comment date: May 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. The Furst Group, Inc.

[Docket No. ER98–2423–000]

Take notice that on April 24, 1998, The Furst Group, Inc. (Furst), filed an amended petition to the Commission for acceptance of Furst Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

Furst intends to engage in wholesale electric power and energy purchases and sales as a marketer. Furst is not in the business of generation or transmitting electric power.

Comment date: May 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Niagara Mohawk Power Corporation

[Docket No. ER98–2667–000]

Take notice that on April 24, 1998, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing a Borderline Agreement between Niagara Mohawk and Central Vermont Public Service Corporation (CVPS).

Copies of the filing have been served on CVPS, the Vermont Department of Public Service, and the Public Service Commission of the State of New York.

Comment date: May 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Duke Energy Oakland LLC

[Docket No. ER98–2669–000]

Take notice that on April 24, 1998, in accordance with the provisions of Section 205 of the Federal Power Act and Section 35.12 of the Commission's Regulations, Duke Energy Oakland LLC (DEO), submitted for filing a Rate Schedule to establish the terms and conditions of the Reliability Must-Run Services which DEO intends to provide to the California Independent System Operator Corporation (California ISO) when DEO acquires the Oakland Generating Plant from Pacific Gas & Electric Company (PG&E); to establish the rates applicable to those services; and to set forth the conditions under which revenue credits will be provided to the California ISO.

DEO requests that the Rate Schedule be permitted to become effective on June 23, 1998, subject to the condition that it has become the owner of the Oakland generating plant.

Copies of the filing were served upon the California ISO and the Public Utilities Commission of the State of California.

Comment date: May 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Sparc, L.L.C.

[Docket No. ER98–2671–000]

Take notice that on April 24, 1998, Sparc, L.L.C. (Sparc) applied to the Commission for acceptance of Sparc Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

Sparc intends to engage in wholesale electric power and energy purchases and sales as a marketer.

Comment date: May 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. NGE Generation, Inc.

[Docket No. ER98–2672–000]

Take notice that on April 24, 1998, NGE Generation, Inc. (NGE Gen), tendered for filing pursuant to Section 35.15 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 35.15, a notice of cancellation (Cancellation) of Rate Schedule FERC No. 98 (Rate Schedule) between NGE Gen and Long Island Lighting Company (LILCO).

NGE Gen requests that the Cancellation be deemed effective as of April 23, 1998. To the extent required to give effect to the Cancellation, NGE Gen requests waiver of the notice requirements pursuant to Section 35.15 of the Commission's Regulations, 18 CFR 35.15.

NGE Gen served copies of the filing upon the New York State Public Service Commission and LILCO.

Comment date: May 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Southern Indiana Gas and Electric Company

[Docket No. ER98–2675–000]

Take notice that on April 24, 1998, Southern Indiana Gas and Electric Company (SIGECO), tendered for filing summary information on transactions that occurred during the period January 1, 1998 through March 31, 1998, pursuant to its Market Based Rate Sales Tariff accepted by the Commission in Docket No. ER96–2734–000.

Comment date: May 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. New England Power Company

[Docket No. ER98–2676–000]

Take notice that on April 24, 1998, New England Power Company tendered for filing Notice of Cancellation for Schedule III–C to its FERC Electric Tariff, Original Volume No. 1.

Comment date: May 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. South Carolina Electric & Gas Company

[Docket No. ER98–2678–000]

Take notice that on April 24, 1998, South Carolina Electric & Gas Company (SCE&G), submitted a service agreement establishing Tenaska Power Services Company as a customer under the terms of SCE&G's Open Access Transmission Tariff.

SCE&G requests an effective date of one day subsequent to the filing of the service agreement. Accordingly, SCE&G requests waiver of the Commission's notice requirements. Copies of this filing were served upon TPSC and the South Carolina Public Service Commission.

Comment date: May 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Duke Energy Moss Landing LLC

[Docket No. ER98–2680–000]

Take notice that on April 24, 1998, Duke Energy Moss Landing LLC (Moss Landing), tendered for filing an application for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1. Moss Landing proposes that its Rate Schedule No. 1 become effective on June 23, 1998 or on the date its acquisition of the Moss Landing Facility, a generation facility in California, closes, whichever is later.

Moss Landing intends to sell energy and capacity from the Moss Landing Facility at market based rates and may also engage in electric power and energy transactions as a marketer and a broker. In transactions where Moss Landing sells electric energy, it proposes to make such sales on rates, terms and conditions to be mutually agreed to with the purchasing party.

Comment date: May 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Duke Energy Morro Bay LLC

[Docket No. ER98–2681–000]

Take notice that on April 24, 1998, Duke Energy Morro Bay LLC (Morro Bay), tendered for filing an application for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1. Morro Bay proposes that its Rate Schedule No. 1, become effective on June 23, 1998 or on the date its acquisition of the Morro Bay Facility, a generation facility in California, closes, whichever is later.

Morro Bay intends to sell energy and capacity from the Morro Bay Facility at market based rates and may also engage in electric power and energy transactions as a marketer and a broker. In transactions where Morro Bay sells electric energy, it proposes to make such sales on rates, terms and conditions to be mutually agreed to with the purchasing party.

Comment date: May 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Duke Energy Oakland LLC

[Docket No. ER98–2682–000]

Take notice that on April 24, 1998, Duke Energy Oakland LLC (Oakland), tendered for filing an application for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1. Oakland proposes that its Rate Schedule No. 1, become effective on June 23, 1998 or on the date its acquisition of the Oakland Facility, a generation facility in California, closes, whichever is later.

Oakland intends to sell energy and capacity from the Oakland Facility at market based rates and may also engage in electric power and energy transactions as a marketer and a broker. In transactions where Oakland sells electric energy, it proposes to make such sales on rates, terms and conditions to be mutually agreed to with the purchasing party.

Comment date: May 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Nicole Energy Services

[Docket No. ER98–2683–000]

Take notice that on April 24, 1998, Nicole Energy Services (NES), petitioned the Commission for acceptance of NES Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

NES intends to engage in wholesale electric power and energy purchases and sales as a marketer. NES is not in the business of generating or transmitting electric power. NES is a wholly-owned subsidiary of Nicole Gas Marketing, Inc., which, through its affiliates, explores for, produces and markets natural gas and associated products and services.

Comment date: May 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. LG&E Energy Marketing Inc., Western Kentucky Energy Corp. and WKE Station Two Inc.

[Docket No. ER98–2684–000]

Take notice that on April 24, 1998, LG&E Energy Marketing Inc. (LEM), Western Kentucky Energy Corp., and WKE Station Two Inc., submitted for filing, pursuant to Section 205 of the Federal Power Act, 16 U.S.C. § 824d, and Part 35 of the Federal Energy Regulatory Commission's Rules and Regulations, 18 CFR 35.12, a rate schedule setting forth the rates, terms and conditions for LEM's sale of certain generation-based ancillary services at cost-based rates. LEM has agreed to provide these ancillary services to Big Rivers Electric Corporation (Big Rivers), two of Big Rivers' member distribution cooperatives (Member Cooperatives), namely Green River Electric Corporation and Henderson Union Electric Cooperative Corp., and the City of Henderson, Kentucky (City).

Copies of the filing were served upon Big Rivers and its counsel, the Member Cooperatives and their counsel, the City and its counsel and the Kentucky Public Service Commission.

Comment date: May 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Wisconsin Electric Power Company

[Docket No. ER98–2685–000]

Take notice that on April 24, 1998, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing a revision to the Emergency Energy Service Schedule of its Coordination Sales Tariff (FERC Electric Tariff, Original Volume No. 2). The revision would allow the cost of Wisconsin Electric's retail interruptible service options to be recovered in its provision of Emergency Energy to utility members of the Mid America Interconnected Network (MAIN). The modification to the Emergency Energy service schedule is in order to be prepared for any unusual electric supply and delivery challenges faced by utilities throughout the Midwest region this summer.

Wisconsin Electric respectfully requests an effective date May 1, 1998 and a termination date of September 30, 1998 when the conventional definition of ''out-of-pocket cost'' would then be restored. Wisconsin Electric requests waiver of the Commission's advance notice requirements.

Copies of the filing have been served on the investor owned utility members of MAIN, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: May 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Public Service Electric and Gas Company

[Docket No. ER98–2686–000]

Take notice that on April 24, 1998, Public Service Electric and Gas Company, of Newark, New Jersey (PSE&G), tendered for filing an agreement for the sale of capacity and energy to NGE Generation, Inc. (NGE), pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of March 25, 1998.

Copies of the filing have been served upon NGE and the New Jersey Board of Public Utilities.

Comment date: May 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Public Service Electric and Gas Company

[Docket No. ER98–2687–000]

Take notice that on April 24, 1998, Public Service Electric and Gas Company of Newark, New Jersey (PSE&G), tendered for filing an agreement for the sale of capacity and energy to SCANA Energy Marketing Inc. (SCANA), pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of March 25, 1998.

Copies of the filing have been served upon SCANA and the New Jersey Board of Public Utilities.

Comment date: May 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Public Service Electric and Gas Company

[Docket No. ER98–2688–000]

Take notice that on April 24, 1998, Public Service Electric and Gas Company of Newark, New Jersey (PSE&G), tendered for filing an agreement for the sale of capacity and energy to Morgan Stanley Capital Group Inc. (Morgan), pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of March 25, 1998.

Copies of the filing have been served upon Morgan and the New Jersey Board of Public Utilities.

Comment date: May 14, 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. 98–11956 Filed 5–5–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–2657–000, et al.]

Electric Rate and Corporate Regulation Filings; Wisconsin Public Service, et al.

April 28, 1998.

Take notice that the following filings have been made with the Commission:

1. Wisconsin Public Service

[Docket No. ER98–2657–000]

Take notice that on April 23, 1998, Wisconsin Public Service Corporation tendered for filing an executed service agreement with Minnesota Power Co., under its Market-Based Rate Tariff.

Comment date: May 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Portland General Electric Company

[Docket No. ER98–2655–000]

Take notice that on April 23, 1998, Portland General Electric Company (PGE) tendered for filing under PGE's Final Rule pro forma tariff (FERC Electric Tariff Original Volume No. 8, Docket No. OA96–137–000), executed Service Agreements for Short-Term Firm and Non-Firm Point-to-Point Transmission Service with Grays Harbor PUD.

Pursuant to 18 CFR Section 35.11, and the Commission's Order in Docket No. PL93–2–002 issued July 30, 1993, PGE respectfully requests that the Commission grant a waiver of the notice requirements of 18 CFR Section 35.3 to allow the Service Agreement to become effective March 31, 1998.

A copy of this filing was caused to be served upon Grays Harbor PUD as noted in the filing letter.

Comment date: May 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Wisconsin Public Service Corporation

[Docket No. ER98–2656–000]

Take notice that on April 23, 1998, Wisconsin Public Service Corporation tendered for filing an executed service agreement with LG&E Power Marketing, Inc., under its Market-Based Rate Tariff.

Comment date: May 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. UtiliCorp United Inc.

[Docket No. ER98–2652–000]

Take notice that on April 23, 1998, UtiliCorp United Inc. (UtiliCorp), filed

service agreements with The Dayton Power and Light Company for service under its Non-Firm Point-to-Point open access service tariff for its operating divisions, Missouri Public Service, WestPlains Energy-Kansas and WestPlains Energy-Colorado.

Comment date: May 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Niagara Mohawk Power Corporation

[Docket No. ER98–2664–000]

Take notice that on April 23, 1998, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing a contribution in aid of construction agreement between Niagara Mohawk and Hydro Development Group, Inc., (HDG).

Copies of the filing have been served on HDG and the Public Service Commission of the State of New York.

Comment date: May 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Central Hudson Gas and Electric Corporation

[Docket No. ER98–2663–000]

Take notice that on April 23, 1998, Central Hudson Gas and Electric Corporation (CHG&E), tendered for filing pursuant to Section 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR a service agreement between CHG&E and NGE Generation, Inc. The terms and conditions of service under this agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume No. 1 (Power Sales Tariff) accepted by the Commission in Docket No. OA97–479–000. CHG&E also has requested waiver of the 60-day notice provisions pursuant to 18 CFR Section 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: May 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Cinergy Services, Inc.

[Docket No. ER98–1808–000]

Take notice that on April 23, 1998, Cinergy Services, Inc. (Cinergy), tendered a filing providing unbundled pricing in the above-referenced docket.

Copies of the filing have been served upon the Continental Energy Services, L.L.C., the Oklahoma Corporation Commission, the Indiana Utility Regulatory Commission, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Office of Utility Consumer Counselor.

Comment date: May 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Cinergy Services, Inc.

[Docket No. ER98–1810–000]

Take notice that on April 23, 1998, Cinergy Services, Inc., (Cinergy), tendered a filing providing unbundled pricing in the above-referenced docket.

Copies of the filing have been served upon the New Energy Ventures, L.L.C., the Department of Public Utilities, the Indiana Utility Regulatory Commission, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Office of Utility Consumer Counselor.

Comment date: May 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Cinergy Services, Inc.

[Docket No. ER98–1481–000]

Take notice that on April 23, 1998, Cinergy Services, Inc., (Cinergy), tendered a filing providing unbundled pricing in the above-referenced docket.

Copies of the filing have been served upon the Board of Public Utilities of Kansas City, Kansas, the Kansas State Corporation Commission, the Indiana Utility Regulatory Commission, the Indiana Office of Utility Consumer Counselor, the Kentucky Public Service Commission and the Public Utilities

Comment date: May 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Cinergy Services, Inc.

[Docket No. ER98–1811–000]

Take notice that on April 23, 1998, Cinergy Services, Inc. (Cinergy), tendered a filing providing unbundled pricing in the above-referenced docket.

Copies of the filing have been served upon the Entergy Power Marketing Corp., the Texas Public Utility Commission, the Indiana Utility Regulatory Commission, the Public Utilities Commission of Ohio, the Kentucky Public Service Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: May 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Cinergy Services, Inc.

[Docket No. ER98–2086–000]

Take notice that on April 23, 1998, Cinergy Services, Inc. (Cinergy), tendered a filing providing unbundled pricing in the above-referenced docket.

Copies of the filing have been served upon Strategic Energy Limited, the Pennsylvania Public Utility Commission, the Indiana Utility Regulatory Commission, the Indiana Office of Utility Consumer Counselor, the Kentucky Public Service Commission and the Public Utilities Commission of Ohio.

Comment date: May 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Cinergy Services, Inc.

[Docket No. ER98–1716–000]

Take notice that on April 23, 1998, Cinergy Services, Inc. (Cinergy), tendered a filing providing unbundled pricing in the above-referenced docket.

Copies of the filing have been served upon CNG Energy Services Corporation, the Pennsylvania Public Utility Commission, the Indiana Utility Regulatory Commission, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Office of Utility Consumer Counselor.

Comment date: May 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Cinergy Services, Inc.

[Docket No. ER98–1797–000]

Take notice that on April 23, 1998, Cinergy Services, Inc. (Cinergy), tendered a filing providing unbundled pricing in the above-referenced docket.

Copies of the filing have been served upon the Griffin Energy Marketing, L.L.C., the Public Service Commission of Wisconsin, the Indiana Utility Regulatory Commission, the Public Utilities Commission of Ohio, the Kentucky Public Service Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: May 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Niagara Mohawk Power Corporation

[Docket No. ER98–2249–000]

Take notice that on April 23, 1998, Niagara Mohawk Power Corporation (Niagara Mohawk), filed revised Service Agreements for transmission and wholesale requirements services in conjunction with an electric retail access pilot program that was established by the New York Public Service Commission effective November 1, 1997. The Service Agreement for transmission services is under Niagara Mohawk's FERC Electric Tariff, Original Volume No. 3; as modified by an Order of the Commission in this proceeding dated November 7, 1997. The Service Agreement for wholesale requirements

services is under Niagara Mohawk's FERC Electric Tariff, Original Volume No. 4; as modified by an Order of the Commission in this proceeding dated November 7, 1997. Niagara Mohawk's customer is Eastern Power Distribution, Inc., (Eastern Power).

Comment date: May 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Ohio Edison Company and Pennsylvania Power Company

[Docket No. ER98–2662–000]

Take notice that on April 23, 1998, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, Service Agreements with South Jersey Energy Company and Columbia Power Marketing Corporation under Ohio Edison's Power Sales Tariff. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: May 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Southern California Edison Company

[Docket No. ER98–2661–000]

Take notice that on April 23, 1998, Southern California Edison Company (Edison), tendered for filing executed Service Agreements for Wholesale Distribution Service with Mountain Vista Power Generation L.L.C., Ocean Vista Power Generation L.L.C., and Oeste Power Generation L.L.C., 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 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Virginia Electric and Power Company

[Docket No. ER98–2660–000]

Take notice that on April 23, 1998, Virginia Electric and Power Company (Virginia Power), tendered for filing the Service Agreement between Virginia Electric and Power Company and Merchant Energy Group of the Americas, Inc., 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 Merchant Energy Group of the Americas, Inc., under the rates, terms and conditions of the applicable Service Schedules included in the Tariff. Virginia Power requests an effective date of April 23, 1998, for the Service Agreement.

Copies of the filing were served upon Merchant Energy Group of the Americas, Inc., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: May 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. PP&L, Inc.

[Docket No. ER98–2659–000]

Take notice that on April 23, 1998, PP&L, Inc. (formerly known as Pennsylvania Power & Light Company) (PP&L), filed a Service Agreement dated March 25, 1998, with American Electric Power Service Corporation (AEPSC), under PP&L's FERC Electric Tariff, Original Volume No. 5. The Service Agreement adds AEPSC as an eligible customer under the Tariff.

PP&L requests an effective date of April 23, 1998, for the Service Agreement.

PP&L states that copies of this filing have been supplied to AEPSC and to the Pennsylvania Public Utility Commission.

Comment date: May 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Public Service Company of New Mexico

[Docket No. ER98–2658–000]

Take notice that on April 23, 1998, Public Service Company of New Mexico (PNM), submitted for filing executed service agreements, for point-to-point transmission service under the terms of PNM's Open Access Transmission Service Tariff, with Tenaska Power Services Company (2 agreements, dated April 2, 1998, for Non-Firm and Short Term Firm Service) and Columbia Power Marketing Corporation (2 agreements dated April 13, 1998, for Non-Firm and Short Term Firm Service). PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Comment date: May 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Duke Energy Moss Landing LLC

[Docket No. ER98–2668–000]

Take notice that on April 24, 1998, in accordance with the provisions of Section 205 of the Federal Power Act and Section 35.12 of the Commission's Regulations, Duke Energy Moss Landing LLC (DEML), submitted for filing a Rate Schedule to establish the terms and conditions of the Reliability Must-Run Services which DEML intends to provide to the California Independent System Operator Corporation (California ISO), when DEML acquires the Moss Landing Generating Plant from Pacific Gas & Electric Company (PG&E); to establish the rates applicable to those services; and to set forth the conditions under which revenue credits will be provided to the California ISO.

In addition to an allocated share of routine operation and maintenance costs, depreciation, return and taxes, the rates to the California ISO also reflect an allocated share of the costs which DEML incurred to acquire the Moss Landing facilities in excess of the amounts reflected on the books of PG&E prior to the acquisition (acquisition adjustment) and special revenue credits associated with the recovery of the acquisition adjustment.

DEML requests that the Rate Schedule be permitted to become effective on June 23, 1998, subject to the condition that it has become the owner of the Moss Landing generating plant.

Copies of the filing were served upon the California ISO and the Public Utilities Commission of the State of California.

Comment date: May 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Niagara Mohawk Power Corporation

[Docket No. ER98–2312–000]

Take notice that on April 14, 1998, Niagara Mohawk Power Corporation tendered for filing notice of cancellation of FERC Rate Schedule No. 245, effective date May 13, 1996, and any supplements thereto, and filed with the Federal Energy Regulatory Commission by Niagara Mohawk Power Corporation is to be canceled.

Notice of the proposed cancellation has been served upon Toledo Edison Company.

Comment date: May 20, 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. 98–11955 Filed 5–5–98; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6010–1]

Agency Information Collection Activities: Proposed Collection; Comment Request; Postponing Consumption: An Examination of Individual and Household Preferences

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 EPA is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): Postponing Consumption: An Examination of Individual and Household Preferences.

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 July 6, 1998.

ADDRESSES: Melonie Williams (2172) Office of Policy, Planning and Evaluation, US EPA, 401 M St. SW, Washington, DC 20460. Interested persons may obtain a copy of the ICR without charge by calling Melonie Williams at 202–260–7978 or via e-mail at williams.melonie@epamail.epa.gov.

FOR FURTHER INFORMATION CONTACT: Melonie Williams at 202–260–7978 or via e-mail at williams.melonie@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are (i) those individuals who are contacted and asked to participate in the study and (ii) those who voluntarily agree to participate in the study. Residents in the Atlanta, GA area will be contacted by telephone (random-digit dialing), students at an as-yet-undetermined university will be contacted by e-mail (via group mailing lists) and posted announcements.

Title: Postponing Consumption: An Examination of Individual and Household Preferences.

Abstract: This information collection exercise is a pilot study designed to examine individual and household discount rates and individual preferences over intergenerational distributions of wealth.

Currently, market interest rates are used as proxies for individual and social discount rates in economic analyses of EPA programs. Considerable evidence indicates, however, that these discount rates may bear no relationship to market rates. Instead, individual discount rates appear to vary with respect to time horizon, socio-demographic characteristics, and the nature of the good being traded across time.

This study will use the experimental laboratory to examine individual and household discount rates. Experiment participants will be asked to make intertemporal trade-offs and discount rates will be inferred from their choices. Participants will also be asked to provide information on their socio-demographic characteristics and financial market activities. Ultimately, these data will be used to (i) generate individual and household discount rates for use in economic models involving intertemporal components and (ii) examine the appropriateness of using market interest rates as social discount rates in economic analyses of public programs.

Moreover, the choice of a particular discount rate to be used in economic analyses of EPA programs is likely to have consequences for the intergenerational distribution of wealth. Thus, equity issues may influence individual preferences over the discount rate used to evaluate EPA programs.

This study will use the experimental laboratory to examine individual preferences over income distributions. Laboratory incentives will be designed to create alternative social decision mechanisms under which subjects choose among different income distributions that determine subject payments. The characteristics defining these alternative social decision mechanisms correspond to equity issues similar to those arising from EPA policies. By observing individual preferences over income distributions under alternative decision rules, we can provide EPA policymakers with evidence on public preferences over intergenerational distributions of wealth.

Laboratory incentives will involve real (as opposed to hypothetical) economic commitments. Participation in these experiments will be informed and voluntary. Participants will be able to terminate participation at any time without penalty. Well-established procedures will be in place to ensure the participants' anonymity and the confidentiality of their responses. 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: 330 subjects will participate in those experiments examining discount rates. Subjects will convene in groups at an Atlanta conference center. Each subject will participate in one experimental session and each experimental session will last approximately 1.5 hours inclusive of time to sign informed-consent forms, answer questionnaires, read experimental instructions and record decisions. Subjects will incur an estimated average of 45 minutes travel time. Assuming a 75% show-up rate, Haigler-Bailly, who is likely to conduct the experiments, has estimated that 440 subjects should be recruited to obtain a final sample size of 330. Recruiting is by telephone and Haigler-Bailly estimates that 2000 completed contacts are necessary to obtain 440 recruits. The phone calls will last from 2 minutes (for those who refuse to participate) to 4 minutes (for those who agree to participate). Hence, the estimated burden for these experiments is 824 hours.

260 subjects will participate in those experiments examining preferences over income distributions. Subjects will convene in groups on a university campus. Each subject will participate in

one experimental session and each experimental session will last approximately 1.25 hours inclusive of time to sign informed-consent forms, answer questionnaires, read experimental instructions and record decisions. Since subjects are located at the site, travel time will be negligible. Moreover, the recruitment burden will be negligible, so no separate burden estimate is calculated. Hence, the estimated burden for these experiments is 325 hours. Total burden for the pilot study is thus 1149 hours. Labor costs were estimated based on the Bureau of Labor Statistics April 18, 1997 release of weekly earnings of wage and salary workers. Using median earnings ($504/wk), the total burden cost is estimated at $14,477.

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 30, 1998.

Melonie B. Williams,

Economist.

[FR Doc. 98–12035 Filed 5–5–98; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6009–5]

Air Pollution Control; Proposed Action on Clean Air Act Grant to the South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed determination with request for comments and notice of opportunity for public hearing.

SUMMARY: The U.S. EPA has made a proposed determination that reductions in expenditures of non-Federal funds for the South Coast Air Quality Management District (SCAQMD) in Diamond Bar, California are a result of non-selective reductions in expenditures. This determination, when final, will permit the SCAQMD to be awarded financial assistance for FY–98 by EPA, under section 105(c) of the Clean Air Act (CAA).

DATES: Comments and/or requests for a public hearing must be received by EPA at the address stated below by June 5, 1998.

ADDRESSES: All comments and/or requests for a public hearing should be mailed to: R. Michael Stenburg, Grants and Program Integration Office (Air-8), Air Division, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901; FAX (415) 744–1076.

FOR FURTHER INFORMATION CONTACT: R. Michael Stenburg, Grants and Program Integration Office (Air-8), Air Division, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901 at (415) 744–1182.

SUPPLEMENTARY INFORMATION: Under the authority of Section 105 of the CAA, EPA provides financial assistance (grants) to the SCAQMD, whose jurisdiction includes Los Angeles and Orange Counties in southern California, to aid in the operation of its air pollution control programs. In FY–97, EPA awarded the SCAQMD $4,844,967, which represented approximately 5.1% of the SCAQMD's budget.

Section 105(c)(1) of the CAA, 42 U.S.C. 7405(c)(1), provides that ''[n]o agency shall receive any grant under this section during any fiscal year when its expenditures of non-Federal funds for recurrent expenditures for air pollution control programs will be less than its expenditures were for such programs during the preceding fiscal year. In order for [EPA] to award grants under this section in a timely manner each fiscal year, [EPA] shall compare an agency's prospective expenditure level to that of its second preceding year.'' EPA may still award financial assistance to an agency not meeting this requirement, however, if EPA, ''after notice and opportunity for public hearing, determines that a reduction in expenditures is attributable to a non-selective reduction in the expenditures in the programs of all Executive branch agencies of the applicable unit of Government.'' CAA section 105(c)(2). These statutory requirements are repeated in EPA's implementing regulations at 40 CFR 35.210(a).

In its FY–98 § 105 grant application the SCAQMD projected MOE of $63,763,496. This amount represents a shortfall of $11,450,587 from the actual FY–97 MOE of $75,214,083. In order for the SCAQMD to be eligible to be awarded its FY–98 grant, EPA must make a determination under § 105(c)(2).

The SCAQMD is a single-purpose agency whose primary source of funding is emission fee revenue. It is the ''unit of Government'' for § 105(c)(2) purposes. The SCAQMD submitted documentation to EPA which shows that over the last six years emission reductions brought on by a combination of regulated and voluntary emission reductions and actions to minimize fee increases on businesses have reduced fee revenues from stationary sources from a high of $66,914,362 in 1991–1992 to approximately $50,724,900 in 1997–1998. As a result, the SCAQMD has instituted hiring/salary freezes, furloughs, and layoffs, has reduced its equipment purchases and contract expenditures, and has instituted new programs to reduce costs such as permit streamlining, computer-assisted permit processing, and privatization efforts.

Therefore, the SCAQMD's MOE reduction resulted from a loss of fee revenues due to circumstances beyond its control. EPA proposes to determine that the SCAQMD's lower FY–98 MOE level meets the § 105(c)(2) criteria as resulting from a non-selective reduction of expenditures. Pursuant to 40 CFR 35.210, this determination will allow the SCAQMD to be awarded financial assistance for FY–98.

This notice constitutes a request for public comment and an opportunity for public hearing as required by the Clean Air Act. All written comments received by June 5, 1998 on this proposal will be considered. EPA will conduct a public hearing on this proposal only if a written request for such is received by EPA at the address above by June 5, 1998.

If no written request for a hearing is received, EPA will proceed to the final determination. While notice of the final determination will not be published in the **Federal Register**, copies of the determination can be obtained by sending a written request to R. Michael Stenburg at the above address.

Dated: April 20, 1998.

Steven Frey,

Acting Director, Air Division, U.S. EPA, Region 9.

[FR Doc. 98–12031 Filed 5–5–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6009–9]

Gulf of Mexico Program Policy Review Board Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting of the Gulf of Mexico Program Policy Review Board.

SUMMARY: The Gulf of Mexico Program's Policy Review Board will hold a meeting at the Adam's Mark Hotel, Mobile, Alabama.

DATES: A meeting of the Gulf of Mexico Program Policy Review Board will be held at the Adam's Mark Hotel, Mobile, Alabama. The committee will meet from 1:00 P.M. to 5:00 P.M. on May 26 and from 9:00 A.M. to 3:00 P.M. on May 27. Agenda items will include: Overview of key environmental indicators for Gulf Coast estuaries; Status of Management Committee and Gulf Program restructuring and Overview of Current Initiatives; Focus Team Progress (Panel Report); Mid-Year Strategic Evaluation. The meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: James D. Giattina, Director, Gulf of Mexico Program Office, Building 1103, Room 202, Stennis Space Center, MS 39529–6000 at (228) 688–1172.

Bryon O. Griffith,

Deputy Director, Gulf of Mexico Program.

[FR Doc. 98–12033 Filed 5–5–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–66250; FRL 5784–1]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency. (EPA)

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by November 2, 1998, orders will be issued cancelling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier, delivery, telephone number and e-mail: Rm. 216, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5761; e-mail: hollins.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the **Federal Register** before acting on the request.

II. Intent to Cancel

This Notice announces receipt by the Agency of requests to cancel some 54 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1.

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000334–00245	Hysan "006" Weed Killer	5-Bromo-3-sec-butyl-6-methyluracil
		Acetic acid, (2,4-dichlorophenoxy)-, 2-ethylhexyl ester
000352 OR–88–0005	Vendex 50 Wettable Powder Miticide	Hexakis(2-methyl-2-phenylpropyl)distannoxane
000769–00686	SMCP Diazinon Insect Spray	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
000769–00688	SMCP Diazinon 4S	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
000769–00691	SMCP Diazinon RP 12.5 E Insecticide	Aromatic petroleum derivative solvent
		O,O-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
000769–00693	SMCP Diazinon RP 25E	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
000769–00695	SMPC Diazinon 6-S	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
		Aliphatic petroleum hydrocarbons
000769–00708	SMPC Diazinon 12.5% Insect Spray	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
		Xylene range aromatic solvent
000769–00749	Insecticide Liquid, Diazinon, 1%	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
000769–00820	Diazinon 4AG	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
000769–00864	Pratt Diazinon 18E Insect Spray	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
000769–00959	Pratt Diazinon Ag4E Insect Spray	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
000802–00438	Miller's Whack Wasp-Hornet-Ant-Roach Killer	*o*-Isopropoxyphenyl methylcarbamate
000892–00026	Germotox Disinfectant Deodorant	2-Benzyl-4-chlorophenol
		4-tert-Amylphenol
		Sodium *o*-phenylphenate
001839–00082	Disinfectant Pump Spray	Isopropanol
		Alkyl* dimethyl benzyl ammonium chloride *(60%C_{14}, 30%C_{16}, 5%C_{18}, 5%C_{12})
		Alkyl* dimethyl ethylbenzyl ammonium chloride *(68%C_{12}, 32%C_{14})

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
004787 OR–96–0003	Fyfanon ULV	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
004822–00131	Raid Aqueous Ant and Roach Killer	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate
		(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		Pyrethrins
004822–00156	Raid Water-Based Residual Liquid	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate
004822–00171	Raid Roach & Ant Killer	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate
		(1-Cyclohexene-1,2-dicarboximido)methyl2,2-dimethyl-3-(2-methylpropenyl)cycloprop
004822–00175	Raid Formula 34 Insect Spray	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate
		(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		Pyrethrins
004822–00176	Raid Formula 33 Insect Spray	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate
004822–00177	Raid Formula 32 Insect Spray	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate
004822–00178	Raid Formula 36 Insect Spray	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate
		(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		Pyrethrins
004822–00179	Insect Spray for Crawling Insects	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate
004822–00182	Raid Household Roach & Ant Killer	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate
		(1-Cyclohexene-1,2-dicarboximido)methyl 2,2-dimethyl-3-(2-methylpropenyl)cycloprop
004822–00213	Raid Formula D147 for Crawling Insects	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate
		(1-Cyclohexene-1,2-dicarboximido)methyl 2,2-dimethyl-3-(2-methylpropenyl)cycloprop
004822–00218	Raid Roach & Ant Killer Formula III	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate
		(1-Cyclohexene-1,2-dicarboximido)methyl 2,2-dimethyl-3-(2-methylpropenyl)cycloprop
004822–00219	Raid Roach & Ant Killer Formula IV	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate
		Pyrethrins
004822–00285	Raid Flea Killer VI Plus	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate
		(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		Pyrethrins
		Isopropyl (2*E*,4*E*)-11-methoxy-3,7,11-trimethyl-2,4-dodecadienoate
004822–00291	Raid Flea Killer V Plus	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate
		(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		Pyrethrins
		Ethyl 2-(*p*-phenoxyphenoxy)ethyl carbamate
004822–00322	Raid Ant & Roach Killer 5	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate
		(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		Pyrethrins
010182 OR–94–0003	Dyfonate II 15-G Granular Insecticide	*O*-Ethyl *S*-phenyl ethylphosphonodithioate
010182 OR–94–0004	Dyfonate II 15-G Granular Insecticide	*O*-Ethyl *S*-phenyl ethylphosphonodithioate
010370–00163	Flea, Tick, & Mange Dip	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate
028293–00034	Unicorn Dursban Flea Spray for Dogs	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate
028293–00051	Unicorn Chlorpyrifos Dog Dip	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate
028293–00238	Unicorn Dursban Flea & Tick Dog Dip	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate
028293–00257	Unicorn Dursban Room Fogger	*N*-Octyl bicycloheptene dicarboximide
		O,O-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate
		(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		Pyrethrins
034704–00515	Azinphos Methyl 50 W	*O,O*-Dimethyl *S*-((4-oxo-1,2,3-benzotriazin-3(4*H*)-yl)methyl) phosphorodithioate
050534 FL–95–0004	Bravo 720	Tetrachloroisophthalonitrile

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
051036–00186	Micro Flo Dyfonate 2-G	*O*-Ethyl *S*-phenyl ethylphosphonodithioate
056228 TX–95–0002	Zinc Phosphide Concentrate for Mouse Control	Zinc phosphide (Zn3P2)
057908 GA–92–0004	Dayfonate 11 15-G Granular Insecticide	*O*-Ethyl *S*-phenyl ethylphosphonodithioate
059639–00030	Orthene Specialty Concentrate	*O,S*-Dimethyl acetylphosphoramidothioate
062719–00194	Tapp Powdered Pyrethrum	Pyrethrins
062719–00195	B & G Tapp 1.3	Pyrethrins
062719–00196	B&g SYN-PY-TE-35 Transparent Emulsion Spray	(5-Benzyl-3-furyl)methyl 2,2-dimethyl-3-(2-methylpropenyl)cyclopropanecarboxylate
062719–00199	Dursban 1 D	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate
062719–00201	B & G Pyrenone General Purpose Spray	(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		Pyrethrins
062719–00202	Tapp General Purpose Residual Spray	Cyclopropanecarboxylic acid, 3-(2,2-dichloroethenyl)-2,2-dimethyl-,
062719–00204	Syn-Perm Insecticide for Plants	Cyclopropanecarboxylic acid, 3-(2,2-dichloroethenyl)-2,2-dimethyl-,
062719–00205	B & G Flexi - Dust	(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		Pyrethrins
063244–00001	Roof Saver	Copper (metallic)
		Zinc
066249–00001	Bug Master Strips	Oil of citronella

Unless a request is withdrawn by the registrant within 180 days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 180–day period. The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000334	Hysan, A Division of Specialty Chemical Resources, 9055 Freeway Drive, Macedonia, OH 44056.
000352	E. I. Du Pont De Nemours & Co., Inc., Barley Mill Plaza, Walker's Mill, Wilmington, DE 19880.
000769	Sureco Inc., An Indirect Subsidiary of Ringer Corporation, 9555 James Ave., South, Suite 200, Bloomington, MN 55431.
000802	Chas H. Lilly Co., Box 83179, Portland, OR 97283.
000892	Pioneer Mfg. Co., 4529 Industrial Parkway, Cleveland, OH 44135.
001839	Stepan Co., 22 W. Frontage Rd., Northfield, IL 60093.
004787	Cheminova Agro A/S, 1700 Route 23, Suite 210, Wayne, NJ 07470.
004822	S.C. Johnson & Son Inc., 1525 Howe Street, Racine, WI 53403.
010182	Zeneca Ag Products, Box 15458, Wilmington, DE 19850.
010370	AgrEvo Environmental Health, 95 Chestnut Ridge Rd., Montvale, NJ 07645.
028293	Unicorn Laboratories, 12385 Automobile Blvd., Clearwater, FL 33762.
034704	Cherie Garner, Agent For: Platte Chemical Co Inc., Box 667, Greeley, CO 80632.
050534	ISK Biosciences Corp., 5966 Heisley Rd., Box 8000, Mentor, OH 44061.
051036	Micro-Flo Co., Box 5948, Lakeland, FL 33807.
056228	U.S. Department of Agriculture, Animal & Plant Health Inspection Service, 4700 River Rd., Unit 152, Riverdale, MD 20737.
057908	Metam Sodium Task Force, c/o Stauffer Chemical Co., 1200 South 47th St., Richmond, CA 94804.
059639	Valent U.S.A. Corp., 1333 N. California Blvd, Ste 600, Walnut Creek, CA 94596.
062719	Dow Agrosciences LLC, 9330 Zionsville Rd., 308/3E, Indianapolis, IN 46268.
063244	Greg Ripke, Box 475, Veneta, OR 97487.
066249	Bug Master Products, 50 Hollworthy St., Rochester, NY 14606.

III. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before November 2, 1998. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

IV. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in **Federal Register** (56 FR 29362) June 26, 1991; [FRL 3846–4]. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: April 13, 1998.

Linda A. Travers,

Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 98–11760 Filed 5–5–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–181061; FRL 5787–1]

Carbofuran; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Arkansas State Plant Board hereafter referred to as the ''Applicant'' to use the pesticide flowable Carbofuran (Furadan 4F Insecticide/Nematicide) (EPA Reg. No. 279–2876) to treat up to 1 million acres of cotton, to control cotton aphids. The Applicant proposes the use of a chemical which has been the subject of a Special Review within EPA's Office of Pesticide Programs. The granular formulation of carbofuran was the subject of a Special Review between the years of 1986–1991, which resulted in a negotiated settlement whereby most of the registered uses of granular carbofuran were phased out. While the flowable formulation of carbofuran is not the subject of a Special Review, EPA believes that the proposed use of flowable carbofuran on cotton could pose a risk similar to the risk assessed by EPA under the Special Review of granular carbofuran. Additionally, in 1997 EPA denied requests made under provisions of section 18 for this use of flowable carbofuran. Therefore, in accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before May 21, 1998.

ADDRESSES: Three copies of written comments, bearing the identification notation ''OPP–181061,'' should be submitted by mail to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Follow the instruction under ''SUPPLEMENTARY INFORMATION.'' No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be included in the public record by EPA without prior notice.

The public docket is available for public inspection in Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: David Deegan, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number and e-mail: CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703–308–9358); e-mail: deegan.dave@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a state agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for the use of carbofuran on cotton to control aphids. Information in accordance with 40 CFR part 166 was submitted as part of this request.

As part of this request, the Applicant asserts that the state of Arkansas is likely to experience non-routine infestations of aphids during the 1998 cotton growing season. The applicant further claims that, without a specific exemption of FIFRA for the use of flowable carbofuran on cotton to control cotton aphids, cotton growers in the state will suffer significant economic losses. The applicant also details a use program designed to minimize risks to pesticide handlers and applicators, non-target organisms (both Federally-listed endangered species, and non-listed species), and to reduce the possibility of drift and runoff.

The Applicant proposes to make no more than two applications of flowable carbofuran on cotton at the rate of 0.25 lb. active ingredient (a.i.) [(8 fluid oz.)] in a minimum of 2 gallons of finished spray per acre by air, or 10 gallons of finished spray per acre by ground application. The total maximum proposed use during the 1998 growing season June 1, 1998 until September 30, 1998 would be 0.5 lb. a.i. (16 fluid oz.) per acre. The applicant proposes that the maximum acreage which could be treated under the requested exemption would be 1 million acres, with approximately half of that acreage requiring a second application. If all the proposed acres were treated at the maximum proposed rate, then 375,000 lbs. a.i. would be used in Arkansas.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of a notice of receipt of an application for a specific exemption proposing use of a chemical (i.e., an active ingredient) which has been the subject of a Special Review within EPA's Office of Pesticide Programs, and the proposed use could pose a risk similar to the risk assessed by EPA under the previous Special Review. Such notice provides for opportunity for public comment on the application.

The official record for this notice, as well as the public version, has been established for this notice under docket number [OPP–181061] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at: opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–181061]. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Arkansas State Plant Board.

List of Subjects

Environmental protection, Pesticides and pests, Emergency exemptions.

Dated: April 23, 1998.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 98–11761 Filed 5–5–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OW–FRL–6010–4]

Contaminated Sediment Management Stategy

AGENCY: Environmental Protection Agency.

ACTION: Notice of Availability.

SUMMARY: The Environmental Protection Agency (EPA) announces the availability of EPA's Contaminated Sediment Management Strategy, an Agency workplan issued in support of EPA's regulatory and policy initiatives. The Strategy does not propose new regulation and is Agency guidance only. Also available for review is the Comment and Response Document.

EPA's Contaminated Sediment Management Strategy describes the cross-program policy framework in which EPA intends to promote consideration and reduction of ecological and human health risks posed by sediment contamination. The Strategy establishes four goals to manage the problem of contaminated sediment, and describes actions the Agency intends to take to accomplish those goals. The four goals are: (1) Prevent the volume of contaminated sediment from increasing; (2) reduce the volume of existing contaminated sediment; (3) ensure that sediment dredging and dredged material disposal are managed in an environmentally sound manner; and (4) develop scientifically sound sediment management tools for use in pollution prevention, source control, remediation, and dredged material management.

ADDRESSES: Requests for copies of EPA's Contaminated Sediment Management Strategy (EPA document number EPA 823–R–98–001) should be sent to: U.S. Environmental Protection Agency, National Center for Environmental Publications and Information, P.O. Box 42419, Cincinnati, Ohio 45242; telephone: 1–800–490–9198, fax: 513–489–8695. EPA's Contaminated Sediment Management Strategy may be viewed or downloaded form the Office of Science and Technology's homepage on the Internet at http:www.epa.gov/OST/. The Contaminated Sediment Management Strategy and Comment and Response Document are available for public inspection and copying from 9:00 am to 4:00 pm at the Water Docket, East Tower Basement, Environmental Protection Agency, Mail Code 4101, 401 M Street, S.W., Washington, D.C. 20460. Also available are related docket materials which include: the proposed Strategy, all public comments received on the Strategy as well as those received on an earlier proposal for discussion, and the proceedings of three national public forums held to discuss development of the Strategy. For an appointment to review Docket materials, call the Water Docket Clerk at 202–260–3027 between 9 a.m. and 4:00 p.m. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Jane M. Farris, Risk Assessment and Management Branch, Office of Science and Technology, Mail Code 4305, 401 M Street, S.W., Washington, D.C. 20460, Telephone: 202–260–8897.

SUPPLEMENTARY INFORMATION: EPA accepted written comments on the proposed Contaminated Sediment Management Strategy for 90 days after publication of the notice of availability in the **Federal Register** on August 30, 1994, and publication of a notice of extension of comment period in the **Federal Register** on October 28, 1994. At the close of the comment period on November 30, 1994 through 1997, EPA's Office of Science and Technology within the Office of Water developed responses to comments received from 126 organizations. The Strategy and comment/response document have been reviewed and revised by four staff workgroups of the EPA Sediment Steering Committee who also drafted the proposed Strategy.

Executive Summary—EPA's Contaminated Sediment Management Strategy

Reinventing Government to Streamline Decision-making

Contaminated sediment poses ecological and human health risks in many watersheds throughout the United States. In these watersheds, sediment serves as a contaminant reservoir from which fish and bottom dwelling organisms can accumulate toxic compounds and pass them up the food

chain. Sediment contaminants can be passed to fish, birds, and mammals until they accumulate to levels that may be toxic. Such toxic effects may include neurological, developmental, and reproductive impacts. Toxic chemicals come from discharges from industrial waste and sewage; storm water runoff from waste dumps, city streets and farms; air pollutants contained in rainwater; contaminants in ground water; discharges to surface water; and from natural sources. The magnitude of the sediment contamination problem in the United States is evidenced in more than 2,100 State advisories that have been issued against consuming fish. Sediments were identified as a potential source of contamination at many of the sites where consumption of fish may pose health risks. EPA has studied sediment quality data from 1,372 of the 2,111 watersheds in the continental U.S. Of these, EPA has identified 96 watersheds that contain ''areas of probable concern'' where potential adverse effects of sediment contamination are more likely to be found.

More than ten Federal statutes provide authority to many EPA program offices to address the problem of contaminated sediment. This has resulted in fragmented, and in some cases duplicative, efforts to complete the necessary research, technology development, and pollution control activities required to effectively manage contaminated sediment. Often it has been difficult for EPA programs to agree even upon the fundamental question of whether sediment at a particular site poses ecological or human health risks. EPA's Contaminated Sediment Management Strategy was developed to streamline decision-making within and among the Agency's program offices by promoting and ensuring: the use of consistent sediment assessment practices, consistent consideration of risks posed by contaminated sediment, the use of consistent approaches to management of contaminated sediment risks, and the wise use of scarce resources for research and technology development.

Goals of the Contaminated Sediment Management Strategy

EPA's Contaminated Sediment Management Strategy describes actions that the Agency intends to take to accomplish the following four strategic goals: (1) Prevent the volume of contaminated sediment from increasing; (2) reduce the volume of existing contaminated sediment; (3) ensure that sediment dredging and dredged material disposal are managed in an environmentally sound manner; (4) develop scientifically sound sediment management tools for use in pollution prevention, source control, remediation, and dredged material management.

What the Strategy Does

The Contaminated Sediment Management Strategy is comprised of six component sections: assessment, prevention, remediation, dredged material management, research, and outreach. In each section, EPA describes actions that the Agency intends to take to accomplish the four broad strategic goals.

In the assessment section of the Strategy EPA proposes that Agency program offices all use standard sediment toxicity test methods and chemical-specific sediment quality criteria to determine whether sediments are contaminated. Actions that EPA has taken to develop a biennial national inventory of sites and sources of sediment contamination (the National Sediment Quality Survey and National Sediment Inventory Database) are described in the assessment section of the Strategy. EPA plans to use the National Sediment Inventory Database (NSI) to identify sites that may be associated with adverse effects to human health and the environment. These assessment actions should enable EPA to focus on cleaning up the most contaminated waterbodies and ensuring that further sediment contamination is prevented. The National Sediment Quality Survey is a screening-level assessment of sediment quality data and sources of pollution that will be used by various EPA programs.

EPA's plan to stop sediment contaminants from reaching the environment is described in the prevention section of the Strategy. In order to regulate the use of pesticides and toxic substances that accumulate in sediment, EPA proposes the use of acute sediment toxicity tests to support registration of chemicals under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and the evaluation of chemicals under the Toxic Substances Control Act (TSCA). In the prevention section of the Strategy EPA also proposes: considering sediment contamination as a factor in determining which industries should be subject to new and revised effluent guidelines; using pollution prevention policies to reduce or eliminate sediment contamination resulting from noncompliance with permits; developing guidelines for design of new chemicals to reduce bioavailability and partitioning of toxic chemicals to sediment; and implementing point and nonpoint source controls to protect sediment quality. EPA's prevention actions would minimize further contamination of sediment and reduce ecological and human health risks.

In the remediation section of the Strategy EPA proposes using multiple statutes to require contaminated sediment remediation by parties responsible for pollution. These statutes include the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Resource Conservation and Recovery Act (RCRA), the Clean Water Act (CWA), TSCA, the Rivers and Harbors Act, and the Oil Pollution Act. The Agency will consider whether a combination of pollution prevention and source controls will allow contaminated sediments to recover naturally without unacceptable impacts to human health and the environment. On a site-specific basis, cleanup programs intend to consider natural attenuation. EPA's remediation actions would clean up existing sediment contamination that adversely affects the Nation's waterbodies.

In the dredged material management section, EPA describes its commitment to continue to work with the Corps of Engineers to ensure that dredged materials are managed in an environmentally sound manner. Physical, chemical and biological test methods will continue to be used to guide disposal and management decisions.

In the research section of the Strategy, EPA proposes a program of investigative research that is needed to: develop and validate chemical-specific sediment criteria and other sediment assessment methods; improve EPA's understanding of the transfer of sediment contaminants through the food chain; and develop and evaluate a range of technologies for remediating contaminated sediments. EPA's proposed research program would support improved assessment, prevention, and remediation of contaminated sediment.

The outreach section of the Strategy describes actions that EPA intends to take to demonstrate, through public involvement, the Agency's commitment to, and accountability for, sediment management efforts. EPA plans to produce, and make available to the public, status reports on sediment management activities as part of the biennial updates of the National Sediment Quality Survey Reports.

Next Steps Toward Implementation of a Federal Agency Contaminated Sediment Management Strategy

EPA intends to begin tracking activities of the Agency's program offices as they implement the Contaminated Sediment Management Strategy. Future updates of Agency-wide contaminated sediment activities will be included in the biennial National Sediment Quality Survey Report to Congress.

EPA's National Sediment Inventory is a screening-level assessment of sediment quality and sources of pollution that can be used in various programs. This data base can be used by Federal, State, and local agencies to target their pollution prevention and remediation efforts on the sites where sediment may be contaminated.

EPA's Contaminated Sediment Management Strategy will promote EPA and COE research to develop technologies for remediation of contaminated sediment under authority of the CWA, CERCLA, RCRA, TSCA, the Rivers and Harbors Act, the Oil Pollution Act, and WRDA.

Guidance provided in future updates of the Strategy will facilitate the coordination of dredged material management activities among Federal agencies and nongovernmental organizations. Coordination of dredged material management activities has been called for in the December 1994 action plan, ''The Dredging Process in the United States: An Action Plan for Improvement,'' developed by the Federal Interagency Working Group on the Dredging Process (U.S. DOT, 1994). The Working Group was convened by the Secretary of Transportation in the Fall of 1993. The Group has held a series of outreach sessions throughout the country to solicit ideas on improving the dredging process. The Working Group identified important activities needed to improve the dredging process. These activities include: enhanced research and monitoring to improve dredged material disposal decision making, identification of opportunities to control sources of sediment contaminants, and effective education and communication with the public on the risks and impacts associated with dredged material disposal. Future updates of the Contaminated Sediment Management Strategy will address these issues.

Listing of Actions Identified in EPA's Contaminated Sediment Management Strategy

EPA's Contaminated Sediment Management Strategy proposes that Agency program offices take the following actions.

Assessment

All EPA program offices intend to use standard sediment testing methods to determine whether sediments are contaminated. The Office of Water (OW) intends to use standard sediment toxicity and bioaccumulation test methods for monitoring, interpretation of narrative water quality standards, and dredged material disposal testing. The Office of Pesticide Programs (OPP) and the Office of Pollution Prevention and Toxics (OPPT) intend to use standard sediment toxicity tests to assess the toxicity of pesticides when registering or re-registering these chemicals for use and for evaluating new and existing chemicals under TSCA. The Office of Emergency and Remedial Response (OERR) intends to use standard sediment toxicity and bioaccumulation test methods for Superfund Remedial Investigation/Feasibility Studies. The Office of Solid Waste (OSW) intends to use biological sediment toxicity test methods for site-specific risk assessments and monitoring at hazardous waste facilities.

Where appropriate, EPA program offices intend to use sediment quality criteria, when they are published, to assess contaminated sediment sites. All EPA programs conducting sediment monitoring intend to use the criteria to interpret sediment chemistry data. Upon publication, the criteria may be used along with appropriate test endpoints from chronic sediment bioassays to interpret the narrative state water quality standard of ''no toxics in toxic amounts''. National Pollutant Discharge Elimination System (NPDES) permit limits would be based on applicable water quality standards which may include the State's narrative standard. EPA intends to use the sediment criteria (as appropriate) with other information to make site-specific decisions concerning corrective action at hazardous waste facilities, and to assess Superfund sites. The Agency has begun to develop a more detailed ''User's Guide for Multi-Program Implementation of Sediment Quality Criteria in Aquatic Ecosystems,'' describing how the Agency's programs intend to use these criteria. This document will be submitted for public review when it is drafted.

EPA program offices intend to use the NSI as a screening-level assessment tool of sediment quality and sources of pollution. The NSI can be used by the various EPA program offices to identify sites for further assessment. The inventory can be used to: identify potentially contaminated sediment sites for consideration for remedial action; identify sites for further assessment that may be candidates for injunctive relief or supplemental enforcement projects; identify problem pesticides and toxic substances that may require further regulation or be evaluated for possible enforcement action; identify impaired waters for National Water Quality Inventory reports or possible development of Total Maximum Daily Loads; target watersheds for nonpoint source best management practices; and help select industries for effluent guidelines development.

Prevention

In order to regulate the use of pesticides that may accumulate to toxic levels in sediment, EPA intends to propose that acute sediment toxicity tests be included in procedures required to support registration, re-registration, and special review of pesticides likely to sorb to sediment. In fiscal year 1996, EPA proposed incorporating acute toxicity bioassays and spiking protocols into the Agency's pesticide assessment guidelines (40 CFR Part 158). To prevent other toxic substances from accumulating in sediment, EPA also intends to propose incorporating acute sediment toxicity tests and sediment bioaccumulation tests into routine chemical review processes required under TSCA. In addition, EPA intends to develop guidelines for design of new chemicals to reduce bioavailability and partitioning of toxic chemicals to sediment.

EPA's Office of Enforcement and Compliance Assurance (OECA) plans to take action to prevent sediment contamination by negotiating, in appropriate cases of noncompliance with permits, enforceable settlement agreements to require source recycling and source reduction activities. The Office of Regulatory Enforcement within OECA also intends to monitor the progress of Federal facilities toward the goal of halving toxic emissions by the year 1999 and plans to monitor the reporting of toxic releases to the public.

OW and other EPA program offices intend to work with nongovernmental organizations and the States to prevent point and nonpoint source contaminants from accumulating in sediments. EPA intends to: (1) Promulgate new and revised technology-based effluent guidelines for industries that discharge sediment contaminants; (2) encourage the States to use biological sediment test methods and sediment quality criteria to interpret the narrative standard of ''no toxics in toxic amounts;'' (3) encourage

the States to develop Total Maximum Daily Loads for impaired watersheds specifying point and nonpoint source load reductions necessary to protect sediment quality; (4) use the NSI to identify point sources of sediment contaminants for potential permit compliance tracking after further evaluation using program-specific criteria to confirm sediment quality problems; (5) ensure that discharges from CERCLA sites and RCRA facilities subject to NPDES permits comply with future NPDES permit requirements to protect sediment quality; and (6) use the NSI to identify watersheds where technical assistance and grants could effectively be used to reduce nonpoint source loads of sediment contaminants.

Remediation

OW, OERR, and OECA intend to use the NSI to help target sites for further study which may lead to enforcement action requiring contaminated sediment remediation. EPA plans to use standard sediment toxicity, bioaccumulation tests, and site-specific field-based methods to identify potential sites for remediation, to assist in determining clean-up goals for contaminated sites, and to monitor the effectiveness of remedial actions. RCRA Corrective Action sites are generally determined by facilities seeking a RCRA permit, not by the program identifying contaminated areas, except in enforcement under 7003 orders.

Dredged Material Management

Guidance provided in future updates of the Strategy will facilitate the coordination of dredged material management activities among Federal agencies and nongovernmental organizations.

Research

EPA's Office of Research and Development (ORD), through its Environmental Monitoring and Assessment Program (EMAP), intends to continue to collect new chemical and biological data on sediment quality. These data would be included in the Agency's NSI. ORD is developing: new biological methods to assess the ecological and human health effects of sediment contaminants, chemical-specific sediment quality criteria, methods to conduct sediment toxicity identification evaluations and methods to identify bioaccumulative chemicals in sediment. ORD intends to develop dredged material disposal fate and transport models, sediment wasteload allocation models, and technologies for remediation of contaminated sediment.

Outreach

EPA plans to undertake a program of outreach and technology transfer to educate target audiences about contaminated sediment risk management. Target audiences would include: other Federal agencies, State and local agencies, the regulated community, the scientific community, environmental advocacy groups, the news media, and the general public. EPA plans to provide technical and nontechnical information to these audiences by developing a range of outreach products. Future updates to the Strategy will be reported in biennial updates of the National Sediment Quality Survey Report to Congress.

Dated: April 30, 1998.

Carol M. Browner,

Administrator.

[FR Doc. 98–12032 Filed 5–5–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–44648; FRL–5788–9]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's receipt of test data on alkyl glycidyl ether (CAS No. 120547–52–6) and tertiary amyl methyl ether (TAME) (CAS No. 994–05–8). These data were submitted pursuant to enforceable testing consent agreements/orders issued by EPA under section 4 of the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under 40 CFR 790.60, all TSCA section 4 enforceable consent agreements/orders must contain a statement that results of testing conducted pursuant to testing enforceable consent agreements/orders will be announced to the public in accordance with procedures specified in section 4(d) of TSCA.

I. Test Data Submissions

Test data for alkyl glycidyl ether were submitted by the Society of the Plastics Industry, Inc. (SPI) Epoxy Resin Systems Alkyl Glycidyl Ether Task Force. The report was submitted pursuant to a TSCA section 4 enforceable testing consent agreement/order at 40 CFR 799.5000 and was received by EPA on March 18, 1998. The submission includes a final report entitled ''In Vitro Mammalian Cell Gene Mutation Test with an Independent Repeat Assay.'' This chemical is used as an epoxy resin additive and as a modifier for other epoxides in flooring adhesives.

Test data for tertiary amyl methyl ether were submitted by the American Petroleum Institute (API), on behalf of the Tertiary Amyl Methyl Ether (TAME) Consortium. The report was also submitted pursuant to a TSCA section 4 enforceable consent agreement/order at 40 CFR 799.5000. EPA received the report on March 27, 1998. The submission includes a final report entitled ''Two-Generation Reproductive Toxicity Evaluation of Inhaled Tertiary Amyl Methyl Ether (TAME) Vapor in CD (Sprague-Dawley) Rats.'' This chemical is widely seen as a possible additive to gasoline.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submissions.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPPTS–44648). This record includes copies of all studies reported in this notice. The record is available for inspection from 12 noon to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Nonconfidential Information Center (also known as the TSCA Public Docket Office), Rm. B–607 Northeast Mall, 401 M St., SW., Washington, DC 20460. Requests for documents should be sent in writing to: Environmental Protection Agency, TSCA Nonconfidential Information Center (7407), 401 M St., SW., Washington, DC 20460 or fax: (202) 260–5069 or e-mail: oppt.ncic@epamail.epa.gov.

Authority: 15 U.S.C. 2603.

List of Subjects

Environmental protection, Test data.

Dated: April 27, 1998.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 98–12029 Filed 5–5–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51897; FRL–5786–2]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical to notify EPA and comply with the statutory provisions pertaining to the manufacture or import of substances not on the TSCA Inventory. Section 5 of TSCA also requires EPA to publish receipt and status information in the **Federal Register** each month reporting premanufacture notices (PMN) and test marketing exemption (TME) application requests received, both pending and expired. The information in this document contains notices received from February 23, 1998 to February 27, 1998.

ADDRESSES: Written comments, identified by the document control number ''[OPPTS–51897]'' and the specific PMN number, if appropriate, should be sent to: Document Control Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. ETG–099 Washington, DC 20460.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: oppt.ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPPTS–51897]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under ''SUPPLEMENTARY INFORMATION''.

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this notice. Persons submitting information on any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC, 20460, (202) 554–1404, TDD (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under the provisions of TSCA, EPA is required to publish notice of receipt and status reports of chemicals subject to section 5 reporting requirements. The notice requirements are provided in TSCA sections 5(d)(2) and 5(d)(3). Specifically, EPA is required to provide notice of receipt of PMNs and TME application requests received. EPA also is required to identify those chemical submissions for which data has been received, the uses or intended uses of such chemicals, and the nature of any test data which may have been developed. Lastly, EPA is required to provide periodic status reports of all chemical substances undergoing review and receipt of notices of commencement.

A record has been established for this notice under docket number ''[OPPTS–51897]'' (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center (NCIC), Rm. NEM–B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:

oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

In the past, EPA has published individual notices reflecting the status of section 5 filings received, pending or expired, as well as notices reflecting receipt of notices of commencement. In an effort to become more responsive to the regulated community, the users of this information and the general public, to comply with the requirements of TSCA, to conserve EPA resources, and to streamline the process and make it more timely, EPA is consolidating these separate notices into one comprehensive notice that will be issued at regular intervals.

In this notice, EPA shall provide a consolidated report in the **Federal Register** reflecting the dates PMN requests were received, the projected notice end date, the manufacturer or importer identity, to the extent that such information is not claimed as confidential and chemical identity, either specific or generic depending on whether chemical identity has been claimed confidential. Additionally, in this same report, EPA shall provide a listing of receipt of new notices of commencement.

EPA believes the new format of the notice will be easier to understand by the interested public, and provides the information that is of greatest interest to the public users. Certain information provided in the earlier notices will not be provided under the new format. The status reports of substances under review, potential production volume, and summaries of health and safety data will not be provided in the new notices.

EPA is not providing production volume information in the consolidated notice since such information is generally claimed as confidential. For this reason, there is no substantive loss to the public in not publishing the data. Health and safety data are not summarized in the notice since it is recognized as impossible, given the format of this notice, as well as the previous style of notices, to provide meaningful information on the subject.

In those submissions where health and safety data were received by the Agency, a footnote is included by the Manufacturer/Importer identity to indicate its existence. As stated below, interested persons may contact EPA directly to secure information on such studies.

For persons who are interested in data not included in this notice, access can be secured at EPA Headquarters in the NCIC at the address provided above. Additionally, interested parties may telephone the Document Control Office at (202) 260–1532, TDD (202) 554–0551, for generic use information, health and safety data not claimed as confidential or status reports on section 5 filings.

Send all comments to the address listed above. All comments received will be reviewed and appropriate amendments will be made as deemed necessary.

This notice will identify: (I) PMNs received; and (II) Notices of Commencement to manufacture/import.

I. 8 Premanufacture Notices Received From: 02/23/98 to 02/27/98

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–98–0508	02/23/98	05/24/98	CBI	(G) Coating resin, open, non-dispersive use	(G) Polyester polyurethane acrylic copolymer
P–98–0509	02/24/98	05/25/98	Bush Boake Allen Inc.	(S) Fragrance for air freshners; fragrance for liquid laundry detergent; fragrance for liquid surface cleaners; fragrance for soaps; fragrance for shampoo / shower gel; fragrance for household products	(S) Propanoic acid, *z*-methyl-1,7,7-trimethylbicyclo [2.2.1] hept-yl ester, exo-
P–98–0510	02/23/98	05/24/98	CBI	(G) Highly dispersive	(G) Disubstituted alkenol
P–98–0511	02/23/98	05/24/98	Wacker Silicones Corporation	(S) Pigment	(G) Siloxanes modified polymethacrylate
P–98–0512	02/25/98	05/26/98	CBI	(G) Coating of metal substrates	(G) Modified epoxy resin copolymer of epoxy withacrylic monomers modifiers acrylic copolymer
P–98–0513	02/25/98	05/26/98	NOF America Corporation	(G) Additive	(G) Methylacrylate copolymer
P–98–0514	02/25/98	05/26/98	Olin Corporation	(S) Film- forming polymer	(G) Polyamic acid, acrylate ester, ethyl ester
P–98–0515	02/27/98	05/28/98	CBI	(G) Adhesive additive, paper additive, printing plate additive	(G) Amines modified poly (vinyl alcohol)

II. 8 Notices of Commencement Received From: 02/23/98 to 02/27/98

Case No.	Received Date	Commencement/Import Date	Chemical
P–95–1332	02/25/98	02/09/98	(G) Secondary aliphatic alcohol
P–97–0316	02/27/98	02/12/98	(S) Silane, hexadecyltrimethoxy
P–97–0552	02/24/98	01/27/98	(G) Metal ester
P–97–0553	02/24/98	01/27/98	(G) Metal ester
P–97–0809	02/23/98	02/06/98	(G) Isocyanate terminated polyurethane
P–97–0856	02/23/98	01/28/98	(G) Hydroxyl terminated polyetherol
P–98–0004	02/26/98	01/29/98	(G) Acrylate polymer
P–98–0194	02/27/98	02/24/98	(G) Cycloolefin polymer

List of Subjects

Environmental protection, Premanufacture notices.

Dated: April 30, 1998.

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 98–12030 Filed 5–5–98; 8:45 am]

BILLING CODE 6560–50–F

EXPORT-IMPORT BANK OF THE UNITED STATES

[Federal Register Notice No. 32]

Agency Information Collection Activities: Proposed Collection; 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) invites comments on the following information collection for which Ex-Im Bank intends to request approval from the Office of Management and Budget (OMB).

SUMMARY: The Export-Import Bank of the United States (Ex-Im Bank) is announcing an opportunity for public comment on the proposed survey questionnaire.

DATES: Interested persons are invited to submit comments on or before July 6, 1998.

ADDRESSES: Please address written comments to Bernard Lubran, Export-Import Bank of the United States, Business Development, Room 919, 811 Vermont Avenue, NW., Washington, DC 20571, (202) 565–3603.

FOR FURTHER INFORMATION CONTACT: Copies of this submission and any other information may be obtained from Daniel Garcia, Export-Import Bank of the United States, 811 Vermont Avenue, NW., Washington, DC 20571, (202) 565–3335.

SUPPLEMENTARY INFORMATION: This survey is used to comply with Executive Order 12862 that requires federal agencies to measure its ability to deliver quality services to its customers.

Burden Statement Summary

Type of Request: Extension of expiration date.

OMB Number: 3048–0011.

Form Number: EIB 95–7.

Title: Export-Import Bank of the United States Customer Service Satisfaction Survey.

Frequency of Use: Annual.

Respondents: Exporters of U.S. goods and services.

Estimated total number of annual responses: 1,200.

Estimated total number of hours needed to fill out the form: 20 minutes.

Dated: May 1, 1998.

Dan Garcia,

Agency Clearance Officer.

[FR Doc. 98–12039 Filed 5–5–98; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

April 30, 1998.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (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.

DATES: Written comments should be submitted on or before June 5, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARYINFORMATION:

OMB Control No.: 3060–0793.

Title: Procedures for States Regarding Lifeline Consents, Adoption of Intrastate Discount Matrix for Schools and Libraries, and Designation of Eligible Telecommunications Carriers.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit; state, local or tribal governments.

Number of Respondents: 865.

Estimated Time Per Response: 1.12 hours.

Frequency of Response: On occasion and annual reporting requirement.

Cost to Respondents: N/A.

Total Annual Burden: 970 hours.

Needs and Uses: In the Report and Order on Universal Service, adopted May 7, 1997 and released May 8, 1997, the Commission adopted rules that are designed to implement the universal service provisions of section 254. Specifically, the Order addresses: (1) universal service principles; (2) services eligible for support; (3) affordability; (4) carriers eligible for universal service support; (5) support mechanisms for rural, insular, and high costs areas; (6) support for low-income consumers; (7) support for schools and libraries, and health care providers; (8) interstate subscriber line charge and common line cost recovery; and (9) administration of support mechanisms. All the requirements contained in the Order are necessary to implement the congressional mandate for universal service. These reporting requirements are necessary to verify that particular carriers and other respondents are eligible to receive universal service support.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–12045 Filed 5–5–98; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 20, 1998.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Clanton Investments LP, Jerry N. Clanton, and Janys M. Clanton, all of Louisville, Kentucky; to acquire voting shares of Magnolia Bancshares, Inc., Hodgenville, Kentucky, and thereby indirectly acquire Bank of Magnolia, Magnolia, Kentucky.

B. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Myron L. Mulder, Prinsburg, Minnesota; to acquire voting shares of PSB Financial Shares, Inc., Prinsburg, Minnesota, and thereby indirectly acquire Prinsburg State Bank, Prinsburg, Minnesota.

Board of Governors of the Federal Reserve System, April 30, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–11977 Filed 5–5–98; 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 29, 1998.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. First American Corporation, Nashville, Tennessee; to acquire 100 percent of the voting shares of Peoples Bank, Dickson, Tennessee.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. First Commerce Bancshares, Inc., Lincoln, Nebraska; to acquire 100 percent of the voting shares of Western Nebraska National Bank, Valentine, Nebraska.

Board of Governors of the Federal Reserve System, April 30, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–11975 Filed 5–5–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 20, 1998.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. The Bank of Nova Scotia, Toronto, Canada; to acquire American Securities Transfer & Trust Incorporated, Denver, Colorado, and thereby engage in certain shareholder services, including acting as a stock transfer and dividend disbursing agent and providing similar custodial or agency services, pursuant to § 225.28(b)(5) of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. First Chicago NBD Corporation, Chicago, Illinois; to acquire indirectly through First Chicago Trust Company, New York, New York, 50 percent of the voting shares of Boston EquiServe, L.P., Canton, Massachusetts, and thereby engage in the nonbanking activities of providing data processing services and performing trust company operations pursuant to §§ 225.28(b)(14) and 225.28(b)(5) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 30, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–11976 Filed 5–5–98; 8:45 am]

BILLING CODE 6210–01–F

FEDRAL RESERVE SYSTEM

Sunshine Act Meeting

TIME AND DATE: 11:00 a.m., Monday, May 11, 1998.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: 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: May 1, 1998

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–12097 Filed 5–1–98; 5:08 pm]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Survey of Rent-to-Own Customers; Proposed Information Collection

AGENCY: Federal Trade Commission (FTC).

ACTION: Proposed information collection; comment request.

SUMMARY: The FTC invites comments on a proposed telephone survey before submitting a request for OMB review under the Paperwork Reduction Act.

DATES: Comments on the proposed survey must be submitted on or before July 6, 1998.

ADDRESSES: Written comments should be addressed to Elaine W. Crockett,

Attorney, Office of the General Counsel, Room 598, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20850. Telephone: (202) 326–2453. E-mail: ECrockett@FTC.gov.

FOR FURTHER INFORMATION CONTACT: Signe-Mary McKernan, Economist, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580. Telephone: (202) 326–3480. E-mail: SMcKernan@FTC.gov.

SUPPLEMENTARY INFORMATION: The FTC seeks comments concerning a proposed telephone survey of consumers in order to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the FTC, including whether the information will have practical utility; (2) Evaluate the accuracy of the FTC's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Title: Survey of Rent-to-Own Customers.

Type of review: New.

Frequency: Once.

Affected public: Consumers.

Response Hour Burden:

Pre-test questionnaire: approximately 10 minutes × 50 people=8 hours.

Screening question: One initial question within a survey of 20,000 people (other topics are also submitted from third party entities). Approximately 30 seconds × 20,000 people=167 hours.

Questionnaire response: Approximately 300–500 consumers × 10 minutes=83 hours.

Total burden hours: Approximately 260.

Abstract: The FTC proposes to survey rent-to-own customers in order to evaluate their experiences with rent-to-own transactions. This information will be used to assess reported consumer protection concerns and in consideration of possible future Commission actions. All information will be collected on a voluntary basis and the identities of respondents will remain confidential.

If OMB approves, the FTC will contract with a survey firm to identify 300 to 500 rent-to-own consumers and to briefly obtain information about their experience with the rent-to-own industry. Survey respondents will be identified through screening questions included in a preexisting random digit dialing survey of a nationally representative sample of approximately 1,000 individuals. The screening survey will include routine demographic questions as well as specific questions contracted by other firms and organizations. Given the low (roughly 2%) incidence rate of rent-to-own customers within the general population, the FTC estimates that approximately 20,000 people will be screened in order to obtain a sample of 300 to 500 customers.

The survey questionnaire will be pretested on approximately 50 respondents to ensure that all questions are easily understood. The pretest will take approximately 10 minutes apiece, for a total of 8 hours. The final survey will involve 300–500 respondents, again for approximately 10 minutes apiece, for a total of 83 hours.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 98–11941 Filed 5–5–98; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

''Year 2000'' Consumer Issues; Request for Comment

AGENCY: Federal Trade Commission.

ACTION: Request for public comments.

SUMMARY: The Federal Trade Commission (''Commission'') seeks comment on the various types of ''Year 2000'' problems that consumers are likely to face. The term ''Year 2000 problems'' (hereinafter ''Y2K problems'') as used in this **Federal Register** Notice (hereinafter ''Notice'') refers to problems caused by the inability of software and/or electronic products, including personal computers (hereinafter ''PCs'') and other computer systems, to process, store, display, or otherwise utilize dates correctly beginning in the year 2000. This inability usually stems from a failure to distinguish between the year 2000 (and subsequent years) and the year 1900 (and subsequent years). Additionally, it might include an inability to recognize the year 2000 as a leap year.

Specifically, the Commission seeks comment on what types of consumer software and electronic products are likely to experience Y2K problems, as well as what steps have been taken or will be taken by software publishers, electronics manufacturers, and others to notify consumers of any anticipated Y2K problems and to remedy any such problems. The Commission also seeks comment on potential Y2K problems likely facing various segments of the consumer financial services industry, such as finance entities, consumer reporting agencies (some of which are commonly referred to as credit bureaus), and other businesses involved in consumer financial services. Lastly, the Commission seeks comment regarding interest in participating in or attending one or more workshops to discuss the issues raised in this Notice.

DATES: Comments must be submitted on or before June 22, 1998.

ADDRESSES: Written comments should be submitted to: Secretary, Federal Trade Commission, Room H–159, Sixth Street and Pennsylvania Ave., NW., Washington, D.C. 20580. The Commission requests that the original comment be filed with five copies, if feasible. The Commission also requests, if possible, that the comment be submitted in electronic form on a computer disk. (Programs based on DOS or Windows are preferred. Files from other operating systems should be submitted in ASCII text format.) The disk label should identify the commenter's name and the name and version of the word processing program used to create the comment. Alternatively, the Commission will accept comments submitted to the following e-mail address <y2k@ftc.gov>. All submissions should be captioned: ''Year 2000 Consumer Issues—Comment, FTC File No. P984238.''

FOR FURTHER INFORMATION CONTACT: For questions concerning consumer software or electronic products: Jonathan M. Cowen, Attorney, Division of Enforcement, Federal Trade Commission, Sixth Street & Pennsylvania Ave., NW, Washington, DC 20580, telephone 202–326–2533, e-mail (for questions or information only) <jcowen@ftc.gov>. For questions concerning consumer financial services: Rolando Berrelez, Attorney, Division of Credit Practices, Federal Trade Commission, Sixth Street and Pennsylvania Ave., NW, Washington, DC 20580, telephone 202–326–3211, e-mail (for questions or information only) <rberrelez@ftc.gov>.

SUPPLEMENTARY INFORMATION:

Background

The Commission believes that consumers might potentially experience

Y2K problems[1] related to PC software, electronic products,[2] and consumer financial services provided by finance entities,[3] consumer reporting agencies,[4] and other businesses. These consumer issues have been explored to some extent in Congressional hearings[5] and by other federal agencies. For example, the Food and Drug Administration has sought information from manufacturers of biomedical equipment concerning the Y2K compliance of their products, some of which might be in the possession of consumers.[6] Also, the Federal Financial Institutions Examination Council has issued safety and soundness guidance to federally-chartered or federally-insured financial institutions on potential Y2K risks.[7]

With respect to software and information-technology-related electronic products, there have also been some efforts by both private and government entities to disseminate available information on specific products. For example, some commercial off-the-shelf (hereinafter ''COTS'') software and PC manufacturers have made Y2K compliance information available to the business community and consumers on the Internet. This information has in turn been aggregated to varying degrees by other entities, who have also made their COTS compilations available on the Internet. A comprehensive compilation is the COTS database maintained by Mitre Corp. (hereinafter ''Mitre'').[8] Mitre's database describes many of the Y2K problems that individual software and PC manufacturers have already disclosed and sometimes also directs readers to the availability of software ''patches'' (*i.e.*, fixes) that can be downloaded from the manufacturers' own Internet sites. The Year 2000 Subcommittee of the Chief Information Officers Council has established a similar Internet database that provides COTS compliance information collected from vendors and federal agencies.[9]

Furthermore, with respect to financial issues, at least one trade association has surveyed its membership regarding their Y2K preparedness and posted a variety of Y2K-related materials on its Internet site.[10] The survey did not, however, directly seek information related to consumer financial services, such as credit issues.

The Commission believes that it would be useful to solicit public comment on the Y2K problems that consumers will likely face in order to obtain more complete information on these potential problems. The Commission also believes that aggregating information on these seemingly disparate issues might help businesses and consumers alike to avert otherwise unforeseen problems.[11] In addition, potential remedies for problems that might occur could also be identified. With regard to consumer software and electronic products, these could range from downloadable software patches to rebates or refunds.[12]

Legal Authority

Section 5 of the Federal Trade Commission Act (hereinafter ''FTC Act''), 15 U.S.C. 45(a), gives the Commission broad authority over the advertising and marketing of products and services through its prohibition on ''unfair or deceptive acts or practices in or affecting commerce.'' The Commission has issued policy statements to provide guidance on how it evaluates whether acts or practices are ''unfair or deceptive'' under section 5 of the FTC Act and on how it will enforce the legal requirement that advertisers possess a reasonable basis for objective claims about their products and services.[13]

Additionally, the Commission has enforcement authority under the Magnuson-Moss Warranty Act, 15 U.S.C. 2301 *et seq.*, and has promulgated rules, regulations, statements, and interpretations pursuant thereto. 16 CFR parts 700–703. The Commission also has enforcement authority under the Consumer Credit Protection Act.[14]

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[1] *Cf.* related definitions in Exec. Order No. 13,073, 63 FR 6,467 (1998) (''Y2K problem'' defined with respect to ''computer systems and other electronic devices''); 48 CFR 39.002 (''Year 2000 compliant'' defined with respect to ''information technology''); Letter from Kevin Thurm, Deputy Secretary of the U.S. Department of Health and Human Services, to Biomedical Equipment Manufacturers, Enclosure (Jan. 21, 1998) (''Year 2000 compliant'' defined with respect to ''medical devices and scientific laboratory equipment'').

[2] The Commission is using the *term electronic products* in this Notice to refer broadly to all products that contain one or more embedded microchips. It has been suggested that only electronic products whose microchips possess a date function with a year component might potentially experience Y2K problems. Specific examples of consumer electronic products that it has been suggested might experience Y2K problems include, non-exhaustively, the following products: PCS, videocassette recorders (hereinafter ''VCRs''), programmable thermostats, home security systems, home automation systems, digital wristwatches, camcorders, cameras, and fax machines. It has also been suggested that Global Positioning System (hereinafter ''GPS'') receivers might experience problems related to use of a 10-bit field for weeks since January 1980—sometimes called ''Week 1024'' problems—that might occur beginning in August 1999. For purposes of GPS receivers, the Commission is using the term ''Y2K problems'' to include such problems.

[3] The Commission is using the *term finance entities* in this Notice to refer broadly to nonfederally chartered or nonfederally insured entities—such as mortgage companies, finance companies, leasing companies, vehicle manufacturers or dealerships, retailers, and others—who may extend and/or advertise ''consumer credit'' or ''consumer leases,'' as those terms are defined under § 226.2 of Regulation Z, 12 CFR 226.2, as amended, or § 213.2 of Regulation M, 12 CFR 213.2, as amended, respectively.

[4] The term *consumer reporting agency*, as used in this notice, is defined in Section 1681a of the Fair Credit Reporting Act (''FCRA''), 15 U.S.C. 1681a, as amended. The term generally refers to any person, which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports. The term *consumer report* as used in this notice, is also defined in Section 1681a of the FCRA. Generally, *consumer report* refers to any written, oral, or other communication of any information by a consumer reporting agency which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing a consumer's eligibility for credit, insurance, or employment.

[5] Hearing on ''Year 2000 Risks: What Are The Consequences Of Information Technology Failure?'' Before the Subcomm. on Technology of the House Science Comm. and the Subcomm. on Government Management, Information and Technology of the House Government Reform and Oversight Comm. (1997); Hearing on ''The Year 2000 Problem'' Before the House Comm. on Banking and Financial Services (1998); Hearing on ''Financial Institutions and the Year 2000 Problem'' Before the Subcomm. on Financial Services and Technology of the Senate Banking, Housing and Urban Affairs Comm. (1997).

[6] Letter from Kevin Thurm, Deputy Secretary of the U.S. Department of Health and Human Services, to Biomedical Equipment Manufacturers (Jan. 21, 1998).

[7] Safety and Soundness Guidelines Concerning the Year 2000 Business Risk, Federal Financial Institutions Examination Council (Dec. 17, 1997).

[8] Mitre Corporation, *COTS Companies and Product Information Database* (1998) <http://www.mitre.org/research/cots/VENDOR__LIST.html>.

[9] Chief Information Officers Council, *Federal Year 2000 Commercial Off-the-Shelf (COTS) Product Database* (1998) <http://y2k.policyworks.gov>.

[10] Securities Industry Association, *Year 2000 Financial Service Industry Scorecard* (1997) <http://www.sia.com>.

[11] Obtaining and disseminating reliable information also could help correct any misinformation that might inadvertently have been disseminated in the popular press and elsewhere.

[12] Conceivably, manufacturers, retailers, and/or consumer groups might consider establishing alternative dispute resolution (hereinafter ''ADR'') mechanisms, in particular to deal with electronic product problems. An ADR program might have the flexibility to effectively handle remedy issues that could be complicated by factors such as the age of the product at issue and its expected useful life.

[13] Federal Trade Commission Policy Statement on Deception, *appended to Cliffdale Associates, Inc.*, 103 F.T.C. 110, 174 (1984); Federal Trade Commission Policy Statement on Unfairness, *appended to International Harvester Co.*, 104 F.T.C. 949, 1070 (1984) (superseded by 15 U.S.C. 45(n)); Federal Trade Commission Policy Statement Regarding Advertising Substantiation, 48 FR 10,471 (Mar. 11, 1983).

[14] The Consumer Credit Protection Act, 15 U.S.C. 1601 *et seq.* includes, *inter alia*, the Truth in Lending Act, 15 U.S.C. 1601–1667 *et seq.*, and its

Public Workshops

The Commission seeks public comment as to the advisability of convening one or more public workshops to assist in gathering information and to provide an opportunity for public dialogue regarding the issues raised in this Notice. The Commission believes that software and microchip/electronic product issues could likely be discussed in a single workshop, while consumer financial service issues might require a separate workshop. Any workshops would not be intended to achieve a consensus among participants, or between participants and Commission staff, with regard to issues raised in this Notice. Persons interested in attending or participating in such workshops are requested to notify Commission staff in the comment submitted in response to this Notice. If the Commission decides to convene one or more public workshops, it will announce the subject matter, date, time, and location of the workshop(s) in a separate notice in the **Federal Register**.

Request for Comment

Interested parties are requested to submit written comments on any issue of fact, law or policy that may inform the Commission regarding the issues raised in this Notice. Please provide copies of any studies, surveys, research, or other empirical data referenced in responses. The Commission also seeks comment on the following specific questions:[15]

Software and Electronic Products

Software

1.1 What types[16] of consumer software process, store, display, or otherwise utilize dates? How are the dates utilized?

1.2 What types of consumer software, if any, are marketed as Y2K compliant? What is meant by this claim?

1.3 What types of consumer software, if any, are likely to have Y2K problems? What is the nature of the problems?

1.4 For each type of consumer software likely to have Y2K problems, is software with such problems currently being marketed? If so, what percentage of the software of this type currently being marketed has Y2K problems? If not, when did marketing end?

a. What percentage of the software of this type being marketed two years ago had Y2K problems? Five years ago?

1.5 For each type of consumer software likely to have Y2K problems, how frequently do consumers typically upgrade or replace the software? What percentage of consumers who use this type of software typically use a version that is more than two years old? More than five years old? More than ten years old?

1.6 For each type of consumer software likely to have Y2K problems, what, if anything, has been done or will be done to notify consumers of these problems? If notification is planned but has not yet occurred, when will it occur?

1.7 For each type of consumer software likely to have Y2K problems, is a software fix a practical solution? What is the nature of the fix?

a. What, if anything, has been done or will be done to notify consumers of any practical software fixes? If notification is planned but has not yet occurred, when will it occur?

b. How is the fix being made available to consumers? How much, if anything, are consumers expected to pay to obtain the fix? What is the cost of the fix to software publishers?

1.8 What types of consumer software, if any, are able to avert Y2K problems provided the consumer takes some specific action (*e.g.*, resetting the clock)?

a. Does the software prompt the user with a message suggesting the necessary action?

b. If not, what, if anything, has been done or will be done to notify consumers of the necessary action?

1.9 For each type of consumer software likely to have Y2K problems, if software fixes are impractical, have consumers been offered or will they be offered any refunds (full or partial), replacement software, or other compensation (*e.g.*, discounts off replacement software)? If so, how have consumers been notified or will they be notified of such refunds, replacements, or other compensation?

Microchips

2.1 What types[17] of microchips that are embedded in consumer electronic products process, store, or otherwise utilize dates? How are the dates utilized?

2.2 Are there circumstances under which a microchip might utilize dates indirectly (*e.g.*, checking the date circuit to determine whether a product is turned on)? If so, how are the dates utilized?

2.3 What types of microchips, if any, are marketed as Y2K compliant? What is meant by this claim?

2.4 What types of microchips that are embedded in consumer electronic products, if any, are likely to have Y2K problems? What is the nature of the problems?

Electronic Products

3.1 What types[18] of consumer electronic products contain microchips that process, store, or otherwise utilize dates? How are the dates utilized?

3.2 Are there circumstances under which a consumer electronic product might contain a microchip that utilizes dates indirectly (*e.g.*, checking the date circuit to determine whether a product is turned on)? If so, how are the dates utilized?

3.3 What types of consumer electronic products, if any, are marketed as Y2K compliant? What is meant by this claim?

3.4 What types of consumer electronic products, if any, are likely to have Y2K problems? What is the nature of the problems?

3.5 For each type of consumer electronic product likely to have Y2K problems, are products with such problems currently being marketed? If so, what percentage of the products of this type currently being marketed has Y2K problems? If not, when did marketing end?

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implementing Regulation Z, 12 CFR part 226; the Consumer Leasing Act, 15 U.S.C. 1667–1667e, and its implementing Regulation M, 12 CFR part 213, the Equal Credit Opportunity Act, 15 U.S.C. 1691–1691f and its implementing Regulation B, 12 CFR part 202, the Electronic Fund Transfer Act, 15 U.S.C. 1693 *et seq.* and its implementing Regulation E, 12 CFR part 205, the Fair Credit Reporting Act, 15 U.S.C. 1681 *et seq.*, as amended, and the Fair Debt Collection Practices Act, 15 U.S.C. 1692 *et seq.*

[15] Questions concerning software, microchips, and electronic products should be construed as limited to such items that could still be in use by consumers now.

[16] With respect to software, the Commission is using the term *type* to refer to categories such as spreadsheet programs, database programs, schedulers, communications programs, etc. The Commission also requests information on specific software titles, to the extent that such information is available.

[17] With respect to microchips, the Commission is using the term *type* to refer to categories such as clock speed, amount of memory and cache, bus speed, special purchase, general purpose, programmability, etc. The Commission also requests information on specific models, to the extent that such information is available.

[18] With respect to electronic products, the Commission is using the term *type* to refer to categories such as VCRs, PCS, fax machines, etc. The Commission also requests information on specific models, to the extent that such information is available.

a. What percentage of the products of this type being marketed two years ago had Y2K problems? Five years ago?

3.6 For each type of consumer electronic product likely to have Y2K problems, how frequently do consumers typically replace the product? What percentage of consumers who use this type of product typically use a model that is more than two years old? More than five years old? More than ten years old?

3.7 For each type of consumer electronic product likely to have Y2K problems, what, if anything, has been done or will be done to notify consumers of these problems? If notification is planned but has not yet occurred, when will it occur?

3.8 For each type of consumer electronic product likely to have Y2K problems, is a software fix a practical solution? What is the nature of the fix?

a. What, if anything, has been done or will be done to notify consumers of any practical software fixes? If notification is planned but has not yet occurred, when will it occur?

b. How is the fix being made available to consumers? How much are consumers expected to pay to obtain the fix? What is the cost of the fix to product manufacturers?

3.9 For each type of consumer electronic product likely to have Y2K problems, is a hardware fix a practical solution? What is the nature of the fix?

a. What, if anything, has been done or will be done to notify consumers of any practical hardware fixes? If notification is planned but has not yet occurred, when will it occur?

b. How is the fix being made available to consumers? How much, if anything, are consumers expected to pay to obtain the fix? What is the cost of the fix to product manufacturers?

3.10 For each type of consumer electronic product likely to have Y2K problems, if software or hardware fixes are impractical, have consumers been offered or will they be offered any refunds (full or partial), replacement products, or other compensation (*e.g.*, discounts off replacement products)? If so, how have consumers been notified or will they be notified of such refunds, replacements, or other compensation?

Retailers Selling Software or Electronic Products

4.1 To what extent are retailers concerned that consumers will return software or electronic products that have Y2K problems? To what extent are retailers working with software publishers and electronic product manufacturers to handle anticipated returns?

4.2 To what extent are retailers working with software publishers and electronic product manufacturers to ensure that consumer software and electronic products will not have Y2K problems?

4.3 To what extent would alternative dispute resolution programs be able to remedy Y2K problems that consumers have with software and electronic products? What other remedies can retailers identify?

Consumer Financial Services

Finance Entities

5.1 What types [19] of computer or other automated systems used by finance entities in connection with consumer credit or leasing transactions process, store, display, or otherwise utilize dates? How are the dates utilized?

5.2 What types of systems used by finance entities in connection with consumer credit or leasing transactions, if any, are likely to have Y2K problems? What is the nature of the problems?

5.3 For each type of system used by finance entities in connection with consumer credit or leasing transactions that is likely to have Y2K problems, what has been done or will be done to fix the problem? If a fix is planned but has not yet occurred, when will it occur?

5.4 Are there computer systems used by finance entities in connection with consumer credit or leasing transactions for which likely Y2K problems cannot or will not be fixed before January 1, 2000? If so, why can't or won't such problems be fixed?

a. When is it planned that the problems with these systems will be fixed? How will they be fixed?

b. What percentage of consumer accounts is likely to be affected by these unfixed Y2K problems? What will be the consequences for consumers? For creditors, lessors, and/or advertisers?

c. What, if any, steps are being taken to identify and notify consumers whose accounts will be affected?

d. Will the unfixed Y2K problems affect a creditor, lessor, and/or advertiser's compliance with federal consumer credit (or lease) protection statutes? If so, how?

e. Will the unfixed Y2K problems result in erroneous information being reported to or from third parties such as consumer reporting agencies or debt collection agencies? What, if any, steps are being taken to avert such erroneous reporting?

Consumer Reporting Agencies

6.1 What types of computer or other automated systems used by consumer reporting agencies in connection with assembling or evaluating consumer information or furnishing consumer reports process, store, display, or otherwise utilize dates? How are the dates utilized?

6.2 What types of systems used by consumer reporting agencies in connection with assembling or evaluating consumer information or furnishing consumer reports, if any, are likely to have Y2K problems? What is the nature of the problems?

6.3 For each type of system used by consumer reporting agencies in connection with assembling or evaluating consumer information or furnishing consumer reports that is likely to have Y2K problems, what has been done or will be done to fix the problem? If a fix is planned but has not yet occurred, when will it occur?

6.4 Are there computer systems used by consumer reporting agencies in connection with assembling or evaluating consumer information or furnishing consumer reports for which likely Y2K problems cannot or will not be fixed before January 1, 2000? If so, why can't or won't such problems be fixed?

a. When is it planned that the problems with these systems will be fixed? How will they be fixed?

b. What percentage of consumer accounts is likely to be affected by these unfixed Y2K problems? What will be the consequences for consumers? For consumer reporting agencies? For third parties?

c. What, if any, steps are being taken to identify and notify consumers whose accounts will be affected?

[19] With respect to consumer financial services, the Commission is using the term ''type'' to refer to categories of automated systems, including software or computer hardware categories such as spreadsheet programs, database programs, PCS, mainframes, etc. The Commission also requests information on specific software titles or hardware models, to the extent that such information is available.

d. Will the unfixed Y2K problems affect a consumer reporting agency or third party's compliance with federal consumer credit protection statutes? If so, how?
e. Will the unfixed Y2K problems result in erroneous information being reported to or from third parties? What, if any, steps are being taken to avert such erroneous reporting? What, if any, steps are being taken to handle consumer complaints related to such erroneous reporting?

Retailers and Other Businesses Involved in Consumer Financial Services [20]

7.1 What types of computer or other automated systems (including cash registers, credit/debit card equipment, other electronic fund transfer devices, etc.) used by retailers and others in connection with third-party credit/leasing transactions, electronic fund transfers, other forms of payments, or other types of consumer financial services process, store, display, or otherwise utilize dates? How are the dates utilized?
7.2 What types of systems used by retailers and others in connection with third-party credit/leasing transactions, electronic fund transfers, other forms of payments, or other types of consumer financial services, if any, are likely to have Y2K problems? What is the nature of the problems?
7.3 For each type of system used by retailers and others in connection with third-party credit/leasing transactions, electronic fund transfers, other forms of payments, or other types of consumer financial services, that is likely to have Y2K problems, what has been done or will be done to fix the problem? If a fix is planned but has not yet occurred, when will it occur? If a fix cannot or will not occur before January 1, 2000, why not?

Availability of Submissions

All submissions received in response to this Notice will be available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and Commission regulations, 16 CFR 4.9, on normal business days between the hours of 8:30 a.m. and 5 p.m. at the Public Reference Room 130, Federal Trade Commission, Sixth Street & Pennsylvania Ave., NW., Washington, DC 20580. The Commission will make this Notice, and to the extent technically possible, all submissions received in response to this Notice, available to the public through the Internet at the following address: <http://www.ftc.gov>.

Confidentiality

Persons submitting material in response to this Notice may designate that material or portions of it confidential and request that it be withheld from the public record. No such material or portions of material will be placed on the public record until the General Counsel has ruled on the request for confidential treatment and provided any prior notice to the submitter required by law. All requests for confidential treatment shall be supported by a showing of justification in light of applicable statutes, rules, orders of the Commission or its administrative law judges, orders of the courts, or other relevant authority.

Authority: 15 U.S.C. 41 *et seq.*

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 98–11943 Filed 5–5–98; 8:45 am]

BILLING CODE 6750–01–P

[20] To the extent that a retailer or other business involved in consumer financial services might also be a finance entity, these questions are in addition to those directed to all finance entities.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Proposed Collections; Comment Request

The Department of Health and Human Services, Office of the Secretary will periodically publish summaries of proposed information collections projects and solicit public comments in compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain a copy of the information collection plans and instruments, call the OS Reports Clearance Officer on (202) 690–6207.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Projects 1. Study of Frail Elders in Medicare Managed Care, New

The Office of the Assistant Secretary for Planning and Evaluation is proposing to conduct a study of how managed care delivery systems can meet the needs of elderly beneficiaries with disabilities and chronic illnesses. A survey of Medicare beneficiaries will be conducted to identify ways in which managed care can add value and barriers to realizing added value. *Respondents:* Individuals or households; *Number of Responses:* 3264; *Average Burden per Response:* 35.57 minutes; *Total Burden:* 1,935 hours.

Send comments to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue S.W., Washington DC 20201. Written comments should be received within 60 days of this notice.

Dated: April 28, 1998.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 98–11962 Filed 5–5–98; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Supporting Field Initiated Teen Pregnancy Prevention Evaluation

AGENCY: Office of the Assistant Secretary for Planning and Evaluation; DHHS.

ACTION: Announcement of the availability of funds and request for applications to enhance existing evaluations on teen pregnancy prevention programs.

SUMMARY: The Office of the Assistant Secretary for Planning and Evaluation (ASPE) announces that applications are being accepted for funding to augment existing evaluations of teen pregnancy prevention interventions that are rigorous in design and already have funding. The primary goal of the proposed grants is to further the understanding of teen pregnancy prevention interventions and the extent to which these interventions meet their goal of reducing teenage pregnancies. Federal funding under this announcement is intended to support evaluation exclusively, not program operation or service provision. Projects funded under this announcement are

intended to complement other aspects of the Department's National Strategy to Prevent Teen Pregnancy.

Organizations eligible to apply for this federal funding include public entities; private for profit organizations (if fee is waived); and public or private nonprofit organizations, including universities that are either in the process of conducting a rigorous evaluation of a teen pregnancy prevention program or that have completed an evaluation of such program within the past three years and would be appropriate for a follow-up.

It is anticipated that two to three grants totaling approximately $300,000 will be awarded. Project duration is 12 months from date of award.

Legislative Authority

This grant is authorized by section 1110 of the Social Security Act (42 U.S.C).

CLOSING DATE: The closing date for submitting applications under this announcement is July 6, 1998.

MAILING ADDRESS: Application instructions and forms should be requested from and submitted to: Grants Officer, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, 200 Independence Avenue, SW., Room 405F, Hubert H. Humphrey Building, Washington, DC 20201, Phone (202) 690–8794. Copies of this program announcement and many of the required forms may also be obtained electronically at the ASPE World Wide Web Page http://aspe.os.dhhs.gov. You may fax your request to (202) 690–6518 to the attention of the Grants Officer. Application submissions may not be faxed or sent electronically.

The printed **Federal Register** notice is the only official program announcement. Although reasonable efforts are taken to assure that the files on the ASPE World Wide Web Page containing electronic copies of this Program Announcement are accurate and complete, they are provided for information only. The applicant bears sole responsibility to assure that the copy downloaded and/or printed from any other source is accurate and complete. Requests for forms and questions (administrative and technical) will be accepted and responded to up to 30 days prior to closing date of receipt of applications.

FOR FURTHER INFORMATION: Technical questions should be directed to Barbara Broman DHHS, ASPE, Telephone, (202) 690–6461 or E-Mail, bbroman@osaspe.dhhs.gov. Questions may also be faxed to (202) 690–5514. Written technical questions should be addressed to Ms. Broman at the following address: Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, 200 Independence Ave, SW, Room 450G, Washington, DC 20201.

Part I. Background

Although teen birth rates in the United States are declining, the teen birth rate continues to range between two and seven times higher than the teen birth rate in comparable Western industrialized nations. However, before large scale pregnancy prevention initiatives can be implemented, the current knowledge base on pregnancy prevention programs must be expanded to delineate which strategies are the most promising, which aspects of which programs demonstrate the strongest impact, and which programs are successful in affecting behavior across various communities and population characteristics, such as ethnicity and socioeconomic status. This project is designed to augment existing rigorous evaluations of teen pregnancy prevention interventions to further the understanding of the extent to which these interventions meet their goal of reducing teenage pregnancy.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104–193) signed by President Clinton on August 22, 1996 called for additional efforts to prevent teenage pregnancies and to assure that communities engage in local efforts to prevent teen pregnancy. DHHS responded to this call from Congress and the President by releasing the National Strategy to Prevent Teen Pregnancy in January 1997. The National Strategy builds on existing public and private-sector efforts and on initiatives in the new welfare law by helping provide the tools needed to develop more strategic and targeted approaches to preventing teen pregnancies. The goals of the Strategy include: Strengthening ongoing efforts across the nation through increasing opportunities through welfare reform; supporting promising approaches; building partnerships; improving data collection, research, and evaluation; and disseminating information on innovative and effective practices.

The Department supports a variety of programs to help communities develop teen pregnancy prevention strategies. However, since the multiple challenges adolescents face are often interrelated, programs that emphasize other high-risk behaviors (e.g., alcohol and drug abuse, school dropout) are also related to teen pregnancy prevention. Current Department efforts include family planning grants, maternal and child health programs, abstinence education, adolescent health programs, runaway and homeless youth programs, and alcohol and drug abuse prevention programs.

Department research, evaluation, and data activities in this area are extensive. Agencies involved include the Centers for Disease Control and Prevention/ National Center Health Statistics (NCHS), National Institutes of Health /National Institute of Child Health and Human Development (NICHD), and ASPE. Specifically, in 1995, ASPE funded Child Trends, Inc. to do a comprehensive review of the most recent literature on teen sexual behavior, pregnancy, and parenthood and the effectiveness of teen pregnancy prevention programs (*Beginning Too Soon: Adolescent Sexual Behavior, Pregnancy and Parenthood*). ASPE, along with NICHD and NCHS, also prepared the September 1995 *Report to Congress on Out-of-Wedlock Childbearing* requested by Senator Moynihan. The report includes the current status and trends in nonmarital childbearing and presents a series of supplemental papers from experts from various social science disciplines. DHHS' statistical and surveillance activities provide much needed data that support research throughout the country. However, there is still a great need to know more about which programs focused on preventing teen pregnancy change sexual behavior and what makes them achieve their program goals.

Numerous programs have been implemented, ranging from abstinence education to comprehensive, multi-faceted interventions that offer education, counseling, and a variety of support services. As documented in the Child Trends report referenced above, several broad conclusions can be drawn about the current state of the field of pregnancy prevention programs. First, interventions have generally not been informed by basic research studies or by theory, and this accounts for the incomplete state of the current knowledge regarding the success of interventions intended to affect adolescent sexual behavior and pregnancy. Second, most of the evaluations that have been conducted have been lacking in methodological and statistical rigor. Douglas Kirby's 1997 report *No Easy Answers*, prepared for the National Campaign to Prevent Teen Pregnancy, also concludes there is a need to continue to explore, develop and rigorously evaluate promising

approaches. This announcement looks to build on current evaluation studies, such as those included in the reports noted above, that are based on theory and existing research, using rigorous methods.

Part II—Purpose and Project Design

A. Purpose

The primary purpose of this announcement is to enhance existing teen pregnancy prevention program evaluations. As part of the DHHS' National Strategy to Prevent Teen Pregnancy we strive to better understand the effects of these programs by providing additional support to evaluations already in place. We are primarily interested in supporting enhancements to existing evaluations (e.g., follow-up to completed studies or nearly completed studies or enhanced data analysis). We do not expect to provide full funding for any study.

B. Project Design

Funding under this announcement is expected to be used to support existing rigorous evaluations of teen pregnancy prevention interventions. Given that we know there is no ''magic bullet'' in preventing teen pregnancy, ASPE does not prescribe specific types of interventions for evaluation, but rather invites varied approaches to advance understanding of teen pregnancy prevention efforts. While the methods for evaluations may differ, projects must be well designed and the methods must be adequate and appropriate to address the questions identified.

As discussed below in the Evaluation Criteria section, applicants must demonstrate prior experience in conducting evaluations of the scope, scale and topic area proposed. In making funding decisions, ASPE will consider an applicant organization's experience and the qualifications of researchers and staff.

There is a wide range of teen pregnancy prevention programs aimed at delaying the initiation of sexual activity, improving contraceptive use among sexually active adolescents, and preventing subsequent births among adolescent parents. Programs targeting each of these issues range from traditional sex education programs and interventions designed to improve an adolescent's decisionmaking and interpersonal skills, to contraceptive services programs designed to meet needs of young clients, to multi-faceted initiatives targeting a wide range of adolescent needs. Regardless of the type of approach, ASPE is interested in two main questions: First, have the targeted behaviors changed during the time period under study for the population targeted? Second, are there other possible causes for the behavior changes, if any are noted?

ASPE also seeks evidence as to which aspects of which programs demonstrate the strongest impact, and which programs are successful in affecting behavior across various populations that are diverse with respect to ethnicity and socioeconomic status.

As indicated above, we expect to provide funding to augment existing evaluations which already examine a specific type of teen pregnancy prevention intervention. However, ASPE does not intend to fund evaluations of abstinence-only programs under this announcement, given that a competitive contract award will be made to conduct an intensive rigorous evaluation of a selected number of abstinence-only programs funded under Section 510 of the Maternal and Child Health Block Grant. We are seeking to enhance evaluations of other programs including for example: curriculum-based sex education, school-based health centers, multi-component or youth development programs. These approaches are meant for illustrative purposes and to demonstrate our desire for additional evaluation information on a wide variety of teen pregnancy interventions.

Grantees must deliver a final report to ASPE at the completion of the project that can be disseminated by ASPE or its designee(s). The report must be reviewed for quality of content, formatting, and readability. The report, at a minimum, should contain a table of contents, executive summary, and full report.

In addition to the printed copies required under this grant, the contents of all reports must be delivered in a digital form that is reproducible on personal computers and office printers.

Electronic copy shall be delivered on 3½″ disks formatted in the DOS (FAT) format.

Text shall be entered and formatted in any of the commonly available commercial word processing programs marketed by the IBM®, Corel®, or Microsoft® Corporations. Lengthy documents should be organized into chapters and a separate file should be provided for each chapter. The title page, table of contents, and other front matter shall be in a separate file.

Tables of data shall be delivered in a commonly available commercial spreadsheet program marketed by the IBM®, Corel®, or Microsoft® Corporations. Each table shall be delivered as a separate file on the disk and not embedded in the word processing file even though tables may have been merged with the text to form a single file for printing purposes. File names should contain consecutive numbers that correspond to the numerical labels used in the printed version. For example, Chapter 4, Table 7 could be designated C4T7.tbl.

Graphic figures such as bar and line charts, diagrams, and other drawings shall be delivered in the Graphics Interchange Format (GIF) or the JPG (Joint Photographic Experts Group) format. Even though the graphical elements may have been merged with the text to form a single file for printing purposes, each graphical image shall be delivered as a separate file on the disk and must not be embedded in a word processing, spreadsheet, slide show or other composite file.

Documents that have been designed to include visually complex elements, two or more colors, specialized drawings, photographic images, or other artwork, or which have been specially prepared for offset printing, shall be delivered in electronic form as one or more Postscript® files. All the files necessary for reproduction shall be provided including templates, indices, etc.

C. Eligible Applicants and Funding

ASPE anticipates providing up to a total of $300,000 for two to three approved projects in FY 98, subject to the availability of funds. All grants will be awarded by September 30, 1998. We expect to make one-time awards for projects. There are currently no budgeted future year costs to this initiative, though if funding becomes available in FY 1998 or FY 1999 additional grants could be funded or some of this year's grants could be extended to allow additional analysis.

Applications may be submitted by for-profit and non-profit organizations, public and private, such as universities, colleges, hospitals, laboratories, units of State and local governments, health boards, public health departments, volunteer organizations or clinics that are either in the process of conducting an evaluation of a teen pregnancy prevention intervention or that have completed an evaluation of such program within the past three years and would be appropriate for follow-up. However, to reach scientifically valid conclusions about effectiveness, evaluations most appropriate for this funding should include the following criteria: (1) A sufficiently large sample size, (2) long-term follow-up, (3) measures of behavior rather than just attitudes and beliefs, (4) a comparison or control group (5) proper statistical

analyses, and 6) independent evaluators. Applicant should explain further in narrative if any of these criteria are not met.

ASPE does not expect to fully fund a new evaluation. To maximize the benefit of the Federal investment to advance knowledge about teen pregnancy prevention, applicants must provide evidence of other sources of funding for the project (e.g, applicant resources or private foundation funding). The applicant should provide budget statements from previous awards that contribute to the completion of the evaluation. The applicant should describe the level, sources and duration of non-Federal funds or resources committed to the project, and should clearly state how ASPE funds will be used to enhance the evaluation.

Part III. Application Preparation and Evaluation Criteria

This section contains information on the preparation of applications for submission under this announcement, on the forms necessary for submission, and on the evaluation criteria under which the applications will be reviewed. Potential applicants should read this section carefully in conjunction with information provided above. The application must contain the required federal forms, title page, table of contents, and the sections listed below. All pages of the narrative should be numbered. The application should include the following elements:

1. *Abstract:* A one page summary of the proposed project.

2. *Goals and objectives of the project:* An overview that describes (1) specific research questions to be investigated, (2) the project and methods to be employed, and (3) knowledge and information to be gained from the project by the applicant, the government, and the research community.

3. *Methodology and Design:* Provide a description and justification of how the proposed evaluation enhancement will be implemented, including methodologies, chosen approach, data, and proposed evaluation and analytic plans including a description of the overall project and how the enhancement relates to the overall project. Address the ability to generalize the findings from this study to the national problem. Identify theoretical or empirical basis for the methodology and approach proposed. Specify how the study will protect the confidentiality of subjects and the information they provide. Describe how the project will address potential difficulties in studying the youth population such as recruitment and retention as well as language and cultural differences, if applicable. Indicate the types of assurances that are provided regarding protection of human subjects, in areas like confidentiality, informed consent, etc.

4. *Experience, capacity, qualifications, and use of staff:* Briefly describe the applicant's organizational capabilities and experience in conducting pertinent evaluation projects. Identify key staff who are expected to carry out the proposed evaluation enhancement and provide a curriculum vita for each person. Provide a discussion of which key staff are already involved in the existing evaluation project and a detailed description of additional responsibilities of that staff for the enhancement or additional staff, if applicable. If the applicant plans to contract for outside staff for this project, the relationship and commitment of these people to the applicant organization should be demonstrated. Applicants should demonstrate access to computer hardware and software for storing and analyzing their data necessary to complete this project.

5. *Work plan:* A work plan should be included which describes the start and end dates of the overall project and the proposed enhancement, the responsibilities of each of the key staff, and a time line which indicates the sequence of tasks necessary for the completion of the overall evaluation and the proposed enhancement. It should identify other time commitments of key staff members such as other projects and/or teaching or managerial responsibilities. The work plan should include a discussion of plans for dissemination of the results of the study including the findings from the enhancement, e.g., articles in journals and presentations at conferences.

6. *Budget:* Applicants must submit a request for federal funds using Standard Form 424A and include a detailed breakdown of Federal line items. A narrative explanation of the budget should be included which explains fund usage in more detail. The applicant should clearly state how the funds associated with this announcement will be used and describe how these funds will be used for purposes that would not otherwise be incorporated within the project. The applicant should document equipment purchase, if applicable. The applicant should also document the level of funding from other sources and how these funds have been or will be utilized. The applicant should provide budget statements from previous award/s that contribute to the completion of the evaluation.

Review Process and Funding Information

A independent review panel will review and score all applications that are submitted by the deadline date and which meet the screening criteria (all information and documents as required by this Announcement.) The panel will review the application using the evaluation criteria listed below to score each application. These review results will be the primary element used by the Assistant Secretary in making funding decisions. The Department reserves the option to discuss applications with other Federal or State staff, specialists, experts and the general public. Comments from these sources, along with those of the reviewers, will be kept from inappropriate disclosure and may be considered in making an award decision

State Single Point of Contact (E.O. 12372)

DHHS has determined that this program is not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' because it is a program that is national in scope and does not directly affect State and local governments. Applicants are not required to seek intergovernmental review of their applications within the constraints of E.O. 12372.

Deadline for Submission of Applications

The closing date for submission of applications under this announcement is July 6, 1998. Applications must be postmarked or hand delivered to the application receipt point no later than 5 p.m. on July 6, 1998. Hand-delivered applications will be accepted Monday through Friday, excluding federal holidays, prior to and on July 6, 1998, during the working hours of 9 a.m. to 5 p.m. in the lobby of the Hubert H. Humphrey building located at 200 Independence Avenue, SW. in Washington, DC. When hand-delivering an application, call (202) 690–8794 from the lobby for pick up. A staff person will be available to receive applications.

An application will be considered as meeting the deadline if it is either: (1) Received at, or hand-delivered to, the mailing address on or before July 6, 1998, or (2) postmarked before midnight of the deadline date, July 6, 1998 and received in time to be considered during the competitive review process.

When mailing applications, applicants are strongly advised to obtain a legibly dated receipt from a

commercial carrier (such as UPS, Federal Express, etc.) or from the U.S. Postal Service as proof of mailing by the deadline date (Applicants are cautioned that express/overnight mail services do not always deliver as agreed). If there is a question as to when an application was mailed, applicants will be asked to provide proof of mailing by the deadline date. When proof is not provided, an application will not be considered for funding. Private metered postmarks are not acceptable as proof of timely mailing.

A. Late Applications

Applications which do not meet the July 6, 1998 deadline are considered late applications and will not be considered or reviewed in the current competition. DHHS will send a letter to this effect to each late applicant.

B. Extension of Deadlines

DHHS reserves the right to extend the deadline for all proposals due to acts of God, such as floods, hurricanes, or earthquakes; or if there is a widespread disruption of the mail; or if DHHS determines a deadline extension to be in the best interest of the government. However, DHHS will not waive or extend the deadline for any applicant unless the deadline is waived or extended for all applicants.

C. Initial Screening

Applications will be initially screened for compliance with the timeliness, completeness, and cost-sharing requirements. If judged in compliance, the application then will be reviewed by government personnel, augmented by outside experts where appropriate.

Mailing Address and Application Forms

Application instructions and forms should be requested from and submitted to: Grants Officer, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, 200 Independence Avenue, SW., Room 405F, Hubert H. Humphrey Building, Washington, DC 20201, Phone (202) 690–8794. Copies of this program announcement and many of the required forms may also be obtained electronically at the ASPE World Wide Web Page http://aspe.os.dhhs.gov. You may fax your request to (202) 690–6518 to the attention of the Grants Officer. Application submissions may not be faxed or sent electronically.

The printed **Federal Register** notice is the only official program announcement. Although reasonable efforts are taken to assure that the files on the ASPE World Wide Web Page containing electronic copies of this Program Announcement are accurate and complete, they are provided for information only. The applicant bears sole responsibility to assure that the copy downloaded and/or printed from any other source is accurate and complete. Requests for forms and questions (administrative and technical) will be accepted and responded to up to 30 days prior to closing date of receipt of applications.

Also see section entitled ''Components of a Complete Application.'' All of these documents must accompany the application package.

Length of Application

Applications should be as brief as possible but should assure successful communication of the applicant's proposal to the reviewers. In no case shall an application (excluding the resumes, appendix and other appropriate attachments) be longer than 20 single spaced pages. Applications should be neither unduly elaborate nor contain voluminous supporting documentation. Videotapes and cassette tapes may not be included as part of a grant application for panel review. A signed original and two (2) copies of each application are required. Applicants are encouraged to send an additional four (4) copies of their application to ease processing, but applicants will not be penalized if these extra copies are not included. The application's Form 424 must be signed by the applicant's representative authorized to act with the full authority on behalf of the applicant

Review Process and Evaluation Criteria

Selection of the successful applicant will be based on the technical and financial criteria described in this announcement. Reviewers will determine the strengths and weaknesses of each application in terms of the evaluation criteria listed below, provide comments and assign numerical scores. The review panel will prepare a summary of all applicant score and strengths/weaknesses and recommendations and submit it to ASPE for final decisions on the award.

The point value following each criterion heading indicates the maximum numerical weight that each section will be given in the review process. An unacceptable rating on any individual criterion may render the application unacceptable. Consequently, applicants should take care to ensure that all criteria are fully addressed in the applications. Applications will be judged according to the criteria set forth below:

1. *Goals, Objectives, and Potential Usefulness of the Analyses (20 points).* The potential usefulness of the project and how the anticipated results of the proposed project will advance knowledge and development in the field of teen pregnancy prevention. Applicants will be judged on the extent to which the proposed evaluative approach addresses the interests of ASPE and whether findings will contribute to the current knowledge base on teen pregnancy prevention programs and which strategies are the most promising.

2. *Quality and Soundness of Methodology and Evaluation Design (40 points).* The appropriateness, soundness, and cost effectiveness of the methodology, including the evaluation design, statistical techniques, analytical strategies, selection of existing data sets, and other procedures. Reviewers will judge the overall program/intervention that is being evaluated, the existing evaluation design and the proposed enhancement to that evaluation funded by this announcement. Reviewers will consider the following about the program/intervention: (1) Period of time the program has been in existence, (2) target population, (3) theoretical base of program, (4) geographical location, and (5) intensiveness.

Reviewers will consider the following in assessing the existing evaluation and the proposed enhancement to the evaluation: (1) A sufficiently large sample size, (2) long-term follow-up, (3) measures of behavior rather than just attitudes and beliefs, (4) a comparison or control group (5) proper statistical analyses, and an (6) independent evaluators. Applicant should explain further if any of these criteria are not met.

Reviewers will also judge the ability of the applicant's proposed methodology to reliably attribute impacts. Reviewers will consider if the types of assurances regarding protection of human subjects, in areas like confidentiality, informed consent, etc. are provided.

3. *Qualifications of Personnel and Organizational Capacity (20 points).* The qualifications of the project personnel for conducting the proposed evaluation as evidenced by professional training and experience, and the capacity of the organization to provide the infrastructure and support necessary for the project. Reviewers will evaluate the applicant's principal investigator and staff on evaluation experience and their demonstrated evaluation skills. Principal investigator and staff time

commitments also will be a factor in the evaluation.

4. *Ability of the Work Plan and Budget to Successfully Achieve the Project's Objectives (20 points).* Reviewers will examine if the work plan and budget are reasonable and sufficient to ensure timely implementation and completion of the evaluation enhancement and whether the applicant demonstrates an adequate level of understanding by the applicant of the practical problems of conducting such a project. Reviewers will judge whether there is an ''added benefit'' from providing these funds. In other words, is the applicant using federal funds for purposes that would not otherwise be funded? Reviewers will also consider whether the budget assures an efficient and effective allocation of funds to achieve the objectives of this solicitation and whether the application has additional funding from other sources. Eligible projects must document sufficient funding for program operation during the period of the evaluation and also document sufficient funding for the existing evaluation component. The applicant should provide budget statements from previous award/s that contribute to the completion of the evaluation. Applicants without these funds or the documentation that certifies these funds will be ineligible to receive any points in this category. Reviewers will judge if the applicant has adequately demonstrated its ability to present findings and produce a final report that can be widely disseminated by ASPE or its designee (s).

Disposition of Applications

1. Approval, Disapproval, or Deferral

On the basis of the review of the application, the Assistant Secretary will either: (a) Approve the application as a whole or in part; (b) disapprove the application; or defer action on the application for such reasons as lack of funds or a need for further review. However, nothing commits the Assistant Secretary to making an award or limits the ability to make multiple award.

2. Notification of Disposition

The Assistant Secretary for Planning and Evaluation will notify the applicants of the disposition of their applications. If approved, a signed notification of the grant award will be sent to the business office named in the ASPE checklist.

Federal Domestic Assistance Catalog

The Catalog of Federal Domestic Assistance number is 93–239.

Components of a Complete Application

A complete application consists of the following items in this order:

1. Application for Federal Assistance (Standard Form 424);
2. Budget Information—Non-construction Programs (Standard Form 424A);
3. Assurances—Non-construction Programs (Standard Form 424B);
4. Table of Contents;
5. Budget Justification for Section B Budget Categories;
6. Proof of Non-Profit Status, if appropriate;
7. Copy of the applicant's Approved Indirect Cost Rate Agreement;
8. Project Narrative Statement;
9. Any appendices or attachments;
10. Certification Regarding Drug-Free Workplace;
11. Certification Regarding Debarment, Suspension, or other Responsibility Matters;
12. Certification and, if necessary, Disclosure Regarding Lobbying;
13. Supplement to Section II—Key Personnel
14. Application for Federal Assistance Checklist

Margaret A. Hamburg,

Assistant Secretary for Planning and Evaluation.

[FR Doc. 98–11963 Filed 5–5–98; 8:45 am]

BILLING CODE 4151–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of National AIDS Policy

Notice of Meeting of the Presidential Advisory Council on HIV/AIDS and Its Subcommittees

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Presidential Advisory Council on HIV/AIDS on June 15–18, 1998, at the Madison Hotel, Washington, DC. The meeting of the Presidential Advisory Council on HIV/AIDS will take place on Monday, June 15, Tuesday, June 16, Wednesday, June 17 and Thursday, June 18 from 8:30 am to 5:30 pm at the Madison Hotel, Fifteenth and M Streets, NW, Washington, DC 20005. The meetings will be open to the public.

The purpose of the subcommittee meetings will be to finalize any recommendations and assess the status of previous recommendations made to the administration. The agenda of the Presidential Advisory Council on HIV/AIDS may include presentations from the Council's subcommittees, Research, Services, Prevention, International, Discrimination, Communities for African and Latino Descent, and Prison Issues.

Daniel C. Montoya, Executive Director, Presidential Advisory Council on HIV and AIDS, Office of National AIDS Policy, 736 Jackson Place, NW, Washington, D.C. 20503, Phone (202) 456–2437, Fax (202) 456–2438, will furnish the meeting agenda and roster of committee members upon request. Any individual who requires special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ann Borlo at (301) 986–4870 no later than May 15, 1998.

Dated: April 24, 1998.

Daniel C. Montoya,

Executive Director, Presidential Advisory Council on HIV and AIDS, Office of National AIDS Policy.

[FR Doc. 98–11960 Filed 5–5–98; 8:45 am]

BILLING CODE 3195–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Federal Financial Participation in State Assistance Expenditures; Federal Matching Shares for Aid to Families With Dependent Children, Medicaid, and Aid to Aged, Blind, or Disabled Persons for October 1, 1997 Through October 1, 1998 and for October 1, 1998 Through September 30, 1999; Clarification and Correction

ACTION: Notice of clarification and correction.

SUMMARY: This Notice clarifies the status of Alaska and the District of Columbia shown in the Tables of Federal Medical Assistance percentages calculated for determining the amount of Federal matching in State welfare and medical expenditures for Fiscal Years 1998 and 1999 and corrects an error for the District of Columbia for 1999. For Medicaid and for the Child Health Insurance Program, the percentages given in the notices are correct. For other uses, including the remaining Title IV programs, the Alaskan percentage for 1998 should be 50.00% and for 1999 should be 52.26%. The District of Columbia percentage should be 50.00% for both years.

EFFECTIVE DATES: The corrected percentages will be effective for each of the 4 quarter-year periods in the period beginning October 1, 1997 and ending September 30, 1998 and for each of the 4 quarter-year periods in the period beginning October 1, 1998 and ending September 30, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Gene Moyer, Office of Health Policy, Office of the Assistant Secretary for Planning and Evaluation, Room 442E Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, D.C. 20201, Telephone (202) 690–7861.

SUPPLEMENTARY INFORMATION: The Balanced Budget Act, passed in July 1997, specified new Federal Medical Assistance Percentages for Alaska and for the District of Columbia for fiscal years 1998, 1999, and 2000. On January 29, 1997, in Notice 97–2231 beginning on page 4293, the Department published the 1998 percentages. On September 12, 1997, in Notice 97–24324 beginning on page 48098, the Department published updated percentages for Alaska and the District of Columbia for purposes of Medicaid and the New Children's Health Insurance Program. On November 24, 1997, in Notice 97–30832 beginning on page 62613, the Office of the Secretary announced the percentages for use in determining the amount of Federal matching in State welfare and medical expenditures for October 1, 1998 through September 30, 1999. The FY1999 Notice provided a Table on pages 62614–62615 that listed Federal Medical Assistance percentages and Enhanced Federal Medical Assistance percentages for each of the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands. The Federal Medical Assistance Percentage for Alaska is listed as 59.80% and for the District of Columbia as 70.00%. The enhanced percentages were 71.86% for Alaska and 79.00% for the District of Columbia. These are the correct percentages for Medicaid and Children's Health Insurance. For Title IV and perhaps some other programs, the percentages for Alaska and the District of Columbia were to be calculated in the usual way.

The FY 1999 Notice recognized this for the State of Alaska. The second sentence in the second footnote to the table read ''For other purposes, the percentage for Alaska is 52.26%.'' The error was that the sentence should have included the District of Columbia and should have been more specific about the uses of the standard rates. The sentence should have read ''For other purposes, including programs remaining in Title IV of the Act, the percentage for Alaska is 52.26% and for the District of Columbia is 50.00%.''

Dated: April 19, 1998.

Neil J. Stillman,

Assistant Secretary for Information Resource Management.

[FR Doc. 98–11959 Filed 5–5–98; 8:45 am]

BILLING CODE 4110–60–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement 98036]

Violence Against Women Prevention Research Center (VAWPRC) Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year 1998 cooperative agreement funds to establish a Violence Against Women Prevention Research Center (VAWPRC). This program addresses the Healthy People 2000 priority area of Violent and Abusive Behavior.

The purposes of the Prevention Research Center are to:

1. Support research on prevention and policy issues relevant to Violence Against Women;
2. Encourage professionals from a spectrum of disciplines such as public health, criminal justice, health care, behavioral and social sciences, education, law enforcement, and others to undertake and collaborate in research and evaluation activities for preventing violence against women;
3. Foster interdisciplinary collaboration for the purpose of developing integrated theoretical and scientific models about the nature of violence against women, its relationship to other forms of violence and injury, and effective prevention strategies;
4. Integrate research on child maltreatment and other forms of violence into the study of violence against women;
5. Foster creative and innovative approaches to collaborative research and evaluation efforts among research institutions and sexual assault and intimate partner violence service providers;
6. Develop a knowledge base for evaluating current and new programs, strategies, and policies designed to prevent or control violence against women;
7. Create training programs that develop interdisciplinary knowledge and expertise among new investigators and investigators retraining in the field. These efforts should emphasize training researchers in evaluation methodology and developing the research skills of scientists from racial and ethnic minorities and other historically under represented and underserved groups;
8. Provide technical assistance to other investigators around methodological issues related to the field of violence against women; and
9. Provide a national focus for interdisciplinary public fora designed to disseminate research knowledge about violence against women.

For additional information please see Addendum 2, Background and Definitions (included in the application package).

B. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies. Thus, universities, colleges, research institutions, hospitals, and other public and private nonprofit organizations, State and local governments or their bona fide agents, and federally recognized Indian tribal governments, Indian tribes or Indian tribal organizations.

Note: Pub. L. 104–65, which became effective January 1, 1996, states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $600,000 is available in FY 1998 to fund one (1) cooperative agreement. It is expected that the award will begin on or about September 1, 1998 and will be made for a 12-month budget period within a project period not to exceed five (5) years. Funding estimates may vary and are subject to change and availability of funds.

Non-competing continuation awards for new budget periods within the approved project period will be made on the basis of satisfactory progress as evidenced by required reports and site visits.

D. Program Requirements

1. Applicants must provide a Principal Investigator (Director) who has specific authority and responsibility to carry out the project. Applicants must demonstrate high level institutional support for the Prevention Research Center (e.g., from the dean of a school, vice-president of a university, or a commissioner of health). The Principal Investigator must have no less than 20 percent effort devoted solely to this

project with an anticipated range of 20 to 50 percent of time.

2. Applicants must provide assurances that a full-time Program Manager will be hired and will devote 100 percent time to this project.

E. Cooperative Activities

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for the activities listed under 2. (CDC Activities).

1. Recipient Activities

a. Design, implement, and assess a Violence Against Women Prevention Research Center;

b. Foster creative and innovative approaches to collaborative research and evaluation efforts among research institutions and service providers;

c. Develop and disseminate a knowledge base for evaluating current and new programs, strategies, and policies designed to prevent violence against women;

d. Develop interdisciplinary knowledge and expertise among new investigators, and investigators retraining in this field. Emphasis should be given to training investigators from racial and ethnic minorities and other historically under represented and underserved groups;

e. Foster interdisciplinary collaboration for developing integrated theoretical and sound scientific models about the nature of violence against women, its relationship to other forms of violence and injury, and effective prevention strategies; and

f. Collaborate with the CDC on these activities, and the activities listed below.

2. CDC Activities

a. Collaborate in establishing research and evaluation priorities, designing program protocols, and evaluating the cost, process(es), and outcomes resulting from the Center's activities.

b. Collaborate in establishing reporting systems to monitor the progress of the Center's activities.

c. Collaborate with Center staff in identifying up-to-date scientific and programmatic information about violence against women prevention.

F. Application Content

Use the information in the Program Requirements, Other Requirements, Evaluation Criteria sections and the Errata Sheet (Addendum 3, included in the application package) to develop the application content. Your application will be evaluated on the criteria listed so it is important to follow them in laying out your program plan. Each application should be limited to 40 pages, excluding attachments.

The application should include the following sections:

1. Abstract: (page 2–PHS398).

A summary of the proposed Prevention Research Center, outlining its goals and objectives, its working partners and collaborators, the proposed research, evaluation, training and collaborative activities which will be undertaken, and the procedure by which the Center will assess the achievement of its goals.

2. Research Capacity: (Research Plan items A–I:PHS398).

The applicant should provide details about the Center's capacity for conducting a Violence Against Women research program. In particular, the applicants should:

(a) Demonstrate their experience in successfully designing, implementing, and evaluating Violence Against Women prevention programs, and/or conducting, publishing, and disseminating Violence Against Women research and evaluation studies.

(b) Outline the vision of the Center and how the proposed collaboration between researchers will contribute to the overall goals and objectives of the Center; describe how the collaborative activities of the applicants were or will be developed and how the proposed Center will expand and develop on work that has already been undertaken by the applicant(s) and other researchers.

(c) Describe the proposed focus of the Center's research and its relevance to the field of VAW, particularly in terms of the proposed interdisciplinary collaboration. Provide sufficient detail to allow assessment of the scientific merit of the research activities. Indicate how results of the proposed research program will advance the field and have relevance for the prevention and control of violence against women.

Within this section, applications must include the following: *Women, Racial, and Ethnic Minorities:* describing the proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

3. Training Capacity

The applicant should outline plans for attracting and involving high quality students (undergraduate, graduate and postdoctoral) in Center activities, and identify how participants will receive interdisciplinary training and experience using multiple research methodologies. The applicant should emphasize how scientists from racial and ethnic minorities and other under represented and underserved populations will be encouraged to participate in activities of the Center.

4. Management Capcity

The applicant should provide a description of the key staff, their qualifications and experience in the field of violence against women, and the role each person will play in designing, implementing, and assessing the Prevention Research Center's activities. The applicant should clearly describe how disciplines will be integrated to achieve the goals and objectives of the Prevention Research Center. The applicant should provide resumes of key staff as an appendix. An organizational chart should be included that shows the Center's proposed program structure, its relationship to the broader institution of which it is a part, and if applicable, operational lines of authority with collaborating organizations. If following the Consortium model, the applicant should outline the procedures for focusing consortium activities, selecting and integrating research across institutions, allocating funds and other resources, and managing the involvement of other research groups. The applicant should show where Consortium partners are housed within existing organizations.

5. Plan of Operation

The applicant should provide a plan of operations which indicates how the goals and objectives of the Prevention Research Center will be met. The goals and objectives should be specific, relevant, achievable, time-phased, and should be related to the purposes of this announcement (see **PURPOSE** section). The plan of operation should describe the program activities for achieving the Prevention Research Center's goals and objectives, and specifically who among the core staff and collaborating partners *is responsible for doing what and when.* A detailed timeline should be provided illustrating concurrent activities.

Applicants should also demonstrate that the facilities and resources are sufficient to conduct the Center's research and training activities and should include: sufficient office space to house staff and conduct training, adequate furniture to accommodate staff, conduct seminars; adequate training equipment for presentations, such as overhead and slide projectors, and video cassette recorder; and computer hardware and software resources for data entry, storage, analysis, and retrieval.

6. Assessment Plan

The applicant should include a detailed plan for assessing the Violence Against Women Prevention Research Center's progress toward achieving its stated goals and objectives, as they relate to the purposes of this announcement. (See **PURPOSE** section)

7. Collaboration

The applicant should specify the exact nature of the contribution each of the working partners makes to the Prevention Research Center's program, e.g., program planning and design, training, space, instructors and other faculty, curriculum development and evaluation, program evaluation activities, etc. Applicants drawn from different disciplines is not, in itself, sufficient evidence of multidisciplinary collaboration. A more important indicator is the extent to which research from different disciplines will be integrated.

The application must also show evidence of collaboration with practitioners and victim advocates working in the intimate partner violence and sexual assault field. This collaboration may be with organizations such as National/State Domestic Violence and Sexual Assault Coalitions. Collaboration may also be undertaken with governmental agencies, other institutions of higher learning, and other organizations making substantive contributions to advancing the field of violence against women.

Letters of support or memoranda of understanding should state the specific contribution, activities to be undertaken, or resources to be provided by all collaborators.

8. Proposed Budget

The application must provide a detailed proposed first-year budget and a narrative justification. The budget requests should be reasonable and consistent with the intended use of cooperative agreement funds.

9. Human Subjects

Indicate whether human subjects will be involved, and if so, how they will be protected, and describe the review process which govern their participation.

G. Submission and Deadline

Submit the original and five copies of PHS 398 (OMB Number 0925–0001) and adhere to the instructions on the Errata Instruction sheet for PHS 398). Forms are in the application kit.

On or before June 30, 1998, submit to: Lisa T. Garbarino, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office Announcement #98036, Centers for Disease Control and Prevention (CDC) Mailstop E–13, Room 300, 255 East Paces Ferry Road, N.E., Atlanta, Georgia 30305–2209.

Applications shall be considered as meeting the deadline if they are received at the above address on or before the deadline date; or sent on or before the deadline date, and received in time for the review process. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

H. Evaluation Criteria

Each application will be evaluated individually against the following criteria: (maximum 100 points):

1. Research Capacity (25 points)

The degree to which the applicant:

a. demonstrates experience in successfully designing, implementing, and evaluating Violence Against Women prevention programs, and/or conducting, publishing, and disseminating Violence Against Women research and evaluation studies.

b. outlines the vision of the Center and how the proposed collaboration will contribute to the overall goals and objectives of the Center.

c. describes how the collaborative activities of the applicants were or will be developed and how the proposed Center will expand and develop on work that has already been undertaken by the applicants and other researchers.

d. describes the proposed focus of the Center's research and its relevance, particularly in terms of the proposed interdisciplinary collaboration, integration of fields of violence research, and multiple methodologies.

e. provides sufficient detail to allow assessment of the scientific merit of the research activities and indicated how results of the proposed research program will advance the violence against women field and have relevance for the prevention and control of violence against women.

f. describes the facilities available for conducting the planned research and supporting research staff (e.g., computer facilities, office space, data management and statistical support).

g. The degree to which the applicant has met the CDC policy requirements regarding the inclusion of women, and ethnic and racial groups in the proposed center.

2. Training Capacity (20 points)

The degree to which the applicant:

a. outlines plans for attracting and involving high quality students (undergraduate, graduate and postdoctoral) in Center activities and how participants will receive interdisciplinary training and experience using multiple research methodologies.

b. addresses the needs of scientists from racial and ethnic minorities and other under-represented and underserved populations and will encourage them to participate in activities of the Center.

c. describes the facilities available for delivering training and supporting students (e.g., computer facilities, office space, audiovisual and other training related equipment).

3. Management Capacity (10 points)

The degree to which the applicant:

a. demonstrates that the Principal Investigator has the vision, professional standing, research expertise and managerial qualifications to lead the Center.

b. describes the qualifications and experience of key staff and outlined the role each person will play in designing, implementing, and assessing the Center's activities.

c. describes how disciplines will be integrated to achieve the goals and objectives of the Center.

d. illustrates the Center's proposed program structure (organizational chart), its relationship to the broader institution of which it is a part, and if applicable, operational lines of authority with collaborating organizations. If following the Consortium model, how effectively did the applicant outline the procedures for focusing consortium activities, selecting and integrating research across institutions, allocating funds and other resources, and managing the involvement of other research groups.

4. Plan of Operation (15 points)

The degree to which the applicant:

a. outlines goals and objectives that are specific, relevant, achievable, time-phased, and related to the purposes of this program announcement (See Purpose section).

b. describes the program activities for achieving the Center's goals and objectives, and specifically who among the core staff and collaborating partners *is responsible for doing what and when.*

c. provides a timeline which illustrates proposed concurrent activities.

5. Assessment Plan (10 points)

The degree to which the applicant provides a detailed plan for assessing the Violence Against Women Prevention Research Center's progress toward achieving its stated goals and objectives.

6. Collaboration (20 points)

The degree to which the applicant:

a. describes the collaboration they will undertake with sexual assault and intimate partner violence service providers, victim advocates, policy makers, and other key stakeholders in the field.

b. includes letters of support or memoranda of understanding stating the specific contribution that each collaborator intends to make to the Center's program.

7. Proposed Budget: (Not Scored)

Did the application provide a detailed proposed first-year budget and a narrative justification? Are budget requests reasonable and consistent with the intended use of cooperative agreement funds? (See PURPOSE section)

8. Human Subjects (Not Scored)

The extent to which the applicant complies with the Department of Health and Human Services Regulations (45 CFR Part 46) regarding the protection of human subjects.

Other Requirements

Technical Reporting Requirements.

Provide CDC with original plus two copies of:

1. progress report semi-annually;
2. financial status report, no more than 90 days after the end of the budget period; and
3. final financial report and performance report, no more than 90 days after the end of the project period.

Send all reports to: Lisa T. Garbarino, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office Centers for Disease Control and Prevention (CDC), Mailstop E–13, Room 300, 255 East Paces Ferry Road, N.E. Atlanta, Georgia 30305–2209.

The following additional requirements are applicable to this program. For a complete description of each see Addendum 1 (included in the application package).

AR98–1 Human Subjects Certification.
AR98–2 Requirements for inclusion of Women and Racial and Ethnic Minorities in Research.
AR98–9 Paperwork Reduction Act Requirements.
AR98–10 Smoke-Free Workplace Requirement.
AR98–11 Healthy People 2000.
AR98–12 Lobbying Restrictions.
AR98–13 Prohibition on Use of CDC funds for Certain Gun Control Activities.

Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 391(a) and 393(a) of the Public Health Service Act, [42 U.S.C. 280b(a), and 280b–1a] as amended. The catalog of Federal Domestic Assistance number is 93.136.

Where To Obtain Additional Information

Please refer to Program Announcement 98036 when you request information. For a complete program description, information on application procedures, an application package, and business management technical assistance contact: Lisa T. Garbarino, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office Centers for Disease Control and Prevention (CDC) Mailstop E–13, Room 300, 255 East Paces Ferry Road, N.E. Atlanta, Georgia 30305–2209, Telephone: (404) 842–6796. See also the CDC home page on the Internet: http://www.cdc.gov.

For program technical assistance contact: Denise Johnson and Joyce McCurdy, Centers for Disease Control and Prevention (CDC), National Center for Injury Prevention and Control, Division of Violence Prevention, Mailstop K–60, 1600 Clifton Road, N.E., Atlanta, Georgia, 30333, Telephone: (770) 488–4410.

Dated: April 30, 1998.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–11967 Filed 5–5–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

ICD–9–CM Coordination and Maintenance Committee; Meeting; National Center for Health Statistics (NCHS), Data Policy and Standards Staff Announces the Following Meeting

Name: ICD–9–CM Coordination and Maintenance Committee Meeting (Vols. 1, 2 & 3 (Diagnosis & Procedures)).

Time And Dates: 9 a.m.–4 p.m., Thursday, June 4, 1998.

Place: Health Care Financing Administration, Auditorium, 7500 Security Boulevard, Baltimore, Maryland.

Status: Open to the public.

Purpose: The ICD–9–CM Coordination and Maintenance (C&M) Committee will hold its first meeting of the 1998 cycle on Thursday June 4, 1998. The C&M meeting is a public forum for the presentation of proposed modifications to the International Classification of Diseases, Ninth-Revision, Clinical Modification.

Matters To Be Discussed: Agenda items include:

Update on ICD–10–CM
Nodular prostate
Status-post prematurity
Amputee NOS
Uterine size-date discrepancy
Unspecified adverse effect of drug
Adult failure to thrive
Reason for visit to dialysis centers
Addenda
Report on final draft of ICD–10–PCS and testing results.

Contracts for Additional Information: Amy L. Blum, 301/436–7050 ext. 164 (diagnosis), or Amy Gruber 410/786–1542 (procedures), NCHS, CDC, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782.

Dated: April 30, 1998.

Julia M. Fuller,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC)

[FR Doc. 98–11974 Filed 5–5–98; 8:45 am]

BILLING CODE 4160–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Recordkeeping/Reporting Requirements Under Emergency Review by the Office of Management and Budget (OMB)

Title: TANF High Performance Bonus Report for Fiscal Year 1999 and Emergency TANF Data Report [previously approved OMB Number 0970–0164].

OMB No.: New.

Description: Pub. L. 104–193 (the Personal Responsibility and Work Opportunity Reconciliation Act of 1996) established the Temporary Assistance for Needy Families (TANF) Program. It also included provisions for rewarding States which attain the highest levels of success in achieving the legislative goals of that program. The purpose of this collection is to obtain data upon which to base the computations for measuring State performance in meeting those goals and for allocating the bonus grant funds appropriated under the law.

Respondents: States, Puerto Rico, Guam, the Virgin Islands, and the District of Columbia.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden per respondent	Total burden hours
TANF High Performance Bonus Report (ACF–200)	54	4	14	3,024
Emergency TANF Data Report (ACF–198)	17	4	218.5	14,858

Estimated Total Burden Hours: 17,882.

Note: Competition for a High Performance Bonus is optional. This estimate assumes that all 50 States, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands would apply and be required to submit the TANF High Performance Bonus Report; however, only those competing jurisdictions operating separate State programs comparable to TANF would be required to submit the Emergency TANF Data Report for those separate State programs; those competing jurisdictions where the separate State programs are not comparable to the TANF program or would be required to submit other supplement data.

Additional Information

ACF is requesting that OMB grant a 180 day approval for this information collection under procedures for emergency processing by June 1, 1998. A copy of this information collection, with applicable supporting documentation, may be obtained by calling the Administration for Children and Families, Acting Reports Clearance Officer, Bob Sargis at (202) 690–7275.

Comments and questions about the information collection described above should be directed to the Office of Information and Regulatory Affairs prior to June 1, 1998, Attn: OMB Desk Officer of ACF, Office of Management and Budget, Paperwork Reduction Project, 725 17th Street N.W., Washington, D.C. 20503, (202) 690–7275.

Dated: April 29, 1998.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 98–11961 Filed 5–5–98; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0451]

Microbial Safety of Produce; Notice of Public Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing three public meetings to discuss the President's initiative to ensure the safety of imported and domestic fruits and vegetables and other foods, and specifically the microbial safety of produce. The meetings are intended to give an overview of, and obtain comment on, the general draft guide entitled ''Guidance for Industry: Guide to Minimize Microbial Food Safety Hazards for Fresh Fruits and Vegetables'' (the proposed guide). One of the meetings will focus primarily on obtaining comment from the international audience.

DATES: See Table 1 in the **SUPPLEMENTARY INFORMATION** section of this document.

ADDRESSES: Submit written comments on the meetings and on the proposed guide to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Submit written requests for single copies of the proposed guide to Lou Carson, Center for Food Safety and Applied Nutrition, 200 C St. SW., rm. 3812, Washington, DC 20204, 202–260–8920. Send one self-adhesive address label to assist that office in processing your request. Comments on the meetings or on the proposed guide should be identified with the docket number found in brackets in the heading of this document.

The meetings will be at the addresses and on the dates listed in Table 1. Registration is not required.

FOR FURTHER INFORMATION CONTACT: Camille E. Brewer, Center for Food Safety and Applied Nutrition (HFS–32), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–260–1784, FAX 202–260–9653, e-mail cbrewer@bangate.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On October 2, 1997, the President announced the ''Initiative to Ensure the Safety of Imported and Domestic Fruits and Vegetables'' (fresh produce safety initiative). As part of the fresh produce safety initiative, the President directed the Secretary of Health and Human Services (DHHS) and the Secretary of the U.S. Department of Agriculture (USDA), in cooperation with the agricultural community, to issue, within 1 year, guidance on good agricultural practices and good manufacturing practices for fresh fruits and vegetables. FDA is coordinating the effort for DHHS.

As part of this effort, FDA and USDA held a series of public meetings between November 17, 1997, and December 12, 1997, to provide the details on a broad approach on how to minimize microbial contamination through the control of water, manure, worker health and hygiene, field and facility sanitation, and transportation. A draft guide entitled ''Working Draft: Guide to Minimize Microbial Food Safety Hazards for Fresh Fruit and Vegetables'' was made available on FDA's World Wide Web (WWW) home page (http://www.fda.gov) and at each public meeting. Transcripts of these meetings and all comments received on the working draft of the proposed guide are on file in the Dockets Management Branch (address above) under the docket number found in brackets in the heading of this document and are accessible via the FDA home page on the WWW (http://www.fda.gov/ohrms/dockets/default.htm).

In the **Federal Register** of April 13, 1998 (63 FR 18029), FDA published a notice of availability of the proposed guide that responded to comments received on the working draft of the guide. The revised draft entitled ''Guidance for Industry: Guide to Minimize Microbial Food Safety Hazards for Fresh Fruits and Vegetables'' is available on the FDA home page on the WWW (http://www.fda.gov/ohrms/dockets/default.htm).

The public meetings will include an overview of the President's fresh produce safety initiative and a review of the proposed guide. The meetings are intended to obtain comment on the specific recommendations made in the

proposed guide and how the recommendations might best be applied.

II. Requests for Comments

Interested persons may submit written comments on the meetings and on the proposed guide to the Dockets Management Branch (address above). Two copies of any comments are to be submitted except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the proposed guide and received comments are available for public examination in the office above between 9 a.m. and 4 p.m., Monday through Friday.

III. Transcripts

Transcripts of the meetings may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after each meeting at a cost of 10 cents per page. The transcripts of the meetings will be available for public examination at the Dockets Management Branch (address above).

Persons requiring a sign language interpreter or other special accommodations should notify the contact person referenced above by February 19, 1998.

IV. Electronic Access

Transcripts of the meetings will be available on the Internet using the WWW (http://www.fda.gov/ohrms/dockets/default.htm). The proposed guide is available at the same address.

Table 1.—Public Meetings

Meeting address	Date and local time	FDA contact person
WASHINGTON, DC: Department of Health and Human Services, Hubert Humphrey Bldg., rm. 800, 200 and Independence Ave., Washington, DC 20201.	May 19, 1998, Tuesday, 10 a.m. to 5 p.m.	Marilyn Veek, Food and Drug Administration, Office of International Affairs (HFG–1), 5600 Fishers Lane, Rockville, MD 20857, 301–827–0906
MIAMI: Miami Dade County Cooperative Extension Service Agriculture Center,18710 SW. 288th St., Homestead, FL 33033.	May 21, 1998, Thursday, 10 a.m. to 5 p.m.	Estela Niella-Brown, Food and Drug Administration, P.O. Box 59–2256, Miami, FL 33159–2256, 305–526–2800, ext. 930.
SAN DIEGO: Malcolm X Branch Library Multipurpose Room, 5148 Market St., San Diego, CA 92114.	May 27, 1998, Wednesday, 10 a.m. to 5 p.m.	Rosario Quintanilla Vior, Food and Drug Administration, 19900 MacArthur Blvd., suite 300, Irvine, CA 92612–2445, 714–798–7607.

Dated: May 1, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–12116 Filed 5–4–98; 1:10 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Surveillance Updates and Trends; Notice of Workshops

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

The Food and Drug Administration (FDA), (Office of Regulatory Affairs, Atlanta and Florida District Offices, and the Center for Biologics Evaluation and Research) is announcing two Workshops entitled ''Surveillance Updates and Trends,'' for persons involved in licensed and unlicensed blood banks, plasma centers, and transfusion services served by FDA's Southeast Regional Office. The purpose of these workshops is to provide industry with information regarding regulations, surveillance updates, and trends on error and accident reporting, recalls, and fatalities.

Date and Time: The workshops will be held on Tuesday, June 23, 1998, 8 a.m. to 5:30 p.m., Doraville, GA (Atlanta area), and on Thursday, June 25, 1998, 8 a.m. to 5:30 p.m., Altamonte Springs, FL (Orlando area).

Location: On June 23, 1998, the workshop will be held at the Ramada Plaza Hotel, 4001 Presidential Pkwy., Doraville, GA, 770–216–9500. On June 25, 1998, the workshop will be held at the Orlando North Hilton, 350 S. North Lake Blvd., Altamonte Springs, FL, 407–830–1985.

Contact: Barbara Ward-Groves, Food and Drug Administration, 60 Eighth St. NE., Atlanta GA 30309, 404–347–4001, ext. 5256, FAX 404–347–4349, or Sharon Schneider, Center for Biologics Evaluation and Research, Food and Drug Administration (HFM–43), 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–3840, FAX 301–827–3843.

Registration: For the June 23, 1998, Atlanta area workshop, fax registration information (including name, title, firm name, address, telephone, and fax number) to Vincent Williams, Registration Coordinator at 404–347–1913 or 404–347–4206 by May 15, 1998. For the June 25, 1998, Orlando area workshop, fax registration information (including name, title, firm name, address, telephone, and fax number) to Ron Jackson, Registration Coordinator at 407–475–4768 by May 15, 1998. There is no registration fee for these workshops. Space is limited; therefore, interested parties are encouraged to register early.

SUPPLEMENTARY INFORMATION: These workshops comply with the Small Business Regulatory Enforcement Fairness Act (Pub. L. 104–121) that requires outreach activities by Government agencies directed to small businesses. These workshops are intended to provide an exchange of information between FDA and the biologics industry on updates and trend information regarding surveillance functions. The topics to be discussed include the following: (1) The current regulation and proposed rule for error and accident reporting; (2) recall definitions, i.e., differences between FDA and firm-initiated recalls, and (3) the current regulation for reporting fatalities, to include information pertaining to the investigative followup. Trend information will identify the types of events occurring in the past few years in each of the above three areas.

Dated: April 29, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–11983 Filed 5–5–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4183–N–03]

Announcement of Funding Awards; Indian HOME Program for Indian Applicants Fiscal Year 1997

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year 1997 for the Indian HOME Program for Indian applicants. The purpose of this Notice is to publish the names and addresses of the award winners and the amount of the awards made available by HUD to provide assistance to the Indian applicants under the HOME Program.

FOR FURTHER INFORMATION CONTACT: Jennifer Bullough, Office of Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, Room 4126, 451 Seventh Street SW, Washington, DC 20410. Telephone (202) 401–7914 (this is not a toll-free number). Hearing- or speech-impaired persons may use the Telecommunications Devices for the Deaf (TDD) by contacting the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Indian HOME Program funding for Fiscal Year 1997 is authorized by the HOME Investment Partnerships Act (the HOME Act) signed into law on November 28, 1990 (Pub. L. 101–625). The HOME Act was amended by the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992) and the Multifamily Housing Property Disposition Reform Act of 1994 (Pub. L. 102–233, approved April 11, 1994).

This Notice announces FY 1997 funding of $20,001,378 to be used to assist in the funding to Indian tribes to expand the supply of affordable housing for very low-income and low-income persons. The FY 1997 awards announced in this Notice were selected for funding consistent with the provisions in the Notice of Funding Availability (NOFA) published in the **Federal Register** on April 11, 1997 (62 FR 17992).

The Indian HOME Program for Indian Applicants is listed in the Catalog of Federal Domestic Assistance as number 14.239.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is hereby publishing the names, addresses, and amounts of those awards as shown in Appendix A.

Dated: April 29, 1998.

Deborah Vincent,

General Deputy, Assistant Secretary for Public and Indian Housing.

Appendix A

HOME SET-ASIDE FOR INDIAN TRIBES AND ALASKAN NATIVE VILLAGES; RECIPIENTS OF FUNDING DECISIONS

[Fiscal Year 1997]

Funding recipient (name and address)	Amount approved
Eastern/Woodlands ONAP	
Red Lake Band of Chippewa, Hwy 1, P.O. Box 219, Red Lake, MN 56671	398,040
Ho-Chunk Nation, P.O. Box 667, Black Falls, WI 54615–0667	661,500
Poach Band of Creek, 5811 Jack Springs Road, Atmore, AL 36502–6502	103,533
Menomine Indian Tribe of Wisconsin, P.O. Box 910, Keshena, WI 54135	100,000
Oneida Tribe of Indians of Wisconsin, P.O. Box 365, Oneida, WI 54135	324,677
Southern Plains ONAP	
Chickasaw Nation, P.O. Box 1548, Ada, OK 74821	1,096,778
Citizen Potawatomi Nation, 1901 South Gordon Cooper Dr., Shawnee, OK 74801	1,281,350
Osage Nation of Oklahoma, P.O. Box 53, Pawhuska, OK 74056	391,542
Seminole Tribe of Oklahoma, P.O. Box 1498, Wewoka, OK 74884	325,000
Wyandotte Tribe of Oklahoma, P.O. Box 250, Wyandotte, OK 74370	903,480
Northern Plains ONAP	
Spirit Lake Sioux Tribe, Fort Totten, SD 58335	1,000,000
Lower Brule Sioux Tribe, P.O. Box 187, Lower Brule, SD 57548	571,524
Oglala Sioux Tribe, P.O. Box H, Pine Ridge, SD 57770	510,466
Northern Arapho, P.O. Box 396, Fort Washakie, WY 82514	145,081
Turtle Mountain Band of Chippewa, P.O. Box 900, Belcourt, ND 58316	97,000
Yankton Sioux Tribe, P.O. Box 248, Marty, SD 57361	425,961
Cheyenne River Sioux Tribe, P.O. Box 590, Eagle Butte, SD 57625	345,000
Assiniboine and Sioux Tribes of Fort Peck, P.O. Box 1027, Poplar, MT 59255	229,418
Southwest ONAP	
Jicarilla Apache Tribe, P.O. Box 507, Dulce, NM 87528	500,000
San Carlos Apache Tribe, P.O. Box 0, San Carlos, AZ 85550	500,000
Ysleta del Sur Pueblo, P.O. Box 17579, Ysleta Station El Paso, TX 79917	1,339,119
Colorado River Indian Tribes, Rt. 1, Box 23-B, Parker, AZ 85344	123,000
Karuk Tribe of California, P.O. Box 1016, Happy Camp, CA 96039	541,489
Mechoopda Tribe of Chico Rancheria, 1907-F Mangrove Ave., Chico, CA 95926–2392	1,426,799

HOME SET-ASIDE FOR INDIAN TRIBES AND ALASKAN NATIVE VILLAGES; RECIPIENTS OF FUNDING DECISIONS—Continued

[Fiscal Year 1997]

Funding recipient (name and address)	Amount approved
Fort McDermitt Paiute and Shoshone Tribe, P.O. Box 457, McDermitt, NV 89421	1,180,200
Cocopah Tribe of Arizona, Bin ''G'', Somerton, AZ 85350	1,250,550
Zuni Tribe of New Mexico, P.O. Box 339, Zuni, NM 87327	968,980
Redding Rancheria, 2000 Rancheria Road, Redding, CA 96001	625,441
Northwest ONAP	
Coeur d'Alene Tribe, P.O. Box 197, Plummer, ID 83851	600,000
Shoshone Bannock Tribe of Fort Hall, P.O. Box 306, Fort Hall, ID 83203	360,000
Alaska ONAP	
Cook Inlet Tribal Council, P.O. Box 93330, Archorage, AK 99509	500,000
Orutsararmiut Native Council, P.O. Box 927, Bethel, AK 99559	1,175,450

[FR Doc. 98–11971 Filed 5–5–98; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Draft Recovery Plan for the Arroyo Southwestern Toad for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a draft Recovery Plan for the Arroyo Southwestern Toad. This toad occurs in coastal montane regions from Monterey County, California, to Baja California.

DATE: Comments received on the draft recovery plan by August 4, 1998, will be considered by the Service.

ADDRESSES: Copies of the draft recovery plan are available for inspection, by appointment, during normal business hours at the following locations: U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003 (phone: 805/644–1766); U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008 (phone: 760/431–9440). Requests for copies of the draft recovery plan and written comments and materials regarding this plan should be addressed to the Field Supervisor, at the above Ventura address.

FOR FURTHER INFORMATION CONTACT: Dr. Grace S. McLaughlin, Herpetologist, at the Ventura address.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988 requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during the public comment period prior to approval of each new or revised Recovery Plan. Substantive technical comments will result in changes to the plans. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plans, but will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions. Individualized responses to comments will not be provided.

This species is listed as endangered. As of 1994, the arroyo southwestern toad (*Bufo microscaphus californicus*) (referred to as arroyo toad) was known from 22 river basins with a total estimated breeding population of fewer than 3,000 individuals. The arroyo toad is endemic to primarily the coastal plain and mountains of central and southern California and northwestern Baja California. These toads breed in stream channels and use stream terraces and surrounding uplands for foraging and wintering. Direct habitat loss due to urbanization, agriculture, and dam construction is the main cause for the decline of arroyo toads. Other threats include water diversions, road building, livestock grazing, mining, recreational activities, loss of habitat due to exotic plants, and predation by introduced species. Although the species evolved and has survived in an environment periodically impacted by fire, flood, and drought, the interactions of such natural events with human alterations of the habitat may lead to the extirpation of local populations.

The objective of this plan is to provide a framework for the recovery of the arroyo toad so that protection by the Act is no longer necessary. The recovery strategy for the arroyo toad is focused on providing sufficient breeding and upland habitat to maintain self-sustaining populations of arroyo toads throughout the historic range of the species in California, and minimizing or eliminating impacts and threats to arroyo toad populations. This plan describes a five-part recovery strategy with specific tasks necessary to maintain healthy aquatic, riparian and adjacent upland ecosystems that provide habitat for arroyo toads. The tasks, when implemented, will stabilize and maintain populations throughout the range of the arroyo toad in California by protecting sufficient breeding and nonbreeding habitat, monitor the status of existing populations to ensure

recovery actions are successful, identify and secure additional suitable arroyo toad habitat and populations, conduct research to determine the population dynamics and ecology of the species to guide management efforts and determine the best methods for reducing threats, and develop and implement an outreach program.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of this plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Michael J. Spear,

Regional Director, U.S. Fish and Wildlife Service, Region 1, Portland, Oregon.

[FR Doc. 98–11972 Filed 5–5–98; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Draft Recovery Plan for the Least Bell's vireo (Vireo bellii pusillus) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a draft recovery plan for the least Bell's vireo (*Vireo bellii pusillus*). The breeding distribution of the least Bell's vireo is limited to eight counties in southern California and portions of northern Baja California, Mexico. Historically, this species was widespread throughout riparian woodlands in the Central Valley and low elevation riverine valleys of California and northern Baja California. Least Bell's vireos winter in southern Baja California, Mexico. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before July 6, 1998, to be considered by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may receive a copy by contacting the Carlsbad Field Office, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008. Written comments and material regarding the plan should also be addressed to the same address above. Comments and material received are available on request for public inspection, by appointment, during normal business hours at the same address.

FOR FURTHER INFORMATION CONTACT: Jon Avery, U.S. Fish and Wildlife Service (see **ADDRESSES**) at 760/431–9440).

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery Plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for reclassifying them from endangered to threatened or removing them from the list, and estimate the time and cost for implementing the needed recovery measures.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) Requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Secion 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised Recovery Plan. The Service and other Federal agencies will take these comments into account in the course of implementing approved recovery plans.

The least Bell's vireo was listed as endangered on May 2, 1986. Critical habitat for the species was designated on February 2, 1994. The least Bell's vireo is an obligate riparian species during the breeding season, preferring early successional habitat. This species typically inhabits structurally diverse woodlands along watercourses. Extensive breeding habitat loss and degradation and brood parasitism by the brown-headed cowbird (*Molothrus ater*) have resulted in a rangewide decline of the least Bell's vireo. The objective of this plan is the reclassification of the least Bell's vireo to threatened and ultimately, delisting through recovery.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(F).

Dated: March 30, 1998.

Michael J. Spear,

Regional Director, Region 1.

[FR Doc. 98–11973 Filed 5–5–98; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Bay-Delta Advisory Council's Ecosystem Roundtable Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meeting.

SUMMARY: The Bay-Delta Advisory Council's (BDAC) Ecosystem Roundtable will meet to discuss several issues including: status of the May 1998 Proposal Solicitation Package, the development of the other programs for FY 98 funding, revised planning process, funding coordination, CVPIA FY 98 budget and other issues. This meeting is open to the public. Interested persons may make oral statements to the Ecosystem Roundtable or may file written statements for consideration.

DATES: The BDAC Ecosystem Roundtable meeting will be held from 9:00 a.m. to 1:00 p.m. on Friday, May 15, 1998.

ADDRESSES: The Ecosystem Roundtable will meet at the Resources Building, 1416 Ninth Street, Room 1131, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: Cindy Darling, CALFED Bay-Delta Program, at (916) 657–2666. If reasonable accommodation is needed due to a disability, please contact the Equal Employment Opportunity Office at (916) 653–6952 or TDD (916) 653–6934 at least one week prior to the meeting.

SUPPLEMENTARY INFORMATION: The San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta system) is a critically important part of California's natural environment and economy. In recognition of the serious problems facing the region and the complex resource management decisions that must be made, the state of California and the Federal government are working together to stabilize, protect, restore, and enhance the Bay-Delta system. The

State and Federal agencies with management and regulatory responsibilities in the Bay-Delta system are working together as CALFED to provide policy direction and oversight for the process.

One area of Bay-Delta management includes the establishment of a joint State-Federal process to develop long-term solutions to problems in the Bay-Delta system related to fish and wildlife, water supply reliability, natural disasters, and water quality. The intent is to develop a comprehensive and balanced plan which addresses all of the resource problems. This effort, the CALFED Bay-Delta Program (Program), is being carried out under the policy direction of CALFED. The Program is exploring and developing a long-term solution for a cooperative planning process that will determine the most appropriate strategy and actions necessary to improve water quality, restore health to the Bay-Delta ecosystem, provide for a variety of beneficial uses, and minimize Bay-Delta system vulnerability. A group of citizen advisors representing California's agricultural, environmental, urban, business, fishing, and other interests who have a stake in finding long-term solutions for the problems affecting the Bay-Delta system has been chartered under the Federal Advisory Committee Act (FACA) as the BDAC to advise CALFED on the program mission, problems to be addressed, and objectives for the Program. BDAC provides a forum to help ensure public participation, and will review reports and other materials prepared by CALFED staff. BDAC has established a subcommittee called the Ecosystem Roundtable to provide input on annual work plans to implement ecosystem restoration projects and programs.

Minutes of the meeting will be maintained by the CALFED Bay-Delta Program, Suite 1155, 1416 Ninth Street, Sacramento, CA 95814, and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: April 30, 1998.

Kirk Rodgers,

Deputy Regional Director, Mid-Pacific Region.

[FR Doc. 98–11969 Filed 5–5–98; 8:45 am]

BILLING CODE 4310–94–M

INTERNATIONAL TRADE COMMISSION

Summary of Commission Practice Relating to Administrative Protective Orders

AGENCY: U.S. International Trade Commission.

ACTION: Summary of Commission practice relating to administrative protective orders.

SUMMARY: Since February 1991, the U.S. International Trade Commission (''Commission'') has issued an annual report on the status of its practice with respect to violations of its administrative protective orders (''APOs'') in investigations under Title VII of the Tariff Act of 1930 in response to a direction contained in the Conference Report to the Customs and Trade Act of 1990. Over time, the Commission has added to its report discussions of APO breaches in Commission proceedings other than Title VII and violations of the Commission's rule on bracketing business proprietary information (''BPI'') (the ''24-hour rule''), 19 CFR 207.3(c). This notice provides a summary of investigations of breaches and violations of the 24-hour rule for the period ending in 1997. The Commission intends that this report educate representatives of parties to Commission proceedings as to some specific types of APO breaches and 24-hour rule violations encountered by the Commission and the corresponding types of actions the Commission has taken.

FOR FURTHER INFORMATION CONTACT: Carol McCue Verratti, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone (202) 205–3088. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at (202) 205–1810. General information concerning the Commission can also be obtained by accessing its Internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: Representatives of parties to investigations conducted under Title VII of the Tariff Act of 1930 may enter into APOs that permit them, under strict conditions, to obtain access to BPI of other parties. See 19 U.S.C. 1677f; 19 CFR 207.7. The discussion below describes APO breach investigations that the Commission has completed including a description of actions taken in response to breaches. The discussion covers breach investigations completed during calendar year 1997.

Since 1993, the report has also included a summary of the Commission's investigations involving violations of the 24-hour rule, which provides that during the 24-hour period after a Commission deadline for a party submission in an antidumping or countervailing duty proceeding, changes are permitted to the proprietary version to correct the bracketing of BPI; no other changes are permitted under that rule. See 19 CFR 207.3(c). The discussion below covers investigations of violations of this rule completed during 1997.

In recent years, the Commission has expanded the report to include APO breaches in other types of proceedings as well. In 1997, no APO investigations were completed in proceedings other than Title VII investigations.

Since 1991, the Commission has published annually a summary of its actions in response to violations of Commission APOs and the ''24-hour'' rule. See 56 *FR* 4846 (Feb. 6, 1991); 57 *FR* 12,335 (Apr. 9, 1992); 58 *FR* 21,991 (Apr. 26, 1993); 59 *FR* 16,834 (Apr. 8, 1994); 60 *FR* 24,880 (May 10, 1995); 61 *FR* 21,203 (May 9, 1996), and 62 *FR* 13,164 (March 19, 1997). This report does not provide an exclusive list of conduct that will be deemed to be a breach of the Commission's APOs. APO breach inquiries are considered on a case-by-case basis.

As part of the effort to educate practitioners about the Commission's current APO practice, the Commission Secretary issued in April 1996 a revised edition of *An Introduction to Administrative Protective Order Practice in Antidumping and Countervailing Duty Investigations* (Pub. No. 2961). This document is available upon request from the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, telephone (202) 205–2000.

I. In General

The current APO form for antidumping and countervailing duty investigations, which the Commission has used since March 1995, requires the applicant to swear that he or she will:

(1) Not divulge any of the BPI obtained under the APO and not otherwise available to him, to any person other than—

(i) Personnel of the Commission concerned with the investigation,

(ii) The person or agency from whom the BPI was obtained,

(iii) A person whose application for disclosure of BPI under this APO has been granted by the Secretary, and

(iv) Other persons, such as paralegals and clerical staff, who (a) are employed or supervised by and under the

direction and control of the authorized applicant or another authorized applicant in the same firm whose application has been granted; (b) have a need thereof in connection with the investigation; (c) are not involved in competitive decisionmaking for the interested party which is a party to the investigation; and (d) have submitted to the Secretary a signed Acknowledgment for Clerical Personnel in the form attached hereto (the authorized applicant shall sign such acknowledgment and will be deemed responsible for such persons' compliance with the APO);

(2) Use such BPI solely for the purposes of the Commission investigation [or for binational panel review of such Commission investigation or until superceded by a judicial protective order in a judicial review of the proceeding];

(3) Not consult with any person not described in paragraph (1) concerning BPI disclosed under this APO without first having received the written consent of the Secretary and the party or the representative of the party from whom such BPI was obtained;

(4) Whenever materials (*e.g.*, documents, computer disks, etc.) containing such BPI are not being used, store such material in a locked file cabinet, vault, safe, or other suitable container (N.B.: storage of BPI on so-called hard disk computer media is to be avoided, because mere erasure of data from such media may not irrecoverably destroy the BPI and may result in violation of paragraph C of the APO);

(5) Serve all materials containing BPI disclosed under this APO as directed by the Secretary and pursuant to section 207.7(f) of the Commission's rules;

(6) Transmit such document containing BPI disclosed under this APO:

(i) with a cover sheet identifying the document as containing BPI,

(ii) with all BPI enclosed in brackets and each page warning that the document contains BPI,

(iii) if the document is to be filed by a deadline, with each page marked ''Bracketing of BPI not final for one business day after date of filing,'' and

(iv) if by mail, within two envelopes, the inner one sealed and marked ''Business Proprietary Information—To be opened only by [name of recipient]'', and the outer one sealed and not marked as containing BPI;

(7) Comply with the provision of this APO and section 207.7 of the Commission's rules;

(8) Make true and accurate representations in the authorized applicant's application and promptly notify the Secretary of any changes that occur after the submission of the application and that affect the representations made in the application (*e.g.*, change in personnel assigned to the investigation);

(9) Report promptly and confirm in writing to the Secretary any possible breach of the APO; and

(10) Acknowledge that breach of the APO may subject the authorized applicant and other persons to such sanctions or other actions as the Commission deems appropriate including the administrative sanctions and actions set out in this APO.

The APO further provides that breach of protective order may subject an applicant to:

(1) Disbarment from practice in any capacity before the Commission along with such person's partners, associates, employer, and employees, for up to seven years following publication of a determination that the order has been breached;

(2) Referral to the United States Attorney;

(3) In the case of an attorney, accountant, or other professional, referral to the ethics panel of the appropriate professional association;

(4) Such other administrative sanctions as the Commission determines to be appropriate, including public release of or striking from the record any information or briefs submitted by, or on behalf of, such person or the party he represents; denial of further access to business proprietary information in the current or any future investigations before the Commission; and issuance of a public or private letter of reprimand; and

(5) Such other actions, including but not limited to, a warning letter, as the Commission determines to be appropriate.

Commission employees are not signatories to the Commission's APOs and do not obtain access to BPI through APO procedure. Consequently, they are not subject to the requirements of the APO with respect to the handling of BPI. However, Commission employees are subject to strict statutory and regulatory constraints concerning BPI, and face potentially severe penalties for noncompliance. *See* 18 U.S.C. 1905; Title 5, U.S. Code; and Commission personnel policies implementing the statutes. Although the Privacy Act (5 U.S.C. 552a) limits the Commission's authority to disclose any personnel action against agency employees, this should not lead the public to conclude that no such actions have been taken.

An important provision of the Commission's rules relating to BPI is the ''24-hour'' rule. This rule provides that parties have one business day after the deadline for filing documents containing BPI to file a public version of the document. The rule also permits changes to the bracketing of information in the proprietary version within this one-day period. No changes— other than changes in bracketing—may be made to the proprietary version. The rule was intended to reduce the incidence of APO breaches caused by inadequate bracketing and improper placement of BPI. The Commission urges parties to make use of the rule. If a party wishes to make changes to a document other than bracketing, such as typographical changes or other corrections, the party must ask for an extension of time to file an amendment document pursuant to Rule 201.14(b)(2).

II. Investigations of Alleged APO Breaches

An investigation of an alleged APO breach in an antidumping or countervailing duty investigation commences when the Secretary, acting under delegated authority, issues to the alleged breacher a letter of inquiry to ascertain the alleged breacher's views on whether a breach has occurred. If, after reviewing the response and other relevant information, the Commission determines that a breach has occurred, the Commission often issues a second letter asking the breacher to address the questions of mitigating or aggravating circumstances and possible sanctions or other actions. The Commission then determines what action to take in response to the breach. In some cases, the Commission has determined that although a breach has occurred, sanctions are not warranted, and therefore has found it unnecessary to issue a second letter concerning what sanctions might be appropriate. Instead, it issues a warning letter to the individual. The Commission retains sole authority to determine whether a breach has occurred and, if so, the appropriate action to be taken.

The records of Commission investigations of alleged APO breaches in antidumping and countervailing duty cases are not publicly available and are exempt from disclosure under the Freedom of Information Act, 5 U.S.C. 552, Section 135(b) of the Customs and Trade Act of 1990, and 19 U.S.C. 1677f(g).

The breach most frequently investigated by the Commission involves the APO's prohibition on the dissemination of BPI to unauthorized persons. Such dissemination usually

occurs as the result of failure to delete BPI from public versions of documents filed with the Commission or of transmission of proprietary versions of documents to unauthorized recipients. Other breaches have included: the failure to properly bracket BPI in proprietary documents filed with the Commission; the failure to immediately report known violations of an APO; and the failure to adequately supervise non-legal personnel in the handling of BPI.

Sanctions for APO violations serve two basic interests: (a) Preserving the confidence of submitters of BPI in the Commission as a reliable protector of BPI; and (b) disciplining breachers and deterring future violations. As the Conference Report to the Omnibus Trade and Competitiveness Act of 1988 observed, ''the effective enforcement of limited disclosure under administrative protective order depends in part on the extent to which private parties have confidence that there are effective sanctions against violation.'' H.R. Conf. Rep. No. 576, 100th Cong., 1st Sess. 623 (1988).

The Commission has worked to develop consistent jurisprudence, not only in determining whether a breach has occurred, but also in selecting an appropriate response. In determining the appropriate response, the Commission generally considers mitigating factors such as the unintentional nature of the breach, the lack of prior breaches committed by the breaching party, the corrective measures taken by the breaching party, and the promptness with which the breaching party reported the violation to the Commission. The Commission also considers aggravating circumstances, especially whether persons not under the APO actually read the BPI. The Commission considers whether there are prior breaches within the previous two-year period and multiple breaches by the same person or persons in the same investigation.

The Commission's rules permit economists or consultants to obtain access to BPI under the APO if the economist or consultant is under the direction and control of an attorney under the APO, or if the economist or consultant appears regularly before the Commission and represents an interested party who is a party to the investigation. 19 CFR 207.7(a)(3)(B) and (C). Economists and consultants who obtain access to BPI under the APO under the direction and control of an attorney nonetheless remain individually responsible for complying with the APO. In appropriate circumstances, for example, an economist under the direction and control of an attorney may be held responsible for a breach of the APO by failing to redact APO information from a document that is subsequently filed with the Commission and served as a public document. This is so even though the attorney exercising direction or control over the economist or consultant may also be held responsible for the breach of the APO.

III. Specific Investigations in Which Breaches Were Found

The Commission presents the following case studies to educate users about the types of APO breaches found by the Commission. The case studies provide the factual background, the actions taken by the Commission, and the factors considered by the Commission in determining the appropriate actions. The Commission has not included some of the specific facts in the descriptions of investigations where disclosure could reveal the identity of a particular breacher. Thus, in some cases, apparent inconsistencies in the facts set forth in this notice result from the Commission's inability to disclose particular facts more fully.

Case 1: Counsel for a party to a Commission investigation filed a submission with International Trade Administration, Department of Commerce (''Commerce'') in a Commerce investigation and served copies of the submission on the parties to the Commerce investigation. The submission contained BPI which counsel had obtained under a Commission APO. The Commission determined that one attorney did not breach the APO because he did not participate in the preparation or review of the Commerce submission and his name did not appear on the submission. The Commission determined that two attorneys who prepared and reviewed the submission filed with Commerce breached the APO. In reaching its decision to issue private letters of reprimand, the Commission considered that the BPI was viewed by an unauthorized person employed at Commerce. In addition, unauthorized persons may have viewed the BPI at the various law firms that were served copies of the submission. At least one person authorized to review BPI released under Commerce APOs was not authorized to review BPI released under the Commission's APO. The Commission noted that an even more important consideration was the admission by the attorneys that they were not aware of the explicit condition of the APO that information obtained under a Commission APO may not be used in any other investigation including the companion Commerce inquiry. This lack of awareness called into question the level of care that the attorneys exercised in regard to their obligations under the APO. In reaching its decision, the Commission also considered the mitigating factors that the two attorneys had not previously breached a Commission APO and that both reported and attempted to correct the breach promptly.

Case 2: Counsel in an investigation submitted a public version of a document in which certain BPI contained in footnotes was not bracketed or redacted. The text to which the footnotes referred was bracketed. The BPI in question was contained in an attachment to a questionnaire response. The Commission staff discovered the possible breach, and the Secretary contacted counsel to inquire about the failure to bracket and redact the information in the footnote. Counsel responded immediately by submitting corrected pages to the Commission and persons on the service list, and instructing the recipients that the original pages be destroyed. In response to the Commission's inquiry about the possible breach, counsel argued that the information was available in the public domain because the information in question was not marked as confidential and was not bracketed. The Commission's consistent practice with regard to information submitted in connection with a questionnaire response is that it must be treated as confidential unless the party served with the response can establish that the material is elsewhere available in the public domain. Counsel failed to establish that the unbracketed and unredacted material was available in the public domain at the time that they filed the document in question. Thus, the Commission disagreed and determined that counsel breached the APO and issued warning letters. In reaching its decision, the Commission took into account that the attorneys had not previously breached an APO; there was no bad faith or willful conduct involved in connection with this breach; and they moved promptly to mitigate the breach once informed about it by the Secretary. It did not appear that any non-signatory to the APO had reviewed the BPI.

Case 3: Two attorneys filed the public version of an *in camera* hearing submission with bracketed but unredacted BPI. They discovered the breach the following day, immediately reported it to the Commission, retrieved all copies from parties on the service list and the Commission, and obtained from each party a certification that no copies

were reviewed by non-signatories to the APO. The public version retrieved from the Commission's files had not been reviewed by any member of the public. The Commission determined that the two attorneys breached the APO and issued warning letters to them. In reaching its decision not to sanction the attorneys, the Commission considered that they had not been involved in prior breaches and they took action immediately after discovering the breach to limit the possibility of disclosure to unauthorized persons.

A second alleged breach occurred on the same day when four attorneys from the same firm filed the public version of a brief which contained three items of what appeared to be unredacted BPI. The Commission Secretary's office notified counsel that the submission appeared to contain unredacted BPI. The law firm retrieved copies of the pages in question and filed corrected versions with the Commission, as requested by the Secretary. The Commission determined that two of the attorneys committed a breach of the APO when they failed to redact one item of BPI from the brief. In deciding to issue warning letters, the Commission considered that the attorneys had not been involved in prior breaches and took appropriate action upon discovering the breach. The Commission also noted that the information in question was disclosed publicly by the submitter very shortly after the breach.

The Commission determined that disclosure of the other two items in question was not a breach of the APO because the information was not BPI. One item was publicly available and the other item was obtained directly from the client and not under the APO. The Commission determined that two of the attorneys did not breach the APO because they did not participate in the final review of the public version of the brief.

Case 4: Employees for an economic consulting firm prepared and distributed documents containing bracketed but unredacted BPI at a public hearing. A signatory of the APO, an attorney for another party, noticed that BPI had not been redacted from the documents and immediately informed the Secretary, the law firm, and the consulting firm. All copies of the handout were retrieved immediately and all persons at the hearing who had copies of the handout in their possession, with the exception of the attorney who first noticed the BPI, stated that they did not review the BPI contained in the handouts. The Commission determined that two consultants breached the APO and issued private letters of reprimand. In reaching the decision that the breach had occurred, the Commission noted that the actual receipt and review of BPI by unauthorized persons is not a precondition for a finding of a violation of the APO. Failure to follow the rules which are protective of the information by leaving the information unprotected and potentially releasable is sufficient to constitute a breach of the APO. In reaching its decision to issue private letters of reprimand, the Commission considered that this was the second time in two years that the consultants had breached an APO. In reaching its decision, the Commission also considered the mitigating factors that the breach was inadvertent, the Commission was promptly informed of the breach, and the consultant took immediate steps to mitigate any possible damage from the breach.

The Commission found that two other consultant firm employees, identified as clerical personnel in the APO applications, did not breach the APO because their work in preparing the documents was subject to review by the senior consultants. Although the consultants were under the direction and control of the lead attorney at a law firm, the Commission determined that no attorney at the firm was responsible for the breach because the consulting firm employees revised the documents after the attorneys had reviewed what they thought were the final versions, and no one advised the attorneys of the revision or requested that the attorneys review the revised documents.

Case 5: (*See* Case B of the 24-hour rule.) Attorneys, signatories to the APO in an investigation, failed to bracket and redact BPI from a footnote in the public version of a brief. The Commission sent a letter of inquiry to three attorneys but determined that one of them did not breach the APO because he was not involved in the drafting of the public version of the brief or in any review or appraisal of data included in the submission. The Commission determined that two attorneys breached the APO and issued one attorney a letter of reprimand and the other a warning letter. In reaching its decision to issue a private letter of reprimand to one of the attorneys, the Commission took into account the principal aggravating circumstance that it was the second time within a few months that this first attorney had breached an APO by failing to bracket and redact BPI from a submission. The Commission also considered that there was no evidence of willful disregard of the APO. However, the breach was not the result of an accident or inadvertence, but the result of a conscious decision not to bracket information which the attorney continued to maintain was justified. The Secretary's office discovered the breach and, once advised that there had been a breach, the attorney moved promptly to mitigate the breach by retrieving the offending pages of the brief and replacing them with corrected pages.

In reaching its decision to issue a warning letter to the second attorney, the Commission took into consideration that he had no prior APO violations. This attorney was involved in the preparation of the documents, but did not make bracketing decisions with respect to the submission and was not in a position to countermand the attorney who made those decisions.

Case 6: Four attorneys were named as possibly breaching the APO by filing a submission before the Department of Commerce (Commerce) containing BPI obtained under the Commission APO and by labeling the submission public even though it contained BPI. The BPI in question had been obtained from the confidential version of the petition to which counsel had access under the Commission's APO but had not yet gained access to it under the Commerce APO. The day after the submission of the document to Commerce, the attorneys informed the Commission in writing of the potential breaches stemming from the submission to Commerce and took immediate steps to retrieve the submission and prevent the improper disclosure to unauthorized individuals.

The Commission found that two of the attorneys did not breach the APO because they played no role in either the preparation or filing of the submission. The Commission determined that the two other attorneys committed two distinct breaches of the APO by including Commission BPI in a Commerce submission and by incorrectly labeling that document as a public document. The Commission issued private letters of reprimand to the two attorneys and reminded them that information obtained under the Commission's APO is not to be used in other agency proceedings without first obtaining the written consent of the Secretary of the Commission and the party from whom the BPI was obtained. The Commission considered as mitigating factors the fact that the attorneys had no previous breaches; they reported and corrected the breach promptly; and the firm strengthened its APO procedures subsequent to the breaches. Moreover, it appeared that the mislabeling of the document was unintentional and due to mistake or

oversight. In reaching its decision to issue private letters of reprimand, the Commission considered that there were two separate breaches in the same investigation and that the document was placed in a public file at Commerce where it may have been viewed by unauthorized persons.

Case 7: Two attorneys, an economist, and a secretary from a law firm representing a party in an investigation failed to certify within a Commission deadline that APO documents in their possession had been destroyed and to attest to their good faith belief that there was no unauthorized access by any person to the APO materials. Pursuant to the APO, counsel was required to destroy the BPI documents and provide certification to that effect within 60 days of the termination of the investigation. However, since counsel appealed the Commission's determination to the U.S. Court of International Trade, the firm was permitted to retain the documents pending its application for a Judicial Protective Order (JPO). If a JPO is not sought, signatories to the APO in the law firm are required to destroy the documents and to provide certification promptly after 150 days have elapsed from the termination of the investigation. Counsel did not apply for a JPO and failed to provide the certification promptly after the 150 days had passed. In their response to the Commission's inquiry, counsel provided the required certification indicating that the documents had been destroyed immediately after the termination of the investigation. The Commission determined that the two attorneys and the economist breached the APO by not providing the certification within the required time period, and issued warning letters. In reaching a decision to issue warning letters, the Commission considered that there was no access to the APO documents by any unauthorized person; the breach appeared to have been unintentional; the attorney and economist took prompt action to remedy the breach; and they had no prior APO breach violations within the last two years. The Commission concluded that the secretary did not breach the APO as the Commission generally has not held clerical personnel responsible for breaches unless they have played a direct role in the circumstances contributing to a breach.

Case 8: An attorney representing a party to a Commission investigation filed a letter with the Commission which was designated as public, although it contained bracketed but undeleted BPI. The Commission Secretary notified the attorney about the possible breach. In response, the attorney filed a revised letter and immediately took steps to retrieve the document from the other parties. Two weeks later the attorney filed a public version of a prehearing brief which contained BPI in one of the exhibits. Again, the Secretary notified the attorney who immediately took steps to retrieve the document from the other parties and prevent unauthorized disclosure. The Commission determined that breaches had occurred and issued a private letter of reprimand. In reaching its decision to issue a private letter of reprimand the Commission considered that, although the attorney had committed no prior breaches, the attorney had committed two separate breaches in the same investigation within weeks of each other. The Commission also considered the mitigating factors that, when informed of the breaches, the attorney took immediate steps to retrieve the information and prevent its unauthorized disclosure; the breaches were unintentional; and the law firm took action to prevent future violations of this nature.

IV. Investigations Involving the 24-Hour Rule

Under Commission rule 207.3(c), parties that submit a proprietary version of a document with the Commission pursuant to a Commission deadline have one business day in which to check and correct bracketing of BPI before filing the nonproprietary version of the document. The rule expressly states however, that *only* bracketing changes may be made without leave of the Commission in the one business day interval between the filing of the confidential and the filing of the nonconfidential document. A party desiring to make any other changes, including correction of typographical errors, must request leave of the Commission to do so.

Case A: Counsel to a party in an investigation filed a public version of the postconference brief which contained text which was not present in the confidential version of the brief. Leave of the Commission was not sought to make the non-bracketing change, nor was any mention of the additional material made when the public version of the brief was filed. The Commission determined that counsel violated Commission Rule 207.3 and issued a warning letter to each of the four attorneys who were signatories on the brief. In its letter, the Commission, noting that counsel's letter responding to the Commission inquiry stated that the change was made within one business day, advised counsel that the rule permits only bracketing changes and deletion of confidential information. Parties must request leave of the Commission to make a late filing to make any other changes to a previously filed document.

In reaching its decision to issue warning letters, the Commission considered that the addition of text appeared to be inadvertent and counsel had no previous record of violating the 24-hour rule.

Case B: (*See* Case 5 of the APO Breaches.) Two attorneys representing a party to a Commission investigation made changes to a submission that did not involve bracketing of information without receiving prior leave of the Commission. The Commission determined that the two attorneys had violated the 24-hour rule by making the non-bracketing changes to submissions without seeking prior leave from the Commission. The Commission also found that the attorneys had breached the APO in the same investigation, but determined not to impose any additional sanction upon the attorneys for violation of rule 207.3, the 24-hour rule. One attorney received a warning letter for the APO breach and the 24-hour rule violation. The Commission issued a private letter of reprimand to the second attorney for the APO breach and the 24-hour rule violation because it was his second breach violation within several months.

The Commission determined not to hold a third attorney at the firm responsible for violation of the 24-hour rule because he played no role in the preparation of the brief.

Case C: Three attorneys submitted a change to the filing of the public version of their prehearing brief prior to being granted leave to make the change. The Commission determined that the attorneys violated Commission Rule 207.3(c) and issued warning letters. In determining to issue warning letters, the Commission considered that the three attorneys had no previous record of having violated Rule 207.3(c). In addition, since the attorneys had sought to make the change in their BPI version of the brief, filing the change to the public version prior to approval of this leave appeared to be an inadvertent procedural error.

By order of the Commission.

Issued: April 29, 1998.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–12010 Filed 5–5–98; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation 332–393]

Ammonium Nitrate: A Comparative Analysis of Factors Affecting Global Trade

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

EFFECTIVE DATE: April 27, 1998.

SUMMARY: Following receipt of a request on April 2, 1998, from the Senate Committee on Finance, the Commission instituted investigation No. 332–393, Ammonium Nitrate: A Comparative Analysis of Factors Affecting Global Trade, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

FOR FURTHER INFORMATION CONTACT: Industry-specific information may be obtained from Ms. Elizabeth Nesbitt (202–205–3355), Office of Industries, U.S. International Trade Commission, Washington, DC 20436. For information on the legal aspects of this investigation contact Mr. William Gearhart of the Office of the General Counsel (202–205–3091). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202) 205–1810.

Background:

In its report, the Commission will, as requested by the Committee in its letter, provide a comparative analysis of factors affecting global trade in ammonium nitrate, with special emphasis on the industries in the United States, the European Union, and Russia. As requested, the Commission will provide the following information, to the extent information is available, with data presented for the most recent five-year period, or except as noted:

- An overview of the world ammonium nitrate market, including examination of consumption (for the most recent 10-year period), import, and export trends, and information on future consumption in the major markets;
- Industry profiles of the principal manufacturers and traders, their pattern of ownership and investment, including the extent to which government programs may affect production and may impede trade in ammonium nitrate between the specified countries. Examples of such programs cited by the Committee are farm policies, industrial policies, economic policies, trade policies, and other governmental measures that may affect the cost of raw materials and transportation;
- An overview of the ammonium nitrate production process, with information on costs of production, including those of its major raw material components, and the principal sources of these feedstocks; and
- Information on trends in domestic and export prices of ammonium nitrate.

In its request letter the Committee noted that the United States is a major producer and consumer of nitrogenous fertilizers, including urea and ammonium nitrate. The Committee stated that it has recently come to its attention that U.S. ammonium nitrate producers have concerns about competitive conditions affecting their industry, including increased imports of ammonium nitrate from Russia. The producers believe that these increased imports are the indirect result of the European Union's (EU) imposition of an antidumping order in 1995 on EU imports of ammonium nitrate from Russia. The letter continues by stating that moreover, the producers are concerned about additional imports of Russian ammonium nitrate into the United States as a result of the EU's recent institution of a review of the original order.

Public Hearing

A public hearing in connection with the investigation will be held at the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC, beginning at 9:30 a.m. on June 16, 1998. All persons shall have the right to appear, by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, no later than 5:15 p.m., June 2, 1998. Any prehearing briefs (original and 14 copies) should be filed not later than 5:15 p.m., June 4, 1998; the deadline for filing post-hearing briefs or statements is 5:15 p.m., June 30, 1998. In the event that, as of the close of business on June 2, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary of the Commission (202–205–1816) after June 2, 1998, to determine whether the hearing will be held.

Written Submissions

In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements concerning the matters to be addressed by the Commission in its report on this investigation. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked ''Confidential Business Information'' at the top. All submissions requesting confidential treatment must conform with the requirements of section § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary of the Commission for inspection by interested parties. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than 5:15 p.m. on June 30, 1998. All submissions should be addressed to the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

List of Subjects

Ammonium nitrate, ammonia, natural gas, urea.

Issued: April 28, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–12012 Filed 5–5–98; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 753–TA–34]

In the Matter of Extruded Rubber Thread from Malaysia; Notice of Commission Determination to Conduct a Portion of the Hearing in Camera

AGENCY: U.S. International Trade Commission.

ACTION: Closure of a portion of a Commission hearing to the public.

SUMMARY: Upon request of respondents in the above-captioned investigation, the Commission has determined to conduct a portion of its hearing scheduled for May 5, 1998 in camera. See Commission rules 207.23(d), 201.13(m) and 201.35(b)(3) (19 CFR 207.23(d), 201.13(m) and 201.35(b)(3)). The remainder of the hearing will be open to the public. The Commission has

determined that the seven-day advance notice of the change to a meeting was not possible. See Commission rule 201.35(a), (c)(1) (19 CFR 201.35(a), (c)(1)).

FOR FURTHER INFORMATION CONTACT: Marc A. Bernstein, Office of General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–3087, e-mail mbernstein@usitc.gov. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission believes that the respondents have justified the need for a closed session. A full discussion of information relating to the condition of the domestic industry, domestic and subject import shipment data, and pricing can only occur if a portion of the hearing is held in camera. Because much of this information is not publicly available, any discussion of issues relating to this information will necessitate disclosure of business proprietary information (BPI). Thus, such discussions can only occur if a portion of the hearing is held in camera. In making this decision, the Commission nevertheless reaffirms its belief that whenever possible its business should be conducted in public.

The hearing will include the usual public presentations by petitioner and by respondents, with questions from the Commission. In addition, the hearing will include an in camera session for a confidential presentation by respondents and for questions from the Commission relating to the BPI, followed by an in camera rebuttal presentation by petitioner. For any in camera session the room will be cleared of all persons except those who have been granted access to BPI under a Commission administrative protective order (APO) and are included on the Commission's APO service list in this investigation. See 19 CFR 201.35(b)(1), (2). The time for the parties' presentations and rebuttals in the in camera session will be taken from their respective overall allotments for the hearing. All persons planning to attend the in camera portions of the hearing should be prepared to present proper identification.

Authority: The General Counsel has certified, pursuant to Commission Rule 201.39 (19 CFR 201.39) that, in her opinion, a portion of the Commission's hearing in Extruded Rubber Thread from Malaysia, Inv. No. 753–TA–34, may be closed to the public to prevent the disclosure of BPI.

Issued: May 1, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–12014 Filed 5–5–98; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–383 (Bond Forfeiture/Return Proceeding]

In the Matter of Certain Hardware Logic Emulation Systems and Components Thereof; Notice of Referral to Administrative Law Judge of Complainant's Motion for Forfeiture of Respondents' Bonds and Respondents' Motion for Return of Their Bonds

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commission has referred to the presiding administrative law judge complainant's motion for forfeiture of respondents' bonds posted during the temporary relief and Presidential review periods, and respondents' motion for return of those bonds in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Peter L. Sultan, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3152. General information concerning the Commission may also be obtained by accessing the Commission's Internet server (http://www.usitc.gov)

SUPPLEMENTARY INFORMATION: This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission rule 210.50, 19 CFR 210.50.

This patent-based section 337 investigation was instituted on March 8, 1996, based upon a complaint and motion for temporary relief filed on January 26, 1996, by Quickturn Design Systems, Inc. (''Quickturn''). 61 FR 9486. The respondents are Mentor Graphics Corporation (''Mentor'') and Meta Systems (''Meta'') (collectively ''respondents''). On July 8, 1996, the presiding administrative law judge (''ALJ'') issued an initial determination (''ID'') granting Quickturn's motion for temporary relief. On August 5, 1996, the Commission determined not to modify or vacate the ID, issued a temporary limited exclusion order against respondents and a temporary cease and desist order against Mentor, and determined that the amount of respondents' bond during the pendency of temporary relief should be 43 percent of the entered value of imported hardware logic emulation systems and components thereof. On September 24, 1997, the Commission determined to modify respondents' temporary relief bond. Respondents' temporary relief bond remained at 43 percent of the entered value of the subject imported articles when the articles are appraised at transaction value (as defined in applicable U.S. Customs Service regulations), but increased to 180 percent of the entered value of the subject imported articles when the articles are appraised at other than transaction value.

On July 31, 1997, the ALJ issued a final ID finding that respondents have violated section 337 by infringing claims of all five of Quickturn's asserted patents. On that same date, the ALJ issued a recommended determination (''RD'') recommending the issuance of a permanent exclusion order and a cease and desist order. On October 2, 1997, the Commission issued its notice of the decision not to review the ALJ's final ID, thereby finding that respondents are in violation of section 337. On December 3, 1997, the Commission issued a permanent limited exclusion order directed to Meta and a permanent cease and desist order against domestic respondent Mentor.

On February 26, 1998, Quickturn filed a motion for forfeiture of respondents' temporary relief bonds. On March 13, 1998, respondents filed an opposition to Quickturn's motion and a motion for the return of their bonds. On that same date, the Commission investigative attorneys filed a response in support of Quickturn's motion. The Commission has referred these motions to Administrative Law Judge Paul Luckern for adjudication in an initial determination to be issued within nine months. Pursuant to rule 210.50(d) (19 CFR 210.50(d)), the ALJ's initial determination shall have a 45-day effective date and shall be subject to review under the provisions of Commission rules 210.42 through 210.45, 19 CFR 210.42–210.45.

Copies of all nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information

concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

Issued April 28, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–12011 Filed 5–5–98; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE (DOJ)

President's Advisory Board on Race; Meeting

ACTION: President's Advisory Board on Race; notice of meeting.

SUMMARY: The President's Advisory Board on Race will meet from approximately 9:00 am to Noon on May 19, 1998 in Washington, D.C. at a site to be determined to discuss issues relating to race and crime and the administration of justice. The meeting will include a panel discussion with national experts.

The public is welcome to attend the Advisory Board meeting on a first-come, first-seated basis. Members of the public may also submit to the contact person, any time before or after the meeting, written statements to the Board. Written comments may be submitted by mail, telegram, facsimile, or electronic mail, and should contain the writer's name, address and commercial, government, or organizational affiliation, if any. The address of the President's Initiative on Race is 750 17th Street, N.W., Washington, D.C. 20503. The electronic mail address is http://www.whitehouse.gov/Initiatives/OneAmerica.

FOR FURTHER INFORMATION: Contact our main office number, (202) 395–1010, for the exact time and location of the meetings. Other comments or questions regarding this meeting may be directed to Randy D. Ayers, (202) 395–1010, or via facsimile, (202) 395–1020.

Dated: May 1, 1998.

Randy Ayers,

Executive Officer.

[FR Doc. 98–12040 Filed 5–5–98; 8:45 am]

BILLING CODE 4410–13–M

DEPARTMENT OF JUSTICE

Antitrust Division

[Civil Action No. 98–CIV–2716]

Proposed Final Judgment and Competitive Impact Statement United States of America, State of New York, and State of Illinois v. Sony Corporation of America, LTM Holdings, Inc. d/b/a Loews Theatres, Cineplex Odeon Corporation, and J.E. Seagram Corp.

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court for the Southern District of New York, Case No. 98–CIV–2716. The proposed Final Judgment is subject to approval by the Court after the expiration of the statutory 60-day public comment period and compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h).

The United States, the State of New York, and the State of Illinois filed a civil antitrust Complaint on April 16, 1998, alleging that the proposed merger of LTM Holdings, Inc. (''Loews'') and Cineplex Odeon Corporation (''Cineplex'') would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint alleges that the proposed merger would have combined the first and second largest theatre chains in Manhattan and Chicago. In Manhattan and Chicago, the combined chains would have had market shares, by revenue, of 67 percent and 77 percent, respectively. The complaint states that the merger would have reduced competition in both markets, leading to higher ticket prices and reduced theatre quality for first-run movies. It also would have allowed the newly merged firm to reduce competition by lowering film rentals paid to distributors for first-run movies.

The prayer for relief seeks: (a) Adjudication that the proposed merger would violate Section 7 of the Clayton Act; (b) permanent injunctive relief preventing the consummation of the proposed merger; (c) an award to each plaintiff of the costs of the action; and (d) such other relief as is proper.

A Stipulation and Order and a proposed Final Judgment were filed with the court at the same time the Complaint was filed. The proposed Final Judgment requires Loews and Cineplex to divest 14 theatres in Manhattan and 11 theatres in the Chicago area to a buyer or buyers, acceptable to the United States (after consultation with the State of New York or the State of Illinois as the case may be), that will continue to operate them as movie theatres. Unless the United States grants a time extension, the divestitures must be completed within one-hundred and eighty (180) calendar days after the filing of the Complaint in this matter or five (5) days after notice of the entry of the Final Judgment by the Court, whichever is later.

If the divestitures are not completed within the divestiture period, the Court, upon application of the United States, is to appoint a trustee selected by the United States to sell the assets. The proposed Final Judgment also requires that, until the divestitures mandated by the Final Judgment have been accomplished, Loews and Cineplex must maintain and operate the 25 theatres to be divested as active competitors, maintain the management, staffing, sales, and marketing of the theatres, and maintain the theatres in operable condition at current capacity configurations. Further, the proposed Final Judgment requires defendants to give the United States prior notice regarding future motion picture theatre acquisitions in Manhattan or Cook County, Illinois.

The plaintiffs and the defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

A Competitive Impact Statement filed by the United States describes the Complaint, the proposed Final Judgment, and remedies available to private litigants.

Public comment is invited within the statutory 60-day comment period. Such comments, and the responses thereto, will be published in the **Federal Register** and filed with the Court. Written comments should be directed to Craig W. Conrath, Chief, Merger Task Force, Antitrust Division, 1401 H Street, NW., Suite 4000, Washington, DC 20530 (telephone: 202–307–0001).

Copies of the Complaint, Stipulation and Order, proposed Final Judgment, and Competitive Impact Statement are available for inspection in Room 215 of the Antitrust Division, Department of Justice, 325 7th Street, NW., Washington, DC 20530 (telephone: 202–514–2481) and at the office of the Clerk of the United States District Court for the Southern District of New York, 500 Pearl Street, New York, NY 10007.

Copies of any of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations and Merger Enforcement Antitrust Division.

Stipulation and Order

It is stipulated by and between the undersigned parties, by their respective attorneys, as follows:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the Southern District of New York;

2. The parties stipulate that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiff the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court;

3. The defendants (as defined in paragraph II (B)–(F) of the proposed Final Judgment attached hereto) shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment by the Court, and shall, from the date of the filing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court;

4. Defendants shall not consummate their transaction before the Court has signed this Stipulation and Order;

5. In the event plaintiff United States withdraws its consent, as provided in paragraph 2 above, or if the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, this Stipulation shall be of no effect whatever, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding;

6. Loews and Cineplex represent that the divestitures ordered in the proposed Final Judgment can and will be made, and that Loews and Cineplex will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained therein;

7. All parties agree that this agreement can be signed in multiple counterparts.

Dated: April 16, 1998.

For Plaintiff United States:

Allen P. Grunes (AG 4775),
U.S. Department of Justice, Antitrust Division, Merger Task Force, 1401 H Street, NW, Suite 4000, Washington DC 20530, (202) 307–0001.

For Plaintiff State of New York:

Dennis C. Vacco, Attorney General.
By: Stephen D. Houck (SH 0959),
Assistant Attorney General in Charge, Antitrust Bureau, Office of the Attorney General, State of New York, 120 Broadway, New York, NY 10271, (212) 416–8280.

For Plaintiff State of Illinois:

James E. Ryan, Attorney General.
By: Christine H. Rosso (CR 3708),
Chief, Antitrust Bureau, Office of the Attorney General, State of Illinois, 100 West Randolph Street, 13th Floor, Chicago, Illinois 60601, (312) 814–5610.

For Defendants Sony Corporation of America and LTM Holdings, Inc.:

Ira S. Sacks (IS 2861),
Fried, Frank, Harris, Shriver & Jacobson, One New York Plaza, New York, NY 10004, (212) 859–8000.

For Defendant Cineplex Odeon Corporation:

Alan J. Weinschel (AW 5659),
Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, NY 10153, (212) 310–8000.

For Defendant J. E. Seagram Corp.:

Kenneth R. Logan (KL 7745),
Simpson Thacher & Bartlett, 425 Lexington Avenue, New York, NY 10017, (212) 455–2000.

So ordered:

United States District Judge

Final Judgment

Whereas, plaintiffs, the United States of America, the State of New York, and the State of Illinois filed their Complaint in this action on April 16, 1998, and plaintiffs and defendants by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

And whereas, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, plaintiffs intend Loews and Cineplex, as hereinafter defined, to be required to preserve competition by promptly divesting the 14 theatres in Manhattan and 11 theatres in Chicago identified below;

And whereas, plaintiffs required Loews and Cineplex to make the divestitures for the purpose of establishing one or more viable competitors in both Manhattan and Chicago in the exhibition of first-run motion pictures;

And whereas, Loews and Cineplex have represented to the plaintiffs that the divestitures ordered herein can and will be made and that Loews and Cineplex will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestitures contained below;

Now, therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby *Ordered, Adjudged, And Decreed* as follows:

I. Jurisdiction

This Court has jurisdiction over each of the parties hereto and over the subject matter of this action. The Complaint states a claim by the plaintiffs upon which relief may be granted against the defendants, as hereinafter defined, under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II. Definitions

As used in this Final Judgment:

A. *DoJ* means the Antitrust Division of the United States Department of Justice.

B. *Loews* means defendant LTM Holdings, Inc. d/b/a/ Loews Theatres, a Delaware corporation with its headquarters in New York, New York, and its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees.

C. *Cineplex* means Cineplex Odeon Corporation, an Ontario corporation with its headquarters in Toronto, Canada, and its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees.

D. *Sony* means defendant Sony Corporation of America, a New York corporation with its headquarters in New York, New York, and its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees.

E. *Seagram* means defendant J.E. Seagram Corp., a Delaware corporation with its headquarters in New York, New York, and its successors, assigns, subsidiaries (including but not limited to Universal Studios, Inc.), divisions, groups, affiliates, partnerships and joint

ventures, and directors, officers, managers, agents, and employees.

F. *Defendants* means Loews, Cineplex, Sony and Seagram.

G. The *Manhattan theatre assets* means the motion picture theatre businesses operated by Loews and Cineplex under the following names at the following addresses in Manhattan, New York:

i. Chelsea, 260 West 23rd Street.
ii. Chelsea West, 333 West 23rd Street.
iii. 62nd & First, 400 East 62nd Street.
iv. Ziegfeld, 141 West 54th Street.
v. Park & 86th Street, 125 East 86th Street.
vi. Waverly Twin, 323 Sixth Avenue.
vii. Olympia, 2770 Broadway.
viii. Art Greenwich, 97 Greenwich Avenue.
ix. Metro Twin, 2626 Broadway.
x. Beekman, 1254 Second Avenue.
xi. Regency, 1987 Broadway.
xii. 62nd Street & Broadway, 1871 Broadway.
xiii. 59th Street East, 239 East 59th Street.
xiv. 34th Street Showplace, 238 East 34th Street.

The term *Manhattan theatre assets* includes all tangible and intangible assets used in the operation of these theatres including: All real property (owned or leased); all personal property, inventory, office furniture, fixed assets and fixtures, materials, supplies, and other tangible property or improvements used in the operation of the theatres; all licenses, permits and authorizations issued by any governmental organization relating to the operation of the theatres; and all contracts, agreements, leases, licenses, commitments and understandings pertaining to the theatres including supply agreements and licenses to exhibit motion pictures.

H. The *Chicago theatre assets* means the motion picture theatre businesses operated by Loews and Cineplex under the following names at the following addresses in Cook County, Illinois:

i. 600 North Michigan, 600 N. Michigan Ave., Chicago.
ii. 900 North Michigan, 900 N. Michigan Ave., Chicago.
iii. Biograph, 2433 N. Lincoln Ave., Chicago.
iv. Bricktown, 6420 W. Fullerton, Chicago.
v. Watertower 1–4, 845 N. Michigan Ave., Chicago.
vi. Watertower 5–7, 175 East Chestnut, Chicago.
vii. Burnham Plaza, 826 S. Wabash, Chicago.
viii. Broadway, 3175 N. Broadway, Chicago.
ix. Hyde Park Quad, 5238 S. Harper, Chicago.
x. River Run Eightplex, 16621 Torrence Ave., Lansing.
xi. Old Orchard Quad, 9400 Skokie Blvd., Skokie.

The term *Chicago theatre assets* includes all tangible and intangible assets used in the operation of these theatres including: All real property (owned or leased); all personal property, inventory, office furniture, fixed assets and fixtures, materials, supplies, and other tangible property or improvements used in the operation of the theatres; all licenses, permits and authorizations issued by any governmental organization relating to the operation of the theatres; and all contracts, agreements, leases, licenses, commitments and understandings pertaining to the theatres including supply agreements and licenses to exhibit motion pictures.

I. *Acquirer* means the entity or entities to whom Loews and Cineplex divest the Manhattan theatre assets or the Chicago theatre assets under this Final Judgment.

III. Applicability

A. The provisions of this Final Judgment apply to the defendants, their successors and assigns, their subsidiaries, directors, officers, managers, agents, and employees, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Each defendant shall require, as a condition of the sale or other disposition of all or substantially all of the assets used in its business of operating motion picture theatres in either Manhattan or Cook County, Illinois, that the acquiring party or parties agree to be bound by the provisions of this Final Judgment; provided, however, that Loews and Cineplex need not obtain such an agreement from an Acquirer in connection with the divestiture of the Manhattan theatre assets or the Chicago theatre assets.

IV. Divestiture

A. Loews and Cineplex are hereby ordered and directed in accordance with the terms of this Final Judgment, within one-hundred and eighty (180) calendar days after the filing of the Complaint in this matter or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the Manhattan theatre assets to an Acquirer or Acquirers acceptable to DoJ in its sole discretion after consultation with the State of New York and divest the Chicago theatre assets to an Acquirer or Acquirers acceptable to DoJ in its sole discretion after consultation with the State of Illinois.

B. Loews and Cineplex shall use their best efforts to accomplish the divestitures as expeditiously and timely as possible. DoJ, in its sole discretion, may extend the time period for any divestiture for two (2) additional thirty (30) day periods of time, not to exceed sixty (60) calendar days in total.

C. In accomplishing the divestitures ordered by this Final Judgment, Loews and Cineplex promptly shall make known, by usual and customary means, the availability of the Manhattan theatre assets and the Chicago theatre assets described in this Final Judgment. Loews and Cineplex shall inform any person making an inquiry regarding a possible purchase that the sale is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. Loews and Cineplex shall also offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information regarding the Manhattan theatre assets and the Chicago theatre assets customarily provided in a due diligence process except such information subject to attorney-client privilege or attorney work-product privilege. Loews and Cineplex shall make available such information to DoJ at the same time that such information is made available to any other person.

D. Loews and Cineplex shall permit prospective Acquirers of the Manhattan theatre assets and the Chicago theatre assets to have reasonable access to personnel and to make such inspection of the physical facilities of the Manhattan theatre assets and the Chicago theatre assets and any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

E. The defendants shall not take any action that will impede in any way the operation of the Manhattan theatre assets or the Chicago theatre assets.

F. Unless DoJ otherwise consents in writing, the divestitures pursuant to Section IV, or by trustee appointed pursuant to Section V of this Final Judgment, shall include the entire Manhattan theatre assets and Chicago theatre assets and be accomplished by selling or otherwise conveying the Manhattan theatre assets and Chicago theatre assets to an Acquirer or Acquirers in such a way as to satisfy DoJ in its sole discretion (after consultation with the State of New York or the State of Illinois as the case may be), that the Manhattan theatre assets and the Chicago theatre assets can and will be used by the Acquirer(s) as part of a viable, ongoing business of exhibition of first-run films. Divestiture of the

Manhattan theatre assets and the Chicago theatre assets may be made to one or more Acquirers provided that in each instance it is demonstrated to the sole satisfaction of DoJ (after consultation with the State of New York or the State of Illinois as the case may be) that the Manhattan theatre assets and the Chicago theatre assets will remain viable and the divestiture of such assets will remedy the competitive harm alleged in the complaint. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment: (1) Shall be made to an Acquirer or Acquirers who it is demonstrated to DoJ's sole satisfaction (after consultation with the State of New York or the State of Illinois as the case may be) has or have the intent and capability (including the necessary managerial, operational, and financial capability) of competing effectively in the business of exhibition of first-run films; (2) shall be accomplished so as to satisfy DoJ, in its sole discretion (after consultation with the State of New York or the State of Illinois as the case may be), that none of the terms of any agreement between an Acquirer and Loews or Cineplex give Loews or Cineplex the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

V. Appointment of Trustee

A. In the event that Loews and Cineplex have not divested the Manhattan theatre assets and the Chicago theatre assets within the time specified in Section IV(A) of this Final Judgment, the Court shall appoint, on application of the United States, a trustee selected by DoJ to effect the divestiture of the Manhattan theatre assets and the Chicago theatre assets.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Manhattan theatre assets and the Chicago theatre assets. The trustee shall have the power and authority to accomplish the divestitures at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Sections IV and X of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. Subject to Section V (C) of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of Loews and Cineplex any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestitures, and such professionals and agents shall be accountable solely to the trustee. The trustee shall have the power and authority to accomplish the Manhattan theatre assets divestitures at the earliest possible time to an Acquirer or Acquirers acceptable to DoJ in its sole discretion (after consultation with the State of New York), and the Chicago theatre assets divestitures at the earliest possible time to an Aquirer or Acquirers acceptable to DoJ in its sole discretion (after consultation with the State of Illinois), and shall have such other powers as this Court shall deem appropriate. Loews and Cineplex shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance. Any such objections by Loews and Cineplex must be conveyed in writing to plaintiffs and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VII of this Final Judgment.

C. The trustee shall serve at the cost and expense of Loews and Cineplex, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Loews and Cineplex and the trust shall then be terminated. The compensation of such trustee and of any professionals and agents retained by the trustee shall be reasonable in light of the value of the divested business and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestitures and the speed with which they are accomplished.

D. Loews and Cineplex shall use their best efforts to assist the trustee in accomplishing the required divestitures, including best efforts to effect all necessary consents and regulatory approvals. The trustee, and any consultants, accountants, attorneys and other persons retained by the trustee, shall have full and complete access to the personnel, books, records, and facilities of the businesses to be divested, and Loews and Cineplex shall develop financial or other information relevant to the business to be divested customarily provided in a due diligence process as the trustee may reasonably request, subject to customary confidentiality assurances. Loews and Cineplex shall permit prospective Acquirers of the assets to have reasonable access to personnel and to make such inspection of physical facilities and any and all financial, operational or other documents and other information as may be relevant to the divestitures required by this Final Judgment.

E. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestitures ordered pursuant to this Final Judgment; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the businesses to be divested, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to divest the business to be divested.

F. If the trustee has not accomplished such divestitures within six (6) months after its appointment, the trustee thereupon shall file promptly with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestitures, (2) the reasons, in the trustee's judgment, why the required divestitures have not been accomplished, and (3) the trustee's recommendations; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall enter thereafer such orders as it shall deem appropriate in order to carry out the purpose of the trust which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by DoJ.

VI. Notice

Unless such transaction is otherwise subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. 18a (the ''HSR Act''), defendants, without providing advance notification to DoJ, shall not directly or indirectly acquire any assets of or any interest, including any financial, security, loan, equity or management interest, in any then-existing motion picture theatre in either

Manhattan in the State of New York or in Cook County in the State of Illinois. Such notification shall be provided to the DoJ in the same format as, and per the instructions relating to the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended, except that the information requested in Items 5–9 of the instructions must be provided only with respect to defendants' motion picture theatre operations in Manhattan in the State of New York or in Cook County in the State of Illinois. Notification shall be provided at least thirty (30) days prior to acquiring any such interest, and shall include, beyond what may be required by the applicable instructions, the names of the principal representatives of the parties to the agreement who negotiated the agreement, and any management or strategic plans discussing the proposed transaction. If within the 30-day period after notification, representatives of DoJ make a written request for additional information, defendants shall not consummate the proposed transaction or agreement until twenty (20) days after submitting all such additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the HSR Act and rules promulgated thereunder. This Section shall be broadly construed and any ambiguity or uncertainty regarding the filing of notice under this Section shall be resolved in favor of filing notice.

VII. Notification

Within two (2) business days following execution of a definitive agreement, contingent upon compliance with the terms of this Final Judgment, to effect, in whole or in part, any proposed divestitures pursuant to Sections IV or V of this Final Judgment, Loews and Cineplex or the trustee, whichever is then responsible for effecting the divestitures, shall notify DoJ, and, as the case may be, in the State of New York or the State of Illinois of the proposed divestitures. If the trustee is responsible, it shall similarly notify Loews and Cineplex. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or a desire to, acquire any ownership interest in the businesses to be divested that are the subject of the binding contract, together with full details of same. Within fifteen (15) calendar days of receipt by DoJ of notice, DoJ may request from Loews or Cineplex, the proposed Acquirer, or any other third party additional information concerning the proposed divestitures and the proposed Acquirer. Loews and Cineplex and the trustee shall furnish any additional information requested from them within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after DoJ has been provided the additional information requested from Loews and Cineplex, the proposed Acquirer, and any third party, whichever is later, DoJ shall provide written notice to Loews and Cineplex and the trustee, if there is one, stating whether or not it objects to the proposed divestitures. If DoJ provides written notice to Loews and Cineplex and the trustee that DoJ does not object, then the divestitures may be consummated, subject only to Loews and Cineplex's limited right to object to the sale under Section V(B) of this Final Judgment. Absent written notice that DoJ does not object to the proposed Acquirer or upon objection by DoJ, a divestiture proposed under Section IV or Section V may not be consummated. Upon objection by Loews and Cineplex under the provision in Section V(B), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VIII. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter and every thirty (30) calendar days thereafter until the divestitures have been completed whether pursuant to Section IV or Section V of this Final Judgment, Loews and Cineplex shall deliver to DoJ an affidavit as to the fact and manner of compliance with Sections IV or V of this Final Judgment. Each such affidavit shall include, *inter alia,* the name, address, and telephone number of each person who, at any time after the period coverage by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the businesses to be divested, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts that Loews and Cineplex have taken to solicit a buyer for the relevant assets and to provide required information to prospective Acquirers.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, Loews and Cineplex shall deliver to DOJ an affidavit which describes in detail all actions they have taken and all steps they have implemented on an on-going basis to preserve the Manhattan theatre assets and the Chicago theatre assets pursuant to Section IX of this Final Judgment. The affidavit also shall describe, but not be limited to, the efforts of Loews and Cineplex to maintain and operate the Manhattan theatre assets and the Chicago theatre assets as active competitors, maintain the management, staffing, sales, and marketing of the Manhattan theatre assets and the Chicago theatre assets, and maintain the Manhattan and the Chicago theatre assets in operable condition at current capacity configurations. Loews and Cineplex shall deliver to DoJ an affidavit describing any changes to the efforts and actions outlined in their earlier affidavit(s) filed pursuant to this Section within fifteen (15) calendar days after the change is implemented.

C. Until one year after such divestiture has been completed, Loews and Cineplex shall preserve all records of all efforts made to preserve the business to be divested and effect the divestitures.

IX. Preservation of Assets

Until the divestitures required by the Final Judgment have been accomplished, Loews and Cineplex shall take all steps necessary to maintain and operate the Manhattan theatre assets and the Chicago theatre assets as active competitors, maintain the management, staffing, sales, and marketing of the Manhattan theatre assets and the Chicago theatre assets, and maintain the Manhattan theatre assets and the Chicago theatre assets in operable condition at current capacity configurations. Defendants shall take no action that would jeopardize the divestitures described in this Final Judgment.

X. Financing

The defendants are ordered and directed not to finance all or any part of any purchase by an Acquirer or Acquirers made pursuant to Sections IV or V of this Final Judgment.

XI. Compliance Inspection

For purposes of determining or securing compliance with the Final Judgment and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the plaintiffs, upon the written request of the Assistant Attorney General in charge of the Antitrust Division, the New York Attorney General or the Illinois Attorney General, and on

reasonable notice to the defendants made to their principal offices, shall be permitted:

1. Access during office hours of the defendants to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the defendants, who may have counsel present, relating to the matters contained in this Final Judgment; and

2. Subject to the reasonable convenience of the defendants and without restraint or interference from any of them, to interview, either informally or on the record, their officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Assistant Attorney General in charge of the Antitrust Division, the New York Attorney General, or the Illinois Attorney General made to the defendants' principal offices, the defendants shall submit such written reports, under oath if requested, with respect to any matter contained in the Final Judgment.

C. No information or documents obtained by the means provided in Sections VIII or XI of this Final Judgment shall be divulged by a representative of the plaintiffs to any person other than a duly authorized representative of the Executive Branch of the United States, or of each state government, except in the course of legal proceedings to which at least one of the plaintiffs is a party (including grand jury proceedings,), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by the defendants to the plaintiffs, the defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and the defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then ten (10) calendar days notice shall be given by the plaintiffs to the defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which the defendants are not a party.

XII. Retention of Jurisdiction

Jurisidiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XIII. Termination

Unless this Court grants an extension, this Final Judgment will expire upon the tenth anniversary of the date of its entry.

XIV. Public Interest

Entry of this Final Judgment is in the public interest.

Dated _____

_____

United States District Judge

Competitive Impact Statement

Plaintiff, the United States of America, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

Plaintiffs the United States, the State of New York, and the State of Illinois filed a civil antitrust Complaint on April 16, 1998, alleging that a proposed merger of LTM Holdings, Inc. (''Loews'') and Cineplex Odeon Corp. (''Cineplex'') would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint alleges that Loews and Cineplex both operate motion picture theatres throughout the United States, and that they each operate first-run motion picture theatres in Manhattan and Chicago. The merger would combine the two leading theatre circuits in both Manhattan and Chicago and give the newly merged firm a dominant position in both localities: in Manhattan, the newly merged firm would have a 67% market share (by revenue) and in Chicago, the newly merged firm would have a 77% market share (by revenue). As a result, the combination would substantially lessen competition and tend to create a monopoly in the markets for theatrical exhibition of first-run films in both Manhattan and Chicago.

The prayer for relief seeks: (1) an adjudication that the proposed merger described in the Complaint would violate Section 7 of the Clayton Act; (b) permanent injunctive relief preventing the consummation of the transaction; (c) an award to each plaintiff of the costs of this action; and (d) such other relief as is proper.

Shortly before this suit was filed, a proposed settlement was reached that permits Loews to complete its merger with Cineplex, yet preserved competition in the markets in which the transactions would raise significant competitive concerns. A Stipulation and proposed Final Judgment embodying the settlement were filed at the same time the Complaint was filed.

The proposed Final Judgment orders Loews and Cineplex to divest 14 theatres in Manhattan and 11 theatres in the Chicago area to an acquirer acceptable to the United States. Unless the United States grants a time extension, the divestitures must be completed within one-hundred and eighty (180) calendar days after the filing of the Complaint in this matter or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later.

If the divestitures are not completed within the divestiture period, the Court, upon application of the United States, is to appoint a trustee selected by the United States to sell the assets. The proposed Final Judgment also requires that, until the divestitures mandated by the Final Judgment have been accomplished, the defendants must maintain and operate the 25 theatres to be divested as active competitors, maintain the management, staffing, sales, and marketing of the theatres, and maintain the theatres in operable condition at current capacity configurations. Further, the proposed Final Judgment requires defendants to give the United States prior notice regarding future motion picture theatre acquisitions in Manhattan or Cook County, Illinois.

The plaintiffs and the defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. The Alleged Violations

A. The Defendants

Sony Corporation of America is a New York corporation with its headquarters in New York, New York.

LTM Holdings, Inc. is a Delaware corporation which does business under the name Loews Theatres and has its principal executive offices in New York, New York. Loews is an indirect wholly

owned subsidiary of Sony Pictures Entertainment Inc., itself an indirect wholly owned subsidiary of Sony Corporation of America, which in turn is an indirect wholly owned subsidiary of Sony Corporation, a Japanese company. Loews currently operates 139 theatres with 1,035 screens in 16 states. Its annual revenues for the fiscal year ending February 28, 1997 were approximately $375 million.

Cinceplex is a Canadian corporation headquartered in Toronto, Ontario. It currently operates a total of 312 theatres with 1,723 screens in the United States, Canada and Hungary. Its United States operations consist of 911 screens at 175 locations in 13 states and the District of Columbia. Cineplex had annual revenues of approximately $500 million in 1996.

J.E. Seagram Corp. is a Delaware corporation headquartered in New York, New York. Its subsidiary, Universal Studios, Inc., is the largest shareholder of Cineplex.

B. Description of the Events Giving Rise to the Alleged Violations

On September 30, 1997, Sony Pictures Entertainment Inc., LTM Holdings, Inc. and Cineplex entered into a merger agreement. Pursuant to the agreement, Cineplex will become a wholly owned subsidiary of LTM Holdings, Inc., and Sony Pictures Entertainment will transfer all of its U.S. theatre assets not owned by LTM Holdings, Inc. to LTM Holdings, Inc. or its subsidiaries. LTM Holdings, Inc. will then be renamed Loews Cineplex Entertainment Corporation (''LCE''). Following the merger, Sony Pictures Entertainment Inc. will own approximately 51% of LCE and Universal Studios, Inc. will own approximately 26% of LCE.

Loews and Cineplex compete in the theatrical exhibition of first-run films in Manhattan and Chicago: They compete to obtain films from film distributors and to attract movie-goers to their theatres. The proposed merger, and the threatened loss of competition that would be caused thereby, precipitated the government's suit.

C. Anticompetitive Consequences of the Proposed Transaction

The Complaint alleges that the theatrical exhibition of first-run films in Manhattan and Chicago each constitutes a line of commerce and section of the country, or relevant market, for antitrust purposes. First-run films differ significantly from other forms of entertainment. The experience of viewing a film in a theatre is an inherently different experience from a live show, a sporting event, or viewing a videotape in the home. Ticket prices for first-run films are also generally very different than for other forms of entertainment. A small but significant increase in the price of tickets for first-run films would not cause a sufficient shift to other forms of entertainment to make the increase unprofitable.

From a movie-goer's standpoint, theatres outside Manhattan and Chicago are not acceptable substitutes for theatres within those areas. A small but significant increase in the price of tickets for first-run films would not cause a sufficient shift to theatres outside Manhattan or Chicago to make the increase unprofitable.

From a distributor's standpoint, there is no alternative to screening its first-run films in first-run theatres. Given the high population densities and number of significant critics in both Manhattan and Chicago, ''passing'' (i.e., not playing a film in) Manhattan and Chicago is not a viable option. From the distributor standpoint as well, a small but significant decrease in prices (i.e., a decrease in film rental fees) would not cause a sufficient shift by distributors to other locations to make the decrease unprofitable to exhibitors.

The Complaint alleges that the merger of Loews and Cineplex would lessen competition substantially and tend to create a monopoly in the markets for exhibition of first-run films in Manhattan and Chicago. The proposed transaction would create further market concentration in already highly concentrated markets, and the merged firm would control a majority of box office revenues in those markets. In Manhattan, the market share possessed by the largest theatre circuit would rise from 46% percent to 67% percent of box office revenues after the proposed transaction. According to the Herfindahl-Hirschman Index (''HHI''), a widely-used measure of market concentration defined and explained in Appendix A, the merged firm's post-transaction HHI in Manhattan would be 4815, representing an increase of 1911 points. In Chicago, the market share possessed by the largest theatre circuit would rise from 47% percent to 77% percent of box office revenues after the proposed transaction. The post-transaction HHI would equal 6438, representing an increase of 2874 points. These substantial increases in concentration would likely lead the merged firm to raise ticket prices.

Distributors and exhibitors often break the Manhattan and Chicago markets into ''zones'' that reflect various neighborhoods—such as, in Manhattan, the Upper East Side, the East Side, the West Side, Broadway-Times Square, Chelsea, and Greenwich Village, and in Chicago, Downtown, Near North, North, Far North, West, South, and Far South. Movies typically will open and play at only one theatre within a zone. The merger would convert a number of film zones in which Loews and Cineplex compete with each other into zones in which there would be no competition. For instance, in the downtown Chicago zone, the combined entity would control all seven theatres. The same is true in the north zone (Old Orchard/Orchard Gardens), the west zone (Bricktown Square/Norridge) and the far south zone (River Run/River Oaks).

By reducing non-price competition, the merger would also likely lead to lower quality theatres by reducing the incentive to maintain, upgrade and renovate theatres in Manhattan and Chicago, thus reducing the quality of the viewing experience for movie-goer. It also may allow the merged entity to reduce the number of shows as there no longer would be competitive pressure to continue early and late shows.

Finally, the merger would also likely lead to distributors receiving less in revenue for the exhibition of their pictures, either in the form of reduced (or eliminated) guarantees, higher overhead allowances for the exhibitors, or a less favorable percentage of the box office receipts. The reduced revenue remitted to the distributors could lead to fewer films being produced, or less money being expended on high quality films, to the ultimate detriment of movie-goers.

New entry into the Manhattan and Chicago markets for exhibition of first-run films would be highly unlikely to eliminate the anticompetitive effects of this transaction. Manhattan and Chicago are two of the most difficult markets in the country to enter: Available theatre sites are scarce, real estate and construction costs are among the highest in the nation, and acquiring the necessary permits and approvals can be difficult and time-consuming. Identifying a site, planning the development, and constructing a theatre in Manhattan or Chicago takes several years.

For all of these reasons, plaintiff has concluded that the proposed transaction would lessen competition substantially in the exhibition of first-run films in Manhattan and Chicago, eliminate actual and potential competition between Loews and Cineplex, and likely result in increased ticket prices and lower quality theatres in both Manhattan and Chicago. The merger would also likely reduce the rental fees paid to distributors for films. The

proposed merger therefore violates Section 7 of the Clayton Act.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment would preserve existing competition in the theatrical exhibition of first-run films in both Manhattan and Chicago. It requires the divestiture of 14 theatres in Manhattan: 13 Cineplex theatres (Chelsea, Chelsea West, 1st and 62nd, Ziegfeld, Park & 86th Street, Waverly Twin, Olympia, Art Greenwich, Metro Twin, Beekman, Regency, 62nd & Broadway, and 59th Street East) and one Loews theatre (34th Street Showplace); and 11 theatres in the Chicago area: 8 Cineplex Odeon theatres (600 North Michigan, 900 North Michigan, Biograph, Bricktown, Watertower 1–4, Watertower 5–7, Burnham Plaza, and Broadway) and 3 Loews theatres (Hyde Park Quad, River Run Eightplex, and Old Orchard Quad). The divested theatres constitute slightly more in box office revenue in Manhattan and in Chicago than the leading firm is acquiring in each market and, as a result, will reduce the leading firm's share back to (or actually slightly less than) pre-merger levels in both markets. The divestitures will preserve choices for distributors and movie-goers and make it less likely that ticket prices will increase, rental fees paid to distributors will decrease, and theatre quality will decline in Manhattan and Chicago as a result of the transaction.

Two of the divestitures in the Chicago area are outside of the city limits: Old Orchard Quad and the River Run Eightplex. In a case like this, where theatres are geographically differentiated and consumers' willingness to travel is varied, some movie-goers near the border have options outside the city limits. Accordingly, we have negotiated relief that includes two theatres outside of Chicago. Both of these theatres are in close proximity to the city, are near major highways, and are in zones that would be rendered non-competitive by the merger.

Unless the United States grants an extension of time, the divestitures must be completed within one-hundred and eighty (180) calendar days after the filing of the Complaint in this matter or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later. Until the divestitures take place, Loews and Cineplex must maintain and operate the 25 theatres to be divested as active competitors, maintain the management, staffing, sales, and marketing of the theatres, and maintain the theatres in operable condition at current capacity configurations.

The divestitures must be to a purchaser or purchasers acceptable to the United States in its sole discretion, after consultation with the State of New York or the State of Illinois as appropriate. Unless the United States otherwise consents in writing, the divestitures shall include all the assets of the theatres being divested, and shall be accomplished in such a way as to satisfy the United States that such assets can and will be used as viable, ongoing first-run theatres.

If defendants fail to divest these theatres within the time periods specified in the Final Judgment, the Court, upon application of the United States, is to appoint a trustee nominated by the United States to effect the divestitures. If a trustee is appointed, the proposed Final Judgment provides that Loews and Cineplex will pay all costs and expenses of the trustee and any professionals and agents retained by the trustee. The compensation paid to the trustee and any persons retained by the trustee shall be both reasonable in light of the value of the theatres remaining to be divested, and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestitures and the speed with which they are accomplished. After appointment, the trustee will file monthly reports with the parties and the Court, setting for the trustee's efforts to accomplish the divestitures ordered under the proposed Final Judgment. If the trustee has not accomplished the divestitures within six (6) months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestitures, (2) the reasons, in the trustee's judgment, why the required divestitures have not been accomplished and (3) the trustee's recommendations. At the same time the trustee will furnish such report to the plaintiff and defendants, who will each have the right to be heard and to make additional recommendations.

The proposed Final Judgment also prohibits the defendants from acquiring any other threatres in Manhattan or Cook County, Illinois without providing at least thirty (30) days' notice to the U.S. Department of Justice. Such acquisitions could raise competitive concerns but might be too small to be reported otherwise under the Hart-Scott-Rodino (''HSR'') premerger notification statute.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suite in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The parties have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that plaintiff United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the plaintiff written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The plaintiff will evaluate and respond to the comments. All comments will be given due consideration by the U.S. Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the response of the plaintiff will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Craig W. Conrath, Chief, Merger Task Force, Antitrust Division, United States Department of Justice, 1401 H Street, NW; Suite 4000, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and that the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

Plaintiff United States considered, as an alternative to the proposed Final

Judgment, a full trial on the merits of its Complaint against defendants. Plaintiff is satisfied, however, that the divestiture of the Manhattan theatre assets and the Chicago theatre assets and other relief contained in the proposed Final Judgment will preserve viable competition in the first-run exhibition of motion pictures in Manhattan and Chicago. Thus, the proposed Final Judgment would achieve the relief the government might have obtained through litigation, but avoids the time, expense and uncertainty of a full trial on the merits of the Complaint.

VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (60) day comment period, after which the Court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' In making that determination, the Court may consider—

(1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered and any other considerations bearing upon the adequacy of such judgment;

(2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e).

As the United States Court of Appeals for the D.C. Circuit held, this statute permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient and whether the decree may positively harm third parties. *See United States* v. *Microsoft,* 56 F.3d 1448, 1461–62 (D.C. Cir. 1995).

In conducting this inquiry, ''[t]he Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.''[1] Rather,

[a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.,* 1977–1 Trade Cas. ¶ 61,508. at 71, 980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted valuation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988), *Citing United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir.), *cert. denied,* 454 U.S. 1083 (1981); *see also Microsoft,* 56 F.3d at 1460–62. Precedent requires that,

the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[2]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' ''[3]

This is strong and effective relief that should fully address the competitive harm posed by the proposed transaction.

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the plaintiff in formulating the proposed Final Judgment.

Dated: April 16, 1998.

Respectfully submitted,

Allen P. Grunes (AG 4775),

U.S. Department of Justice, Antitrust Division, 1401 H. Street, NW.; Suite 4000, Washington, D.C. 20530, (202) 307–0001, Attorney for Plaintiff the United States.

Exhibit A Definition of HHI and Calculations for Market

''HHI'' means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of thirty, thirty, twenty and twenty percent, the HHI is 2600 $30^2 + 30^2 + 20^2 + 20^2$=2600). The HHI takes into account the relative size and distribution of the firms in a market and approaches zero when a market consists of a large number of firms of relatively equal size. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 points are considered to be moderately concentrated, and those in which the HHI is in excess of 1800 points are considered to be concentrated. Transactions that increase the HHI by more than 100 points in concentrated markets presumptively raise antitrust concerns under the Merger Guidelines. See Merger Guidelines § 1.51.

Certificate of Service

I, Allen P. Grunes, hereby certify that on April 16, 1998, I caused the foregoing document to be served on defendants by having a copy mailed, first-class, postage prepaid, to:

Ira S. Sacks,

Fried, Frank, Harris, Shriver & Jacobson, One New York Plaza, New York, NY 10004, (212) 859–8000.

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[1] 119 Cong. Rec. 24598 (1973). *See United States* v. *Gillette Co.,* 406 F. Supp. 713, 715 (D. Mass. 1975). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. Rep. 93–1463, 93rd Cong. 2d Sess. 8–9 (1974), *reprinted in* U.S.C.C.A.N. 6535, 6538.

[2] *Bechtel.,* 648 F.2d at 666 (citations omitted) (emphasis added); *See BNS,* 858 F.2d at 463; *United States* v. *National Broadcasting Co.,* 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *Gillette,* 406 F. Supp. at 716. *See also Microsoft,* 56 F.3d at 1461 (whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' ') (citations omitted).

[3] *United States* v. *American Tel. and Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982), *aff'd. sub nom. Maryland v. United States,* 460 U.S. 1001 (1983), *quoting Gillette Co.,* 406 F. Supp. at 716 (citations omitted); *United States* v. *Alcan Aluminum, Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985).

Attorney for defendants Sony Corporation of America and LTM Holdings, Inc.

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Attorney for defendant J.E. Seagram Corp.

Allen P. Grunes.

[FR Doc. 98–11958 Filed 5–5–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1918–98]

English Language, American History and Civics, Standardized Naturalization Test

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: This notice announces the termination of the Immigration and Naturalization Service (Service) Standardized Citizenship Testing Program, currently conducted by five non-government companies on behalf of the Service. The program, established under a 1991 Notice of Program in the **Federal Register**, will end at midnight on August 30, 1998. After the August 30 termination date, the Service will commence citizenship testing at the newly opened Application Support Centers as part of the ongoing effort to re-engineer and streamline the entire naturalization process.

DATES: The Citizenship Testing Program will terminate effective at midnight, Eastern Daylight Time, August 30, 1998.

FOR FURTHER INFORMATION CONTACT: Craig Howie, Immigration and Naturalization Service, Office of Naturalization Operations, 801 I Street, NW., Suite 900, Washington, DC 20536. Telephone: (202) 305–0539.

SUPPLEMENTARY INFORMATION:

What Is the Standard Citizenship Testing Program?

The Service established a standardized citizenship testing program pursuant to a Notice of Program published in the **Federal Register** on June 28, 1991, at 56 FR 29714–15. The program's model was similar to the testing program used with Legalization applicants as provided in section 254A(b)(1)(D) of the Immigration and Nationality Act (the Act). The citizenship testing program was designed to facilitate the naturalization of persons who otherwise might be hesitant to apply for naturalization.

Section 312 of the Act requires most applicants for naturalization to demonstrate a basic understanding of the English language and an understanding of United States history and government. Traditionally, applicants are tested on English and United States history and government as part of the mandatory naturalization interview. The 1991 Notice established criteria that non-government organizations were required to meet in order to be authorized to conduct citizenship testing on behalf of the Service. These criteria included requirements for the administration of a multiple choice test on United States history, government, and written English. Naturalization applicants who take and pass one of these tests normally are not questioned on these topics during the mandatory naturalization interview before an officer of the Service.

Since publication of the 1991 Notice, the Service approved six national organizations to administer citizenship tests. Five national organizations currently are administering citizenship tests through networks of local testing centers across the United States. The Service has no contractual or financial ties with any of the companies authorized to conduct citizenship testing.

Why Has the Service Decided To Terminate the Current Testing Program?

The Service has been engaged in a complete re-engineering of the naturalization process. Part of this process involves developing new methods for applicants to demonstrate compliance with various naturalization requirements under the Act. For example, last year the Service embarked upon a new method for applicant fingerprinting. Fingerprints for all Service applications or petitions are now taken at Application Support Centers (ASCs). The Service now plans to commence citizenship testing at the ASCs so that applicants may fulfill these particular requirements at one time, with one visit. The Service anticipates publishing a proposed rule in the **Federal Register** later this year, outlining our regulatory proposal for citizenship testing at the ASCs. The authority for this decision to end the current testing program is found in section 332(a) of the Act which authorizes the Service to determine an applicant's admissibility to citizenship.

How Long Will Testing Certificates Issued by the Current Testing Organizations Be Valid?

The Service will allow the current testing organizations to continue administering tests through midnight, Eastern Daylight Time, August 30, 1998. Test certificates issued noting a testing date on or before August 30, 1998, will be honored in accordance with Service regulations found at 8 CFR 312.3(a)(1). For example, an applicant who is tested on August 30, 1998, passes, and is issued a certificate, has until August 30, 1999, to file an N–400, Application for Naturalization, in order for the certificate to be honored. If the applicant has already filed an N–400 and is awaiting an interview, the certificate will be valid until a final determination on the application has been made, regardless of how long the time period is between the date of the test and the date of the final determination on the application. Service officers interviewing naturalization applicants will retest persons presenting certificates only if the officer has reason to believe that the certificate was either fraudulently issued or otherwise inappropriately granted. While not a requirement, the Service urges all applicants desiring to be tested by the current testing organizations to submit a copy of the passing certification as an attachment to the N–400 at the time of filing, and to bring the original certificate to the naturalization interview.

Dated: April 15, 1998.

Doris Meissner,
Commissioner, Immigration and Naturalization Service.

[FR Doc. 98–12004 Filed 5–5–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Office for Victims of Crime; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review; Reinstatement, with change, of a previously approved collection for which approval has expired; Victims of Crime Act, Victim Compensation Grant Program, State Performance Report.

This proposed information collection is published to obtain comments from

the public and affected agencies. Comments are encouraged and will be accepted until; July 6, 1998. Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Does the proposed information collection instrument include all relevant program performance measures;

(2) Does the proposed information to be collected have practical utility;

(3) Does the proposed information to be collected enhance the quality and clarity of the information to be collected; and

(4) Does the proposed information to be collected minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Toni Thomas, 202–616–3579, Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice, 810 Seventh Street, NW., Washington, DC 20531. You may also contact the Office of Management and Budget, Office of Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW., Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to (202) 514–1590.

Overview of this information

(1) Type of information collection: Reinstatement, with change, of a previously approved collection for which approval has expired.

(2) The title of the form/collection: Victims of Crime Act, Victim Compensation Grant Program, State Performance Report.

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection: None.

Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract:

Primary: State government.

Other: None.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: 52 respondents to complete an annual report in 2 hours.

(6) An estimate of the total public burden (in hours) associated with the collection: 104 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: April 30, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–11965 Filed 5–5–98; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of April, 1998.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determination for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–34,156; Pennacle Micro, Inc., Colorado Springs, CO

TA–W–34,284; Munekata America, Inc., Dalton, GA

TA–W–34,274; Copes-Vulcan, Inc., Sootblowers Div., Lake City, PA

TA–W–34,291; Hafer Logging Co., Inc., LaGrande, OR

TA–W–34,231; Eagle Veneer, Inc., Harrisburg Plywood Div., Harrisburg, OR

TA–W–34,296; Doehler-Jarvis, Toledo, OH

TA–W–34,303, A & B; Young Morgan Lumber, Lyons, OR, Hanel Lumber, Hood River, OR and Hood Lumber Co., Mill City, OR

TA–W–34,273; Harris Enterprises, Inc., Marshfield, MO

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–34,390; Don Mart Clothes, Inc., Philipsburg, PA

TA–W–34,424; The Penn Traffic Co., Insalaco Distribution Center, Scranton, PA

TA–W–34,328; Mexicana Airlines, San Antonio, TX

TA–W–34,421; Weyerhaeuser Co., Coos Bay Services Div., North Bend, OR

TA–W–34,402; Energy Transportation Corp., New York, NY

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–34,267; Block Drug Co., Inc., South Brunswick, NJ

TA–W–34,305 & A; Sara Lee Underwear, Winston-Salem, NC and Yadkinville, NC

TA–W–34,304; Electro-Motive Div., General Motors Corp., Commerce, CA

TA–W–34,271; Danly Machine L.P., Cicero, IL

TA–W–34,180; Comac Enterprises, Columbia, TN

TA–W–34,225; BTR Automotive Sealing Systems, West Unity, OH

TA–W–34,406; Moore Document Solutions, LDK Department, Stillwater, OK

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–34,341; Koch Refining Co LP, Corpus Christi, TX

The investigation revealed that criteria (2) and criteria (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–34,420; Samsonite Corp., Tucson, AZ: February 2, 1997
TA–W–34,283; American Safety Razor Co., Veronia, VA: September 5, 1997.
TA–W–34,289; Leon Levin Sons, Inc., Long Island City, NY: February 18, 1997.
TA–W–34,263; Kwikset Corp and Remedy Intelligent Staffing, Anaheim, CA: January 26, 1997.
TA–W–34,302; Sharp Manufacturing Co., Inc., Rancho Cucamunga, CA: February 19, 1997.
TA–W–34,234; Unimark Foods, Inc., Flavor Fresh Div., Lawrence, MA: January 26, 1997.
TA–W–34,136; Stanley Blacker, Inc., Vidalia, GA: March 11, 1997.
TA–W–34,281; Trico Products Corp., Vanceboro, NC: February 11, 1997.
TA–W–34,397; Carpenter Technology Corp., Orangeburg, SC: March 6, 1997.
TA–W–34,115; Hibbing Taconite Co., Hibbing, MN: December 12, 1996.
TA–W–34,323; Cranston Print Works Co., Fletcher, NC: February 24, 1997.
TA–W–34,280; Jandy Apparel, Hellam, PA: February 20, 1997.
TA–W–33,950; Mario Casuals, Inc., New York, NY: October 16, 1996.
TA–W–34,266; Bladen Sportswear, Tarheel Knitwear Div., Wilmington, NC: February 19, 1997.
TA–W–34,368; Lyle Wood Products, Tacoma, WA: March 17, 1997.
TA–W–34,384; VF Jeanswear, Inc., Arab, AL: March 10, 1997.
TA–W–34,380; Avent, Inc., Including Temporary & Contract Employees From Interim Personnel, Olsten Temporaries and H.L. Yoh, Tucson, AZ: March 16, 1997.
TA–W–34,329; Jostens, Inc., Attleboro, MA: March 4, 1997.
TA–W–34,293; Ideal Reel Co., Inc., Paducah, KY: February 24, 1997.
TA–W–34,219; Powers Holdings, Inc., Milwaukee, WI: January 15, 1997.
TA–W–34,312; The Ertle Co., Dyersville, IA: February 26, 1998.
TA–W–34,268; Foot-Tec Industries, Inc., Miami Lakes, FL: February 17, 1997.
TA–W–34,405; Spalding & Sons, Inc., Grants Pass, OR: March 18, 1997.
TA–W–34,347; Westwood Lighting, Inc., El Paso, TX: December 16, 1996.
TA–W–34,429; Superior Pants Co., Men's Apparel Group, Athens, GA: January 25, 1998.
TA–W–34,275; U.P. Jacket Co., Inc., Memominee, MI: February 12, 1997.
TA–W–34,241; Chamberdoor Industries, Inc., Hot Springs, AR: January 26, 1997.
TA–W–34,190; Lovingston Manufacturing Co., Inc., Staunton, VA: January 19, 1997.
TA–W–34,417; Gent-J Mfg, Inc., Plymouth, PA: March 24, 1997.
TA–W–34,373; Key Tronic Corp., Spokane, WA: March 26, 1998.
TA–W–34,324; Paragon Trade Brands, Waco, TX: February 24, 1997.
TA–W–34,319; Parson and Rives, Inc., Independence, VA: March 3, 1997.
TA–W–34,150; A. Koral Fashion, Inc., Men's Division, Schuylkill Haven, PA: December 18, 1996.
TA–W–34,435; Ram Manufacturing, Inc., Roanoke, AL: March 31, 1997.
TA–W–34,317; Sports Spectacular International, Inc., Philipsburg, PA: March 2, 1997.
TA–W–34,316; Pinewood Casulas, Inc., Philipsburg, PA: March 2, 1997.
TA–W–34,315; Northside Mfg, Inc., Philipsburg, PA: March 2, 1997.
TA–W–34,370; Vishay-Sprague, Inc., Sanford, ME: April 16, 1998.
TA–W–34,286 & A; Hasbro Manufacturing Services, El Paso, TX and Amsterdam, NY: April 17, 1998.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the months of April, 1998.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivison have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases in ports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivison; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–02233; Electro-Motive Division, General Motors Corp., Commerce, CA
NAFTA–TAA–02254; Parson and Rives, Inc., Independence, VA
NAFTA–TAA–02239; Cranston Print Works Co., Fletcher, NC
NAFTA–TAA–02238; U.P. Jacket Co., Inc., Menominee, MI
NAFTA–TAA–02107; Rich Products, Saugatuck, MI
NAFTA–TAA–02230 & A, B; Young Morgan Lumber, Lyons, OR, Hanel Lumber, Hood River, OR and Hood Lumber Co., Mill City, OR
NAFTA–TAA–02208; Wagner Electronic Products, Inc., Rouge River, OR
NAFTA–TAA–02256; Interbake Foods, Tacomka, WA

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

NAFTA–TAA–02275; Don Mart Clothes, Inc., Philipsburg, PA
NAFTA–TAA–02305; The Penn Traffic Co., Insalaco Distribution Center, Scranton, PA
NAFTA–TAA–02215; Universal Transport, Inc., Riddle, OR
NAFTA–TAA–02241; Georgia Pacific Corp., Distribution Center, Spokane, WA

NAFTA–TAA–02329; Penske Logistics, Inc., Bloomington, IN

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

NAFTA–TAA–02250; Koch Refining Co. LP, Corpus Christi, TX

The investigation revealed that criteria (2) and criteria (4) have not been met. Sales or production, or both, of such firm or subdivision have not decreased. There has not been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–02091; Hibbing Taconite Co., Hibbing, MN: December 12, 1996.

NAFTA–TAA–01926; General Electric Co., Salem, VA: August 18, 1996.

NAFTA–TAA–02276; Harrison Alloys, Inc., Spartanburg, SC: March 24, 1997.

NAFTA–TAA–02210; Trico Products Corp., Vanceboro, NC: February 11, 1997.

NAFTA–TAA–02293; Jostens, Inc., Attleboro, MA: March 26, 1997.

NAFTA–TAA–02234; Sharp Manufacturing Co., Inc., Rancho Cucamunga, CA: January 9, 1997.

NAFTA–TAA–02277; Babcock and Wilcox Co (Including Workers Employed by Manpower Temporary Services), Paris, TX: March 27, 1997.

NAFTA–TAA–02294; Gent-J Mfg., Inc., Plymouth, PA: March 24, 1997.

NAFTA–TAA–02263; Samsonite Corp., Tuscon, AZ: March 12, 1997.

NAFTA–TAA–02163; Jantzen, Inc., Seneca, SC: January 28, 1997.

NAFTA–TAA–02240; Paragon Trade Brands, Waco, TX: February 24, 1997.

NAFTA–TAA–02182; Chamberdoor Industries, Inc., Hot Springs, AR: February 2, 1997.

NAFTA–TAA–02158; Lovingston Manufacturing Co., Inc., Staunton, VA: January 27, 1997.

NAFTA–TAA–02245; Pinewood Casuals, Inc., Philipsburg, PA: March 2, 1997.

NAFTA–TAA–02244; Northside Mfg., Inc., Philipsburg, PA: March 2, 1997.

NAFTA–TAA–02246; Sports Spectacular International, Inc., Philipsburg, PA: March 2, 1997.

NAFTA–TAA–02319; Ram Manufacturing, Inc., Roanoke, AL: April 7, 1997.

NAFTA–TAA–02264; Delphi Automotive Systems, Delphi Automotive and Lighting Brea Operations, Brea, CA: March 17, 1997.

I hereby certify that the aforementioned determinations were issued during the months of March and April 1998. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: April 27, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–12019 Filed 5–5–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 18, 1998.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 18, 1998.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

Signed at Washington, DC this 13th day of April, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted on 04/13/98]

TA–W	Subject firm (Petitioners)	Location	Date of petition	Product(s)
34,431	Boeing Company (The) (Co.)	Mesa, AZ	04/01/98	Commercial Helicopters.
34,432	American West Trading (Co.)	Waverly,TN	03/30/98	Boots and Shoes.
34,433	Champion Products, Inc (Co.)	Dunn, NC	03/24/98	Professional/College Licensed Sweatshirt.
34,434	No. American Refractories (USWA)	Curwensville, PA	03/30/98	Hi-Tech Refractory Products.
34,435	RAM Manufacturing, Inc (Co.)	Roanoke, AL	03/31/98	Ladies' Jackets and Vests.
34,436	American Powder-Coating (Wkrs)	El Paso, TX	04/01/98	Metal Furniture.
34,437	Golden City Hosiery Mill (Wkrs)	Villa Rica, GA	03/30/98	Hosiery.
34,438	ADH Manufacturing (Co.)	Farner, TN	03/31/98	Ladies'/Children T-Shirts, Shorts, Pants.
34,439	Polaroid Corp (Wkrs)	Waltham, MA	03/24/98	Instant Photographic Film.
34,440	Taylor Lumber & Treating (IAM)	Sheridan, OR	04/01/98	Lumber.
34,441	TRW Steering Wheel System (Co.)	Yaphank, NY	03/23/98	Automotive Parts.

APPENDIX—Continued

[Petitions Instituted on 04/13/98]

TA–W	Subject firm (Petitioners)	Location	Date of petition	Product(s)
34,442	Sea Watch International (Wkrs)	Easton, MD	03/26/98	Seafood.
34,443	Hart's Textiles (Co.)	Sikeston, MO	03/30/98	Custom Shade Cloth.
34,444	Covington Industries (Co.)	OPP, AL	03/13/98	Jeans and Trousers.
34,445	B and W Manufacturing (Wkrs)	Indiana, PA	03/30/98	Ladies' Sport Skirts, Pants, Shorts.
34,446	Springs Industries (UNITE)	Rock Hill, SC	03/26/98	Prints and Finish Fabrics.
34,447	OilTanking Houstin, Inc (Co.)	Elkins, WV	03/26/98	Met Coal.
34,448	Iowa Beef Processors (Wkrs)	Luverne, MN	03/18/98	Beef.
34,449	Midstate Garment (Wkrs)	McMinnville, TN	03/31/98	Ladies' Pants, Shorts, Blouses.
34,450	Mann Edge Tool Co (Wkrs)	Lewiston, PA	03/30/98	Striking Tools.
34,451	Richfield Apparel Co (Wkrs)	Richfield, PA	03/30/98	Shirts.
34,452	Louisiana Pacific (Wkrs)	Libby, MT	04/02/98	Lumber Studs, Wood Chips.
34,453	Tops Malibu (Co.)	Eugene, OR	03/31/98	Decorative Candles.
34,454	Vogue Originals (Wkrs)	Miami, FL	04/01/98	Ladies' Sportswear.
34,455	Emerson Boot (Wkrs)	Cuba, MO	03/30/98	English Riding Boots.
34,456	Weyerhaeuser Co (Wkrs)	Alameda, CA	03/11/98	Corrugated Containers.
34,457	Pre-Con Corp (IBT)	Kalamazoo, MI	03/31/98	Precast Concrete Panels.
34,458	S and S Sewing Center (Co.)	Spartanburg, SC	04/02/98	Ladies' and Childrens' Knit Tops.
34,459	Delhi Gas Pipeline (Wkrs)	Oklahoma City, OK	04/02/98	Natural Gas.
34,460	Westmark Garment Mfg. (Wkrs)	Magazine, AK	03/25/98	Coats.
34,461	ARC–USA (Co.)	Pauls Valley, OK	04/02/98	Rubber Keypads.
34,462	General Dynamics Defense (Co.)	Pittsfield, MA	03/16/98	Defense Equipment for Army, Navy.

[FR Doc. 98–12023 Filed 5–5–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34, 246]

General Electric Company (Appliance Parts Distribution Center), New Concord, OH; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Acting Director of the Office of Trade Adjustment Assistance for workers at General Electric Company, Appliance Parts Distribution Center, New Concord, Ohio. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–34, 246; General Electric Company, Appliance Parts Distribution Center, New Concord, Ohio (April 20, 1998)

Signed at Washington, D.C. this 22nd day of April, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–12027 Filed 5–5–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33, 876, TA–W–33–876A and TA–W–33–876B]

Jansport, Incorporated and Burlington, WA, et al; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 26, 1997, applicable to all workers of JanSport, Incorporated located in Burlington, Washington. The notice was published in the **Federal Register** on November 7, 1997 (62 FR 60279).

At the request of petitioners, the Department reviewed the certification for workers of the subject firm. Information provided by the company official and the State agency show that worker separations will occur at JanSport's sewing operations in Everett, Washington and the production facility in Wenatchee, Washington. The workers are engaged in employment related to the production of backpacks and equipment products. Based on this new information, the Department is amending the certification to include workers at the sewing operations in Everett, Washington and the production facility in Wenatchee, Washington.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports.

The amended notice applicable to TA–W–33, 876 is hereby issued as follows:

''All workers of JanSport, Incorporated, Burlington, Washington (TA–W–33, 876); the Sewing Operations in Everett, Washington (TA–W–33, 876A); and Wenatchee, Washington (TA–W–33. 876B), who became totally or partially separated from employment on or after September 22, 1996 through October 26, 1999, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, D.C. this 16th day of April, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–12021 Filed 5–5–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,401 and 34,401A]

Newell Company, Acme Frame—a/k/a Intercraft; TA–W–34,401 Mundelein, IL and TA–W–34, 401A Waukegan, IL; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on April 6, 1998 in response to a worker petition which was filed on behalf of workers at Newel Company, Acme Frame, a/k/a Intercraft,

Mundelein, Illinois and Waukegan, Illinois.

All workers of the subject firm are covered under an existing certification (TA–W–34,378 and 34,378A). Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, D.C. this 24th day of April 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–12020 Filed 5–5–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivisions of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address show below, not later than May 18, 1998.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 18, 1998.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

Signed at Washington, DC this 6th day of April, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted on 04/06/98]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
34,398	Semitool (Comp)	Kalispell, MT	03/14/98	Process Equipment for Semiconductors.
34,399	Kennectoo Utah Copper OPETU)	Magna, UT	03/20/98	Mining concentrating & smelting copper.
34,400	Apocalypse, Inc (Wrks)	Ellenville, NY	03/15/98	Snowboards and Accessories.
34,401	Intercraft Burnes (Wrks)	Mudelein, IL	03/14/98	Picture Frames.
34,402	Energy Transportation (Wrks)	New York, NY	01/05/98	Transportation Services.
34,403	Max Kahn Curtain Corp (Comp)	Evergreen, AL	03/20/98	Drapes, Bedspreads and Comforters.
34,404	Chic by H.I.S. (Comp)	Saltillo, TN	03/17/98	Men's and Women's Cotton Slacks Shorts.
34,405	Spalding and Son, Inc (Wrks)	Grants Pass, OR	03/18/98	Dimensional and Structural Lumber.
34,406	Moore Document Solutions (Wrks)	Stillwater, OK	03/17/98	Purified Acme.
34,407	General Die Cast (UAW)	Oak Park, MI	03/19/98	Zinc Die Cast Auto Parts.
34,408	Budd Co. (Wrks)	Philadelphia, PA	03/17/98	Automotive Stampings.
34,409	Wiegand Appliance (Comp)	Vernon, AL	03/24/98	Heating Elements for Appliances.
34,410	Quantum Corp (Comp)	Shrewsbury, MA	03/26/98	Disk Drive Mass Storage Devices.
34,411	Magnecomp Corp (Comp)	Temecula, CA	03/20/98	Computer Hard Drive Assemblies.
34,412	Hit Apparel, Inc (Comp)	Athens, TN	03/18/98	Cutting and Sewing Sportswear.
34,413	Babcock and Wilcox (BBF)	Paris, TX	03/26/98	Fabrication of Boiler Components.
34,414	Bensal Fashions, Inc (UNITE)	Bronx, NY	03/16/98	Pants, Skirts, Shorts.
34,415	Superior Design Co (Wrks)	Liverpool, NY	03/27/98	Piece Parts and Assembly Drawings.
34,416	Lynley Designs, Inc (Comp)	Jefferson, LA	03/25/98	Children's Clothing.
34,417	Gent J. Manufacturing (UNITE)	Plymouth, PA	03/24/98	Ladies' Blazers and Jackets.
34,418	Cole-Haan Manufacturing (Wrks)	Sandford, ME	03/26/98	Belts, Sm. Leather Goods, Handbags.
34,419	Kodak Polychrome Graphics (IUE)	Clark, NJ	03/27/98	Graphic Arts Film and Chemical Products.
34,420	Samsonite Corp (Wrks)	Tucson, AZ	02/02/98	Pull and Carry Luggage.
34,421	Weyerhaeuser Co (IAM)	North Bend, OR	03/03/98	Packaging and Distribution Services.
34,422	Leedo Furniture (Wrks)	Corinth, MS	03/26/98	Furniture.
34,423	Collins Products LC (IAM)	Klamath Falls, OR	03/24/98	Plywood, Particle Board.
34,424	Penn Traffic Co (Wrks)	Scranton, PA	03/24/98	Warehouse and Distribution.
34,425	Ludwick Well Service (Comp)	Sterling, KS	03/26/98	Oil Well Services.
34,426	Bay City Fashions (Wrks)	Bay City, MI	03/25/98	Infant's and Toddlers' Clothing.
34,427	Sterling Commerce (Wrks)	Wayne, PA	03/20/98	CD Rom Catalogs.
34,428	Denise Lingerie	Johnson City, TN	03/23/98	Sportswear, Skirts, and Dresses.
34,429	Superior Pants Co (Comp)	Athens, GA	03/25/98	Men's & Boys' Formalwear and Tailored Wear.
34,430	Alcoa Fujikura Ltd (Comp)	Del Rio, TX	03/27/98	Electrical Distribution Boxes.

[FR Doc. 98–12022 Filed 5–5–98 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act and Work Opportunity Tax Credit; Lower Living Standard Income Level

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of determination of lower living standard income level.

SUMMARY: The Job Training Partnership Act (JTPA) provides that the term ''economically disadvantaged'' may be defined as 70 percent of the ''lower living standard income level'' (LLSIL). To provide the most accurate data possible, the Department of Labor is issuing revised figures for the LLSIL. The Internal Revenue Code also provides that the term ''economically disadvantaged'' may be defined as 70 percent of the LLSIL for purposes of the Work Opportunity Tax Credit (WOTC).

EFFECTIVE DATE: This notice is effective on May 6, 1998.

ADDRESSES: Send written comments to: Mr. Ron Putz, Office of Employment and Training Programs, Employment and Training Administration, Department of Labor, Room N–4463, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Putz, Telephone: 202–219–5229 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: It is a purpose of the Job Training Partnership Act (JTPA) ''to establish programs to prepare youth and adults facing serious barriers to employment for participation in the labor force by providing job training and other services that will result in increased employment and earnings, increased educational and occupational skills, and decreased welfare dependency, thereby improving the quality of the work force and enhancing the productivity and competitiveness of the Nation,'' JTPA Section 2 and 20 CFR 626.1. JTPA Section 4(8) defines, for the purposes of JTPA eligibility, the term ''economically disadvantaged'' in part by reference to the ''lower living standard income level'' (LLSIL).

The LLSIL figures published in this notice shall be used to determine whether an individual is economically disadvantaged for applicable JTPA purposes. JTPA Section 4(16) defines the LLSIL as follows: The term ''lower living standard income level'' means that income level (adjusted for regional, metropolitan, urban, and rural differences and family size) determined annually by the Secretary [of Labor] based on the most recent ''lower living family budget'' issued by the Secretary.

Internal Revenue Code (I.R.C.) Section 51 established the Work Opportunity Tax Credit (WOTC) for a portion of the wages paid by employers from ''targeted'' groups. The LLSIL figures published in this notice shall be used to determine whether an individual is a member of one of the targeted groups for applicable WOTC purposes.

The most recent lower living family budget was issued by the Secretary in the fall of 1981. Using those data, the 1981 LLSIL was determined for programs under the now-repealed Comprehensive Employment and Training Act, and for the WOTC. The four-person urban family budget estimates previously published by the Bureau of Labor Statistics (BLS) provided the basis for the Secretary to determine the LLSIL for training and employment program operators. BLS terminated the four-person family budget series in 1982, after publication of the Fall 1981 estimates.

Under JTPA, the Employment and Training Administration (ETA) published the 1997 updates to the LLSIL in the **Federal Register** of April 25, 1997, 62 FR 20205. ETA has again updated the LLSIL to reflect cost of living increases for 1997 by applying the percentage change in the December 1997 Consumer Price Index for All Urban Consumers (CPI–U), compared with the December 1996 CPI–U, to each of the April 25, 1997, LLSIL figures. Those updated figures for a family of four are listed in Table 1 below by region for both metropolitan and nonmetropolitan areas. Since eligibility is determined by family income at 70 percent of the LLSIL, pursuant to Section 4(8) of JTPA, those figures are listed below as well.

Jurisdictions included in the various regions, based generally on Census Divisions of the U.S. Department of Commerce, are as follows:

Northeast

Connecticut	New York
Maine	Pennsylvania
Massachusetts	Rhode Island
New Hampshire	Vermont
New Jersey	Virgin Islands

Midwest

Illinois	Missouri
Indiana	Nebraska
Iowa	North Dakota
Kansas	Ohio
Michigan	South Dakota
Minnesota	Wisconsin

South

Alabama	Kentucky
American Samoa	Louisiana
Arkansas	Marshall Islands
Delaware	Maryland
District of Columbia	Mississippi
Florida	Micronesia
Georgia	North Carolina
Northern Marianas	Tennessee
Oklahoma	Texas
Palau	Virginia
Puerto Rico	West Virginia
South Carolina	

West

Arizona	New Mexico
California	Oregon
Colorado	Utah
Idaho	Washington
Montana	Wyoming
Nevada	

Additionally, separate figures have been provided for Alaska, Hawaii, and Guam as indicated in Table 2 below.

For Alaska, Hawaii, and Guam, the 1998 figures were updated by creating a ''State Index'' based on the ratio of the urban change in the State (using Anchorage for Alaska and Honolulu for Hawaii and Guam) compared to the West regional metropolitan change, and then applying that index to the West regional nonmetropolitan change.

Data on 25 selected Metropolitan Statistical Areas (MSAs) are also available. These are based on monthly, bimonthly or semiannual CPI–U changes for a 12-month period ending in December 1997. The updated LLSIL figures for these MSAs, and 70 percent of the LLSIL, rounded to the next highest ten, are set forth in Table 3 below.

Table 4 below is a listing of each of the various figures at 70 percent of the updated 1998 LLSIL for family sizes of one to six persons. For families larger than six persons, an amount equal to the difference between the six-person and the five-person family income levels should be added to the six-person family income level for each additional person in the family. Where the poverty level for a particular family size is greater than the corresponding LLSIL figure, the figure is indicated in parentheses.

Section 4(8) of JTPA defines ''economically disadvantaged'' as, among other things, an individual whose family income was not in excess of the higher of the poverty level or 70 percent of the LLSIL. The Department of Health and Human Services published the annual update of the poverty-level guidelines at 63 FR 9235 (February 24, 1998).

Use of These Data

Based on these data, Governors should provide the appropriate figures to service delivery areas (SDAs), State Employment Security Agencies, and

employers in their States to use in determining eligibility for JTPA and WOTC. The Governor should designate the appropriate LLSILs for use within the State from Tables 1 through 3. Table 4 may be used with any of the levels designated.

Information may be provided by disseminating information on MSAs and metropolitan and nonmetropolitan areas within the State, or it may involve further calculations. For example, the State of New Jersey may have four or more figures: metropolitan, nonmetropolitan, for portions of the State in the New York City MSA, and for those in the Philadelphia MSA. If an SDA includes areas that would be covered by more than one figure, the Governor may determine which is to be used. Pursuant to the JTPA regulations at 20 CFR 627.200, guidelines, interpretations, and definitions adopted by the Governor shall be accepted by the Secretary to the extent that they are consistent with the JTPA and the JTPA regulations.

Disclaimer on Statistical Uses

It should be noted that the publication of these figures is only for the purpose of determining eligibility for applicable JTPA and WOTC programs. BLS has not revised the lower living family budget since 1981, and has no plans to do so. The four-person urban family budget estimates series has been terminated. The CPI–U adjustments used to update the LLSIL for this publication are not precisely comparable, most notably because certain tax items were included in the 1981 LLSIL, but are not in the CPI–U.

Thus, these figures should not be used for any statistical purposes, and are valid only for eligibility determination purposes under the JTPA and WOTC programs.

Signed at Washington, DC, this 27th day of April, 1998.

Charles Atkinson,

Deputy Administrator, Office of Job Training Programs.

BILLING CODE 4510–30–P

Appendix

Table 1 -- Lower Living Standard Income Level By Region[1]

Region	1998 Adjusted LLSIL	70 percent LLSIL
Northeast		
Metro	28,210	19,750
Non-Metro	27,900	19,530
Midwest		
Metro	26,160	18,310
Non-Metro	24,820	17,370
South		
Metro	24,790	17,350
Non-Metro	23,520	16,470
West		
Metro	27,740	19,420
Non-Metro	27,460	19,230

1 For ease of calculation, these figures have been rounded to the next highest ten dollars.

Table 2 -- Lower Living Standard Income Level -- Alaska, Hawaii and Guam[1]

Region	1998 Adjusted LLSIL	70 percent LLSIL
Alaska:		
Metro	35,430	24,800
Non-Metro	34,480	24,140
Hawaii-Guam:		
Metro	37,470	26,230
Non-Metro	36,810	25,770

1 Rounded to the next highest ten dollars.

Table 3 -- Lower Living Standard Income Level -- 25 MSAs[1]

Region MSA	1998 Adjusted LLSIL	70 percent LLSIL
Anchorage, AK	35,430	24,800
Atlanta, GA	24,870	17,410
Baltimore, MD	25,890	18,130
Boston–Lawrence–Salem, MA/NH	29,730	20,810
Buffalo–Niagara Falls, NY	25,730	18,010
Chicago–Gary–Lake County, IL/IN/WI	27,440	19,210
Cincinnati–Hamilton, OH/KY/IN	26,090	18,270
Cleveland–Akron–Lorain, OH	27,070	18,950
Dallas–Ft Worth, TX	23,570	16,500
Denver–Boulder, CO	27,190	19,040
Detroit–Ann Arbor, MI	25,240	17,670
Honolulu, HI	37,470	26,230
Houston–Galveston–Brazoria, TX	23,110	16,180
Kansas City, MO/KS	25,520	17,870
Los Angeles–Anaheim–Riverside, CA	28,200	19,740
Milwaukee, WI	26,350	18,450
Minneapolis–St Paul, MN/WI	25,550	17,890
New York–Northern N.J.–Long Island, NY/NJ/CT	29,460	20,620
Philadelphia–Wilmington–Trenton, PA/NJ/DE/MD	27,540	19,280
Pittsburgh–Beaver Valley, PA	26,390	18,470
St Louis–East St Louis, MO/IL	25,270	17,690
San Diego, CA	28,520	19,960
San Francisco–Oakland–San Jose, CA	28,800	20,160
Seattle–Tacoma, WA	30,120	21,080
Washington, DC/MD/VA	29,810	20,870

1 Rounded to the next highest ten dollars.

Table 4--SEVENTY PERCENT OF UPDATED 1998 LLSIL, BY FAMILY SIZE[1]

Family of One	Two	Three	Four	Five	Six
(5,830)	(9,550)	(13,110)	(16,180)	(19,100)	22,330
(5,930)	(9,720)	(13,350)	16,470	19,440	22,730
(5,940)	(9,740)	(13,370)	16,500	19,470	22,770
(6,250)	(10,240)	14,060	17,350	20,780	23,950
(6,260)	(10,250)	14,070	17,370	20,500	23,980
(6,270)	(10,280)	14,110	17,410	20,550	24,030
(6,370)	(10,430)	14,320	17,670	20,860	24,390
(6,370)	(10,440)	14,330	17,690	20,880	24,420
(6,440)	(10,550)	14,480	17,870	21,090	24,670
(6,440)	(10,560)	14,500	17,890	21,110	24,690
(6,490)	(10,630)	14,590	18,010	21,260	24,860
(6,530)	(10,700)	14,690	18,130	21,400	25,020
(6,580)	(10,780)	14,800	18,270	21,560	25,220
(6,600)	(10,810)	14,840	18,310	21,610	25,270
(6,650)	10,890	14,950	18,450	21,780	25,470
(6,650)	10,900	14,970	18,470	21,800	25,490
(6,830)	11,190	15,350	18,950	22,370	26,160
(6,860)	11,240	15,430	19,040	22,470	26,280
(6,920)	11,340	15,560	19,210	22,670	26,510
(6,930)	11,350	15,580	19,230	22,700	26,540
(6,950)	11,380	15,620	19,280	22,750	26,610
(7,000)	11,460	15,730	19,420	22,920	26,800
(7,040)	11,530	15,820	19,530	23,050	26,960
(7,110)	11,650	15,990	19,740	23,300	27,250
(7,110)	11,660	16,000	19,750	23,310	27,260
(7,190)	11,780	16,170	19,960	23,560	27,550
(7,260)	11,900	16,330	20,160	23,790	27,830
(7,430)	12,170	16,710	20,620	24,340	28,460
(7,500)	12,280	16,860	20,810	24,560	28,720
(7,520)	12,320	16,910	20,870	24,630	28,810
(7,590)	12,440	17,080	21,080	24,880	29,090
8,690	14,250	19,560	24,140	28,490	33,320
8,930	14,640	20,090	24,800	29,270	34,230
9,280	15,210	20,880	25,770	30,410	35,570
9,450	15,480	21,250	26,230	30,960	36,200

1 Figures provided in Tables 1–3 of this notice are for a family of four persons. To use Table 4, the appropriate figure should be found in the Family of Four column. Then one may read across the row for family sizes other than four in the appropriate column.

[FR Doc. 98–12017 Filed 5–5–98; 8:45 am]
BILLING CODE 4510–30–C

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (P.L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under Section 250(b)(1) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Acting Director of the Office Trade Adjustment Assistance (OTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes actions pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment of after December 8, 1993 (date of enactment of P.L. 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Acting Director of OTAA at the U.S. Department of Labor (DOL) in Washington, D.C. provided such request is filed in writing with the Acting Director of OTAA not later than May 16, 1998.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Acting Director of OTAA at the address shown below not later than May 16, 1998.

Petitions filed with the Governors are available for inspection at the Office of the Acting Director, OTAA, ETA, DOL, Room C–4318, 200 Constitution Avenue, N.W. Washington, D.C. 20210.

Signed at Washington, D.C. this 22nd day of April, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

Appendix

Subject firm	Location	Date received at Governor's office	Petition number	Articles produced
Babcock and Wilcox (BBF)	Paris, TX	03/27/1998	NAFTA–2,277	boiler components.
Superior Pants (Co.)	Athens, GA	03/23/1998	NAFTA–2,278	formalwear pants.
Hit Apparel (Wkrs)	Athens, GA	03/18/1998	NAFTA–2,279	cutting and sewing sportswear.
Denise Lingerie (UNITE)	Johnson City, TN	03/25/1998	NAFTA–2,280	sportswear, jogging suits, pants, tops.
Collins Products (IAMAW)	Klamath Falls, OR	03/25/1998	NAFTA–2,281	plywood, particle board and hardboard.
Georgia Pacific (IBU)	Eugene, OR	03/26/1998	NAFTA–2,282	softwood dimension lumber.
Dana Corporation (BBF)	Marion, OH	03/20/1998	NAFTA–2,283	truck axles.
IBP (Wkrs)	Luverne, MN	03/26/1998	NAFTA–2,284	beef processing plant.
Delta Woodside Industrial (Co.)	Wallace, NC	03/25/1998	NAFTA–2,285	knit fabrics.
Lane Plywood (Wkrs)	Portland, OR	03/27/1998	NAFTA–2,286	BC milmeter.
Heritage Hills (Co.)	Tustin, CA	03/25/1998	NAFTA–2,287	television cabinets.
Chic by H.I.S. (Wkrs)	Monticello, KY	03/27/1998	NAFTA–2,288	jeans and casual pants.
Weyerhaeuser (Wkrs)	Alameda, CA	03/30/1998	NAFTA–2,289	container board.
Golden City Hosiery Mill (Wkrs)	Villa Rica, GA	03/30/1998	NAFTA–2,290	socks.
Crown Pacific (Wkrs)	Gilchrist, OR	03/26/1998	NAFTA–2,291	timber products.
Caliber Logistics (Wkrs)	Vancouver, WA	03/25/1998	NAFTA–2,292	ink jet printers & circuit boards.
Jostens (Wkrs)	Attleboro, MA	03/26/1998	NAFTA–2,293	high school class rings.
Gent J (UNITE)	Plymouth, PA	03/31/1998	NAFTA–2,294	ladies' blazers/jackets & sportswear.
Alcoa Fujikura (Co.)	Del Rio, TX	03/31/1998	NAFTA–2,295	electrical junction boxes for automobile.
Dale Electronics (Co.)	Yankton, SD	03/27/1998	NAFTA–2,296	electronic components.
Russell-Newman (Co.)	Cisco, TX	03/31/1998	NAFTA–2,297	ladies sleepwear, underwear and robes.
Superior Design (Wkrs)	Liverpool, NY	03/30/1998	NAFTA–2,298	piece parts and assembly drawings.
Richfield Apparel (Wkrs)	Richfield, PA	03/31/1998	NAFTA–2,299	garments.
Action West (Wkrs)	El Paso, TX	03/31/1998	NAFTA–2,300	sportswear pants.
Boeing Company (The) (Co.)	Mesa, AZ	04/03/1998	NAFTA–2,301	commercial light helicopters.
V.F. Corporation—Red Kap Industries (Wkrs).	Nashville, TN	04/02/1998	NAFTA–2,302	workshirts & coveralls (uniform apparel).
General Dynamics Defense Systems (IUE)	Pittsfield, MA	03/31/1998	NAFTA–2,303	transmissions.
Metex (Co.)	Edison, NJ	03/24/1998	NAFTA–2,304	seals for exhaust systems.
Penn Traffic (Wkrs)	Scranton, PA	04/01/1998	NAFTA–2,305	warehouse and distribution services.
Covington Industries (Co.)	OPP, AL	04/1/1998	NAFTA–2,306	jeans and trousers.
Westark Garments (Wkrs)	Magazine, AR	03/30/1998	NAFTA–2,307	coats.
Southport Aviation (Wkrs)	Kansas City, MO	03/31/1998	NAFTA–2,308	transportation services.
Harry G. Kramer III (Co.)	Pittsburgh, PA	04/03/1998	NAFTA–2,309	construction work.
North American Refractories (USWA)	Curwensville, PA	04/03/1998	NAFTA–2,310	refractories for steel.
B and W Manufacturing (Wkrs)	Indiana, PA	04/03/1998	NAFTA–2,311	women's skirts, denim pants, dress pants.
TRW Steering Wheel Systems (Co.)	Yaphank, NY	04/01/1998	NAFTA–2,312	steering wheels, airbag covers.
Champion Products (Co.)	Dunn, NC	04/01/1998	NAFTA–2,313	t-shirts, sweatshirts.
Applied United Industries (IAM)	Beloit, WI	04/02/1998	NAFTA–2,314	stainless steel tubular products.
Beloit Corporation (IAM)	Francis, WI	04/02/1998	NAFTA–2,315	pulp & papermaking machinery & systems.
Taylor Lumber & Treating (IAM)	Sheridan, OR	04/02/1998	NAFTA–2,316	dimensional lumber, beams.
Emerson Boot (Wkrs)	Cuba, MO	04/01/1998	NAFTA–2,317	english riding boots.
American West Trading (Co.)	Waverly, TN	04/01/1998	NAFTA–2,318	boots and shoes.
RAM Manufacturing (Co.)	Roanoke, AL	04/06/1998	NAFTA–2,319	women's jackets and vest.

Subject firm	Location	Date received at Governor's office	Petition number	Articles produced
Eastman Kodak (Wkrs)	Rochester, NY	04/13/1998	NAFTA–2,320	CD writable data storage disks.
Garment Finishers International (Co.)	El Paso, TX	04/13/1998	NAFTA–2,321	stone washing of jeans, jackets, vests.
American Powder—Coatings (Wkrs)	El Paso, TX	04/08/1998	NAFTA–2,322	metal furniture (beds, chairs).
Walls Industries (Co.)	Hamilton, TX	04/07/1998	NAFTA–2,323	insulated clothing.
ADH Manufacturing (Co.)	Farner, TN	04/07/1998	NAFTA–2,324	ladies & childrens pants and tops.
T.L. Edwards (Co.)	Statesville, NC	04/08/1998	NAFTA–2,325	tank tops, knit t-shirts, sweatershirts.
Bugatti New England Leather (Wkrs)	Rocherster, NH	04/09/1998	NAFTA–2,326	Leather goods, bags, belts, etc.
Lone Star Cutting Services (Wkrs)	El Paso, TX	04/08/1998	NAFTA–2,327	cutting of pants, shorts.
Larcan—TTC (Co.)	Louisville, CO	04/09/1998	NAFTA–2,328	broadcast transmitters equipment.
Penske Logistics—Leaseway Trucking (IBT).	Reading, PA	04/06/1998	NAFTA–2,329	trucking.
Young Morgan Trucking (Co.)	Mill City, OR	04/09/1998	NAFTA–2,330	transport of lumber products.
Ocean Beauty (UFCW)	Astoria, OR	04/09/1998	NAFTA–2,331	bottom fish, crock, cod, snapper.
Northrop Grumman (Wkrs)	Fleetville, PA	04/10/1998	NAFTA–2,332	electronic components.
Procter and Gamble (Co.)	Greenville, SC	04/16/1998	NAFTA–2,333	prescription drugs.
Marshall Electric (Co.)	Rochester, IN	04/14/1998	NAFTA–2,334	automotive ignition coils.
American Cemwood (Co.)	Albany, OR	04/14/1998	NAFTA–2,335	wood fiber, cement product.
Springs Industries (UNITE)	Rock Hill, SC	04/16/1998	NAFTA–2,336	printed and finished textile fabrics.
Kaufman Footwear (Wkrs)	Dushore, PA	04/17/1998	NAFTA–2,337	nylon and leather boot uppers.
Johnson Wholesale (Wkrs)	Punta Gorda, FL	04/15/1998	NAFTA–2,338	distribution center.
Eagle Precision Technology (Co.)	Jackson, MI	04/02/1998	NAFTA–2,339	endforming equipment.
NEPECO (Co.)	Byron, WY	04/21/1998	NAFTA–2,340	oil.
DRS Ahead Technology (Co.)	Dassel, MN	04/20/1998	NAFTA–2,341	magnetic tape heads.

[FR Doc. 98–12028 Filed 5–5–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–02291]

Crown Pacific Crescent Creek Logging Gilchrist, OR; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on March 26, 1998 in response to a petition filed on behalf of workers at Crescent Creek Logging, located in Gilchrist, Oregon (NAFTA–02291).

The Department of Labor has determined that the petitioner is covered by an existing certification, as amended (NAFTA 02030B). Consequently, further investigation in this matter would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C., this 23rd day of April 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–12026 Filed 5–5–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA—02266]

Intercraft, Mundelein, IL; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–183) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on March 18, 1998 in response to a petition filed on behalf of workers at Intercraft, Mundelein, Illinois (NAFTA–02089A).

The Department of Labor has determined that the petitioners are covered by an existing certification, as amended (NAFTA–02089A). Consequently, further investigation in this matter would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C., this 24th day of April 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–12025 Filed 5–5–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–02144]

Powers Holdings, Incorporated Curtis Industries Division Milwaukee, WI; Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Certification of Eligibility to Apply for NAFTA-Transitional Adjustment Assistance on April 8, 1998, applicable to all workers of Powers Holdings, Incorporated located in Burlington, Washington. The notice was will soon be published in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New findings on review show that there are two divisions of Powers Holdings operating at the Milwaukee plant. Workers, subject of the petition investigation, producing terminal blocks, along with some production of controls, RFI filters, and sockets are affiliated with the Curtis Industries Division of the subject firm. Accordingly, the Department is amending the adjustment assistance certification to reflect this matter.

The amended notice applicable to NAFTA–02144 is hereby issued as follows:

All Workers of Powers Holdings, Incorporated, Curtis Industries Division, Milwaukee, Wisconsin, who became totally or partially separated from employment on or after January 15, 1997 through April 8, 2000, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, D.C. this 28th day of April, 1998.

Grant D. Beale,

Acting Director, Office Trade of Adjustment Assistance.

[FR Doc. 98–12024 Filed 5–5–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and 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. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning eight information collections: (1) Regulations, 29 CFR Part 547, Requirements of a Bona Fide Thrift or Savings Plan; (2) Regulations, 29 CFR Part 549, Requirements of a Bona Fide Profit-Sharing Plan or Trust; (3) Regulations, 29 CFR Part 4, Labor Standards For Federal Service Contracts; (4) OFCCP Complaint Form (CC–4); (5) Employers First Report of Injury or Occupational Illness (LS–202), Employer's Supplementary Report of Accident or Occupational Illness (LS–210), and Physician's Report on Impairment of Vision (LS–205); (6) Medical Refund Travel Request (CM–957); (7) Request for State or Federal Worker's Compensation Information (CM–905); and (8) Application for Approval of a Representative's Fee in a Black Lung Claim Proceeding Conducted by the U.S. Department of Labor (CM–972). Copies of the proposed information collection requests can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before July 8, 1998. The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSEES: Contact Ms. Patricia Forkel at the U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S–3201, Washington, D.C. 20210, telephone (202) 219–7601. The Fax number is (202) 219–6592. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Regulations, 29 CFR Part 547, Requirements of a Bona Fide Thrift or Savings Plan

I. Background

Section 7(e)(3)(b) of the Fair Labor Standards Act permits the exclusion from an employee's regular rate of pay for payments on behalf of an employee to a bona fide thrift or savings plan. Regulations require that information necessary to support a thrift or savings plan's qualifications as a bona fide plan, as defined in the Fair Labor Standards Act, be maintained by employers. Regulations, 29 CFR Part 547 set forth the requirements for a bona fide thrift or savings plan.

II. Current Actions

The Department of Labor is seeking extension of approval of this recordkeeping requirement in order to enable investigators to determine whether or not a given thrift or savings plan is in compliance with section 7(e)(3)(b) of the Fair Labor Standards Act. A prudent employer establishing a thrift or savings plan would set forth the plan in writing, describing eligibility requirements, a definite formula for saving, and the amount of the employer's contributions, even if not required to do so by the regulations. Therefore, this requirement imposes no additional recordkeeping burden on employers. The annual recordkeeping burden for this information collection is estimated at one hour as a ''placeholder'' only.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Regulations, 29 CFR Part 547, Requirements of a Bona Fide Thrift or Savings Plan.

OMB Number: 1215–0119.

Agency Numbers: None.

Affected Public: Individuals or households; Businesses or other for-profit; State, local or Tribal Government; Not-for-profit institutions.

Total Respondents: 2.072 million.

Frequency: Recordkeeping only.

Total Responses: 2.072 million.

Average Time Per Response: Recordkeeping only.

Total Burden Hours (recordkeeping): 1.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): 0.

Regulations, 29 CFR Part 549, Requirements of a Bona Fide Profit-Sharing Plan or Trust

I. Background

Section 7(e)(3)(b) of the Fair Labor Standards Act permits the exclusion from an employee's regular rate of pay for payments on behalf of an employee to a bona fide profit-sharing plan or trust. Regulations require that information necessary to support a profit-sharing plan or trust's qualifications as a bona fide plan or trust, as defined in the Fair Labor Standards Act, be maintained by employers. Regulations, 29 CFR Part 549 set forth the requirements for a bona fide profit-sharing plan or trust.

II. Current Actions

The Department of Labor is seeking extension of approval of this recordkeeping requirement in order to enable investigators to determine whether or not a given profit-sharing plan or trust is in compliance with section 7(e)(3)(b) of the Fair Labor Standards Act. A prudent employer establishing a profit-sharing plan or trust would set forth the plan in writing,

outlining a definite program for distributing to the employees a share of the company's profits, as well as describing eligibility requirements for participation, even if not required to do so by the regulations. Therefore, this requirement imposes no additional recordkeeping burden on employers. The annual recordkeeping burden for this information collection is estimated at one hour as a ''placeholder'' only.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Regulations, 29 CFR Part 549, Requirements of a Bona Fide Profit-sharing Plan or Trust.

OMB Number: 1215–0122.

Agency Number: None.

Affected Public: Business or other for-profit; Not-for-profit institutions; State, Local, or Tribal Government.

Total Respondents: 888,000.

Frequency: Recordkeeping only.

Total Responses: 888,000.

Average Time per Response: Recordkeeping only.

Total Burden Hours (recordkeeping): 1.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintenance): 0.

Regulations, 29 CFR Part 4, Labor Standards for Federal Service Contracts

I. Background

The Service Contract Act (SCA) imposes certain recordkeeping and incidental reporting requirements applicable to employers performing on service contracts with the Federal government. The basic payroll recordkeeping requirements contained in this regulation (sections 4.6(g)(1)(i) through (iv)) have been previously approved under OMB number 1215–0017, which constitutes the basic recordkeeping regulations for all laws administered by the Wage and Hour Division, and the remaining SCA requirements under 1215–0150. This information collection contains three additional requirements not cleared under either of the above information collections. They are: a vacation benefit seniority list, which is used by the contractor to determine vacation fringe benefits entitlements earned and accrued by service employees who were employed by predecessor contractors; a conformance record report, which is used by Wage and Hour to determine the appropriateness of the conformance and compliance with the SCA and its regulations; and a collective bargaining agreement, submitted by the contracting agency to Wage and Hour to be used in the issuance of wage determinations for successor contracts subject to section 2(a) and 4(c) of SCA.

II. Current Actions

The Department of Labor seeks extension of approval of this information collection in order to carry out the provisions of the Service Contract Act.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Regulations, 29 CFR Part 4, Labor Standards For Federal Service Contracts.

OMB Number: 1215–0150.

Agency Number: None.

Affected Public: Businesses or other for-profit; Federal government.

Total Respondents: 61,789.

Frequency: On occasion.

Requirement	Respondents	Average time per response	Burden hours
Vacation Benefit Seniority List	59,055	1 hour	59,055
Conformance Record	204	½ hour	102
Collective Bargaining Agreements	2,530	5 minutes	211

Total Burden Hours: 59,368.

Total Burden Cost (capital/startup): 0.

Total Burden Cost: (operating/maintenance): 0.

OFCCP Complaint Form (CC–4)

I. Background

The Office of Federal Contract Compliance Programs (OFCCP) administers three equal employment opportunity programs: Executive Order 11246, as amended; Section 503 of the Rehabilitation Act of 1973, as amended; and 38 U.S.C. 4212, the Vietnam Era Veteran's' Readjustment Assistance Act. These programs require affirmative action by Federal contractors and subcontractors and prohibit discrimination on the basis of race, color, sex, religion, national origin, disability, or veteran status. All three programs give individuals the right to file complaints. The CC–4 Complaint Form is used to file complaints under all three programs. The form is used as the first step in the initiation of a complaint investigation.

II. Current Actions

The Department of Labor seeks an extension of approval of this information collection in order to collect information necessary to investigate complaints of discrimination.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: OFCCP Complaint Form.

OMB Number: 1215–0131.

Agency Number: CC–4.

Affected Public: Individuals or households.

Total Respondents: 1,150.

Frequency: On occasion.

Total Responses: 1,150.

Average Time per Response: 1.28 hours.

Total Burden Hours: 1,472.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintenance): $402.50.

Employer's First Report of Injury or Occupational Illness (LS–202), Employer's Supplementary Report of Accident or Occupational Illness (LS–210), Physician's Report on Impairment of Vision (LS–205)

I. Background

The Longshore and Harbor Workers' Compensation Act provides benefits to workers injured in maritime employment on the navigable waters of the United States or in an adjoining area customarily used by an employee in loading, unloading, repairing or building a vessel. The LS–202, Employer's First Report of Injury or Occupational Illness, is used by employers to report injuries that have occurred under the Longshore Act and its related statutes. The LS–210, Employer's Supplementary Report of Accident or Occupational Illness, is used to report additional periods of lost time from work. The LS–205, Physician's Report on Impairment of Vision, is a medical report based on a comprehensive examination of visual impairment.

II. Current Actions

The Department of Labor seeks an extension of this information collection in order to ensure that employers are complying with the reporting requirements of the Act and to ensure that injured claimants receive all compensation benefits to which they are entitled.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Employer's First Report of Injury or Occupational Illness (LS–202); Employer's Supplementary Report of Accident or Occupational Illness (LS–210); Physician's Report on Impairment of Vision (LS–205).

OMB Number: 1215–0031.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Total Respondents: 29,990.

Frequency: On occasion.

Form	Respondents	Average time per response	Burden hours
LS–202	27,000	.25 hour	6,750
LS–205	90	.75 hour	68
LS–210	2,900	.25 hour	725

Total Burden Hours: 7,543.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintenance): $11,846.05.

Medical Refund Travel Request (CM–957)

I. Background

When a coal miner files an application for black lung benefits under the Black Lung Benefits Act, the miner is scheduled for medical determination testing. The Black Lung Trust fund is required to pay for this determination testing and associated travel costs. The CM–957 is used by the miner to record travel expenses incurred while traveling to and from the testing facility.

II. Current Actions

The Department of Labor seeks an extension of this information collection in order to identify and reimburse miners for out-of-pocket medical travel expenses associated with black lung related medical testing.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Medical Travel Refund Request.

OMB Number: 1215–0054.

Agency Number: CM–957.

Affected Public: Individuals or households; Businesses or other for-profit; Not-for-profit institutions.

Total Respondents: 8,700.

Frequency: On occasion.

Total Responses: 8,700.

Average Time per Response: 10 minutes.

Total Burden Hours: 1,450.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintenance): $3,045.

Request for State or Federal Workers' Compensation Information (CM–905)

I. Background

The Federal Mine Safety and Health Act of 1977, as amended, 30 U.S.C. 922(b) and 20 CFR 725.535, direct that DOL Black Lung benefit payments to a beneficiary for any month be reduced by any other payments of state or federal benefits for workers compensation due to black lung disease. This form collects information regarding the status of any state or Federal workers' compensation claim, including dates of payments, weekly or lump sum amounts paid, and other fees or expenses paid out of this award, such as attorney fees and related expenses associated with black lung disease.

II. Current Actions

The Department of Labor seeks an extension of this information collection in order that state or Federal workers' compensation programs may notify DCMWC that a claimant is receiving benefits that must be offset, of any rate changes, or of cessation of compensation benefits.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Request for State or Federal Workers' Compensation Information.

OMB Number: 1215–0060.

Agency Number: CM–905.

Affected Public: Federal Government; State, Local or Tribal Government.

Total Respondents: 3,986.

Frequency: On occasion.

Total Responses: 3,986.

Average Time per Response: 15 minutes.

Total Burden Hours: 996.

Total Burden Cost: (capital/startup): 0.

Total Burden Cost: (operating/maintenance: $12,197.16.

Application for Approval of a Representative's Fee in a Black Lung Claim Proceeding Conducted by the U. S. Department of Labor (CM–972)

I. Background

Individuals filing for benefits under the Black Lung Benefits Act may elect to be represented or assisted by an attorney or other representative. The fee charged by the representative must be approved for payment by the Division of Coal Mine Worker's Compensation. Regulation 20 CFR 725.365–6 establishes certain information and documentation criteria which must be submitted in order for the Program to evaluate the fee request. This form provides a standardized format for submission of the information required by the regulation.

II. Current Actions

The Department of Labor seeks an extension of this information collection in order to carry out its responsibility to evaluate and approve a fee for services rendered.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Application for Approval of a Representative's Fee in Black Lung Claim Proceeding Conducted by the U. S. Department of Labor.

OMB Number: 1215–0171.

Agency Number: CM–972.

Affected Public: Businesses or other for-profit.

Total Respondents: 1,000.

Frequency: As needed.

Total Responses: 1,000.

Average Time per Response: 42 minutes.

Total Burden Hours: 700.

Total Burden Cost: (capital/startup): 0.

Total Burden Cost: (operating/maintenance: 0.

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 30, 1998.

Cecily A. Rayburn,

Director, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 98–12015 Filed 5–5–98; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Veterans' Employment and Training Service

Agency Information Collection Activities: Proposed Collection; Comment Request; Eligibility Data Form: Uniformed Services Employment and Reemployment Rights Act (USERRA)

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and 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. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently the Veterans' Employment and Training Service is soliciting comments concerning the proposed extension of the information collection request for the Eligibility Data Form, USERRA 38 U.S.C., Chapter 43. The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility; and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

DATES: Written comment must be submitted by June 5, 1998.

ADDRESSES: Comments are to be submitted to Hary Puente-Duany, Director, Office of Agency Management and Budget, Veterans' Employment and Training Service, U.S. Department of Labor, Room S–1310A, 200 Constitution Ave. NW, Washington, D.C. 20210, telephone: (202) 219–6350. Written comments limited to 10 pages or fewer may also be transmitted by facsimile to (202) 219–7341.

FOR FURTHER INFORMATION CONTACT: Robert Wilson, Chief, Compliance Programs, Veterans' Employment and Training Service, U.S. Department of Labor, Room S–1316, 200 Constitution Ave., NW, Washington, D.C. 20210, telephone (202) 219–8611. Copies of the referenced information collection request are available for inspection and copying in the Docket Office and will be mailed to persons who request copies of telephoning Robert Wilson at (202) 219–8611.

SUPPLEMENTARY INFORMATION:

I. Background

The purposes of the Uniformed Services Employment and Reemployment Rights Act and this information collection requirement include: protect and facilitate the employment and prompt reemployment of members of the uniformed services (to include National Guard and Reserves); to minimize disruption to the lives of persons who perform service in the uniformed services and their civilian employers; and to encourage individuals to participate in non-career uniformed service. Also, to prohibit discrimination in employment and acts of reprisal against persons because of their obligation in the uniformed services, prior services, filing a USERRA claim, seeking assistance concerning an alleged violation, testifying in a proceeding, or otherwise participating in an investigation.

II. Current Actions

This notice request an extension of the current Office of Management and Budget approval of the paperwork requirements in the Uniformed Services Employment and Reemployment Rights Act. Extension is necessary to fulfill the statutory requirements for this program.

Type of Review: Extension.

Agency: Veterans' Employment and Training Service.

Title: Uniformed Services Employment and Reemployment Rights Act.

OMB Number: 1293–0002.

Affected Public: Individuals or households.

Total Respondents: 4,215.

Frequency: On occasion.

Total Responses: 4,215.

Average Time per Response: 0.30 hour.

Estimated Total Burden Hours: 632.

Total Annualized capital/startup costs: 0.

Total initial annual costs: 0.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request. The comments will become a matter of public record.

Dated: April 30, 1998.

Hary Puente-Duany,

Director, Office of Agency Management and Budget.

[FR Doc. 98–12016 Filed 5–5–98; 8:45 am]

BILLING CODE 4510–79–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 98–061]

NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Solar System Exploration Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Space Science Advisory Committee, Solar System Exploration Subcommittee.

DATES: Thursday, June 18, 1998, 8:30 a.m. to 5:00 p.m.; and Friday June 19, 1998, 8:30 a.m. 5:00 p.m.

ADDRESSES: National Aeronautics and Space Administration, MIC 5A, Room 5H46 300 E Street, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Carl Pilcher, Code S, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–2470.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting is as follows:

—Convene goals of meeting
—Personnel, budget, and programs
—Mission and technology programs
—Outer Solar System/Solar Probe

—Strategic planning process
—CONTOUR and Genesis mission summaries
—Mars Program review
—New Millennium program update, plans
—DS–4/Champollion mission overview
—Campaign strategy working group.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: April 30, 1998.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 98–11946 Filed 5–5–98; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Electronic Records Work Group; Notice of Meeting

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of meeting.

SUMMARY: NARA will hold a public meeting of the Electronic Records Work Group on May 18, 1998, to present an update of the Work Group's progress in developing recommendations for replacing NARA's General Records Schedule (GRS) 20 for Electronic Records, and to obtain public comments and questions. Additional information about the Electronic Records Work Group is available on NARA's GRS 20 Internet Web page at <http://www.nara.gov/records/grs20/>.

DATES: The meeting will be held on May 18, 1998, from 9 a.m. to noon.

ADDRESSES: The meeting will be held in the Theater at the National Archives Building, 7th Street and Pennsylvania Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lisa Haralampus at 301–713–6677, extension 266. NARA requests that you call Ms. Naralampus to reserve a seat at the presentation. When you call, please leave your name and phone number so that a package of background materials can be made available to you prior to the presentation.

Dated: May 1, 1998.

Lewis J. Bellardo,

Deputy Archivist of the United States.

[FR Doc. 98–12003 Filed 5–5–98; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL SKILL STANDARDS BOARD

Notice of Open Meeting

AGENCY: National Skill Standards Board.

ACTION: Notice of open meeting.

SUMMARY: The National Skill Standards Board was established by an Act of Congress, the National Skill Standards Act, Title V, Pub. L. 103–227. The 27-member National Skill Standards Board will serve as a catalyst and be responsible for the development and implementation of a national system of voluntary skill standards and certification through voluntary partnerships which have the full and balanced participation of business, industry, labor, education and other key groups.

TIME & PLACE: The meeting will be held from 8:30 a.m. to approximately 1:30 p.m. on Friday, May 29, 1998 in Salons I and II of the Ritz-Carlton* Pentagon City located at 1250 South Hayes Street, Arlington, VA 22202.

AGENDA: The agenda for the Board Meeting will include: an update on the Board's Strategic Plan, updates from the Board's committees; and presentations from Voluntary Partnership for Manufacturing, Installation and Repair and the Convening Groups representing the following industries: Business & Administrative Services; Construction; Education and Training; Finance & Training; Restaurants, Lodging, Hospitality & Tourism, and Amusement & Recreation; Retail Trade, Wholesale Trade, Real Estate & Personal Services; and Telecommunications, Computers, Arts & Entertainment, and Information.

PUBLIC PARTICIPATION: The meeting, from 8:30 a.m. to 1:30 p.m., is open to the public. Seating is limited and will be available on a first-come first-served basis. Seats will be reserved for the media. Individuals with disabilities should contact Pat Warfield at (202) 254–8628 extension 24, if special accommodations are needed.

FOR FURTHER INFORMATION CONTACT: Tracy Marshall, Manager of Program Operations at (202) 254–8628 extension 13.

Signed at Washington, DC, this 29th day of April, 1998.

Edie West,

Executive Director, National Skill Standards Board.

[FR Doc. 98–12018 Filed 5–5–98; 8:45 am]

BILLING CODE 4510–23–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. The title of the information collection: 10 CFR 35.32 and 35.33 ''Quality Management Program and Misadministrations''.

2. Current OMB approval number: 3150–0171.

3. How often the collection is required:

For quality management program (QMP):

Reporting: New applicants for medical use licenses, who plan to use byproduct material in limited diagnostic and therapy quantities under Part 35, must develop a written QMP and submit a copy of it to NRC. When a new modality involving therapeutic quantities of byproduct material is added to an existing license, current licensees must submit QMP modifications.

This ICR burden estimate is inflated by the one-time cost for the development and submission of QMPs for approximately 2000 Agreement States licensees in ten Agreement States who have not adopted the rule and are not required to.

Recordkeeping: Records of written directives, administered dose or dosage, annual review, and recordable events for 3 years.

For Misadministrations:

Reporting: Whenever a misadministration occurs.

Recordkeeping: Records of misadministrations for 5 years.

4. Who is required or asked to report: NRC Part 35 licensees who use byproduct material in limited diagnostic and therapeutic ranges and similar type of licensees regulated by Agreement States.

5. An estimate of the number of respondents: 5276 (for both reporting and recordkeeping)

6. The number of hours needed annually to complete the requirement or

request: 34,743 hours for applicable licensees (Reporting: 24,400 hr/yr, and Recordkeeping: 10,343 hrs/yr).

7. Abstract: In the medical use of byproduct material, there have been instances where byproduct material was not administered as intended or was administered to a wrong individual, which resulted in unnecessary exposures or inadequate diagnostic or therapeutic procedures. The most frequent causes of these incidents were: insufficient supervision, deficient procedures, failure to follow procedures, and inattention to detail. In an effort to reduce the frequency of such events, the NRC requires licensees to implement a quality management program (§ 35.32) to provide high confidence that byproduct material or radiation from byproduct material will be administered as directed by an authorized user physician.

Collection of this information enables the NRC to ascertain whether misadministrations are investigated by the licensee and that corrective action is taken. Additionally, NRC has a responsibility to inform the medical community of generic issues identified in the NRC review of misadministrations.

The NRC is currently revising 10 CFR Part 35, including 10 CFR 35.32 and 33. NRC sought early input and will continue to seek input on the rulemaking through Federal Register notices, open meetings, public workshops, and by putting documents on the internet. The proposed rule will be published for comment for 75 days, and NRC plans to hold three public meetings during the formal comment period to facilitate public comment.

Submit, by July 6, 1998, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the burden estimate accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov) under the FedWorld collection link on the home page tool bar. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 F33, Washington, DC, 20555–0001, or by telephone at 301–415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 21st day of April 1998.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–11981 Filed 5–5–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–409]

Dairyland Power Cooperative La Crosse Boiling Water Reactor; Notice of Receipt of the La Crosse Post-Shutdown Decommissioning Activities Report and Public Meeting

The NRC is in receipt of the La Crosse Boiling Water Reactor (LACBWR) Post-Shutdown Decommissioning Activities Report (PSDAR), as previously submitted by Dairyland Power Cooperative (the licensee) as the ''LACBWR Decommissioning Plan.'' Therefore, in order to inform the public of the NRC's regulations regarding decommissioning and licensee's plans to decommission the LACBWR facility, the NRC staff will conduct a public meeting at the Viroqua High School, Middle School Complex—Large Lecture Hall, 100 Blackhawk, Viroqua, WI 64665, on May 13, 1998. The doors will open at 6:30 p.m. with the public meeting starting at 7:00 p.m. Mr. Geoffrey Banta, Sheriff, Vernon County, will chair the meeting. The meeting agenda includes a presentation by the NRC staff on the decommissioning regulatory process and the conduct of NRC inspections and a presentation by a Dairyland Power representative on the licensee's plans for the decommissioning of the LACBWR facility. Following the presentations, there will be an opportunity for members of the public to make comments or ask questions to the NRC staff and/or Dairyland Power representatives. This public meeting will be transcribed.

On April 30, 1987, LACBWR permanently ceased reactor power operations and on June 11, 1987, all nuclear fuel was removed from the reactor vessel and placed in the Fuel Element Storage Well (FESW or spent fuel pool). Then, on December 21, 1987, the licensee submitted their Decommissioning Plan, Preliminary DECON Plan, and Supplement to the Environmental Report for the Post-Operating License Stage—SAFSTOR (Accession No. 8801150072, Microfiche No. 44034–1643). Within this submittal, the licensee described their plans to maintain the LACBWR facility in long-term storage until March 29, 2031, when license termination activities would commence. Dairyland Power then submitted an application for amendment of their Provisional License DPR–45 (Accession No. 8803020068, Microfiche No. 44547–332) on February 22, 1988, to reflect the permanently shutdown and defueled status of the LACBWR facility. The NRC staff published a ''Notice of Consideration of Issuance of Amendment and Opportunity for Hearing'' in the **Federal Register** on April 8, 1988 (53 FR 11718) and on August 7, 1991, the ''Order to Authorize Decommissioning and Amendment No. 66 to Possession Only License No. 45 for La Crosse Boiling Water Reactor,'' was issued approving the LACBWR Decommissioning Plan. No request for hearing or petition to intervene was filed following notice of the proposed action.

Notwithstanding NRC approval of the LACBWR Decommissioning Plan, Parts 2, 50, and 51 of Title 10 to the Code of Federal Regulations (10 CFR parts 2, 50, and 51) were amended (61 FR 39278, dated July 29, 1996) changing some of the regulations governing the decommissioning of nuclear power facilities. The revised regulations (10 CFR 50.82) stated, in part, that for power reactor licensees who, before the effective date of the amended rule (August 28, 1996) possess an approved decommissioning plan (such as LACBWR), the plan is considered to be a Post-Shutdown Decommissioning Activities Report (PSDAR) in accordance with 10 CFR 50.82(a)(4)(i). Additionally, the NRC staff shall notice receipt of the PSDAR, make this report available for public comment, and shall conduct a public meeting in the vicinity of the licensee's facility (10 CFR 50.82(a)(4)(ii)). The NRC staff notes that Dairyland Power continues to maintain the LACBWR facility in long-term storage and that the licensee has not made significant changes to their decommissioning plans.

Copies of the PSDAR, as revised by the licensee, are available to the public from the NRC Public Document Room, Gelman Building, 2120 L Street NW,

Washington, DC 20037, telephone number at (202) 634–3273 or (800) 397–4209. For more information, contact Mr. Paul W. Harris, Project Manager, Non-Power Reactors and Decommissioning Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation, Washington, DC 20555–0001, telephone number at (301) 415–1169.

Dated at Rockville, Maryland, this 29th day of April 1998.

For the Nuclear Regulatory Commission.

Marvin M. Mendonca,

(A) Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 98–11979 Filed 5–5–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–648]

UMETCO Minerals Corporation

AGENCY: Nuclear Regulatory Commission.

ACTION: Final finding of no significant impact; notice of opportunity for hearing.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) proposes to amend NRC Source Material License SUA–648 to authorize the licensee, Umetco Minerals Corporation (Umetco), to reclaim the commercial heap leach area, located in Natrona County, Wyoming, according to the 1996 Reclamation Plan, as amended. This license currently authorizes Umetco to receive, acquire, possess, and transfer uranium at the Umetco East Gas Hills site, which is located approximately 50 miles (80 kilometers) southeast of the town of Riverton, Wyoming. An Environmental Assessment (EA) was performed by the NRC staff in support of its review of Umetco's license amendment request, in accordance with the requirements of 10 CFR Part 51. The conclusion of the Environmental Assessment is a Finding of No Significant Impact (FONSI) for the proposed licensing action.

FOR FURTHER INFORMATION CONTACT: Ms. Elaine Brummett, Uranium Recovery Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T7–J9, Washington, D.C. 20555. Telephone 301/415–6606.

SUPPLEMENTARY INFORMATION:

Background

The Umetco Mineral Corporation (Umetco) site is licensed by the U.S. Nuclear Regulatory Commission (NRC) under Materials License SUA–648 to possess byproduct material in the form of uranium waste tailings as well as other radioactive wastes generated by past milling operations. The mill has been dismantled and current site activities include completion of reclamation of three disposal areas and continuation of the ground water corrective action program.

The commercial heap leach operations began in March 1980. The operations were extended in November 1982 as permitted by Amendment No. 17 of the license and operated until December 1984. Operations were restarted in May 1987 and finally shut down in January 1988. In 1992, to control radon emission, windblown tailings, and water infiltration, Umetco placed 2 feet (61 cm) of cover on the Heap Leach Disposal Area, based on their 1991 proposed cover design.

Umetco submitted reclamation plans or modifications to the plan for the Heap Leach Area in 1991, 1994, and 1996. The 1996 plan also included reclamation of Evaporation Pond No. 2, next to the heap leach, by extension of the Heap Leach Area cover. However, the data available to date related to the evaporation pond reclamation was determined to be insufficient to support a final design, and thus, the proposed design for the pond was approved only as a preliminary design. The pond reclamation will be addressed in a separate amendment, but is included in the area addressed by the EA for this licensing action. The staff also determined that additional clarification and modifications were required for the Heap Leach Area design, and these concerns were not completely addressed until February 1998. The design includes the earthen cover for the heap leach area, construction testing and inspection, stability, erosion protection, site drainage, and quality control procedures.

Summary of the Environmental Assessment

The NRC staff performed an appraisal of the environmental impacts associated with the reclamation plan for the Heap Leach Area, in accordance with 10 CFR Part 51, Licensing and Regulatory Policy Procedures for Environmental Protection. The license amendment would authorize Umetco to stabilize and cover the Heap Leach Area as proposed. In conducting its appraisal, the NRC staff considered the following information: (1) Umetco's 1996 license amendment request, as amended; (2) previous environmental evaluations of the facility; (3) data contained in required semiannual environmental monitoring reports; (4) existing license conditions; (5) results of NRC staff site visits and inspections of the Umetco facility; and (6) consultations with the U.S. Fish and Wildlife Service, the U.S. Bureau of Land Management, and the Wyoming State Historic Preservation Officer. The technical aspects of the reclamation plan are discussed separately in a Technical Evaluation Report (TER) that will accompany the final agency licensing action.

The results of the staff's appraisal are documented in an EA placed in the docket file. Based on its review, the NRC staff has concluded that there are no significant environmental impacts associated with the proposed action.

Conclusions

The NRC staff has examined actual and potential impacts associated with the reclamation of the Heap Leach Area, and has determined that the requested amendment of Source Material License SUA–648, authorizing implementation of the reclamation plan, will: (1) Be consistent with requirements of 10 CFR Part 40, Appendix A; (2) not be inimical to the public health and safety; and (3) not have long-term detrimental impacts on the environment. The following statements summarize the conclusions resulting from the staff's environmental assessment, and support the FONSI:

1. An acceptable environmental and effluent monitoring program is in place to monitor effluent releases and to detect if applicable regulatory limits are exceeded. Radiological effluents from facility operations have been and are expected to remain below the regulatory limits;

2. Present and potential health risks to the public and risks of environmental damage from the proposed reclamation were assessed. Given the remote location, limited activities requested, small area of impact, and past activities on the site, the staff determined that the risk factors for health and environmental hazards are insignificant.

Because the staff has determined that there will be no significant impacts associated with approval of the license amendment, there can be no disproportionally high and adverse effects or impacts on minority and low-income populations. Consequently, further evaluation of Environmental Justice concerns, as outlined in Executive Order 12898 and NRC's Office of Nuclear Material Safety and

Safeguards Policy and Procedures Letter 1–50, Revision 1, is not warranted.

Alternatives to the Proposed Action

The proposed action is to amend NRC Source Material License SUA–648, for reclamation of the Heap Leach Area, as requested by Umetco. Therefore, the principal alternatives available to NRC are to:

1. Approve the license amendment request as submitted; or
2. Amend the license with such additional conditions as are considered necessary or appropriate to protect public health and safety and the environment; or
3. Deny the amendment request.

Based on its review, the NRC staff has concluded that the environmental impacts associated with the proposed action do not warrant either the limiting of Umetco's future operations or the denial of the license amendment. Additionally, in the TER prepared for this action, the staff has reviewed the licensee's proposed action with respect to the criteria for reclamation, specified in 10 CFR Part 40, Appendix A, and has no basis for denial of the proposed action. Therefore, the staff considers that Alternative 1 is the appropriate alternative for selection.

Finding of No Significant Impact

The NRC staff has prepared an EA for the proposed renewal of NRC Source Material License SUA–648. On the basis of this assessment, the NRC staff has concluded that the environmental impacts that may result from the proposed action would not be significant, and therefore, preparation of an Environmental Impact Statement is not warranted.

The EA and other documents related to this proposed action are available for public inspection and copying at the NRC Public Document Room, in the Gelman Building, 2120 L Street N.W., Washington, DC 20555.

Notice of Opportunity for Hearing

The Commission hereby provides notice that this is a proceeding on an application for a licensing action falling within the scope of Subpart L, ''Informal Hearing Procedures for Adjudications in Materials and Operators Licensing Proceedings,'' of the Commission's Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders in 10 CFR Part 2 (54 FR 8269). Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(c), a request for a hearing must be filed within thirty (30) days from the date of publication of this **Federal Register** notice. The request for a hearing must be filed with the Office of the Secretary either:

(1) By delivery to the Rulemakings and Adjudications Staff of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemakings and Adjudications Staff.

Each request for a hearing must also be served, by delivering it personally or by mail to:

(1) The applicant, Umetco Mineral Corporation, P.O. 1029, Grand Junction, CO 81502;

(2) The NRC staff, by delivery to the Executive Director of Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or

(3) By mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the Commission's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

Any hearing that is requested and granted will be held in accordance with the Commission's ''Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings'' in 10 CFR Part 2, Subpart L.

Dated at Rockville, Maryland, this 30th day of April 1998.

For the Nuclear Regulatory Commission.

Joseph J. Holonich,

Chief, Uranium Recovery Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98–11980 Filed 5–5–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Pub. L. 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from April 10 through April 24, 1998. The last biweekly notice was published on April 22, 1998 (63 FR 19964).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period.

However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administration Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By June 5, 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 for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Carolina Power & Light Company, et al., Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendment request: November 1, 1996, as supplemented by letters dated October 13, 1997, February 26, 1998, and March 13, 1998.

Description of amendment request: Associated with a Carolina Power & Light Company (the licensee) application to convert from the Current Technical Specifications (CTS) for the Brunswick Steam Electric Plant, Units 1 and 2, to Improved Technical Specifications (ITS), as contained in Revision 1 of NUREG–1433, ''Standard Technical Specification General Electric Plants, BWR/4,'' the licensee proposed removing a restriction on a surveillance test described below.

CTS 4.8.1.1.1.b requires that the offsite electrical power circuits be demonstrated OPERABLE, at least once per 18 months during shut down, by manually transferring the unit power supply from the normal circuit to the alternate circuit. As proposed, ITS SR 3.8.1.8.b will not contain the restriction to perform the Surveillance ''during shutdown.'' Currently, this test is performed by momentarily paralleling the 230 kV offsite alternating current (AC) power sources. The licensee has stated that paralleling offsite AC power sources is a controlled evolution and the increased risk associated with the performance of this test while the unit is at power is not significant for the following reasons: (1) the frequency and voltages are verified to be within the required range prior to paralleling the two offsite AC power sources; (2) breaker interlocks ensure that the alternate circuit is connected to the load prior to opening the preferred circuit; (3) the test does not result in de-energization of any 4.16 kV emergency bus and the potential for electrical perturbations on the grid system is the same whether performing the transfer while the unit is at power or while shutdown; and (4) operating history indicates that transferring offsite AC power sources while the units were in Operational Conditions 1 (power operation) or 2 (startup) has been performed satisfactorily without electrical distribution system perturbations. The licensee has further pointed out that Generic Letter 91–04, ''Changes in Technical Specifications to Accommodate a 24-Month Fuel Cycle,'' states that licensees may omit the Technical Specification qualification that a refueling interval surveillance is to be performed ''during shutdown.'' Therefore, consistent with the guidance provided in Generic Letter 91–04, the licensee proposed deletion of the requirement to perform this Surveillance ''during shutdown'' as part of the conversion from CTS 4.8.1.1.1.b to ITS SR 3.8.1.8.b.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

This change would remove a specific restriction to perform the verification of the manual transfer of the unit power supply from the normal circuit to the alternate circuit ''during shutdown.'' The transfer of the unit power supply from the normal circuit to the alternate circuit is not an initiator of any previously analyzed accident. Therefore, this change does not significantly increase the frequency of such accidents. Currently, this test is performed by momentarily paralleling the 230 kV offsite AC power sources. Paralleling offsite AC power sources is a controlled evolution and the increased risk associated with the performance of this test while the unit is at power is not significant for the following reasons: (1) The frequency and voltages are verified to be within the required range prior to paralleling the two offsite AC power sources; (2) breaker interlocks ensure that the alternate circuit is connected to the load prior to opening the preferred circuit; (3) the test does not result in de-energization of any 4.16 kV emergency bus and the potential for electrical perturbations on the grid system is the same whether performing the transfer while the unit is at power or while shutdown; and (4) operating history indicates that transferring offsite AC power sources while the units were in MODE (Operational Condition) 1 or 2 has been performed satisfactorily without electrical distribution system perturbations. The appropriate plant conditions for performance of the Surveillance will continue to be controlled to assure the potential consequences are not significantly increased. This control method has been previously determined to be acceptable as indicated in Generic Letter 91–04. Therefore, this change does not significantly increase the consequences of any previously analyzed accident.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

This change removes a specific restriction on the plant conditions for performing a Surveillance, but does not change the method of performance. The appropriate plant conditions for performance of the Surveillance will continue to be controlled to assure the possibility for a new or different kind of accident are not created. This control method has been previously determined to be acceptable as indicated in Generic Letter 91–04. Therefore, this change does not create the possibility of a new or different kind of accident from any previously analyzed accident.

3. Does this change involve a significant reduction in a margin of safety?

The margin of safety considered in determining the appropriate plant conditions for performing the Surveillance will continue to be controlled to assure that there is no significant reduction. This control method has been previously determined to be acceptable as indicated in Generic Letter 91–04. Therefore, the change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297

Attorney for licensee: William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Pao-Tsin Kuo

Carolina Power & Light Company, et al., Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendment request: April 3, 1998.

Description of amendment request: The Carolina Power & Light Company, licensee for the Brunswick Steam Electric Plant (BSEP), Unit Nos. 1 and 2, proposed amendments to the Technical Specifications (TS) to change the specified total volume of the condensate storage tank (CST) from 150,000 gallons to 228,200 gallons. During a recent review of industry operating experience, the licensee determined that information contained in TS 3.5.3.1, Core Spray System (CSS), and the associated bases regarding water inventory in the CST was incorrect. Specifically, the minimum CST volume requirement contained in TS 3.5.3.1 would not assure the availability of 50,000 gallons of water for the CSS, as indicated in TS Bases section 3/4.5.3.1 for the CSS.

The licensee has concluded that the proposed license amendments do not involve a Significant Hazards Consideration. In support of this determination, an evaluation of each of the three standards set forth in 10 CFR 50.92 is provided below.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed license amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS change revises the minimum CST [Condensate Storage Tank] water volume required for OPERABILITY of the Core Spray system (CSS) in OPERATIONAL CONDITIONS 4 AND 5 when the suppression pool is inoperable. The proposed change does not alter the operation of any plant system or component; does not involve a physical modification to any structure, system, or component; and does not affect an initiator to any accident previously evaluated. The minimum CST water level is being increased to assure the availability of 50,000 gallons of water for use by the CSS. Therefore, the proposed license amendments do not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed license amendments will not create the possibility of a new or different kind of accident from any accident previously evaluated. This proposed TS change revises the minimum CST water volume required for OPERABILITY of the CSS in OPERATIONAL CONDITIONS 4 and 5 when the suppression pool is inoperable. The proposed change does not alter the operation of any plant system or component; does not involve a physical modification to any structure, system, or component; and does not affect an initiator to any accident previously evaluated. The proposed change does not add or modify equipment or components related to the CSS and will, therefore, not create new failure modes or common failure modes. The minimum CST water level is being increased to assure the availability of 50,000 gallons of water for use by the CSS. Therefore, the proposed license amendments do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed license amendments do not involve a significant reduction in a margin of safety. The proposed license amendments increase the minimum CST water level to assure the availability of 50,000 gallons of water for use by the CSS. These volumes ensure the validity of existing analyses, and ensure that the existing TS Bases are satisfied. The proposed change does not involve a physical modification to any structure, system, or component, and does not modify the operation of any existing equipment. Therefore, the proposed license amendments do not involve a 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 amendments request involves no significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297

Attorney for licensee: William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Pao-Tsin Kuo (Acting)

Commonwealth Edison Company, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of amendment request: March 31, 1998.

Description of amendment request: Unreviewed Safety Question involving use of Station Blackout (SBO) diesel generators (DGs) and use of a mobile safe shutdown (SSD) battery cart in the 10 CFR part 50, appendix R, Safe Shutdown Safety Analysis.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The licensee has provided a separate no significant hazards consideration determination for the SBO DGs and the battery cart under this amendment request. The following is the determination for the SBO DGs:

(1) No significant increase in the probability or consequences of an accident previously evaluated is involved because of the following:

Two types of previously evaluated accidents are relevant to this criterion: (1) A fire; (2) other accident evaluated in the UFSAR. For these previously evaluated accidents, the change would not result in an increase in either their probabilities of occurrence or the consequences of their occurrence, for the following reasons.

The use of the SBO DGs in lieu of the [Emergency Diesel Generators] EDGs does not change the probability or consequences of a fire. The likelihood of a fire is unchanged. Use of the SBO DGs does not significantly change the fire loading nor introduce significant new ignition sources. The consequences of a fire are unchanged because use of the SBO DGs continues to support the station's ability to achieve and maintain shutdown in the event of a fire.

Use of the SBO DGs for non-fire purposes is unchanged by use of the SBO DGs for post-fire safe shutdown in the event of a fire in areas requiring alternate shutdown capability. Accordingly there is no change in the probability or consequences of a previously evaluated accident involving the SBO DGs. Similarly, there is no change to the probability or consequences of other accidents that have been previously evaluated because they are independent of this change in use of the SBO DGs.

(2) The possibility of a new or different kind of accident from any accident previously evaluated is not created because:

The proposed change does not create the possibility of a new or different kind of accident from that previously evaluated for Quad Station. Although the SBO DGs will be used for a new function, there is no significant change in the operation of the SBOs for a non-fire event. Moreover, the overall use of the SBO DGs as an AC power source is not significantly different from the use of the EDGs. The SBO DGs buses provide power to the same buses that are powered from the EDGs. No new modes of operation are introduced by the proposed changes. The use of the SBO DGs provides a slightly different but effective method for achieving and maintaining post-fire safe shutdown for areas requiring alternate shutdown capability. As such, the proposed change does not create the possibility of a new or different kind of accident.

(3) No significant reduction in the margin of safety is involved because:

A change in the fire protection program does not result in a significant reduction in the margin of safety if the change does not result in a significant adverse impact on the plant's ability to achieve and maintain safe shutdown in the event of a fire. The proposed use of the SBO DGs instead of the EDGs to achieve and maintain safe shutdown within 72 hours change does not significantly affect the capability or reliability of the equipment assumed to operate in the safety analysis.

The demonstrated capability and reliability of the SBO and EDGs are not significantly different. Indeed, the SBO DGs represent a safety improvement due to their physical separation from the postulated fire areas, and the operational benefits provided by their greater capacity. Any narrow reduction in margin associated with the need to manually start the SBO DGs is offset by the reduction in manual actions necessary to reduce electrical loads powered from the EDGs. The lack of Class 1E qualification for the SBO DGs is not significant from a safety perspective because the demonstrated reliability of the SBO DGs is comparable to the reliability of the EDGs. The lack of seismic qualification and single failure protection do not constitute a significant reduction in margin since neither of these attributes is required by Appendix R. Accordingly, the Commission has already determined that these attributes are not part of the Appendix R acceptance criterion. Any reduction in margin associated with the greater fuel consumption rate of the SBO DGs is partially offset by the increased flexibility in powering equipment to achieve and maintain post fire safe shutdown. Additionally, onsite fuel storage and manual transfer capabilities provide for at least 72 hours of SBO DG operation. Within 72 hours, deliveries of diesel fuel from offsite supplies is expected. Therefore, the use of the SBO DGs as an onsite AC power source for

equipment necessary to achieve and maintain post-fire safe shutdown in areas requiring alternate capabilities does not involve a significant reduction in margin.

The licensee has evaluated the use of the mobile SSD battery cart to provide the power source for the Automatic Depressurization System (ADS) valves under certain scenarios where the valves are needed to achieve cold shutdown and determined that it does not involve a significant hazards consideration for the reasons discussed below.

(1) No significant increase in the probability or consequences of an accident previously evaluated is involved.

The accident previously evaluated is the postulated fire requiring alternate shutdown capability. The probability of a previously evaluated fire is not increased significantly because the mobile SSD batteries do not create significant new ignition sources or any other fire initiators. The consequences of a previously evaluated fire are not increased significantly because the mobile SSD batteries do not significantly increase the fire loading in the plant, do not interfere with the plant's ability to extinguish a fire, and are fully capable of fulfilling the designed safety function.

The associated systems related to this proposed change are not affected in a way that could impact the initiation of any accident sequence for the Quad Cities Station. No modes of operation are introduced by the proposed change such that adverse consequences result.

The probability of an accident involving the use of the mobile SSD batteries would not be increased significantly by this proposed use because the use is not significantly different from the alternative manual attachment of a power source to the ADS valves.

The consequences of an accident involving the use of the mobile SSD batteries are not increased because the only significant consequences would be a delay in achieving cold shutdown and that would have no different consequences than would a delay due to an accident related to the currently used manual power source.

(2) The possibility of a new or different kind of accident from any accident previously evaluated is not created.

The proposed change for the Quad Cities Station does not create the possibility of a new or different kind of accident from that previously evaluated. Because the mobile SSD batteries simply provide a different form of manually connecting a source of power to the ADS valves, the use of the mobile SSD batteries does not present new or different kinds of accidents related to such manual actions. Finally, because no new modes of operation are introduced by the proposed change, the change does not create the possibility of a new or different kind of accident that could be related to new modes of operation.

(3) No significant reduction in the margin of safety is involved.

The analytic framework for determining the extent to which a proposed change affects the margin of safety has been discussed above and, so will not be repeated here. In this case, a review of the proposed changes shows that they will not have an adverse impact on the ability to achieve and maintain safe shutdown. Several features associated with the use of the mobile SSD batteries show, as discussed above, that it provides an effective method for achieving and maintaining safe shutdown following a fire. In particular, use of the mobile SSD batteries reduces the overall complexity of the cold shutdown repairs required to supply power to the ADS valves and is familiar to plant personnel from their training on its use for other purposes.

Design calculations regarding capabilities of the mobile SSD batteries show they will be capable in fulfilling their intended safety function for their design basis Appendix R scenario. Reliability of the mobile SSD batteries will be maintained by augmented quality standards. This will entail the conduct of appropriate maintenance and surveillance which is designed to ensure that the mobile batteries will function as intended. Reliability of this power source is further enhanced by the circumstance that there are two mobile SSD batteries, thus permitting one to act as a backup to the other.

Under these circumstances, the margin of safety for achieving cold shutdown using the ADS valves is not reduced significantly, if at all, by the use of non-safety related mobile SSD batteries to power the ADS valves. Although safety-related station batteries had previously been used in this function, the method for attaching those batteries was more prone to human error than the method which has been developed for the mobile SSD batteries. Moreover, substantial steps have been taken to provide a high level of reliability for the mobile SSD batteries. Overall, therefore, the ability to achieve and maintain safe shutdown in the event of a fire has not been reduced by this change in the source of power to the ADS valves.

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 are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603

NRC Project Director: Stuart A. Richards

Commonwealth Edison Company, Docket Nos. 50–295 and 50–304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois

Date of amendment request: March 30, 1998.

Description of amendment request: The proposed amendments would restore the Zion Custom Technical Specifications (CTS) that had been replaced with Improved Technical Specification by a previous amendment and would reinstate License Conditions that were deleted by that previous amendment. The proposed amendment would also modify the CTS to allow the use of Certified Fuel Handlers to satisfy shift staffing requirements and would change management titles and responsibilities to reflect the permanently shutdown organization.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

With a plant permanently shutdown and defueled the spectrum of accidents and events that remain credible is significantly reduced. As discussed below the proposed changes do not affect the probability or consequences of any accidents that do remain credible.

The restoration of the CTS which were replaced with the ITS by Amendments 178/165 cannot increase the probability or consequences of any event or accident because the amendment was never implemented. The CTS have been maintained as the legally binding Technical Specifications in effect at Zion Station. The reinstatement of the five License Conditions deleted by Amendments 178/165 is an administrative change in that the requirements contained in the License Conditions had been relocated elsewhere and are now being restored exactly as they were before the amendment was issued. Since the actual requirements have not changed there can be no change in the probability or consequences of any accident or event.

The changes in management titles and responsibilities will not increase the probability or consequences of any accident or event because these changes are administrative and will not result in any decrease in the quality of management applied to Zion Station. The changes are commensurate with the significant reduction in site activities, site staffing, and risk to public health and safety that occurs when an operational nuclear power plant transitions to a permanently shutdown and defueled plant. Responsible individuals will have the authority to commit the personnel and resources necessary to fulfill their obligations for safe storage and handling of nuclear fuel. The change of position designations will have no effect on the frequency of occurrence of accident or event initiators, or on their consequences.

The changes to allow use of Certified Fuel Handlers in lieu of personnel licensed in accordance with 10 CFR part 55 will not increase the probability or consequences of an accident or event because the Certified Fuel Handler Training and Retraining program (which will be approved by the

NRC) has been developed using a Systems Approach to Training as defined in 10 CFR 55.4. This approach provides assurance that the Certified Fuel Handlers have the knowledge, skills, and abilities that are commensurate with the tasks to be performed (i.e., the proper monitoring, handling, storage, and cooling of nuclear fuel). Therefore the frequency of occurrence of accident or event initiators is not increased and the consequences of the accidents or events are unaffected.

The changes in shift staffing numbers and crew composition will not increase the probability or consequences of an accident or event. These staffing changes are commensurate with the quantity, complexity, and hazard level of the activities required for storage and handling of nuclear fuel. The elimination of the Shift Control Room Engineer does not affect any accident or event initiator or consequence since the previous specification would not have required that the position be manned with both units shut down. The elimination of the requirement for a Radiation Protection Person on shift will have no effect on the frequency of occurrence of accidents or events, nor on the consequences of the accident or event.

The changes in verbiage to eliminate any implication that units are operational will not increase the probability or consequences of an accident or event because they are largely editorial changes and do not increase the frequency of occurrence of [or] event initiators, nor do they increase the consequences.

Therefore this proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The changes proposed by this amendment do not involve new structures, systems, or components, or the use of existing structures, systems, or components in a new manner. Consequently no new failure mechanisms are introduced. The design and operation of structures, systems, or components is unaffected by:

The restoration of CTS,

The reinstatement of the five License Conditions deleted by Amendments 178/165,

The changes in management titles and responsibilities,

The changes to allow use of Certified Fuel Handlers in lieu of 10 CFR [Part] 55 licensed personnel,

The changes in shift staffing numbers and crew composition, or

The changes in verbiage to eliminate any implication that units are operational.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

Does the change involve a significant reduction in a margin of safety?

One of the License Conditions that would be reinstated by this amendment establishes limits that help ensure that the assumptions of the fuel handling accident analysis remain valid. License Condition 2.C.(7).b limits the weight of loads carried over fuel stored in the spent fuel pool to the weight of a single fuel assembly plus the tool for moving that assembly. This weight limit ensures that the number of fuel rods broken in a fuel handling accident does not exceed the maximum number of fuel rods assumed to break in the accident analysis. Consequently, this change continues to provide assurance that the margin of safety involving the number of fuel rods broken in the accident will not be reduced.

Therefore, these changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603

NRC Project Director: Stuart A. Richards

Duke Energy Corporation (DEC), et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: May 27, 1997, as supplemented by a letter dated April 20, 1998.

Description of amendment request: The proposed amendments would revise the Technical Specifications (TS) of each unit to conform with NUREG–1431, Revision 1, ''Standard Technical Specifications—Westinghouse Plants.'' The Commission had previously issued a Notice of Consideration of Issuance of Amendments in the **Federal Register** on July 14, 1997 (62 FR 37628) covering all the proposed changes that were indeed within the scope of NUREG–1431. In DEC's May 27, 1997, submittal, there are proposed changes that are beyond the scope of NUREG–1431, which were thus not covered by the staff's July 14, 1997, notice. The following descriptions and no significant hazard analyses cover only those beyond-scope changes. Associated with each change are administrative/editorial changes such that the new or revised requirements would fit into the format of NUREG–1431.

1. This proposed change affects the surveillance requirement currently contained in Sections 4.6.6.1 and 4.6.6.2, regarding the containment valve injection water system. The requirement to assure adequate capacity to maintain system pressure for at least 30 days would be deleted, the required system pressure of 16.2 pounds per square inch gauge (psig) would be replaced with a surge tank pressure of 36.4 psig, and the system would be tested at lower pressures and more restrictive leak rates.

2. Section 3.9.2.1, regarding the boron dilution mitigating system, currently requires both trains to be operable in Mode 6 (refueling). DEC proposed to add a note stating that the system may be blocked during core reloading until two assemblies are loaded into the core. Adequate shutdown margin will continue to be controlled and verified by other specifications. This blocking would prevent inadvertent actuation of the system, which could distract the operating personnel, but would not diminish the monitoring function of the system.

3. DEC proposed to change the definition of 'dose equivalent iodine-131.' Subsequently, this proposed change was withdrawn by letter dated April 20, 1998.

4. DEC proposed to change Section 3.3.3.6 regarding accident monitoring instrumentation. Specifically, the change would (a) increase the time allowed to return the required number of channels to operable; and (b) permit continued operation if one channel is inoperable given certain conditions are met, instead of requiring shutdown.

5. DEC proposed to change Section 4.6.4.1 regarding surveillance requirements for the hydrogen monitors (combustible gas control). Specifically, this would eliminate the channel operational test, and extend the channel check frequency from once per 12 hours to once per 31 days.

6. DEC proposed to change Section 3.4.6.1 regarding reactor coolant leakage detection systems; a system comprising diverse instruments such as gaseous radioactivity monitoring, containment floor and equipment sump monitoring, etc. In addition to the instruments specified by this section, the plant has other installed instruments such as monitors for humidity, temperature, etc., which can provide indication for reactor coolant leakage. Currently, this specification allows operation up to 30 days if the containment floor and equipment sump monitoring system is inoperable. The change would impose a requirement to perform a precision water balance of the reactor coolant system every 24 hours during this period. The change would also reduce the number of monitors required operable provided compensatory measures are performed or diverse instruments continue to be available.

7. DEC proposed to change Section 4.5.4.b, which currently requires verification of the refueling water storage tank temperature to be within the allowed range once per 24 hours if the outside air temperature is less than 70 degrees or greater than 100 degrees Fahrenheit. The proposed change would simply require that the tank temperature be verified within range every 24 hours regardless of outside air temperature.

8. DEC proposed to revise Table 3.7–1, which imposes limits on the maximum allowable power range neutron flux high setpoint for various numbers of inoperable safety valves on any operating steam generator. The revision would reduce the setpoints, making them more conservative.

9. Section 3.7.6, regarding the condensate storage system, currently only exists in the Unit 2 TS. DEC proposed to impose these requirements also on Unit 1.

10. Several electrical busses and inverters currently covered by Section 3.8.3.1 are qualified by a footnote, which specifies the conditions under which the inverter may be disconnected from its direct current source. DEC proposed to delete this footnote because it is not needed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analyses of the issue of no significant hazards consideration for each of the above proposed changes. The NRC staff has reviewed the licensee's analyses against the standards of 10 CFR 50.92(c). The NRC staff's analysis is presented below.

1. Will the change involve a significant increase in the probability or consequences of an accident previously evaluated?

For changes 1, 2, 4, 5, 6, 7, 8, 9, and 10, the answer is ''no.'' The proposed changes will not affect the safety function of the subject systems. There will be no direct effect on the design or operation of any plant structures, systems, or components. No previously analyzed accidents were initiated by the functions of these systems, and the systems were not factors in the consequences of previously analyzed accidents. Therefore, the proposed changes will have no impact on the consequences or probabilities of any previously evaluated accidents.

2. Will the change create the possibility of a new or different kind of accident from any accident previously evaluated?

For changes 1, 2, 4, 5, 6, 7, 8, 9, and 10, the answer is ''no.'' The proposed changes would not lead to any hardware or operating procedure change. Hence, no new equipment failure modes or accidents from those previously evaluated will be created.

3. Will the change involve a significant reduction in a margin of safety?

For changes 1, 2, 4, 5, 6, 7, 8, 9, and 10, the answer is ''no.'' Margin of safety is associated with confidence in the design and operation of the plant. The proposed changes to the TS do not involve any change to plant design, operation, or analysis. Thus, the margin of safety previously analyzed and evaluated is maintained.

Based on this analysis, it appears that the three standards of 10 CFR 50.92(c) are satisfied for each of the proposed changes. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina

Attorney for licensee: Mr. Paul R. Newton, Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina

NRC Project Director: Herbert N. Berkow

Duke Energy Corporation (DEC), et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: April 8, 1998.

Description of amendment request: The proposed amendments would revise Section 3.6.5.1 and 4.6.5.1 of the Technical Specifications (TS) of each unit to relax ice condenser stored ice weight requirements by approximately 6 percent. The proposed change is based mainly on DEC's gathered data showing lower sublimation rate than originally anticipated.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analyses of the issue of no significant hazards consideration for the proposed changes. The NRC staff has reviewed the licensee's analyses against the standards of 10 CFR 50.92(c). The NRC staff's analysis is presented below.

1. Will the changes involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed changes will not affect the safety function of the ice condenser in that there will be no changes to the design or operation of any plant structures, systems, or components. No previously analyzed accidents were initiated by the functions of the ice condenser, and the ice condenser will remain fully capable of performing its design accident mitigation function. Therefore, the proposed changes will have no impact on the consequences or probabilities of any previously evaluated accidents.

2. Will the changes create the possibility of a new or difference kind of accident from any accident previously evaluated?

No. The proposed changes would not lead to any hardware or operating procedure change. Reducing the required ice weight will not have any impact on other plant systems that were assumed to be accident initiators. Hence, no new equipment failure modes or accidents from those previously evaluated will be created.

3. Will the changes involve a significant reduction in a margin of safety? No. Margin of safety is associated with confidence in the design and operation of the plant; specifically, the ability of the fission product barriers to perform their design functions during and following an accident. The proposed changes regarding required ice weight do not involve any change to plant design, operation, or analysis. Thus, the margin of safety previously analyzed and evaluated is maintained.

Based on this analysis, it appears that the three standards of 10 CFR 50.92(c) are satisfied for the proposed changes. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina

Attorney for licensee: Mr. Paul R. Newton, Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina

NRC Project Director: Herbert N. Berkow

Duke Energy Corporation (DEC), Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: May 27, 1997.

Description of amendment request: The proposed changes would lower the minimum required diesel generator (DG) air start receiver pressure from 220 per square inch gauge (psig) to 210 psig with a monthly verification, and would include an allowed outage time of 48 hours for a degraded air receiver provided the redundant air receiver is maintained at equal to or greater than 210 psig. These proposed changes are associated with DEC's application to convert to the Improved Technical

Specifications. Also, they are considered less restrictive requirements because of the lower required minimum pressure and the allowance of continued operation with a degraded starting air system.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration for each change, which is presented below:

1. (Do the changes) involve a significant increase in the probability or consequence of an accident previously evaluated?

The proposed changes provide Actions for degraded capabilities of the diesel starting air subsystems for the DG. The proposed Actions establish limits for the DG starting air subsystems of 210 psig, (are) allowed to decrease below the required value for 48 hours(, and are verified every 31 days.) The Completion Times are based on the amount of capability remaining, and the time needed to correct any deficient condition. If the Completion Times are exceeded, the specification requires the associated DG to be declared inoperable immediately, consistent with the current TS (technical specifications). Since the new Actions continue to assure that the associated DG remains capable of performing its design safety function, the proposed (changes do) not significantly affect the probability or consequences of an accident previously evaluated.

2. (Do the changes) create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed (changes do) not permit operation in a new or different mode, or permit the installation of a new or different type of equipment. The proposed changes provide Actions for degraded capabilities of the DG starting air subsystems. The proposed Actions establish Conditions, Required Actions, and Completion Times to be entered when in a degraded condition. The DG remains capable of performing its design safety function. Therefore, the proposed (changes do) not create the possibility of a new or different kind of accident from those previously evaluated.

3. (Do these changes) involve a significant reduction in a margin of safety?

The proposed (changes do) not significantly increase the probability or consequences of an accident previously evaluated. The changes provide assurance that timely action will be initiated to restore DG starting air subsystem when inoperabilities exist, without unnecessarily forcing plant shutdown. Based on the limit for the starting air subsystem for the DG, the limited time allowed is acceptable to restore the parameter to within the requirements without unnecessary plant shutdown. Therefore, (these changes do) not involve a significant (reduction in) a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: J. Murrey Atkins Library, University of North Carolina at Charlotte, 9201 University City Boulevard, Charlotte, North Carolina

Attorney for licensee: Mr. Albert Carr, Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina

NRC Project Director: Herbert N. Berkow

Duke Energy Corporation (DEC), Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: May 27, 1997.

Description of amendment request: The two proposed changes are associated with DEC's application to convert to the Improved Technical Specifications and are considered as administrative changes. The first change would delete a current requirement to only verify the refueling water storage tank temperature once every 24 hours if the outside air temperature is less than 70 degrees or greater than 100 degrees Fahrenheit, and would require that the tank temperature be verified within range every 24 hours regardless of the outside air temperature value. The second change would delete the current requirement that 32 of 33 hydrogen igniters be operable on each train, and would require that 34 igniters per train to be operable. The actual design contains 35 igniters per train. This change would correct an inadvertent error in the current Technical Specifications (TS). The number of igniters was increased to 35 after the first refueling outage of each unit. This change would correct the TS to reflect the requirements stated in Safety Evaluation Report Supplement 7.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration for each of the above proposed changes. The NRC staff has reviewed the licensee's analyses against the standards of 10 CFR 50.92(c). The NRC staff's analysis is presented below:

1. Will the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes will not affect the safety function of the subject systems. There will be no direct effect on the design or operation of any plant structures, systems, or components. No previously analyzed accidents were initiated by the functions of these systems, and the systems were not factors in the consequences of previously analyzed accidents. Therefore, the proposed changes will have no impact on the consequences or probabilities of any previously evaluated accidents.

2. Will the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes would not lead to any hardware or operating procedure change. Hence, no new equipment failure modes or accidents from those previously evaluated will be created.

3. Will the change involve a significant reduction in a margin of safety?

Margin of safety is associated with confidence in the design and operation of the plant. The proposed changes to the TS do not involve any change to plant design, operation, or analysis. Thus, the margin of safety previously analyzed and evaluated is maintained.

Based on this analysis, it appears that the three standards of 10 CFR 50.92(c) are satisfied for each of the proposed changes. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: J. Murrey Atkins Library, University of North Carolina at Charlotte, 9201 University City Boulevard, North Carolina

Attorney for licensee: Mr. Albert Carr, Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina

NRC Project Director: Herbert N. Berkow

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: May 27, 1997.

Description of amendment request: The proposed change would allow two charging pumps or safety injection pumps capable of injecting into the Reactor Coolant System (RCS) when the RCS is depressurized and an RCS vent of at least 4.5 square inches is established. This proposed change is associated with the licensee's application to convert to the Improved Technical Specifications and results in a requirement less restrictive than the current requirement.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the

issue of no significant hazards consideration for each change, which is presented below:

1. Does the change involve a significant increase in the probability or consequence of an accident previously evaluated?

The proposed change will provide an additional alternative for low temperature (overpressure) relief capacity when two charging pumps or safety injection pumps are capable of injecting into the RCS. The low temperature (overpressure) protection is not considered to be an initiator of any analyzed event, therefore, the proposed change does not increase the probability of a previously analyzed event.

The proposed change provides an equivalent vent size to the existing two open PORVs (power-operated relief valves). Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not necessitate a physical alteration of the plant (no new or different type of equipment will be installed) or changes in the manner in which the plant is operated. The proposed change adds an additional alternative to overpressure protection equivalent to the current requirements. Therefore, the proposed change will not create the possibility of a new or different kind of accident than any previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

As described above, the proposed change adds an additional alternative to overpressure protection equivalent to the current requirements. The inclusion of additional alternatives provides the operating staff with additional flexibility in meeting low temperature overpressure protection requirements. Therefore, the change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: J. Murrey Atkins Library, University of North Carolina at Charlotte, 9201 University City Boulevard, Charlotte, North Carolina

Attorney for licensee: Mr. Albert Carr, Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina

NRC Project Director: Herbert N. Berkow

Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: March 25, 1998

Description of amendment request: Revise Technical Specification (TS) 3.9.8.1, ''Shutdown Coolant and Coolant Circulation High Water Level,'' and TS 3.9.8.2, ''Shutdown Cooling and Coolant Circulation Low Water Level,'' to change the minimum water level above the fuel assemblies seated in the reactor vessel at which the Shutdown Cooling (SDC) System is required to be maintained operable, or be in operation. In addition, TS 3.8.1.2, ''Electric Power Systems, A.C. Sources, Shutdown,'' and Technical Specification Bases 3/4.9.8, ''Shutdown Cooling and Coolant Circulation,'' have been changed to make the wording consistent with TS 3.9.8.1 and TS 3.9.8.2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequence of any accident?

Response: No.

The operation of the facility in accordance with this change does not involve an increase in the probability of any accident.

Changing the water level at which the Shutdown Cooling (SDC) System is required to be maintained operable or be in operation will not increase the probability or consequences of an accident. The design, operation, or configuration of the SDC system will not be changed.

At least one shutdown cooling train will be in operation to ensure sufficient cooling capacity is available to remove decay heat and maintain the water in the reactor pressure vessel below 140 degree F as required during the refueling mode.

At least one shutdown cooling train will be in operation to ensure sufficient coolant circulation is maintained through the reactor core to minimize the effects of a boron dilution incident and prevent boron stratification. Technical Specification 3.9.10.1, ''Refueling Operations Water Level—Reactor Vessel Fuel Assemblies,'' will be complied with, and therefore, the assumptions related to iodine removal and the fuel handling accident will be preserved.

Sufficient time, approximately 1.00 hours, will be available to the operators to initiate compensatory measures to preclude the initiation of core boiling in the unlikely event SDC should be loss [lost].

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The operation of the facility in accordance with this proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change will not affect the design, configuration, or operation of the SDC system, and therefore there are no new modes of failure introduced.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: No.

Operation of the facility in accordance with this proposed change will not involve a significant reduction in a margin of safety.

The calculation of the time to the initiation of boiling based on 23 feet above the top of the fuel seated in the reactor vessel, at four days after shutdown, demonstrates there is significant time available, approximately 1.00 hour, to the operators within which to take compensatory measures to preclude the initiation of boiling. The calculation shows that based on 23 feet of water above the reactor flange there is 2.04 hours to the initiation of boiling. Although there is a reduction in the time to the initiation of boiling, compensatory measures could be taken within a few minutes to restore SDC, and thus, there is still a significant margin available to the operators within which to preclude the initiation of boiling. Thus, the margin of safety is not significantly reduced.

The time to core uncovery was determined to be 27.74 hours based on four days after shutdown and water level twenty-three (23) feet above the fuel assemblies seated in the reactor vessel.

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 are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, LA 70122

Attorney for licensee: N.S. Reynolds, Esq., Winston & Strawn, 1400 L Street N.W., Washington DC 20005–3502

NRC Project Director: John N. Hannon

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Nuclear Generating Plant, Unit No. 3, Citrus County, Florida

Date of amendment request: March 20, 1998.

Description of amendment request: The proposed amendment requests editorial changes to the Improved Technical Specifications (ITS) Safety Limits and Administrative Controls to replace the titles of the Senior Vice President, Nuclear Operations (SVPNO) and the Vice President, Nuclear Production (VPNP) with the position of Chief Nuclear Officer (CNO). The CNO combines the duties of the SVPNO and VPNP as currently described in ITS and is required to be an officer of the company. The proposed change is

intended to allow upgrading the position of the corporate officer responsible for overall nuclear operations without limiting the title.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below.

Does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because the deletion and updating of individual titles does not affect plant operation. No design basis accidents are affected by the proposed administrative and editorial changes and, as such, there are no physical changes to the facility or its operation.

Does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed ITS changes are administrative and editorial in nature. No changes to the facility structures, systems and components or their operation will result. The design and design basis of the facility remain unchanged. The plant safety analyses remain current and accurate. No new or different failure mechanisms are introduced. Therefore, the possibility of a new or different kind of accident from any accident previously evaluated is not introduced.

Does not involve a significant reduction in the margin of safety.

The proposed ITS changes are administrative and editorial in nature. The proposed safety margins established through the design and facility license including the Improved Technical Specifications remain unchanged. In addition, the proposed amendment ensures continued emphasis and assignment of responsibility for overall nuclear safety. Therefore, all margins of safety are maintained.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of § 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 34428

Attorney for licensee: R. Alexander Glenn, General Counsel, Florida Power Corporation, MAC–A5A, P.O. Box 14042, St. Petersburg, Florida 33733–4042

NRC Project Director: Frederick J. Hebdon

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Nuclear Generating Plant, Unit No. 3, Citrus County, Florida

Date of amendment request: March 20, 1998.

Description of amendment request: The proposed amendment would change the Inservice Inspection Program described in Improved Technical Specification (ITS) 5.6.2.8.c. This ITS currently states that the reactor coolant pump (RCP) motor flywheels will be inspected during the ''Spring 1998 refueling outage,'' which would have been refueling outage 11. Due to a recent 17-month extended outage, refueling outage 11 has been deferred until Fall 1999. The proposed change is intended to accurately reflect the new refueling outage 11 schedule.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below.

The proposed change will not significantly increase the probability or consequences of an accident previously evaluated.

The safety function of the RCP flywheels is to provide a coastdown period during which the RCPs would continue to provide reactor coolant flow to the reactor after loss of power to the RCPs. The maximum loading on the RCP motor flywheel results from overspeed following a large loss of coolant accident (LOCA). The estimated maximum obtainable speed in the event of a Reactor Coolant System piping break was established conservatively. The proposed one-time editorial change to remove the words ''Spring 1998 refueling outage'' and replace them with ''to coincide with Refueling Outage 11R'' does not affect that analysis. The proposed change in dates is editorial in that it merely reflects the new date for cycle 11. The usage time for the flywheels is bounded by the original estimates. The proposed editorial change does not affect the amount of radioactive material available for release or modify any systems used for mitigation of such releases during accident conditions. Therefore, the proposed change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

The proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed editorial change will not change the design, configuration, or method of operation of the plant. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change will not involve a significant reduction to any margin of safety.

The proposed Amendment is an editorial change to reflect that CR–3's operating cycle is not ending in spring 1998, but in fall 1999. The proposed change does not affect the methods of inspection or its acceptance criteria. Therefore, the margins of safety defined in RG [Regulatory Guide] 1.14 are not changed.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of § 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 34428

Attorney for licensee: R. Alexander Glenn, General Counsel, Florida Power Corporation, MAC–A5A, P.O. Box 14042, St. Petersburg, Florida 33733–4042

NRC Project Director: Frederick J. Hebdon

IES Utilities Inc., Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: April 15, 1998.

Description of amendment request: The proposed amendment would update the existing pressure-temperature curves with new curves with values from 18 to 32 effective full power years based on the testing and analysis of reactor pressure vessel surveillance materials.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated. The pressure-temperature limits are not derived from Design Basis Accident (DBA) analyses. They are prescribed by the ASME B&PV Code and 10 CFR part 50 appendices G and H as restrictions on normal operation to avoid encountering pressure, temperature, and temperature rate of change conditions that might cause undetected flaws to propagate and cause nonductile failure of the reactor coolant pressure boundary.

(2) The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated. The amendment will merely update the pressure-temperature curves (and associated SRs and Bases) already existing in the plant Improved Technical Specifications to provide limits from 18 to 32 EFPY of operation, which are based upon evaluation and analysis of actual in-vessel material specimens, per 10 CFR part

50, appendices G and H. The pressure-temperature curves are established to the requirements of 10 CFR part 50, appendix G to assure that brittle fracture of the reactor vessel is prevented.

(3) The proposed amendment will not involve a significant reduction in a margin of safety. 10 CFR part 50, appendix G specifies fracture toughness requirements to provide adequate margins of safety during operation over the service lifetime. The values of adjusted reference temperature and upper shelf energy determined as a result of the 10 CFR part 50, appendices G and H analysis are expected to remain within the limits of Regulatory Guide 1.99, Revision 2 and appendix G of 10 CFR part 50 (less than 200° F and greater than 50 ft-lbs respectively) for at least 32 EFPY of operation.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, SE., Cedar Rapids, IA 52401

Attorney for licensee: Jack Newman, Al Gutterman, Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036–5869

Acting NRC Project Director: Richard P. Savio

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: March 27, 1997.

Description of amendment request: The proposed amendment, included as part of the proposed conversion from the current Technical Specifications (TS) to improved TS, would establish Allowable Values for the instrumentation included in Section 3.3, as a result of the plant-specific application of the General Electric Instrument Setpoint Methodology to the Cooper Nuclear Station (CNS).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change in selected Allowable Values for the instrumentation included in proposed Section 3.3 of the Technical Specifications is the result of application of the CNS instrumentation setpoint methodology. This methodology incorporates the guidance of ISA Recommended Practice ISA–RP67.04, Part II, ''Methodologies for the Determination of Setpoints for Nuclear Safety-Related Instrumentation,'' September 1994. Application of this methodology results in instrumentation selected Allowable Values which more accurately reflect total instrumentation loop accuracy as well as that of test equipment and setpoint drift between Surveillances. The proposed change will not result in any hardware changes. The instrumentation included in proposed Section 3.3 of the Technical Specifications is not assumed to be an initiator of any analyzed event. Existing operating margin between plant conditions and actual plant setpoints is not significantly reduced due to this change. As a result, the proposed change will not result in unnecessary plant transients.

The role of the proposed Section 3.3 instrumentation is in mitigating and thereby limiting the consequences of accidents. The Allowable Values have been developed to ensure that the design and safety analysis limits will be satisfied. The methodology used for the development of the Allowable Values ensures the affected instrumentation remains capable of mitigating design basis events as described in the safety analyses and that the results and consequences described in the safety analyses remain bounding. Additionally, the proposed change does not alter the plant's ability to detect and mitigate events. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change is the result of application of the CNS instrumentation setpoint methodology and do not create the possibility of a new or different kind of accident from any accident previously evaluated. This is based on the fact that the method and manner of plant operation is unchanged. The use of the proposed Allowable Values does not impact safe operation of CNS in that the safety analysis limits will be maintained. The proposed Allowable Values involve no system additions or physical modifications to systems in the station.

These Allowable Values were developed using a methodology to ensure the affected instrumentation remains capable of mitigating accidents and transients. Plant equipment will not be operated in a manner different from previous operation, except that setpoints may be changed. Since operational methods remain unchanged and the operating parameters have been evaluated to maintain the station within existing design basis criteria, no different type of failure or accident is created.

3. Does this change involve a significant reduction in a margin of safety?

The proposed change does not involve a reduction in a margin of safety. The proposed changes have been developed using a methodology to ensure safety analysis limits are not exceeded. As such, this 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.

Local Public Document Room location: Auburn Memorial Library, 1810 Courthouse Avenue, Auburn, NE 68305

Attorney for licensee: Mr. John R. McPhail, Nebraska Public Power District, Post Office Box 499, Columbus, NE 68602–0499

NRC Project Director: John N. Hannon

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: March 27, 1997.

Description of amendment request: The proposed amendment, included as part of the proposed conversion from the current Technical Specifications (CTS) to the improved Technical Specifications (ITS), would add an additional action statement to a limiting condition for operation (LCO). The LCO is in the Improved Standard Technical Specifications (ISTS, NUREG–1433, Revision 1) 3.6.2.3 on the residual heat removal suppression pool cooling subsystems. The requirements in the proposed ITS 3.6.2.3 on the subsystems do not exist in the CTS. The Action B for ITS 3.6.2.3 would require that if the two such subsystems were inoperable, one subsystem would have to be restored to operability within 8 hours or the plant would be in ITS 3.0.3. ITS 3.0.3 governs plant operation if an LCO (i.e., ISTS 3.6.2.3) and the associated action statement are not met (i.e., Action B to ISTS 3.6.2.3).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change provides more stringent requirements for operation of the facility. These more stringent requirements do not result in operation that will increase the probability of initiating an analyzed event and do not alter assumptions relative to (the) mitigation of an accident or transient event. The more restrictive requirements continue to ensure * * * systems, and components ((i.e., the residual heat removal suppression pool cooling subsystems)) are maintained consistent with the safety analyses and licensing basis. Therefore, this (the proposed)

change does not involve a significant (an) increase in the probability or consequences of any accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in the methods governing normal plant operation. The proposed change does impose different requirements. However, this change is consistent with the assumptions in the safety analyses and licensing basis. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated is not created.

3. Does this change involve a significant reduction in a margin of safety?

The imposition of more restrictive requirements either has no impact on or increases the margin of plant safety. As provided in the discussion of the change, each change in this category (i.e., more restrictive requirements) is, by definition, providing additional restrictions to enhance plant safety. The change maintains requirements (systems and components) within the safety analyses and licensing basis. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Auburn Memorial Library, 1810 Courthouse Avenue, Auburn, NE 68305

Attorney for licensee: Mr. John R. McPhail, Nebraska Public Power District, Post Office Box 499, Columbus, NE 68602–0499

NRC Project Director: John N. Hannon

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: March 27, 1997.

Description of amendment request: The proposed amendment, included as part of the proposed conversion from the current Technical Specifications (CTS) to the improved Technical Specifications (ITS), would add an additional test (i.e., water and sediment content within limits) of diesel fuel oil that could be used in place of a current test (i.e., clear and bright appearance with proper color) in the diesel fuel oil testing program. The current tests are listed in CTS 4.9.A.2.d/e. The testing program will be in the new ITS 5.5.9. The additional test is change number 25 to Section 5.0 of the Improved Standard Technical Specifications (NUREG–1433, Revision 1).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change provides more stringent requirements for operation of the facility. (This) more stringent (requirement) do(es) not result in operation that will increase the probability of initiating an analyzed event and do(es) not alter assumptions relative to (the) mitigation of an accident or transient event. The more restrictive (requirement) continue(s) to ensure * * * systems and components (i.e., the diesel generators) are maintained consistent with the safety analyses and licensing basis. Therefore, the proposed change does not involve an increase in the probability or consequences of any accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in the methods governing normal plant operation. However, this change is consistent with the assumptions in the safety analyses and licensing basis. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated is not created.

3. Does this change involve a significant reduction in a margin of safety?

The imposition of more restrictive requirements either has no impact on or increases the margin of plant safety. As provided in the discussion of the change, each change in this category (i.e., a more restrictive requirement) is, by definition, providing additional restrictions to enhance plant safety. The change maintains (systems and components) within the safety analyses and licensing basis. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Auburn Memorial Library, 1810 Courthouse Avenue, Auburn, NE 68305

Attorney for licensee: Mr. John R. McPhail, Nebraska Public Power District, Post Office Box 499, Columbus, NE 68602–0499

NRC Project Director: John N. Hannon

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: March 27, 1997.

Description of amendment request: The proposed amendment, included as part of the proposed conversion from the current Technical Specifications (TS) to improved TS for the Cooper Nuclear Station (CNS), would relocate the Trip Level Settings for the Rod Block Monitor from Table 3.2.C of the current TS to the Core Operating Limits Report. Also, details relating to the Alternate Shutdown system design and operation are proposed to be relocated from current TS 3.2.I and 4.2.I to the improved TS Bases.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the three criteria of 10 CFR 50.92(c), and has determined the following:

The proposed changes relocate certain details from the Technical Specifications to the Bases and the Core Operating Limits Report (COLR). The Bases and the COLR containing the relocated information will be maintained in accordance with 10 CFR 50.59. In addition, the Bases and COLR are subject to the applicable change control provisions of Chapter 5.0, Administrative Controls'', of the proposed improved Technical Specifications. Since any changes to the Bases or the COLR will be evaluated per the requirements of 10 CFR 50.59 or other applicable change control provisions, no increase in the probability or consequences of an accident previously evaluated will result. Therefore, these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not involve any physical alterations to the plant (no new or different type of equipment will be installed), or changes in the methods governing normal plant operation. The proposed changes will not impose or eliminate any requirements, and adequate control of the information will be maintained. Thus, these changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes will not reduce a margin of safety because they have no impact on any safety analysis assumptions. In addition, the details to be transposed from the TS to the Bases

and the COLR are unchanged. Since any future changes to these details in the Bases or the COLR will be evaluated per the requirements of 10 CFR 50.59 or other applicable change control provisions, no reduction in a margin of safety will result. As such, these proposed changes do not involve a significant reduction in a margin of safety.

Based on the above discussion, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Auburn Memorial Library, 1810 Courthouse Avenue, Auburn, NE 68305

Attorney for licensee: Mr. John R. McPhail, Nebraska Public Power District, Post Office Box 499, Columbus, NE 68602–0499

NRC Project Director: John N. Hannon

North Atlantic Energy Service Corporation, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: April 8, 1998.

Description of amendment request: The proposed change would revise Technical Specifications (TSs) 4.4.5.3, Steam Generators—Inspection Frequencies, and 3.4.6.2.c, Reactor Coolant System (RCS) Leakage, and the associated bases to accommodate fuel cycles of up to 24 months with respect to the allowed time interval between steam generator inservice inspections.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Extending Surveillance Requirement (SR) 4.4.5.3 to accommodate a 24 month cycle for inspection of steam generator tubes structural integrity, as well as, imposing a more restrictive Limiting Condition for Operation (TS 3.4.6.2.c) for reactor coolant system leakage through Category C–2 steam generators, will neither exacerbate nor significantly increase the probability or consequences of an accident previously evaluated in the Seabrook Station [updated final safety analysis report] UFSAR.

The proposed changes to SR 4.4.5.3 do not alter the intent or method by which the surveillances are conducted, do not involve physical changes to the plant, do not alter the way structures, systems or components (SSCs) function, and do not modify the manner in which the plant is operated.

The proposed change to TS 3.4.6.2.c imposes more restrictive limits on plant operations due to RCS leakage through steam generators. The proposed change does not involve physical changes to the plant or alter the way a SSC functions.

The proposed changes to SR 4.4.5.3 and TS 3.4.6.2.c, and their associated Bases, will not adversely affect the ability of the steam generators to perform their intended safety function. Furthermore, the proposed changes do not adversely affect the physical protective boundaries of the plant. The proposed changes do not affect accident initiators or precursors and do not alter the design assumptions, conditions, configuration of the facility or the manner in which the plant is operated. The proposed changes do not alter or prevent the ability of SSCs to perform their intended function to mitigate the consequences of an initiating event within the acceptance limits assumed in the Updated Final Safety Analysis Report (UFSAR). The proposed changes are administrative in nature and do not change the level of programmatic controls or the procedural details associated with aforementioned surveillance requirements. While the proposed changes will lengthen the interval between surveillances, the increase in interval has been evaluated; and based on the reviews of the steam generator tube eddy current test (ECT) inspections, it is concluded that the wear growth rate of the only active degradation mechanism (Anti-Vibration Bar (AVB) wear) identified to date at Seabrook Station is such that sufficient margin exists between the plugging criteria and structural limit such that no tubes are predicted to exceed the structural limit even with the longer surveillance interval.

Since there are no changes to previous accident analyses, the radiological consequences associated with these analyses remain unchanged, therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. Therefore, the proposed changes will not significantly increase the probability or consequences of any previously analyzed accident.

2. The proposed changes do not create the possibility of a new or different kind of accident from any previously analyzed.

The proposed changes to TS 3.4.6.2 and SR 4.4.5.3, and associated Bases, do not alter the design assumptions, conditions, configuration of the facility or the manner in which the plant is operated. There are no changes to the source term, containment isolation or radiological release assumptions used in evaluating the radiological consequences in the Seabrook Station UFSAR. Existing system and component redundancy is not being changed by the proposed changes. The proposed changes have no impact on component or system interactions. The proposed changes are administrative in nature and do not change the level of programmatic controls and procedural details associated with the aforementioned surveillance requirements. Therefore, since there are no changes to the design assumptions, conditions, configuration of the facility, or the manner in which the plant is operated and surveilled, the proposed changes do not create the possibility of a new or different kind of accident from any previously analyzed.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The proposed change ( ) to the surveillance intervals for SR 4.4.5.3 is still consistent with the basis for the interval. The intent or method of performing the surveillances remains unchanged. The more restrictive limit for leakage through any one steam generator placed in Category C–2, as well as, the requirement to do an engineering assessment of steam generator tube integrity, provides additional margin of ensuring safe plant operation.

In addition, there is no adverse affect on equipment design or operation and there are no changes being made to the Technical Specification required safety limits or safety system settings that would adversely affect plant safety. The proposed changes are administrative in nature and do not change the level of programmatic controls and procedural details associated with the aforementioned surveillance requirements. While the proposed changes will lengthen the interval between surveillances, the increase in interval has been evaluated; and based on the reviews of the steam generator tube ECT inspections, it is concluded that the wear growth rate of the only active degradation mechanism (AVB wear) identified to date at Seabrook Station is such that sufficient margin exists between the plugging criteria and structural limit such that no tubes are predicted to exceed the structural limit even with the longer surveillance interval. Therefore, extension of the current surveillance intervals to accommodate a 24 month cycle will not significantly degrade the ability, the availability or the reliability of the steam generators to perform their intended safety function, thus, it is concluded that there is no significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Exeter Public Library, Founders Park, Exeter, NH 03833

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, PO Box 270, Hartford, CT 06141–0270

NRC Project Director: Cecil O. Thomas

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: April 6, 1998.

Description of amendment request: The proposed amendment will modify

the Technical Specifications (TSs) by (1) adding a surveillance requirement to verify pressurizer heater capacity to TS 3.4.4, ''Reactor Coolant System—Pressurizer,'' (2) moving the identification of the location of the containment air temperature detectors from the surveillance requirements portion of TS 3.6.1.5, ''Containment Systems—Air Temperature,'' to the TS Bases for Containment Systems, Section 3/4.4.6.1.5, ''Air Temperature,'' and (3) modifying the action statements and surveillance requirements of TS 3.7.1.5, ''Plant Systems—Main Steam Isolation Valves.'' The TS Bases would also be updated to include the list of containment air temperature detectors and reflect the proposed changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to add a surveillance requirement (SR) 4.4.4.2 to verify pressurizer heater capacity will help ensure the pressurizer will be able to function as designed to maintain Reactor Coolant System pressure. There will be no effect on any design basis accident previously evaluated or on any equipment important to safety. Therefore, the proposed change will not result in a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to modify the wording of SR 4.6.1.5 and to relocate the list of containment air temperature detectors from SR 4.6.1.5 to the Bases will not affect the Technical Specification limit for containment temperature or the frequency of verification of this limit. The proposed changes do not alter the way any structure, system, or component functions. The initial assumption for containment temperature used in the design basis accident analysis will remain the same. There will be no affect on any design basis accident previously evaluated or on any equipment important to safety. Therefore, the proposed changes will not result in a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to the action statements and surveillance requirements of Technical Specification 3.7.1.5 will not affect the operability requirements of the main (steamline) isolation valves (MSIVs). There will be no effect on any design basis accident previously evaluated or on any equipment important to safety. Therefore, the proposed changes will not result in a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes have no adverse effect on any of the design basis accidents previously evaluated or on any equipment important to safety. Therefore, the License Amendment Request does not impact the probability of an accident previously evaluated nor does it involve a significant increase in the consequences or an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes will not alter the plant configuration (no new or different type of equipment will be installed) or require any new or unusual operator actions. They do not alter the way any structure, system, or component functions and do not alter the manner in which the plant is operated. The proposed changes do not introduce any new failure modes. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed changes will add SR 4.4.4.2 to verify pressurizer heater capacity, relocate the list of containment temperature detectors used to verify containment temperature from SR 4.6.1.5 to the associated Bases, and modify the action statements and surveillance requirements of Technical Specification 3.7.1.5.

These changes will have no adverse effect on equipment important to safety. This equipment will continue to function as assumed in the design basis accident analysis. Therefore, there will be no significant reduction in the margin of safety as defined in the Bases for the technical Specifications affected by these proposed changes.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut

NRC Deputy Director: Phillip F. McKee

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: April 13, 1998

Description of amendment request: The proposed amendment would change the Technical Specifications (TSs) by adding a new TS 3.5.5, ''Emergency Core Cooling Systems—Trisodium Phosphate (TSP).'' Also, the surveillance requirements in TSs 4.5.2.c.3 and 4.5.2.c.4 would be relocated to new TS 3.5.5 as TS 4.5.5.1 and TS 4.5.5.2, respectively. The applicable TS Index page and Bases sections will be updated to reflect the proposed changes.

Changes to the current requirements for the TSP are also proposed. The TSP requirements in TS 4.5.2.c.3 would become the limiting conditions for operation in the new TS; the amount of TSP required would increase from ''equal to or greater than 110 cubic feet'' to ''equal to or greater than 282 cubic feet'' based on the new calculations; the applicability would be expanded to include all of Mode 3; the action statement would allow 48 hours to restore the TSP volume; and changes would also be made to the required tests and specific details would be relocated to the applicable TS Bases.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to relocate the current trisodium phosphate (TSP) dodecahydrate Technical Specification requirements from the surveillance requirements for the Emergency Core Cooling System to a new TSP Technical Specification will not change the requirement to store TSP inside containment. The proposed changes will require a large quantity of TSP to be stored inside containment. This large quantity, based on a recently revised calculation, will ensure sufficient TSP is available for containment sump water pH control. These proposed changes do not alter the way any structure, system, or component functions. There will be no adverse effect on any design basis accident previously evaluated, on any equipment important to safety, or o n the radiological consequences of any design basis accident. Therefore, this License Amendment Request does not impact the probability of an accident previously evaluated nor does it involve a significant increase in the consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change to increase the TSP volume stored inside containment will require two of the wire mesh TSP baskets inside containment to be replaced by two new and larger wire mesh baskets. The design of the new baskets has been evaluated and it is consistent with the requirements for equipment installed in containment. The replacement of the two wire mesh baskets

will not result in any significant change in plant configuration and will not require any new or unusual operator actions. It will alter the way any structure, system, or component functions and does not alter the manner in which the plant is operated. It will not introduce any new failure modes. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed changes will relocate the current Technical Specification requirements for TSP to a new Technical Specification. The minimum required volume will be increased to reflect the results of a new calculation performed to support the current requirement to raise containment sump pH [equal to or greater than] 7.0. These changes will have no adverse effect on equipment important to safety. This equipment will continue to function as assumed in the design basis accident analysis. Therefore, there will be no significant reduction of the margin of safety as defined in the Bases for the Technical Specifications affected by these proposed changes.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut

NRC Deputy Director: Phillip F. McKee

Northern States Power Company, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of amendment request: April 11, 1997 (supersedes July 26, 1996, application)

Description of amendment request: The proposed amendment would modify the Monticello Technical Specifications (TS) sections 3.6.C, Coolant Chemistry, and 3/4.17.B, Control Room Emergency Filtration System. The changes were proposed to establish TS requirements consistent with modified analysis inputs used for the evaluation of the radiological consequences of the main steam line break accident.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

A limit is established in the plant Technical Specifications for steady state radioiodine concentration in the reactor coolant to ensure that in the event of a release of radioactive material to the environment due to a postulated high energy line break up to and including a design basis Main Steam Line Break Accident, radiation doses are maintained within the guidelines of 10 CFR part 100. The steady state radioiodine concentration in the reactor coolant is an input for analysis of the radiological consequences of an accident due to a Main Steam Line Break outside of containment and postulated high energy line breaks. In addition, requirements are established in the Technical Specifications for control room habitability. During an accident, the control room emergency filtration system provides filtered air to pressurize the Control Room to minimize the activity, and therefore the radiological dose, inside the control room.

A change is proposed for the steady state radioiodine concentration. This value is conservative with respect to the value used in the Main Steam Line Break dose consequences analysis and is consistent with the dose consequences evaluation of a postulated Reactor Water Cleanup (RWCU) line break. Changes are proposed to the limiting conditions for operation and surveillance requirements for the Control Room Emergency Filtration Train iodine removal efficiency. These changes are consistent with the inputs used in the analysis of the radiological consequences of the postulated RWCU line break and the Main Steam Line Break Accident. These proposed requirements maintain operating restrictions for analytical inputs used in the analysis of the Main Steam Line Break Accident. Evaluation of these events has demonstrated that the postulated radiological consequences will remain within the licensing basis established in the AEC [Atomic Energy Commission] Provisional Operating License Safety Evaluation Report, dated March 18, 1970, thus the proposed changes do not result in an increase in the consequences of previously evaluated accidents.

The analysis of the Main Steam Line Break Accident performed using a reactor coolant radioiodine concentration of 2 (microcuries)/gm dose equivalent Iodine-131 and a control room ventilation filter efficiency consistent with the proposed Technical Specifications changes demonstrated that radiological consequences of the Main Steam Line Break are not changed significantly. The radiological consequences of the Main Steam Line Break Accident remain within the exposure guidelines of 10 CFR part 100 and 10 CFR part 50 appendix A, General Design Criterion 19. The offsite dose consequences remain bounded by the licensing basis provided in the AEC Provisional Operating License Safety Evaluation Report, dated March 18, 1970. The control room doses calculated for the hot standby Main Steam Line Break Accident using the TID–14844 dose conversion factors remain bounded by the dose consequences of the comparable design basis loss of coolant accident.

The evaluation of the postulated RWCU line break, performed using a reactor coolant radioiodine concentration of 0.25 (microcurie)/gm dose equivalent Iodine-131 and a control room ventilation filter efficiency consistent with the proposed Technical Specifications changes, demonstrated that the radiological consequences of this event remain within the exposure guidelines of 10 CFR part 100 and 10 CFR part 50 Appendix A, General Design Criterion 19. The offsite dose consequences remain bounded by the Main Steam Line Break as established in the licensing basis provided in the AEC Provisional Operating License Safety Evaluation Report, dated March 18, 1970.

The proposed Technical Specification changes do not introduce new equipment operating modes, nor do the proposed changes alter existing system inter-relationships. The proposed changes do not introduce new failure modes. The system improvements to reduce bypass leakage during postulated accidents do not have an adverse effect on control room habitability. Therefore, this amendment will not cause a significant increase in the probability of an accident previously evaluated for the Monticello plant.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

The proposed Technical Specification changes do not introduce new equipment operating modes, nor do the proposed changes alter existing system inter-relationships. Operator action to mitigate the consequences of the postulated RWCU line break is conservative based on the very limited action required by the operator to close the containment isolation valves and the availability of control room indications to alert the operator to the postulated break. The use of a ten (10) minute operator response time to take manual actions in response to postulated events is consistent with Monticello's licensing basis for similar events. The use of operator actions and all available equipment is consistent with current regulatory guidance for mitigating the consequences of postulated line breaks.

The proposed change to the specification for reactor coolant dose equivalent radioiodine is conservative with respect to the re-evaluation of the Main Steam Line Break Accident for the more conservative hot standby initial condition for the postulated accident. The proposed change to the specification for reactor coolant dose equivalent radioiodine is consistent with the postulated high energy line break of a Reactor Water Cleanup line. The proposed changes to the limiting conditions for operation and

surveillance requirements for the control room emergency filtration train iodine removal efficiency are consistent with the inputs used in the evaluation of the radiological consequences of the postulated RWCU line break and the Main Steam Line Break Accident. The system improvements to reduce bypass leakage during postulated accidents do not have an adverse effect on control room habitability. Therefore, the proposed amendment will not create the possibility of a new or different kind of accident.

3. The proposed amendment will not involve a significant reduction in the margin of safety.

Surveillance data has demonstrated the proposed requirements are within the current capability of the facility. The proposed changes maintain margins of safety. These proposed requirements maintain operating restrictions for analytical inputs used in the analysis of the bounding postulated high energy line break of a Reactor Water Cleanup line and the Main Steam Line Break Accident. The proposed change to the specification for reactor coolant dose equivalent radioiodine is conservative with respect to the re-evaluation of the Main Steam Line Break Accident for the more conservative hot standby initial condition for the postulated accident. The proposed change to the specification for reactor coolant dose equivalent radioiodine is consistent with the postulated high energy line break of a Reactor Water Cleanup line. The evaluation of these postulated events determined that the radiological consequences remain within the exposure guidelines of 10 CFR part 100 and of 10 CFR part 50 Appendix A, General Design Criterion 19. The proposed changes to the limiting conditions for operation and surveillance requirements for the control room emergency filtration train iodine removal efficiency provide assurance that the system will perform at the filter efficiency as used in the evaluation of the radiological consequences of the postulated events. Therefore, the proposed amendment will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037

NRC Project Director: Cynthia A. Carpenter

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment request: April 10, 1998.

Description of amendment request: The proposed amendments would revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant Unit Nos. 1 and 2 to revise TS 6.2.2.g and 6.3 to change the name of the Operations Manager to Operations Director and to change the requirement for the Operations Director to hold a senior reactor operator (SRO) license.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to revise the title of the Operations Manager to Operations Director is an administrative change that clarifies the Technical Specification (TS) to reflect current position titles.

The proposed change provides assurance that the Operations Director will continue to have knowledge of pressurized water reactor (PWR) operation and emergency event mitigation. The proposed change does not detract from the Operations Director's ability to perform his primary responsibilities. In this case, by having previously held a senior reactor operator (SRO) license, the Operations Director has achieved the necessary training, skills, and experience to fully understand the operation of plant equipment and the watch requirements for operators. In summary, the proposed change does not affect the ability of the Operations Director to provide the plant oversight required of his position.

Additionally, another off-shift individual that holds an SRO license for Diablo Canyon Power Plant (DCPP) directs the licensed activities of licensed operators (an Operations middle manager) will have specific knowledge of operation and emergency event mitigation at DCPP. This will assure that the change in qualification of the Operations Director does not affect the probability of an operator initiating an accident or increasing the consequences of an accident due to improper direction from management. The training and qualification programs for operators on shift will not be affected by the proposed changes.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change to revise the title of the Operations Manager to Operations Director is an administrative change that clarifies the TS to reflect current position titles.

The proposed change to TS 6.2.2g. and 6.3 do not affect the design or function of any plant system, structure, or component, nor does it change the way plant systems are operated. It does not affect the performance of NRC licensed operators since the proposed changes do not impact the training or qualification of any operator on shift. Operation of the plant in conformance with TS and other license requirements will continue to be supervised by personnel who hold an SRO license. The proposed change to TS 6.2.2g and 6.3 ensures that the Operations Director will be a knowledgeable and qualified individual by requiring the individual to have held an SRO license at a PWR.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change to revise the title of the Operations Manager to Operations Director is an administrative change that clarifies the TS to reflect current position titles.

The proposed change involves an administrative control that is not related to the margin of safety. The proposed change does not reduce the level of knowledge or experience required of an individual who fills the Operations Director position, nor does it affect the conservative manner in which the plant is operated. The on-shift licensed operators will continue to be supervised by personnel who hold an SRO license in accordance with 10 CFR 50.54(l).

Therefore, neither of the proposed changes involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of § 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room Location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Attorney for Licensee: Christopher J. Warner, Esq., Pacific Gas & Electric Company, P.O. Box 7442, San Francisco, California 94120

NRC Project Director: William H. Bateman

Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: March 26, 1998.

Description of amendment request: The proposed amendments would revise Technical Specification (TS) 3/4.8.2.1, ''AC Distribution—Operating,'' to add operability conditions and action statements for the 115-volt vital instrument bus (VIB) D and inverter. The proposed amendments complete the recommended action from NRC Generic Letter 91–11, Resolution of Generic Issues 48, ''LCOs for Class 1E Vital Instrument Buses,'' and 49, ''Interlocks and LCOs for Class 1E Tie Breakers'' pursuant to 10 CFR 50.54(f), dated July 18, 1991.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change, as described above, does not make any physical changes to the plant or components, nor changes the manner in which the plant or components are operated as a result of the addition of the Note and the D VIB and Inverter to the TS. The proposed change incorporates the operating requirements of the Technical Specification Interpretation (TSI) developed in response to GL 91–11 into the Salem Unit 1 and 2 Technical Specifications. Incorporating this interpretation into the Technical Specifications eliminates the need for the TSI.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not introduce any design or physical configuration change to the plants, change the function of the 115 Volt D VIBs and inverters, or the manner in which they are maintained or tested.

Therefore, the proposed amendment will 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 Action Times associated with the incorporation of the D VIB into the Technical Specifications are consistent with the current Action Times for the A, B, and C VIBs for a loss of an AC bus. Adding the note to the Salem Unit 1 Technical Specification brings consistency between Salem Units 1 and 2, and is also consistent with NUREG 1431, Vol. 1, Rev 1 ''Standard Technical Specifications Westinghouse Plants.''

The outage duration limit of 72 hours for the D inverter is acceptable based on the following: (1) the proposed 72 hours Action Time to restore the inoperable inverter to operable is supported by a PSA [probabilistic safety assessment] assessment. NRC Draft SRP [Standard Review Plan] Chapter 16.1, Revision 13, ''Risk-Informed Decision making: Technical Specifications'' notes that an incremental conditional core damage probability (ICCDP) of 5.0 E–7 is considered very small. The proposed 72 hour allowable outage time was calculated utilizing the NRC incremental conditional core damage probability (ICCDP), and (2) the inoperability of the D VIB Inverter will not affect the operation of any Safeguard Equipment Cabinet (SEC) or Emergency Diesel Generator (EDG).

Therefore, the proposed amendment will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, NJ 08079

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038

NRC Project Director: Robert A. Capra.

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of amendment request: April 18, 1997, as supplemented by letters dated October 10, 1997, and February 27, 1998.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) Section 3/4.7.6, ''Plant Systems—Control Room Emergency Ventilation System.'' Additional Limiting Conditions for Operation would be added related to the availability of the station vent normal range radiation monitoring instrumentation. The associated TS bases would also be modified consistent with these changes. The staff's proposed no significant hazards consideration determination for the requested change was published on June 4, 1997 (62 FR 30646).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

The Davis-Besse Nuclear Power Station has reviewed the proposed changes and determined that a significant hazards consideration does not exist because operation of the Davis-Besse Nuclear Power Station (DBNPS), Unit No. 1, in accordance with this change would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because no accident initiators, conditions, or assumptions are affected by the proposed changes.

The proposed change to Limiting Condition for Operation (LCO) 3.7.6.1 would include new required Action statements in the event that one or both channels of Station Vent Normal Range Radiation Monitoring instrumentation become inoperable. Under the proposed Action statements for inoperable Station Vent Normal Range Radiation Monitoring instrumentation, should the control room normal ventilation system be isolated and at least one train of the control room emergency ventilation system be placed in operation, these systems would be in a state equivalent to that which they would be in following an actual high radiation condition. These proposed changes have no bearing on the probability of an accident.

The proposed change to the terminology utilized in Surveillance Requirement (SR) 4.7.6.1.e is an administrative change made to make the terminology consistent with the proposed new Action statements. The proposed changes to Bases 3/4.7.6 are administrative changes consistent with the proposed changes to LCO 3.7.6.1. These changes have no bearing on the probability of an accident.

Not involve a significant increase in the consequences of an accident previously evaluated because the proposed changes do not change the source term, containment isolation, or allowable releases.

As described above, under the proposed Action statements for inoperable Station Vent Normal Range Radiation Monitoring instrumentation, should the control room normal ventilation system be isolated and at least one train of the control room emergency ventilation system be placed in operation, these systems would be in a state equivalent to that which they would be in following an actual high radiation condition. Therefore, in the unlikely event of an accident requiring control room isolation while in this condition, the dose consequences to control room operators would be unchanged.

The proposed change to the terminology utilized in Surveillance Requirement (SR) 4.7.6.1.e is an administrative change made to make the terminology consistent with the proposed new Action statements. The proposed changes to Bases 3/4.7.6 are administrative changes consistent with the proposed changes to LCO 3.7.6.1. These changes have no bearing on the consequences of an accident.

2. Not create the possibility of a new or different kind of accident from any accident

previously evaluated because no new accident initiators or assumptions are introduced by the proposed changes.

As described above, under the proposed Action statements for inoperable Station Vent Normal Range Radiation Monitoring instrumentation, should the control room normal ventilation system be isolated and at least one train of the control room emergency ventilation system be placed in operation, these systems would be in a state equivalent to that which they would be in following an actual high radiation condition. Operation of the equipment and components in this manner would not introduce the possibility of any new or different kinds of accidents.

The proposed change to the terminology utilized in Surveillance Requirement (SR) 4.7.6.1.e is an administrative change made to make the terminology consistent with the proposed new Action statements. The proposed changes to Bases 3/4.7.6 are administrative changes consistent with the proposed changes to LCO 3.7.6.1. These changes would not introduce the possibility of any new or different kinds of accidents.

3. Not involve a significant reduction in a margin of safety because the proposed changes to the Action under LCO 3.7.6.1 ensure that control room isolation capability is maintained in the event a station vent radiation monitor is inoperable. The proposed allowable outage time of seven days for one inoperable channel is consistent with the presently allowable outage time for one inoperable CREVS. The proposed Action to place at least one CREVS train in operation within one hour, in the event both channels of radiation monitoring become inoperable, is more conservative than the present Action which requires that a plant shutdown commence within one hour, but does not require the CREVS be placed in operation.

The proposed change to the terminology utilized in Surveillance Requirement (SR) 4.7.6.1.e is an administrative change made to make the terminology consistent with the proposed new Action statements. The proposed changes to Bases 3/4.7.6 are administrative changes consistent with the proposed changes to LCO 3.7.6.1. These changes would not affect the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, OH 43606

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Acting Project Director: Richard P. Savio

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application request: March 9, 1998.

Description of amendment request: The proposed amendment application would revise Technical Specification 3/4.5.2b.1 and its associated Bases to add clarification in regard to venting the emergency core cooling system (ECCS) pump casings and accessible discharge piping high points. Technical Specification 3/4.5.2b.1 requires verification that the ECCS piping is full of water at least once per 31 days by venting the ECCS pump casings, i.e., the safety injection pump, residual heat removal pump, and centrifugal charging pump casings and accessible discharge piping high points. The centrifugal charging pump (CCP) casings do not have installed casing vents. Instead of a casing vent, the suction and discharge piping is installed as vertical runs attached to the top-mounted suction and discharge nozzles of each CCP pump. Information provided by the pump manufacturer indicates that the vertical configuration of the piping is sufficient to prevent the accumulation of noncondensible gases that could cause gas binding. Therefore the CCP casings are effectively vented by vents on the CCP discharge lines. The proposed amendment application would revise Technical Specification 3/4.5.2b.1 and associated Bases to require the residual heat removal and safety injection pump casings and accessible ECCS discharge piping high points be vented to ensure the ECCS piping is full of water.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change will align the surveillance requirements with the installed system design and normal operating conditions. The performance of surveillances required by Technical Specifications is not postulated to initiate an accident. The intent of the surveillance ensures OPERABILITY of the ECCS by verifying that the ECCS piping is full of water and not subjected to gas binding or water hammer. The design of the CCPs is such that significant noncondensible gases do not collect in the pumps, whether they are running or not. Therefore, it is unnecessary to require periodic pump casing venting to ensure the CCPs will remain OPERABLE. In addition, operating experience has shown that no significant voiding has occurred in the affected piping which will continue to be vented at a high point every 31 days per Surveillance Requirement 4.5.2b.1). Therefore, no increase in the probability or consequences of an accident will occur as a result of this change.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change will not result in new failure modes because there are no hardware changes nor are there any changes in the method by which any safety-related plant system performs its safety function. The design of the CCPs is such that significant noncondensible gases do not collect in the pumps, whether they are running or not. Therefore, it is not necessary to require periodic pump casing venting to ensure the equipment will remain OPERABLE. Manual venting operations will be performed to minimize the potential for voids in system piping. Accordingly, this change will not create the possibility of a new or different kind of accident.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change does not affect the acceptance criteria for any analyzed event. There will be no effect on the manner in which safety limits or limiting safety system settings are determined nor will there be any effect on those plant systems necessary to assure the accomplishment of protective functions. There will be no impact on any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Missouri-Columbia, Elmer Ellis Library, Columbia, Missouri 65201–5149

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: William H. Bateman

Virginia Electric and Power Company, Docket Nos. 50–280 and 50–281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment request: December 18, 1997.

Description of amendment request: The proposed changes revise the Technical Specifications (TS) to clarify the terminology used to describe equipment surveillances performed with a refueling interval frequency. Currently the TS are somewhat ambiguous in the wording in this regard, and the proposed changes would adhere to the improved Standard TS

and make it clear whether the reactor must be shutdown when performing the test, or whether a ''refueling interval'' frequency (e.g., 18 months) is intended. All of the clarifications are in Section 4 of the TS. In addition, minor typographical errors are being corrected, and an obsolete reference is proposed to be deleted.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1—Operation of Surry Units 1 and 2 in accordance with the proposed Technical Specifications change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The probability of an accident is not increased as a result of the proposed Technical Specification change since surveillance intervals are being clarified, not changed, and will continue to validate system/component availability, operability and performance during the appropriate unit mode. The proposed change is administrative in nature, therefore, station operations are not being affected. The consequences of an accident previously evaluated are not increased since station operations are not being changed, and no physical modifications are being made to plant systems or components.

Criterion 2—The proposed Technical Specifications change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

As noted above, the proposed change is administrative in nature. A new or different type of accident is not being created since no new accident precursors are being introduced and equipment surveillances will continue to be performed as required to ensure proper system/component operation. Plant systems are not being modified, system operations are not being affected, and equipment surveillance intervals are not being increased. Consequently, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The proposed Technical Specifications change does not involve a significant reduction in a margin of safety.

This is an administrative change. Clarification of refueling surveillance interval terminology to ensure consistency in application does not affect plant equipment performance. Surveillance intervals are not being increased, and equipment surveillance tests performed on a refueling interval frequency (i.e. once per 18 months) will continue to ensure system/component performance as assumed in the existing safety analyses. Therefore, the proposed Technical Specification change does not involve a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of § 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219

NRC Project Director: P.T. Kuo, Acting

Virginia Electric and Power Company, Docket Nos. 50–280 and 50–281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment request: March 25, 1998.

Description of amendment request: The proposed amendments would revise the Technical Specifications (TS) Sections 6.1.A; 6.1.A.2; 6.1.C.1.a and b; 6.1.C.1.f.1,4 and 8; 6.1.C.1.g.1 and 3; 6.8.A.2; and 6.8.B.2 for Units 1 and 2, changing the title of Station Manager to Site Vice President, and the titles of the Assistant Station Managers to Manager-Station Operations and Maintenance and Manager-Station Safety and Licensing.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Virginia Electric and Power Company has reviewed the proposed Technical Specifications changes against the criteria of 10 CFR 50.92 and has concluded that the changes do not pose a significant hazards consideration. Specifically, station operations in accordance with the proposed Technical Specifications changes will not:

a. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes are administrative in nature. The overall responsibility for safe operation and review of plant operations is not being changed. There are no changes to the operation of any plant system or its design as a result of these changes. Therefore, neither the probability of occurrence nor the consequences of an accident or malfunction of equipment important to safety previously evaluated in the safety analysis report are increased.

b. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes are administrative in nature. The overall responsibility for safe operation and review of plant operations is not being changed. There are no changes to the operation of any plant system or its design that could create any new modes of operation or accident precursors. Therefore, it is concluded that no new or different kind of accident or malfunction from any previously evaluated has been created.

c. The proposed changes do not result in a significant reduction in margin of safety as defined in the basis for any Technical Specifications.

The proposed changes are administrative in nature. The overall responsibility for safe operation and review is not being changed. There are no changes to the operation of any plant system or its design as a result of these changes. Safety systems are maintained operable as required by Technical Specifications. Therefore, the margin of safety is not changed.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219

NRC Project Director: P.T. Kuo, Acting

Wisconsin Public Service Corporation, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: April 8, 1998.

Description of amendment request: The change would reduce allowable reactor coolant system (RCS) specific activity from 1.0 microcurie/gram to 0.35 microcurie/gram dose equivalent I–131.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change was reviewed in accordance with the provisions of 10 CFR 50.92 to show no significant hazards exist. The proposed change will not:

(1) Involve a significant increase in the probability or consequence of an accident previously evaluated.

The change implements a more restrictive RCS activity limit. Specific RCS activity is an initial plant condition and, therefore, is not an accident initiator and can not cause the occurrence of or increase the probability of an accident. The change also lowers the curve of Figure TS 3.1–3 which restricts operation with high specific activity. The new value for specific activity is justified by

the Westinghouse calculation which demonstrates acceptable offsite and control room doses following a (main steamline break) MSLB with a maximum allowable primary to secondary leak rate. By lowering the RCS specific activity and maintaining leakage within the projected maximum allowable, 10 CFR 100 and GDC 19 criteria are satisfied. Therefore, the change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change to the RCS specific activity limit will not significantly effect operation of the plant nor will it alter the configuration of the plant. There will be no additional challenges to the main steam system or the reactor coolant system pressure boundary and no new failure modes are introduced. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Involve a significant reduction in the margin of safety.

Reduction of the RCS specific activity limit allows an increase in the MSLB allowable primary to secondary leakage. The net effect is no reduction in the margin of safety provided by 10 CFR part 100 and GDC 19 criteria. The maximum allowable leakage is the leakage limit for projected SG leakage following SG tube inspection and repair. Reducing specific activity to increase projected leak rate follows guidance given by GL 95–05 and effectively takes margin available in the specific activity limits and applies it to the projected SG leak rate. This has been determined to be an acceptable means for accepting higher projected leak rates while still meeting the applicable limits of 10 CFR part 100 and GDC 19 criteria with respect to offsite and control room doses. Additionally, monitoring of the specific activity and compliance with the required actions remains unchanged. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

For consistency, the value of secondary coolant activity in Table TS 4.1.2 is being corrected from 1.0 microcurie/gram to 0.1 microcurie/gram. This is consistent with a previously submitted and approved amendment, therefore, no significant hazards exist for this change.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Wisconsin, Cofrin Library, 2420 Nicolet Drive, Green Bay, WI 54311–7001

Attorney for licensee: Bradley D. Jackson, Esq., Foley and Lardner, P.O. Box 1497, Madison, WI 53701–1497

NRC Project Director: Richard P. Savio

Wisconsin Public Service Corporation, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: April 15, 1998.

Description of amendment request: The revisions in the proposed Technical Specification amendment are part of the licensee's fuel and reload change plan for Cycle 23. The revisions implement changes associated with a new fuel design and also reflect changing plant conditions due to steam generator tube plugging and repair. The Technical Specifications (TS) would be modified as follows:

(1) Figure 2.1–1 would be revised to reflect the recently approved High Thermal Performance (HTP) Critical Heat Flux (CHF) correlation and corresponding Departure from Nucleate Boiling Ratio (DNBR) limit of 1.14. The figure would also reflect changes in peak rod power and minimum reactor coolant flow.

(2) TS 3.10.b—new hot channel factors would be incorporated for the new fuel design and the corresponding increase in peaking factors. The limits for Height Dependent Nuclear flux Hot Channel Factor are specified in TS 3.10.b.1 and the limits for Nuclear Enthalpy Rise Hot Channel Factor are specified in 3.10.b.2.

(3) TS 3.10.k—the specification for the maximum Reactor Coolant System (RCS) Inlet Temperature would be replaced with a specification for the maximum Reactor Coolant System (RCS) Average Temperature.

(4) TS 3.10.l—the statement ''During 100% steady-state power operation'' would be revised in the specification for minimum Reactor Coolant System (RCS) pressure and replaced with ''During steady-state power operation.''

(5) TS 3.10.m—the minimum Reactor Coolant Flow is being decreased to 85,500 gallons per minute per loop.

(6) TS 3.10.n—would be revised to reflect the new Minimum DNBR limit.

(7) Figure TS 3.10–1—the Required Shutdown Reactivity vs. Boron Concentration would be revised to reflect the change to an 18 month fuel cycle.

(8) Figure TS 3.10–2, the Hot Channel Factor Normalized Operating Envelope would be revised to reflect the values used in the new safety analyses.

(9) The Table of Contents and the Basis sections would be revised to accommodate the above changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Figure TS 2.1–1: The proposed changes will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The safety limits curves are not accident initiators. Therefore, the change will not increase the probability of an accident previously evaluated. The proposed changes to the safety limits curves do not alter the plant configuration, operating set points, or overall plant performance. The safety limits curves reflect the changes to the DNBR limit, CHF correlation, RCS flow peaking factors and fuel design. The significant hazards determinations for these parameters are evaluated later in this submittal. Therefore, the change will not increase the consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes in the safety limits curves do not alter the plant configuration, operating set points, or overall plant performance. Therefore, it does not create the possibility of a new or different kind of accident.

3. Involve a significant reduction in the margin of safety.

Operation in the acceptable regions (i.e., below and to the left of the safety limit curves) in combination with the reactor protection and engineered safety systems designed into the plant will ensure that the safety limits are not exceeded during normal operation or during anticipated design basis operational transients. The core will be operated in the nucleate boiling heat transfer regime. Departure from nucleate boiling (DNB) will not occur and therefore fuel cladding integrity will be assured.

The revised safety limit curves have been developed using operating parameters at their bounding values (e.g., rod powers at the peaking factor limits, reactor coolant flow at the minimum operating limit). The revised curves will bound plant operation with Siemens Power Corporation standard or heavy fuel. Therefore, this change will not involve a significant reduction in safety margin.

TS 3.10.b: The proposed changes will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

Peaking factor limits are input assumptions to the safety analyses and are not accident initiators. Therefore, this change would not increase the probability of occurrence of an accident previously evaluated.

The safety analyses input assumptions are designed to bound actual plant operation. Changing the safety analysis input assumption for the increased peaking factor limits does not change the underlying progression of design basis accidents evaluated in the safety analyses. All safety analysis acceptance criteria are satisfied in the increased peaking factor limit conditions. Additionally, the radiological consequences

are bounded by existing analysis at the increased peaking factor limits. Therefore, this change will not significantly increase the consequences of an accident previously analyzed.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

This change incorporates the safety analyses assumptions for core peaking factor limits for Siemens Power Corporation heavy fuel. The change does not alter plant equipment, set points or plant performance. Therefore, changing the peaking factor limits for analysis purposes will not create a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in the margin of safety.

Results of the safety analyses and of radiological consequences indicate that all acceptance criteria are satisfied. The peaking factor limits assumed in the safety analyses are consistent with the proposed revised limits and these revised limits are established to bound actual plant operation. Therefore, this change will not involve a significant reduction in the margin of safety.

TS 3.10.k: The proposed change will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The RCS average temperature limit is not an accident initiator. Changing the technical specification limit consistent with the accident analyses will not increase the probability of an accident previously evaluated.

The proposed change limits the maximum reactor coolant system average temperature to 568.8 °F. The design basis safety analyses, the Large and Small Break LOCA accidents and the non-LOCA accidents, have been analyzed and/or evaluated consistent with the revised RCS average temperature. The re-analysis and evaluation have demonstrated that all safety analysis acceptance criteria are satisfied at the specified temperature. Therefore, the change will not increase the consequences of an accident previously evaluated.

The proposed technical specification limit for maximum allowed RCS average temperature was decreased below the analytical limit to account for instrument error.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not alter the plant configuration, operating set points, or overall plant performance. Therefore, it does not create the possibility of a new or different kind of accident.

3. Involve a significant reduction in the margin of safety.

The proposed change is consistent with the safety analyses. All safety analyses acceptance criteria are satisfied at the revised reactor coolant system average temperature. The TS limit will bound actual plant operation. Therefore, there is no significant reduction in the margin of safety.

TS 3.10.l: The proposed change will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The RCS pressure limit is not an accident initiator. By removing the 100% value from the specification, the assumptions in the safety analyses are not changed. Changing the technical specification to remove the 100% power criteria will not increase the probability of an accident previously evaluated.

The design basis safety analyses have been analyzed and/or evaluated at the specified RCS pressure. The analyses and evaluations have demonstrated that all safety analyses acceptance criteria are satisfied at this pressure. Therefore, the change would not increase the consequences of an accident previously evaluated.

The proposed technical specification limit for minimum allowed RCS pressure was increased above the analytical limit to account for instrument error.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not alter the plant configuration, operating set points, or overall plant performance. Therefore, it does not create the possibility of a new or different kind of accident.

3. Involve a significant reduction in the margin of safety.

The proposed change is consistent with the safety analyses. All safety analyses acceptance criteria are satisfied at the reactor coolant system pressure. The limit will bound actual plant operation. Therefore, there is no significant reduction in the margin of safety.

TS 3.10.m: The proposed change will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The RCS flow limit is not an accident initiator. Changing the technical specification limit consistent with the accident analysis will not increase the probability of an accident previously evaluated.

The proposed change limits the minimum reactor coolant flow. The design basis safety analyses have been analyzed and/or evaluated at the revised RCS flow. The re-analysis and evaluation have demonstrated that all safety analysis acceptance criteria are satisfied at the specified flow. Therefore, the change will not significantly increase the consequences of an accident previously evaluated.

The proposed technical specification limit for minimum allowed RCS flow was increased above the analytical limit to account for instrument error.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not alter the plant configuration or overall plant performance. Therefore, it does not create the possibility of a new or different kind of accident.

3. Involve a significant reduction in the margin of safety.

The proposed change is consistent with the safety analyses. All safety analyses acceptance criteria are satisfied at the revised reactor coolant system flow. The limit will bound actual plant operation.

The change reduces the RCS flow rate limit. Re-analysis of LOCA and non-LOCA transients determined all safety requirements of KNPP accident analyses were still met at the reduced RCS flow rate limit. Therefore, this proposed change does not significantly reduce the margin of safety.

TS 3.10.n: The proposed change will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The Departure from Nucleate Boiling Ratio (DNBR) is not an accident initiator. Therefore, the change in the DNBR will not increase the probability of an accident previously evaluated.

The proposed change to the DNBR value does not change plant configuration, operating set points, or overall plant performance. Therefore, the change will not increase the consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not alter the plant configuration, operating set points, or overall plant performance. Therefore, it does not create the possibility of a new or different kind of accident.

3. Involve a significant reduction in the margin of safety.

All safety analyses acceptance criteria are satisfied using the HTP CHF correlation. The DNBR limits assumed in the safety analyses will bound actual plant operation and assures at 95/95 that DNBR will not occur. Therefore, there is no reduction in the margin of safety.

TS Figure 3.10–1: The proposed change will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

Required Shutdown Reactivity vs. Boron Concentration was revised to reflect the longer cycle length and the resulting increase in boron concentration. The Required Shutdown Reactivity vs. Boron Concentration is not an accident initiator. Extending the boron concentrations to account for longer fuel cycles will not increase the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not alter the plant configuration, operating set points, or overall plant performance. Therefore, it does not create the possibility of a new or different kind of accident.

3. Involve a significant reduction in the margin of safety.

The proposed change is consistent with the cycle length and core physics analyses for longer fuel cycles. Operation within the limits specified in the figure will assure all core safety evaluation acceptance criteria are satisfied. The limit will bound actual plant operation. Therefore, there is no reduction in the margin of safety.

TS Figure 3.10–2: The proposed change will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The Hot Channel Factor Normalized Operating Envelope figure was revised to reflect the values used in the safety analyses.

The Hot Channel Factor Normalized Operating Envelope figure is not an accident initiator. Changing the technical specification figure consistent with the assumptions of the accident analyses will not increase the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not alter the plant configuration, operating set points, or overall plant performance. Therefore, it does not create the possibility of a new or different kind of accident.

3. Involve a significant reduction in the margin of safety.

The proposed change is consistent with the safety analyses. Operation within the limits specified in the figure will assure all safety analyses acceptance criteria are satisfied. The limit will bound actual plant operation. Therefore, there is no reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Wisconsin, Cofrin Library, 2420 Nicolet Drive, Green Bay, WI 54311–7001

Attorney for licensee: Bradley D. Jackson, Esq., Foley and Lardner, P.O. Box 1497, Madison, WI 53701–1497

NRC Project Director: Richard P. Savio

Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: May 2, 1995, October 12, 1995, March 26, 1996, and December 15, 1997 (TSCR 172)

Description of amendment request: The proposed amendments would revise Technical Specifications (TS) Table 15.4.1–1, ''Minimum Frequencies for Checks, Calibrations, and Tests of Instrument Channels,'' to change the test frequencies for radiation monitors as discussed in Generic Letter 93–05 (''Line-Item Technical Specifications Improvements To Reduce Surveillance Requirements For Testing During Power Operation''), remove the radiation monitoring system as item 36, revise note(s), and add those radiation monitors and their surveillance requirements that support current TS or meet the requirements of 10 CFR 50.36. Additionally, several typographical and nomenclature errors would be corrected. This amendment request was initially noticed in the **Federal Register** on June 6, 1995 (60 FR 29890).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. Operation of this facility under the proposed TS will not create a significant increase in the probability or consequences of an accident previously evaluated.

The probabilities of accidents previously evaluated are based on the probability of initiating events for these accidents. Initiating events for accidents previously evaluated for the Point Beach Nuclear Plant (PBNP) include control rod withdrawal and drop, chemical volume control system malfunction (boron dilution), startup of an inactive reactor coolant loop, reduction in feedwater enthalpy, excessive load increase, losses of reactor coolant flow, loss of external electrical load, loss of normal feedwater, loss of all alternating current (ac) power to the auxiliaries, turbine overspeed, fuel handling accidents, accidental releases of waste liquid or gas, steam generator tube rupture, steam pipe rupture, control rod ejection, and primary coolant system ruptures.

These proposed changes do not cause an increase in the probabilities of any accidents previously evaluated because these changes will not cause an increase in the probability of any initiating events for accidents previously evaluated. In particular, these changes affect the radiation monitoring system surveillance requirements and make administrative changes that will not result in changing accident initiators.

The consequences of the accidents previously evaluated in the Final Safety Analysis Report (FSAR) are determined by the results of analyses that are based on initial conditions of the plant, the type of accident, transient response of the plant, and the operation and failure of equipment and systems.

The proposed changes reduce the burden associated with radiation monitoring system required surveillance by establishing surveillances for only the necessary monitors (i.e., elimination of the testing requirement for monitors that do not perform a required function) and changing the testing frequency for these monitors from monthly to quarterly. The proposed changes do not increase the probability of failure of this equipment or its ability to operate as required for the accidents previously evaluated in the PBNP FSAR. The proposed changes to correct typographical errors and correct nomenclature are administrative only and do not increase the probability of an accident previously evaluated nor do they affect the consequences of any accident previously evaluated.

Therefore, these proposed license amendments do not affect the consequences of any accident previously evaluated in the PBNP FSAR because the factors that are used to determine consequences of accidents are not being changed.

2. Operation of this facility under the proposed TS change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

New or different kinds of accidents can only be created by new or different accident initiators or sequences. The changes proposed by this license amendment request do not create any new or different accident initiators or sequences because the revisions to TS Table 15.4.1–1, ''Minimum Frequencies for Checks, Calibrations, and Tests of Instrument Channels,'' will not cause failures of equipment or accident sequences different than the accidents previously evaluated. The proposed changes to correct typographical errors and correct nomenclature are administrative only. Therefore, these proposed TS changes do not create the possibility of an accident of a different type than any previously evaluated in the Point Beach FSAR.

3. Operation of this facility under the proposed TS change will not create a significant reduction in a margin of safety.

The margins of safety for Point Beach are based on the design and operation of the reactor and containment and the safety systems that provide their protection. The changes proposed by this license amendment request provide the appropriate surveillance requirements for the radiation monitoring system. The revised surveillance requirements will continue to ensure that the required radiation monitors will operate as required. The design and operation of the reactor and containment are not affected by these proposed changes. The proposed changes to correct typographical errors and correct nomenclature are administrative only. Therefore, the margins of safety for Point Beach are not being reduced because the design and operation of the reactor and containment are not being changed.

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 considerations.

Local Public Document Room location: The Lester Public Library, 1001 Adams Street, Two Rivers, Wisconsin 54241

Attorney for licensee: John H. O'Neill, Jr., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Cynthia A. Carpenter

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Carolina Power & Light Company, et al., Docket No. 50–325, Brunswick Steam Electric Plant, Unit 1, Brunswick County, North Carolina

Date of amendment request: February 23, 1998, as supplemented March 27, 1998.

Brief description of amendment: The proposed amendment would allow addition of a footnote to the Safety Limit Minimum Critical Power Ratio value in the Technical Specifications and the associated action statement.

Date of publication of individual notice in the **Federal Register**: April 10, 1998 (63 FR 17900).

Expiration date of individual notice: May 11, 1998.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of amendment request: April 3, 1998, and related application dated November 22, 1995, as supplemented February 19, April 19, May 3, June 12, and December 4, 1996, and January 30 and August 7, 1997.

Description of amendment request: The proposed amendment would revise Technical Specification 3.8.1.1 to change the emergency diesel generator allowed outage time from 3 to 7 days. This would be a one-time amendment, effective from the date of issuance until September 30, 1998.

Date of publication of individual notice in **Federal Register**: April 13, 1998 (63 FR 18048).

Expiration date of individual notice: May 13, 1998.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161

TU Electric Company, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: April 9, 1998, TXX–98107.

Description of amendment request: The proposed amendment would allow on a one time basis, the verification of the proper operation of the Unit 2 load shed seal-in contacts and the diesel generator trip bypass contacts at power and crediting performance of Surveillance Requirements (SR) 4.8.1.1.2f.4(a) and 4.8.1.1.2f.6(a), at power as opposed to ''during shutdown'' as currently required by those SR. The proposed amendment would also allow on a one time basis the verification of the proper operation of the Unit 2 lockout relays and contacts to be deferred until the startup from 2RFO4 or earlier outage to at least MODE 3.

Date of individual notice in the **Federal Register**: April 20, 1998.

Expiration date of individual notice: May 5, 1998.

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, TX 76019

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Ch. I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: March 17, 1997, as supplemented April 13, 1998. The April 13, 1998, submittal contained clarifying information only, and did not change the proposed no significant hazards consideration.

Brief description of amendment: The amendment revises Technical Specifications 4.1.2.2.c, 4.5.2.e, 4.6.2.1.c, 4.6.2.2.c, 4.6.3.2, 4.7.1.2.1.b, 4.7.3.b, and 4.7.4.b to delete specific restrictions in the text of the surveillances that the tests must be done while the unit is shut down.

Date of issuance: April 14, 1998.

Effective date: April 14, 1998

Amendment No.: 77.

Facility Operating License No. NPF–63: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register**: April 23, 1997 (62 FR 19826)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 14, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605

Commonwealth Edison Company, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: December 12, 1997.

Brief description of amendments: The amendments modify the bypass logic for Main Steam Line Isolation Valve Isolation Actuation Instrumentation on Condenser Low Vacuum as stated in Technical Specification Tables 3.3.2–1 and 4.3.2–1.

Date of issuance: April 14, 1998.

Effective date: Immediately, to be implemented prior to startup from L1F35 for Unit 1 and from L2R07 for Unit 2.

Amendment Nos.: 124 and 109.

Facility Operating License Nos. NPF–11 and NPF–18: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: February 11, 1998 (63 FR 6982).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 14, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Jacobs Memorial Library, Illinois Valley Community College, Oglesby, Illinois 61348

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: December 18, 1997, as supplemented by letter dated January 26, 1998.

Brief description of amendments: The amendments revise the operating license of Unit 1 and Unit 2 to (1) delete license conditions that have been fulfilled; (2) delete exemptions that have expired; (3) update information to reflect current plant status and regulatory requirements; and (4) make other corrections and editorial changes.

Date of issuance: April 23, 1998.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: Unit 1–164; Unit 2–156.

Facility Operating License Nos. NPF–35 and NPF–52: Amendments revised the Operating Licenses.

Date of initial notice in **Federal Register**: February 11, 1998 (63 FR 6983).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 23, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: March 3, 1998.

Brief description of amendments: The amendments revise the Technical Specifications to change the qualification requirements for the members of the Safety Review Group.

Date of issuance: April 27, 1998.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: Unit 1–165; Unit 2–157.

Facility Operating License Nos. NPF–35 and NPF–52: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: March 25, 1998 (63 FR 14486).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 27, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application of amendments: August 28, 1997. Supplement January 22, February 19, March 19, and April 6, 13, and 17, 1998.

Brief description of amendments: The amendments incorporate new testing and operability requirements related to the installation of new systems and upgrades associated with the Emergency Condenser Circulating Water System. Review of the system for this amendment also includes a review of the new design features incorporated into the upgrade and its acceptability as a safety grade system.

Date of Issuance: April 24, 1998.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: Unit 1–229; Unit 2–230; Unit 3–226

Facility Operating License Nos. DPR–38, DPR–47, and DPR–55: The amendments revised the Technical Specifications and Appendix C of the Operating Licenses.

Date of initial notice in **Federal Register**: September 24, 1997 (62 FR 50002).

The January 22, 1998, February 19, March 19, and April 6, 13, and 17, 1998, letters provided clarifying information that did not change the scope of the August 28, 1997, application and the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 24, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina

Duquesne Light Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of application for amendments: March 16, 1998.

Brief description of amendments: These amendments add a new Limiting Condition for Operation (LCO) 3.0.6 to TS Section 3/4.0, ''APPLICABILITY.'' The new LCO 3.0.6 provides specific guidance for returning equipment to service under administrative control to perform testing required to demonstrate OPERABILITY.

Date of issuance: April 15, 1998.

Effective date: Both units, effective immediately, to be implemented within 30 days.

Amendment Nos.: 213 and 90.

Facility Operating License Nos. DPR–66 and NPF–73: Amendments revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes (63 FR 14142, March 24, 1998). That notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by April 23, 1998, but indicated that if the Commission makes a final no significant hazards consideration determination any such hearing would take place after issuance of the amendment.

The Commission's related evaluation of the amendments, finding of exigent circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated April 15, 1998.

Local Public Document Room location: B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: June 26, 1997, as supplemented by letter dated September 11, 1997.

Brief description of amendment: The amendment changes the Appendix A TSs by modifying Tables 3.7–1 and 3.7–2. The revision to Table 3.7–1 changes the Main Steam Safety Valves (MSSVs) orifice size from 26 square inches to 28.27 square inches and relocates the orifice size from the TS Table to the TS Bases. The change to correct the orifice size is an editorial change to make the TS consistent with plant design. The changes to Table 3.7–2 delete the provisions that allows continued plant operation with three MSSVs inoperable. The proposed amendment will also revise TS Bases 3/4.7.1.1 to remove the equation used for determining the reduced maximum allowable linear power level-high reactor trip settings of TS Table 3.7–2.

Date of issuance: April 20, 1998.

Effective date: April 20, 1998, to be implemented within 30 days.

Amendment No.: 142.

Facility Operating License No. NPF–38: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 16, 1997 (62 FR 38135).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 20, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, LA 70122

GPU Nuclear, Inc. and Saxton Nuclear Experimental Corporation (SNEC), Docket No. 50–146, Saxton Nuclear Experimental Facility (SNEF)

Date of application for amendment: November 25, 1996, as supplemented on May 30, June 4 and 16, August 21 and September 16, 1997, and February 3 and 9, 1998, and March 31, 1998. During the amendment request review, the staff also referred to the SNEF Decommissioning Environmental Report dated April 17, 1996, licensee responses to NRC questions about the environmental report dated July 18, 1996, and March 3 and 31, 1998, the SNEC Facility Updated Safety Analysis Report, Revision 0, submitted on October 25, 1996, Revision 1, submitted on August 21, 1997, and Revision 2, submitted on February 3, 1998, and the SNEC Facility Decommissioning Quality Assurance Plan submitted by letter dated November 8, 1996, as supplemented on May 30, 1997, and February 3 and 9, 1998.

Brief description of amendment: The amendment allows decommissioning of the SNEF. The changes to the license and Technical Specifications (TSs) (1) accommodate decommissioning activities at the SNEF, (2) establish specific TS controls over decommissioning activities, (3) establish limiting conditions for performing decommissioning activities, (4) extend exclusion area controls to include the SNEF Decommissioning Support Facility, (5) establish requirements for a Radiological Environmental Monitoring Program, and an Offsite Dose Calculation Manual, and (6) establish requirements for technical and independent safety reviews. In addition, the amendment authorizes other administrative and editorial changes to the TSs associated with the changes described above.

Date of issuance: April 20, 1998.

Effective date: April 20, 1998.

Amendment No.: 15.

Amended Facility License No. DPR–4: Amendment changed the Amended Facility License and TSs.

Date of initial notice in **Federal Register:** March 12, 1997 (62 FR 11494).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 20, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Saxton Community Library, Front Street, Saxton, Pennsylvania 16678

GPU Nuclear Corporation, et al., Docket No. 50–289, Three Mile Island Nuclear Station, Unit No. 1 (TMI–1), Dauphin County, Pennsylvania

Date of application for amendment: December 16, 1996, as supplemented September 11, 1997 and March 25, 1998.

Brief description of amendment: The amendment (1) reflects the change in the legal name of the operator of TMI–1 from GPU Nuclear Corporation to GPU Nuclear, Inc., and (2) reflects in the TMI–1 Facility Operating License the registered trade name of GPU Energy now used by the owners of the facility.

Date of Issuance: April 24, 1998.

Effective Date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 207.

Facility Operating License No. NPF–50: Amendment revised the Facility Operating License and the Technical Specifications.

Date of initial notice in **Federal Register:** January 29, 1997 (62 FR 4350).

The September 11, 1997 and March 25, 1998, submittals provided clarifying information and did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 24, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Law/Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105

Niagara Mohawk Power Corporation, Docket No. 50–410, Nine Mile Point Nuclear Station, Unit No. 2, Oswego County, New York

Date of application for amendment: October 7, 1997.

Brief description of amendment: The amendment revised the Technical Specifications surveillance requirements to change setpoints for the refueling platform main hoist overload cutoff, loaded interlock, and redundant loaded interlock due to planned modifications to the refueling platform mast.

Date of issuance: April 16, 1998.

Effective date: As of the date of issuance to be implemented upon completion and acceptance of design modifications to the refueling platform mast.

Amendment No.: 81.

Facility Operating License No. NMF–69: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** December 31, 1997 (62 FR 68309).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 16, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126

Northern States Power Company, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: March 13, 1998, as supplemented March 25, 1998.

Brief description of amendment: The amendment modifies the Technical Specification requirements associated with the Minimum Critical Power Ratio (MCPR) safety limits for Cycle 19 based on the cycle-specific analysis of the current mixed core of GE [General Electric] 11, GE10, four GE12 lead use assemblies, and eight SPC [Siemens Power Corporation] ATRIUM–9B assemblies.

Date of issuance: April 20, 1998.

Effective date: April 20, 1998.

Amendment No.: 100.

Facility Operating License No. DPR–22: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 20, 1998 (63 FR 13704).

The March 25, 1998, letter provided clarifying information in response to the staff's request for additional information during a teleconference. This information was within the scope of the original application and did not change the staff's initial proposed no significant hazards considerations determination. Therefore, renoticing was not warranted.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 20, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401

Public Service Electric & Gas Company, Docket No. 50–272, Salem Nuclear Generating Station, Unit No. 1, Salem County, New Jersey

Date of application for amendment: October 14, 1997, as supplemented on March 26, 1998.

Brief description of amendment: The amendment revises Technical Specification (TS) 3.4.6.3, ''Primary Coolant System Pressure Isolation Valves Limiting Condition for Operation,'' to add additional pressure isolation valves, establish the operability and testing requirements for the pressure isolation valves, and make this section more consistent with Salem Unit 2 TSs.

Date of issuance: April 20, 1998.

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment No.: 210.

Facility Operating License No. DPR–70: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register***:* November 19, 1997 (62 FR 61845).

The March 26, 1998, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 20, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, NJ 08079.

Pennsylvania Power and Light Company, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: January 26, 1998.

Brief description of amendments: The proposed amendments would (1) modify the requirement to hold a Susquehanna Steam Electric Station (SSES) Senior Reactor Operator (SRO) license in Section 6.3.1 for the Manager-Nuclear Operations (MNO), (2) replace the position of MNO with Operations Supervisor—Nuclear in the Section 6.2.2g requirement to hold an SSES SRO license and (3) renumber existing TS Section 6.3.1 to include 6.3.1.1, 6.3.1.2, and 6.3.1.3.

Date of issuance: April 10, 1998.

Effective date: Both units, as of date of issuance, to be implemented within 30 days.

Amendment Nos.: 175 and 147.

Facility Operating License Nos. NPF–14 and NPF–22: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register***:* February 24, 1998 (63 FR 9270).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 10, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, PA 18701

Pennsylvania Power and Light Company, Docket No. 50–388, Susquehanna Steam Electric Station, Unit 2, Luzerne County, Pennsylvania

Date of application for amendment: January 11, 1996, as supplemented March 16, 1998.

Brief description of amendment: This amendment changes the TSs to preclude the need to enter into Limiting Condition for Operation 3.0.3 to allow performance of certain emergency diesel generator testing.

Date of issuance: April 10, 1998.

Effective date: As of the date of issuance, to be implemented within 30 days.

Amendment No.: 148.

Facility Operating License No. NPF–22: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register***:* March 13, 1996 (61 FR 10397).

The February 15, 1996, letter corrected the no significant hazards (NSH) determination. The NSH determination was used in the March 13, 1996 (61 FR 10397) notice. The March 24, 1998, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 10, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, PA 18701

Philadelphia Electric Company, Docket No. 50–352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of application for amendment: January 12, 1998.

Brief description of amendment: This amendment revises TS Table 4.4.6.1.3–1 to change the withdrawal schedule for the first capsule to be withdrawn from 10 Effective Full Power Years (EFPY) to 15 EFPY. In addition, TS Surveillance Requirement 4.4.6.1.4 will be revised to remove the references to flux wire removal and analysis that was originally required following the first cycle of operation and replaced with a new surveillance requirement. The new requirement refers to the flux wires that are located within the surveillance capsules, which will be removed and analyzed in accordance with the surveillance capsule removal schedule located in Table 4.4.6.1.3–1.

Date of issuance: April 15, 1998.

Effective date: As of the date of issuance.

Amendment No.: 126.

Facility Operating License No. NPF–39: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register***:* February 11, 1998 (63 FR 6988).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 15, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, PA 19464

Power Authority of The State of New York, Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: February 27, 1998.

Brief description of amendment: The amendment changes the Technical Specifications by revising the pressure-temperature curves to extend heatup and cooldown limits from 11 to 13.3 effective full-power years, provides the corresponding overpressure protection system limits, and makes some minor changes to ensure specification clarity and conservatism.

Date of issuance: April 10, 1998.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 179.

Facility Operating License No. DPR–64: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: March 9, 1998 (63 FR 11456).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 10, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of application for amendment: February 26, 1998, as supplemented by letter dated March 20, 1998.

Brief description of amendment: This amendment revises Technical Specification (TS) Section 3/4.4.5, ''Reactor Coolant System—Steam Generators,'' TS Section 3/4.4.6.2, ''Reactor Coolant System—Operational Leakage,'' and the associated bases to allow use of the ''repair roll'' steam generator tube repair process.

Date of issuance: April 14, 1998.

Effective date: April 14, 1998.

Amendment No.: 220.

Facility Operating License No. NPF–3: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: March 9, 1998 (63 FR 11460).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 14, 1998.

No significant hazards consideration comments received: No. The supplemental information submitted by the licensees did not affect the proposed no significant hazards consideration determination.

Local Public Document Room location: University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, OH 43606

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of application for amendment: June 24, 1997.

Brief description of amendment: This amendment revises TS Section 3/4.3.2.1, ''Safety Features Actuation System Instrumentation,'' TS Section 3/4.6.1.7, ''Containment Ventilation System,'' TS Section 3/4.6.3.1, ''Containment Isolation Valves,'' and TS Section 3/4.9.4, ''Refueling Operations—Containment Penetrations,'' and the associated TS Bases. Valve position requirements have been added, and certain containment radiation monitor requirements, valve isolation verification requirements, and containment radiation monitor optional uses have been deleted. Administrative changes have also been made.

Date of issuance: April 15, 1998.

Effective date: April 15, 1998.

Amendment No.: 221.

Facility Operating License No. NPF–3: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: July 30, 1997 (62 FR 40858).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 15, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, OH 43606

TU Electric Company, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment requests: February 25, 1998, (TXX–98050) as supplemented by letter dated March 9, 1998, (TXX–98066) for License Amendment Request (LAR) 98–002, March 12, 1998, (TXX–98076) for LAR 98–003, and March 18, 1998, (TXX–98079) for LAR 98–004.

Brief description of amendments: This amendment is the result of three Notice of Enforcement Discretions (NOEDs) dated February 24, March 13, and 17, 1998. These NOEDs although distinct actions changed the same page of the CPSES TS therefore the single amendment is being issued to cover the three parts of this amendment.

The first part of the amendment would be a temporary change to the TSs to remove the requirement to demonstrate the load shedding feature of MCC XEB4–3 as part of Surveillance Requirements (SRs) 4.8.1.1.2f.4)a) and 4.8.1.1.2f.6)a) until the plant startup subsequent to the next refueling outage for Unit or until an outage of 24 hour in duration.

The second part of the amendment would provide a temporary Technical Specification change for SRs 4.8.1.1.2f.4)b) and 4.8.1.1.2f.6)b) to allow the verification of the auto connected shut-down loads through the load sequencer to be performed at power for fuel cycle 6 on Unit 1 and fuel cycle 4 on Unit 2.

The third part of the amendment would allow on a one time basis, crediting performance of Surveillance Requirements (SR) 4.8.1.1.2f.4)a) and 4.8.1.1.2f.6)a), during POWER OPERATIONS as opposed to ''during shutdown.'' Note that the bus tie breaker for MCC XEB4–3 for Unit 2 was not tested during the last surveillance test and was the subject of part one of this amendment.

Date of issuance: April 20, 1998.

Effective date: April 20, 1998.

Amendment Nos.: Unit 1—Amendment No. 58; Unit 2—Amendment No. 44.

Facility Operating License Nos. NPF–87 and NPF–89: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: March 9, 1998 (63 FR 11458), March 27, 1998 (63 FR 14974) and April 2, 1998 (63 FR 16287).

The Commission's related evaluation of the amendment, finding of exigent circumstances and final determination of no significant hazards consideration are contained in a Safety Evaluation dated April 20, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 702 College, PO Box 19497, Arlington, TX 76019

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: October 31, 1997, as supplemented by letter dated February 27, 1998.

Brief description of amendment: The amendment revises the Callaway Plant,

Unit 1 Technical Specifications to change setpoint and allowable stress values of certain reactor trip system (RTS) and engineered safety features actuation system (ESFAS) functional units.

Date of issuance: April 13, 1998.

Effective date: April 13, 1998, to be implemented within 30 days from the date of issuance.

Amendment No.: 125.

Facility Operating License No. NPF–30: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: January 14, 1998 (63 FR 2283).

The February 27, 1998, supplemental letter provided additional clarifying information that did not change the staff's original no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 13, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Missouri-Columbia, Elmer Ellis Library, Columbia, Missouri 65201–5149

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: December 11, 1997, as supplemented on March 3, 1998.

Brief description of amendment: The amendment revises the values for the safety limit minimum critical power ratio for Cycle 20 operation.

Date of Issuance: April 10, 1998.

Effective date: April 10, 1998, to be implemented within 30 days.

Amendment No.: 159.

Facility Operating License No.DPR–28. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: February 11, 1998, (63 FR 7000).

The March 3,1998 supplement did not change the original proposed no significant hazards consideration.

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated April 10, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, VT 05301

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: September 11, 1996, as supplemented by letter dated December 8, 1997.

Brief description of amendment: The amendment involves a change to the safety and relief valve setpoint tolerance and power operation with an inoperable safety relief valve.

Date of Issuance: April 15, 1998.

Effective date: April 15, 1998, to be implemented within 30 days.

Amendment No.: 160.

Facility Operating License No. DPR–28: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: April 9, 1997 (62 FR 17241).

The information provided in the December 8, 1997, submittal did not change the original proposed no significant hazards determination.

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated April 15, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, VT 05301

Virginia Electric and Power Company, et al., Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: November 26, 1996.

Brief description of amendments: The proposed action would revise the Technical Specifications (TS) to eliminate the records retention requirements from Section 6.10 of the TS since these requirements have already been relocated to the Operational Quality Assurance program, Chapter 17, in revision 32 of the Updated Final Safety Analysis Report.

Date of issuance: April 13, 1998.

Effective date: April 13, 1998.

Amendment Nos.: 208 and 189.

Facility Operating License Nos. NPF–4 and NPF–7: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: January 2, 1997 (62 FR 132).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 13, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903–2498

Virginia Electric and Power Company, et al., Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: February 3, 1998.

Brief description of amendments: The amendments revise the Technical Specifications (TS) Surveillance Requirement Tables 3.3–1 and 4.3–1 for both units, modifying the testing requirements for the reactor trip bypass breaker.

Date of issuance: April 14, 1998.

Effective date: April 14, 1998.

Amendment Nos.: 209 and 190.

Facility Operating License Nos. NPF–4 and NPF–7: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: March 11, 1998 (63 FR 11925).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 14, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903–2498

Virginia Electric and Power Company, et al., Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: November 18, 1997.

Brief description of amendments: The amendments revise the Technical Specifications (TS) Surveillance Requirements 4.7.1.7.2.a.1 and 4.7.1.7.2.a.2 for both units, modifying the testing frequency of the Turbine throttle and Governor valves.

Date of issuance: April 16, 1998.

Effective date: April 16, 1998.

Amendment Nos.: 210 and 191.

Facility Operating License Nos. NPF–4 and NPF–7: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 17, 1997 (62 FR 66146)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 16, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903–2498

Virginia Electric and Power Company, et al., Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: February 3, 1998.

Brief description of amendments: The amendments revise the Technical Specifications (TS) Surveillance Requirement 4.4.10.1.1, modifying the inspection requirements for the Reactor Coolant Pump (RCP) flywheels for both units and eliminating the examination requirements for the flow straighteners in each steam generator to the RCP elbow on Unit 1.

Date of issuance: April 22, 1998.

Effective date: April 22, 1998.

Amendment Nos.: 211 and 192.

Facility Operating License Nos. NPF–4 and NPF–7: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: March 11, 1998 (63 FR 11924)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 22, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903–2498

Dated at Rockville, Md., this 29th day of April 1998.

For the Nuclear Regulatory Commission.

Stuart A. Richards,

Acting Director, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–11911 Filed 5–5–98; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application to Withdraw from Listing and Registration; (Oryx Technology Corp., Common Stock, $0.001 Par Value; Common Stock Warrants) File No. 1–12680

April 30, 1998.

Oryx Technology Corp. (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities (''Securities'') from listing and registration on the Pacific Exchange, Inc. (''PCX'' or ''Exchange'').

The reasons cited in the application for withdrawing the Securities from listing and registration include the following:

The Securities of the Company have been listed for trading on the Exchange and, pursuant to a Registration Statement of Form 8–A, effective on April 5, 1994, the National Association of Securities Dealers Automated Quotation System (''NASDAQ''). Trading in the Company's Securities on the NASDAQ commenced at the opening of business on April 6, 1994, and concurrently therewith on the PCX.

The Company has complied with Exchange Rule 3.4(b) by filing with the Exchange a certified copy of the resolutions adopted by the Company's Board of Directors authorizing the withdrawal of the Securities from listing and registration on the PCX and by setting forth in detail to the Exchange the reasons for and facts supporting the proposed delisting. In deciding to withdraw its Securities from listing and registration of the PCX, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its Securities on the NASDAQ and the PCX. The Company does not see any particular advantage in the dual trading of its Securities and believes that dual listing will fragment the market for its Securities.

By letter, the Exchange informed the Company that it has no objection to the withdrawal of the Company's Securities from listing and registration on the PCX.

By reason of Section 12 of the Act and the rules and regulations thereunder, the Company shall continue to be obligated to file reports under Section 13 of the Act with the Commission.

Any interested person may, on or before May 21, 1998, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–11988 Filed 5–5–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Solucorp Industries, Ltd.; Order of Suspension of Trading

April 30, 1998

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Solucorp Industries Ltd. (''Solucorp'') because of questions regarding the accuracy of assertions by Solucorp in documents sent to and statements made to market makers of the stock of Solucorp, other broker dealers, and to investors concerning, among other things: (1) the negotiation, existence and terms of contracts entered into by Solucorp during the period July 1, 1995 through the present; (2) revenues purportedly accrued under a license agreement with Smart International Ltd. and reported in financial statements for the quarter ended September 30, 1997 and the six-month period ended December 31, 1997, which were included in a registration statement and transition report filed with the Commission in December 1997 and April 1998, respectively; and (3) revenues projected in press releases on August 27, 1997, October 24, 1997 and April 16, 1998.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m. EST, May 1, 1998 through 11:59 p.m. EST, on May 14, 1998.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–12060 Filed 5–1–98; 3:53 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39928; File No. SR–AMEX–98–01]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange, Inc. Relating to Flexible Exchange Index Options

April 28, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 14, 1998, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. On March 2, 1998, the Exchange filed Amendment No. 1 to the proposal with the Commission.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to expand the listing and trading of Flexible Exchange options (''FLEX Options'') to all of the Exchange's Broad Stock Index Groups and Stock Index Industry Groups. The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 20, 1993, the Commission, pursuant to Section 19(b)(2) of the Act and Rule 19b–4 thereunder, approved the Exchange's FLEX™ Options[4] framework permitting the Exchange to list and trade FLEX Options based on the Major Market (''XMI''), Institutional (''XII'') and Standard & Poor's Corporation (''S&P'') MidCap (''MID'') Indices.[5] On December 1, 1993, the Commission approved the listing and trading of FLEX Options on the Exchange's Japan Index (''JPN'').[6]

The Exchange now proposes to expand approval for FLEX Options trading to all of its indices, including all Broad Stock Index Groups (other than the ones currently approved as noted above)[7] and all Stock Index Industry Groups.[8]

Broad Stock Index Group FLEX Options. As noted above, the Exchange currently provides for the trading of FLEX Options on XMI, XII, MID and JPN indices. The Exchange now proposes to expand the ability to trade FLEX Options to include all of its Broad Stock Index Group indices, including the EUROTOP 100, Hong Kong Option, Morgan Stanley Consumer and Morgan Stanley Cyclical Indices. All of the Exchange's rules applicable to FLEX Index Options will apply to the additional Broad Stock Index Group FLEX Options. In addition, the Exchange proposes to apply its current position and exercise limits of 200,000 contracts on the same side of the market for FLEX Options on broad indices to FLEX Options on the additional Broad Stock Index Group indices. The Exchange is proposing this expansion in response to requests from market participants to make available FLEX Options on various additional broad indices. In addition, the Exchange believes that expansion of trading in FLEX Options to all of its Broad Stock Index Group indices will provide new and important trading opportunities which are currently unavailable to market participants. Further, it will increase the Exchange's competitiveness with the over-the-counter market place as well as with other exchanges which have continued to expand FLEX Options trading on indices.[9] Rules currently in place for FLEX Options on indices shall apply to the FLEX Options on these additional broad indices.

Stock Index Industry Group FLEX Options. The Exchange also proposes to provide for the trading of FLEX Options on all of its Stock Index Industry Group indices (''Industry Indices''). As with its Broad Stock Index Group indices, the Exchange has received requests to provide for the trading of FLEX Options on its Industry Indices and believes this expansion will provide new and important trading opportunities currently unavailable to market participants while increasing the Exchange's competitiveness with the over-the-counter market place and other exchanges which have continued to expand FLEX Options trading on their indices.

In addition to applying its existing FLEX Index Options rules to the trading of Industry Index FLEX Options, the Exchange proposes to establish position limits for these FLEX Options at four times the position limits for standard options on the respective underlying Industry Index (36,000, 48,000 and 60,000 contracts on the same side of the market). The Exchange believes such position limits are appropriate given the institutional nature and use of FLEX Index Options. Further, the proposed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from cott VanHatten, Legal Counsel, Derivative Securities, Amex to Michael Walinskas, Senior Special Counsel, Division of Market Regulation, SEC dated February 27, 1998 (''Amendment No. 1''). In Amendment No. 1, the Exchange adds language to Rule 903G indicating that FLEX options may only be traded on an equity or index that was previously approved for non-FLEX trading. In addition, the Exchange represents that it will request Commission approval before trading FLEX options on indices not yet approved for FLEX options trading.

[4] The term ''FLEX'' is a trademark of the Chicago Board Options Exchange, Inc.

[5] Securities Exchange Act Release No. 32781 (August 20, 1993), 58 FR 45360 (August 27, 1993).

[6] Securities Exchange Act Release No. 33262 (December 1, 1993), 58 FR 64622 (December 8, 1993).

[7] Amex Broad Stock Index Group Options currently consist of the following: EUROTOP 100 Index, Hong Kong Options Index, Institutional Index, Japan Index, Major Market Index, S&P MidCap 400 Index, Morgan Stanley Consumer Index and Morgan Stanley Cyclical Index.

[8] Amex Stock Index Industry Group Options currently consist of the following: Airline Index, Gold BUGS Index, Biotechnology Index, Computer Technology Index, de Jager Year 2000 Index, Disk Drive Index, Interactive Week Internet Index, Mexico Index, M.S. Commodity Related Index, M.S. Heathcare Payor Index, M.S. Healthcare Product Index, M.S. Healthcare Provider Index, M.S. High Technology 35 Index, Natural Gas Index, The NatWest Energy Index, Networking Index, North American Telecommunications Index, Oil Index, Pharmaceutical Index, Securities Broker/Dealer Index and Tobacco Index.

[9] On January 14, 1998, the Commission approved the Philadelphia Stock Exchange's proposal to establish Rule 1079 providing for the trading of FLEX Options on equities and narrow and broad indices. Securities Exchange Act Release No. 39549 (January 14, 1998), 63 FR 3601 (January 23, 1998). On September 3, 1997, the Commission approved the Chicago Board Options Exchange's proposal to list FLEX Options on the Dow Jones Industrial Average. Securities Exchange Act Release No. 39011 (September 3, 1997), 62 FR 47841 (September 11, 1997).

position limits are the same as those recently adopted by the Philadelphia Stock Exchange, Inc.[10]

Finally, the Exchange proposes to adopt $5 million Underlying Equivalent Value as the minimum value size for opening transactions and Request for Quotes in Stock Index Industry Group Flex Index Options for any series with no open interest, $1 million Underlying Equivalent Value for any series with open interest and $1 million Underlying Equivalent Value, or the remaining Underlying Equivalent Value for a closing transaction, whichever is less. Similar to the proposed position limits for Stock Index Industry Group Flex Options, the Exchange believes such minimum value sizes for opening and closing transactions and Requests for Quotes are appropriate given the institutional nature and use of FLEX Index Options and they are the same minimum value sizes proposed by the Philadelphia Stock Exchange, Inc. in its proposal to trade FLEX Options on narrow based indices.[11]

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5)[12] that an Exchange have rules that are designed to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange represents that the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. 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, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–AMEX–98–01 and should be submitted by May 27, 1998.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Sections 6(b)(5)[13] and 11A[14] of the Act. Specifically, consistent with Section 11A of the Act, the proposal should encourage fair competition among brokers and dealers and the exchange markets, by allowing the Exchange to compete more effectively with the growing OTC market in customized index options.

The Commission believes that the Exchange's proposal reasonably addresses its desire to better meet the demands of sophisticated portfolio managers and other institutional investors who are increasingly using the OTC market in order to satisfy their hedging needs. Additionally, the Commission believes that the Exchange's proposal will help promote the maintenance of a fair and orderly market, consistent with Sections 6(b)(5) and 11A of the Act, because the purpose of the proposal is to facilitate the extension of the benefits of a listed exchange market to a wider variety of index options that are more flexible than current listed options and that currently trade OTC. The benefits of the Exchange's options market include, but are not limited to, a centralized market center, an auction market with posted transparent market quotations and transaction reporting, parameters and procedures for clearance and settlement, and the guarantee of OCC for all contracts traded on the Exchange.[15]

The Commission believes that the Exchange's proposal to designate all currently approved Amex Industry and Broad Stock Group Indices as eligible for FLEX index options trading is consistent with the Act. The Commission notes, however, that when submitting a Section 19(b) proposal to list and trade a new non-FLEX index options product, the Exchange must, in the same filing, specifically propose to list and trade the FLEX index options. If the Exchange is not prepared at that time to seek approval for the listing of FLEX options overlying the proposed index, then the Exchange should submit a rule filing pursuant to Section 19(b) of the Act proposing to list and trade FLEX options on that index at an appropriate time in the future.

In addition, the Commission believes that it is reasonable for the Exchange to apply its existing position limit of 200,000 contracts on the same side of the market to the additional Broad Stock Index Group indices approved for FLEX Options trading pursuant to this proposal. The Commission also believes that it is reasonable for the Exchange to establish position limits for Amex Industry Index FLEX Options at four times the position limits for standard options on the respective underlying Industry Index (36,000, 48,000 and 60,000 contracts on the same side of the market). The Commission notes that these position limits are identical to those recently adopted by the Philadelphia Stock Exchange.[16]

Finally, the Commission believes that it is reasonable for the Amex to require a $5 million underlying equivalent value for an opening transaction in Amex Industry Index FLEX options.[17] The Commission believes that this large underlying equivalent value requirement should help to ensure that transactions in FLEX index options remain of substantial size and, therefore, that the product is geared to an institutional, rather than a retail market.

The Commission finds good cause for approving the proposed rule change and Amendment No. 1 thereto prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register.** Specifically, as noted above, the Exchange's proposal is substantially similar to a recently approved proposal by the Philadelphia

[10] Securities Exchange Act Release No. 39549 (January 14, 1998), 63 FR 3601 (January 23, 1998).

[11] *Id.*

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78k–1.

[15] In approving this rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation, 15 U.S.C. 78c(f).

[16] Securities Exchange Act Release No. 39549 (January 14, 1998), 63 FR 3601 (January 23, 1998).

[17] The Commission notes that this underlying equivalent value requirement is identical to that recently approved by the Commission for the Philadelphia Stock Exchange. *See* Phlx Rule 1079(a)(8)(A)(i).

Stock Exchange.[18] Therefore, the Commission believes that Amendment No. 1 does not raise any new regulatory issues.

Accordingly, the Commission believes, consistent with Section 6(b)(5) and Section 19(b)(2) of the Act, that good cause exists to grant accelerated approval to the proposed rule change.[19]

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[20] that the proposed rule change (SR–AMEX–98–01) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–11952 Filed 5–5–98; 8:45 am]

BILLING CODE 8010–01–M

[18] *See* Securities Exchange Act Release No. 39549 (January 14, 1998), 63 FR 3601 (January 23, 1998). The Commission notes that this proposal was published for the full notice and comment period during which no comments were received.

[19] 15 U.S.C. 78(f(b)(5) and 78s(b)(2).

[20] 15 U.S.C. 78s(b)(2).

[21] 17 CFR 200.3–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application (98–03–C–00–CPR) to impose and use the revenue from a passenger facility charge (PFC) at the Natrona County International Airport, submitted by the County of Natrona, Wyoming

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Natrona County International Airport under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before June 5, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Alan Wiechmann, Manager; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 26805 E. 68th Avenue, Suite 224; Denver, CO 80249–6361.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Dan E. Mann, Airport Manager, at the following address: Natrona County International Airport, 8500 Airport Parkway, Casper, Wyoming 82604.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to the Natrona County International Airport, under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Schaffer, (303) 342–1258; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 26805 E. 68th Avenue, Suite 224; Denver, CO 80249–6361. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (98–03–C–00–CPR) to impose and use the revenue from a PFC at Natrona County International Airport, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On April 29, 1998, the FAA determined that the application to impose and use a PFC submitted by the County of Natrona, Wyoming, was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than July 29, 1998.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: October 1, 1998.

Proposed charge expiration date: August 1, 2003.

Total requested for use approval: $774,857.00.

Brief description of proposed projects: Rehabilitate water tank for airport rescue fire fighting (ARFF) use, terminal modifications, rehabilitate Runway 8/26, rehabilitate ARFF building ventilation.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue, SW., Suite 315, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Natrona County International Airport.

Issued in Renton, Washington on April 29, 1998.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 98–12042 Filed 5–5–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–6 (Sub-No. 379X)]

The Burlington Northern and Santa Fe Railway Company; Abandonment Exemption; in Garfield and Logan Counties, OK

The Burlington Northern and Santa Fe Railway Company (BNSF) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon 42.80 miles of its line of railroad between milepost 73.60 near Fairmont and milepost 116.40 near Guthrie including the stations of Douglas at milepost 82.4, Marshall at milepost 88.4, Lovell at milepost 95.1, and Crescent at milepost 102.8, in Garfield and Logan Counties, OK. The line traverses United States Postal Service Zip Codes 73736, 73733, 73056, 73028 and 73044.

BNSF has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on June 5, 1998, unless stayed

pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by May 18, 1998. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by May 26, 1998, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423. A copy of any petition filed with the Board should be sent to applicant's representative: Sarah Whitley Bailiff, Senior General Attorney, The Burlington Northern and Santa Fe Railway Company, 3017 Lou Menk Drive, Fort Worth, TX 76131.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

BNSF has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by May 11, 1998. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), BNSF shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by BNSF's filing of a notice of consummation by May 6, 1999, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Decided: April 29, 1998.

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. See 49 CFR 1002.2(f)(25).

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–12048 Filed 5–5–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–290 (Sub–No. 193X)]

Norfolk and Western Railway Company—Abandonment and Discontinuance of Trackage Rights Exemption—in Waynesboro, VA

Norfolk and Western Railway Company (NW) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances of Service and Trackage Rights* to abandon a 0.14-mile line of its railroad between Station 60+00 and Station 67+56 and for discontinuance of trackage rights over a 1.12-mile line of CSX Transportation, Inc. (CSXT), between Station 0+64 and Station 60+00 in Waynesboro, VA. The line traverses United States Postal Service Zip Code 22980.[1]

NW has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment and discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on June 6, 1998, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by May 18, 1998. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by May 26, 1998, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: James R. Paschall, General Attorney, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

NW has filed an environmental report which addresses the effects, if any, of the abandonment and discontinuance on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by May 11, 1998. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NW shall file a notice of consummation with the Board to signify that it has exercised the authority granted abandoned its 0.14-mile line. Pursuant to the same provisions, CSXT shall file a notice of consummation with the Board to signify that it has exercised the authority granted to it to fully consummate abandonment of its 1.12-

[1] CSXT received abandonment authority for the 1.12-mile segment in *The Chesapeake and Ohio Railway Company—Exemption—Abandonment and Discontinuance of Trackage Rights in Waynesboro, VA,* AB–18 (Sub-No. 86X) (ICC served Dec. 16, 1986, subject to the condition that CSXT not consummate the abandonment until NW receives authority or an exemption to discontinue its trackage rights over the CSXT line.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).

mile line now that NW has received an exemption to permit it to discontinue trackage rights operation over CSXT's line. If consummation has not been effected by NW's filing of a notice of consummation of abandonment as to its line and by CSXT's filing of a notice of consummation of abandonment as to its line by May 6, 1999, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.[4]

Decided: April 29, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–11997 Filed 5–5–98; 8:45 am]

BILLING CODE 4915–00–P

[4] NW shall serve a copy of this notice on CSXT within 5 days after its publication, and certify to the Board that it has done so.

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Economy Fire & Casualty Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 17 to the Treasury Department Circular 570; 1997 Revision, published July 1, 1997, at 62 FR 35584.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6779.

SUPPLEMENTARY INFORMATION: A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following Company under 31 U.S.C. 9304 to 9308. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1997 Revision, on page 35557 to reflect this addition:

Economy Fire & Casualty Company

Business Address: 500 Economy Court, Freeport, IL 61032. Phone: (815) 233–2000. Underwriting Limitation *b/*: $19,392,000. Surety Licenses *c/*: AL, AR, CA, CO, FL, GA, ID, IL, IN, IA, KS, KY, LA, MN, MS, MO, MT, NE, NV, NM, ND, OH, OK, PA, SD, UT, WV, WI, WY. Incorporated In: Illinois.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

The Circular may be viewed and downloaded through the Internet at http://www.fms.treas.gov/c570/index.html or through our computerized public bulletin board system (FMS Inside Line) at (202) 874–6887. A hard copy may be purchased from the Government Printing Office (GPO) Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048000–00509–8.

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, 3700 East-West Highway, Room 6A11, Hyattsville, MD 20782.

Dated: April 29, 1998.

Charles F. Schwan III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 98–11968 Filed 5–5–98; 8:45 am]

BILLING CODE 4810–35–M

federal register

Wednesday
May 6, 1998

Part II

Department of the Treasury

Fiscal Service

31 CFR Part 285

Administrative Wage Garnishment; Final Rule

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 285

RIN 1510–AA67

Administrative Wage Garnishment

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: This final rule implements the administrative wage garnishment provisions contained in the Debt Collection Improvement Act of 1996 (DCIA). Wage garnishment is a process whereby an employer withholds amounts from an employee's wages and pays those amounts to the employee's creditor in satisfaction of a withholding order. The DCIA authorizes Federal agencies administratively to garnish the disposable pay of an individual to collect delinquent nontax debts owed to the United States in accordance with regulations issued by the Secretary of the Treasury.

DATES: This rule is effective June 5, 1998.

FOR FURTHER INFORMATION CONTACT: Gerry Isenberg, Financial Program Specialist, Debt Management Services, at (202) 874–6660 or James Regan, Attorney-Advisor, at (202) 874–6680, Financial Management Service, Department of the Treasury, 401 14th Street SW, Washington, DC 20227. This document is available for downloading from the Financial Management Service web site at the following address: http://www.fms.treas.gov.

SUPPLEMENTARY INFORMATION:

Background

This final rule implements the wage garnishment provision in section 31001(o) of the Debt Collection Improvement Act of 1996 (DCIA), Pub. L. 104–134, 110 Stat. 1321–358 (Apr. 26, 1996), codified at 31 U.S.C. 3720D. Wage garnishment is a process whereby an employer withholds amounts from an employee's wages and pays those amounts to the employee's creditor in satisfaction of a withholding order. The DCIA authorizes Federal agencies administratively to garnish up to 15% of the disposable pay of a debtor to satisfy delinquent nontax debt owed to the United States. Prior to the enactment of the DCIA, agencies were required to obtain a court judgment before garnishing the wages of non-Federal employees. Section 31001(o) of the DCIA preempts State laws that prohibit wage garnishment or otherwise govern wage garnishment procedures.

As authorized by the DCIA, a Federal agency collecting delinquent nontax debt may garnish administratively a delinquent debtor's wages in accordance with regulations promulgated by the Secretary of the Treasury. The Financial Management Service (FMS), a bureau of the Department of the Treasury, is responsible for promulgating the regulations implementing this and other debt collection tools established by the DCIA.

In accordance with the requirements of the DCIA, this final rule establishes the following rules and procedures:

1. Notice

At least 30 days before an agency initiates garnishment proceedings, the agency will give the debtor written notice informing him or her of the nature and amount of the debt, the intention of the agency to collect the debt through deductions from pay, and an explanation of the debtor's rights regarding the proposed action.

2. Rights of the Debtor

The agency will provide the debtor with an opportunity to inspect and copy records related to the debt, to establish a repayment agreement, and to receive a hearing concerning the existence or amount of the debt and the terms of a repayment schedule. A hearing must be held prior to the issuance of a withholding order if the debtor's request is timely received. For hearing requests that are not received in the specified time frame, an agency need not delay issuance of the withholding order prior to conducting a hearing. An agency may not garnish the wages of a debtor who has been involuntarily separated from employment until that individual has been reemployed continuously for at least 12 months. The debtor bears the burden of informing the agency of the circumstances surrounding an involuntary separation from employment.

3. Employer's Responsibilities

The agency will send to the employer of a delinquent debtor a wage garnishment order directing that the employer pay a portion of the debtor's wages to the Federal Government. This final rule requires the debtor's employer to certify certain payment information about the debtor. Employers will not be required to vary their normal pay cycles in order to comply with the garnishment order.

The DCIA prohibits employers from taking disciplinary actions against the debtor based on the fact that the debtor's wages are subject to administrative garnishment. In addition, the DCIA authorizes an agency to sue an employer for amounts not properly withheld from the wages payable to the debtor.

Discussion of Comments

General

In response to its Notice of Proposed Rulemaking (NPRM) concerning Administrative Wage Garnishment (62 FR 62458, Nov. 21, 1997), FMS received comments from Federal agencies, private collection agencies, an umbrella organization for organizations that support the activities of the Federal Family Education Loan Programs, and a private citizen. Many of the commenters have been involved in implementing a similar administrative wage garnishment provision that authorizes the U.S. Department of Education (Education) to garnish 10% of the disposable pay of employed individuals who have defaulted on their student loan obligations. See 20 U.S.C. 1095a; 34 CFR 682.410. FMS drafted the NPRM after consultation with the Departments of Education and Justice about their experience implementing wage garnishment to collect student loans. The comments received in response to the NPRM based on the commenters' experience with Education's program have been helpful in drafting the final rule. It is important to note that Education's wage garnishment program is applicable to the collection of one type of debt subject to a single statutory scheme. The DCIA wage garnishment provision and this rule, on the other hand, are applicable to all Federal agencies collecting all types of debt, the collection of which is subject to a variety of statutory provisions. Therefore, as explained below, while some of the suggestions have been incorporated into the final rule, others do not apply to a government-wide wage garnishment program involving all Federal agencies with various types of debts.

A review of the comments is provided in the following Comment Analysis which includes a discussion of FMS' determination whether to incorporate specific suggestions in the final rule. The Comment Analysis is organized by reference to the paragraphs in the NPRM.

NPRM § 285.11(a) Purpose

No changes were made to NPRM § 285.11(a). FMS did not receive any comments applicable to this paragraph.

NPRM § 285.11(b) Scope

One commenter suggested that FMS incorrectly interpreted the DCIA in the NPRM by not limiting the applicability

of administrative wage garnishment to the collection of only those debts evidenced by written agreements. The commenter believes that the language contained in 31 U.S.C. 3720D(a) authorizing wage garnishment ''if the individual is not currently making required repayment in accordance with any agreement between the agency head and the individual'' so limits the use of wage garnishment. FMS disagrees with the commenter. There is nothing in the plain language of the statute to indicate that the referenced phrase limits the applicability of wage garnishment to debts evidenced by a written agreement. The term ''debt,'' as defined in 31 U.S.C. 3701(b)(1), as amended by the DCIA, is not limited to debts evidenced by a written agreement between the debtor and the Government.

One commenter suggested that the rule establish a minimum threshold amount for garnishment based on a cost estimate of the garnishment procedure. This is unnecessary since the use of the administrative wage garnishment tool by agencies is voluntary and should be used by agencies in appropriate situations. Agencies may set their own policies regarding minimum thresholds.

NPRM § 285.11(c) Definitions

One commenter suggested that the definition of agency under NPRM § 285.11(c) be expanded to authorize agents or vendors of Federal agencies to garnish debtors' wages in accordance with this rule. Whether or not an agent or vendor can perform a particular function on behalf of a Federal agency is beyond the scope of this rule. While the use of contractors for the collection of debt generally is authorized by law, agencies may not contract out ''inherently governmental functions.'' *See* Office of Management and Budget (OMB) Circular A–76. This is not to say that contractors cannot assist agencies in conducting administrative wage garnishment. For example, contractors could be hired to mail notices and garnishment orders authorized by the agency, receive documents from the debtor and the employer, and document agency-approved repayment agreements with the debtor.

NPRM § 285.11(d) General Rule

One commenter suggested that FMS clarify a statement in the NPRM preamble concerning NPRM § 285.11(d) involving the use of wage garnishment by Treasury-designated debt collection centers. In addition to agencies that administer the program that gives rise to the debt, agencies that pursue the recovery of the debt for those agencies, such as the Department of the Treasury, Treasury-designated debt collection centers, and the Department of Justice, are authorized to conduct administrative wage garnishment. *See, e.g.,* the definition of ''agency'' in NPRM § 285.11(c), unchanged in the final rule.

NPRM § 285.11(e) Notice Requirements

The suggestion by one commenter that the rule specifically prohibit the combination of an agency's notice of intention to garnish a debtor's wages with other notices to the debtor has not been incorporated into this rule. The rule gives agencies the flexibility to combine notices where appropriate. In many circumstances, the debtor can be informed clearly in a single communication of all debt collection remedies available to the Federal agency and the opportunities available to the debtor to be heard concerning the existence or amount of the debt.

One commenter's suggestion that FMS develop a standard administrative wage garnishment notice for government-wide use has not been incorporated in the final rule. Because agency-specific laws applicable to debt collection have to be considered in drafting a notice, a standard government-wide form would not be appropriate.

One commenter suggested that the rule exempt private collection professionals acting on behalf of agencies from the liability provisions of the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. 1692 *et seq.*, provided that such entities comply with the terms of this rule and use notices and forms developed by Treasury or other agencies. The extent to which the FDCPA may apply to any entity, particularly private collection agencies, is outside the scope of this rule.

Several commenters suggested that the rule should clearly state that the certificate of service may be retained electronically. Other commenters suggested that a certificate of service is unnecessary. The final rule retains the requirement that an agency keep a certificate of service as evidence of mailing. However, NPRM §§ 285.11(e)(3) and 285.11(g)(3) have been amended to indicate more clearly that the certificate of service may be retained electronically so long as the manner of retention is sufficient for evidentiary purposes.

NPRM § 285.11(f) Hearing

One Federal agency asked that the rule address whether an agency needs to publish its own regulation before it can engage in administrative wage garnishment under the DCIA. Another commenter questioned how an agency's existing hearing procedures for debt determination relate to the wage garnishment requirements contained in the DCIA and NPRM. The phrase ''consistent with this section'' was added to NPRM § 285.11(f)(1) in this final rule to clarify that agency regulations must follow the minimum requirements for wage garnishment hearings as set forth in this rule. Each agency is responsible for prescribing hearing procedures in accordance with the statutory and regulatory requirements of this rule and other requirements applicable to that agency's debt collection hearing procedures. Those agencies with hearings procedures which meet the requirements established under this rule and agency-specific statutory and other requirements need not develop new hearing procedures. Agencies should seek legal advice from their agency counsel to determine whether existing agency procedures meet the requirements established under this rule and whether the agency is required to publish new or amended regulations. Section 285.11(b)(6) has been added to the final rule to further clarify that ''(n)othing in this section requires agencies to duplicate notices or administrative proceedings required by contract or other laws or regulations.''

The final rule does not incorporate one commenter's suggestion that the Department of the Treasury or the Department of Justice be required to review agencies' wage garnishment procedures and regulations prior to allowing an agency to initiate a wage garnishment program. Unique statutory requirements apply to every Federal program that gives rise to delinquent debt. Thus, the agency administering the program that gives rise to the debt is in the best position to know what is required. The Departments of Treasury and Justice will continue, however, to provide guidance to agencies concerning debt collection practices and procedures.

One commenter recommended amending NPRM § 285.11(f)(4) by establishing that a debtor has 15 ''calendar'' days, rather than 15 ''business'' days, to request a hearing. FMS was concerned that 15 calendar days would not allow sufficient time for a debtor to request a hearing prior to the issuance of a garnishment order given that 15 calendar days could include four to seven weekend days or holidays. For this reason, NPRM § 285.11(f)(4) has not been changed.

Several comments addressed the hearing procedures proposed in the NPRM. The final rule incorporates the comment from two commenters

suggesting that the requirement in NPRM § 285.11(f)(8)(ii) that a debtor prove by ''clear and convincing evidence'' that no debt exists or that the amount of the debt is incorrect is too burdensome. In the final rule at § 285.11(f)(8)(ii), FMS replaced the ''clear and convincing'' standard with the less burdensome ''preponderance of the evidence'' standard.

One commenter suggested that proving the terms of the repayment schedule are ''unreasonable,'' as required at NPRM § 285.11(f)(8)(ii), is too vague and that the debtor should be required to show that the terms of the repayment schedule would cause a ''financial hardship'' to the debtor. The final rule incorporates this suggestion.

In response to a commenter's suggestion, NPRM § 285.11(f)(8)(ii) has been amended to clarify that the debtor may present evidence that collection of the debt may not be pursued due to operation of law, *e.g.*, enforcement of the order is subject to the automatic stay imposed at the time of a bankruptcy filing pursuant to 11 U.S.C. 362.

Two commenters suggested that this rule restrict hearing officials to those individuals not under the supervision or control of the head of the agency. The commenters suggested that the rule, without such a change, could result in inequitable wage garnishment hearing decisions since an agency, and its qualified hearing officer, have a vested interest in the outcome. FMS disagrees for three reasons. First, Congress did not intend to require that hearing officials be independent. Unlike other statutes, *see, e.g.*, 5 U.S.C. 5514(a)(2) (concerning Federal salary offset), the DCIA does not require an independent hearing official. Second, the rule explicitly sets forth minimum hearing procedures that ensure the debtor has a meaningful opportunity to be heard and minimize the risk of erroneous deprivation of the debtor's property interest in his or her wages. Finally, any final hearing decision by the agency on wage garnishment is subject to judicial review under the Administrative Procedure Act. *See, e.g.*, 5 U.S.C. 706 (concerning judicial review of an agency's actions).

NPRM § 285.11(g) Wage Garnishment Order

One commenter noted that the provision under NPRM § 285.11(g) requiring agencies to submit a wage garnishment order to a debtor's employer within 30 days of a hearing decision (or within 30 days after the debtor fails to make a timely request for a hearing) should be reconciled with the 20 day period provided under Education's wage garnishment regulation at 34 CFR 682.410(b)(10)(H). Such a reconciliation with Education's rule is not warranted or necessary. The time period in this rule accommodates a broad range of agencies' requirements and is consistent with the goal of issuing a wage garnishment order promptly after notice and an opportunity to be heard have been provided to the debtor.

The final rule does not incorporate one commenter's suggestion that NPRM § 285.11(g)(2) be amended to delete the requirement that the wage garnishment order be signed by the head of the agency or his/her designee. The commenter suggested that issuance of the wage garnishment order on agency letterhead including the agency's seal is sufficient to demonstrate official issuance. This rule requires a signature to authenticate a wage withholding order. Failure to include a signature on a wage withholding order could result in employer uncertainty as to the validity of the order and could result in delay, and possible loss, of garnishment payments to which the Government is entitled.

As noted in the NPRM and as suggested by a commenter, FMS is developing a wage garnishment order form. It is anticipated that the use of a standard wage garnishment order form by agencies will make it easier for private sector employers to recognize and comply with agency wage garnishment order requirements. This form will be available from FMS at the address listed above and will be available for downloading from the FMS web site at the following address: www.fms.treas.gov.

One commenter suggested that rather than require the agency to keep a certificate of service indicating the date of the mailing of a garnishment order, the rule should require the debtor's employer to verify receipt. The commenter's rationale is that the DCIA (31 U.S.C. 3720D(f)(2)(A)) and NPRM § 285.11(o) authorize the agency to sue the employer for noncompliance with the wage garnishment order. The final rule does not incorporate this comment because the Government need only show that the order was mailed, not whether it actually was received. *Nelson* v. *Diversified Collection Services*, 961 F.Supp. 863, 868–69 (D. Md. 1997). By requiring an agency to retain a copy of the certificate of service, the agency can produce evidence that the order was mailed without having to place an additional burden on the employer.

One commenter suggested that the requirement to comply with the wage garnishment order should be waived under circumstances when a small employer (with less than five employees) would be subject to a major hardship (financial or otherwise) as a result of complying with the order. Such a change to the rule is unnecessary since the use of the wage garnishment collection tool by agencies is not mandated under the DCIA. Agencies can set their own policies on when it is appropriate to utilize the administrative wage garnishment process.

NPRM § 285.11(h) Certification by Employer

The final rule did not incorporate the recommendation of two commenters to delete the requirement under NPRM § 285.11(h) requiring the debtor's employer to complete and return a certification form to the agency. The commenters suggested this provision is unduly burdensome and that an employer's failure to complete and return the form could unnecessarily delay the garnishment process. The certification form serves multiple purposes. One, the form provides the agency with information necessary to monitor the employer's compliance with the wage garnishment order in accordance with the requirements of the DCIA and applicable laws. The form also will provide information so the agency can calculate anticipated collection amounts to determine whether to pursue other collection tools. Finally, the form will assist the employer in calculating the amount to be garnished from the debtor's disposable pay. It is noted that the employer's failure to complete the certification form as required does not affect the employer's responsibility to withhold the appropriate garnishment amount within a ''reasonable time'' in accordance with this rule. See NPRM § 285.11(i)(7), renumbered as § 285.11(i)(8) in the final rule.

NPRM § 285.11(i) Amounts Withheld

Two commenters recommended clarifying the impact of the Consumer Credit Protection Act's (CCPA) minimum disposable pay requirement on the wage garnishment provisions of the DCIA and this rule. *See* CCPA, § 303(a)(2), codified at 15 U.S.C. 1673(a)(2) (maximum allowable garnishment). NPRM § 285.11(i) has been amended to clarify that the amount of garnishment is limited by the CCPA. Under section 285.11(i) of the final rule, the amount of garnishment is the lesser of the amount indicated on the garnishment order up to 15% of the debtor's disposable pay or the amount set forth in 15 U.S.C. 1673(a)(2). The amount set forth in 15 U.S.C. 1673(a)(2) is the amount by which a debtor's

disposable pay exceeds an amount equivalent to thirty times the minimum wage. For example, if a debtor receives disposable pay of $160.00 per week and thirty times the minimum wage is $154.50, the amount that may be garnished weekly is the lesser of $24.00 (15% of $160) or $5.50 ($160.00–$154.40 = $5.50). *See* 29 CFR 870.10(b)(1) for information on calculating an amount equivalent to thirty times the minimum wage.

Section 285.11(i)(3) of the final rule is the same as NPRM § 285.11(i)(2) except that § 285.11(i)(3)(iii) has been added to clarify the amount of garnishment for a debtor who owes multiple debts to a single creditor agency. Under section 285(i)(3)(iii) of the final rule, an agency may issue multiple withholding orders so long as the total amount garnished from the debtor's pay for such orders does not exceed the garnishment amount permitted under § 285.11(i)(2). For purposes of § 285.11(i)(3)(iii), the term ''agency'' refers to the agency that is owed the debt.

One commenter suggested deleting the language in NPRM § 285.11(i)(7) (renumbered as § 285.11(i)(8) in the final rule) requiring that the wage garnishment order ''indicate a reasonable period of time within which the employer is required to commence wage withholding'' because garnishment orders in all other contexts typically require immediate compliance. This suggestion was not incorporated into the final rule. The ''reasonable period of time'' given to employers allows employers adequate time to calculate garnishment withholding payroll data involving a debtor employee without disrupting the normal payroll cycle. It is anticipated that a ''reasonable period of time'' generally will mean that the employer will commence withholdings within two pay cycles following receipt of the garnishment order. This may vary given an employer's circumstances.

NPRM § 285.11(j) Exclusions From Garnishment.

No changes were made to the NPRM § 285.11(n). FMS did not receive any comments applicable to this paragraph.

NPRM § 285.11(k) Financial Hardship

The final rule does not incorporate one commenter's suggestion that NPRM § 285.11(k) be amended further to define the standards for agency review of a debtor's request for an adjustment in the amount withheld under a wage garnishment order due to ''financial hardship'' based on ''materially changed circumstances.'' NPRM § 285.11(k), unchanged in the final rule, provides illustrative examples of the type of events which may give rise to financial hardship due to ''materially changed circumstances,'' such as disability, divorce, or catastrophic illness. However, whether financial hardship exists must be determined by an agency's review of the particular facts and circumstances of a given case.

NPRM § 285.11(l) Ending Garnishment

The final rule does not incorporate a commenter's suggestion that the rule clarify whether collection costs need to be collected before terminating the garnishment action. NPRM § 285.11(l), unchanged in the final rule, clearly requires termination of garnishment only after the agency ''has fully recovered the amounts owed by the debtor, including interest, penalties and administrative costs consistent with the FCCS (Federal Claims Collection Standards).'' *See* 31 U.S.C. 3717(e) and 4 CFR 102.13 regarding the collection of administrative costs associated with a debt.

NPRM § 285.11(m) Actions Prohibited by the Employer

No changes were made to NPRM § 285.11(m). FMS did not receive any comments applicable to this paragraph.

NPRM § 285.11(n) Refunds

No changes were made to NPRM § 285.11(n). FMS did not receive any comments applicable to this paragraph.

NPRM § 285.11(o) Right of Action.

The final rule does not incorporate a commenter's suggestion that NPRM § 285.11(o) be amended to remove the requirement that a Federal agency must ''terminate collection action'' as a prerequisite to commencing suit against a debtor's employer for failure to withhold amounts from wages pursuant to a wage garnishment order. The DCIA specifically provides that ''suit (against an employer) may not be filed before the termination of the collection action, unless earlier filing is necessary to avoid expiration of any applicable statute of limitations period.'' 31 U.S.C. 3720D(f)(2)(B).

However, FMS has amended NPRM § 285.11(o) in the final rule to incorporate a suggestion by another commenter that the rule be changed to clarify that ''termination of the collection action'' merely refers to the particular debtor/employee, rather than the debt. This change gives agencies flexibility to terminate collection action against one of the debtors and file suit against that debtor's employer for failing to withhold that debtor's wages pursuant to a wage garnishment order. At the same time, the agency could continue collection efforts involving the other debtors who are jointly and severally liable to the agency on the debt.

Regulatory Analysis

This rule is not a significant regulatory action as defined in Executive Order 12866. It is hereby certified that this regulation, including the certification referenced in this final rule (see paragraph (h) of this section), will not have a significant economic impact on a substantial number of small entities. Although a substantial number of small entities will be subject to this regulation and to the certification requirement in this rule, the requirements will not have a significant economic impact on these entities. Employers of delinquent debtors must certify certain information about the debtor such as the debtor's employment status and earnings. This information is contained in the employer's payroll records. Therefore, it will not take a significant amount of time or result in a significant cost for an employer to complete the certification form. Even if an employer is served withholding orders on several employees over the course of a year, the cost imposed on the employer to complete the certifications would not have a significant economic impact on that entity. Employers are not required to vary their normal pay cycles in order to comply with a withholding order issued pursuant to this rule.

List of Subjects in 31 CFR Part 285

Administrative practice and procedure, Claims, Debts, Garnishment of wages, Hearing and appeal procedures, Salaries, Wages.

Authority and Issuance

For the reasons set forth in the preamble, 31 CFR part 285 is amended as follows:

PART 285—DEBT COLLECTION AUTHORITIES UNDER THE DEBT COLLECTION IMPROVEMENT ACT OF 1996

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

Authority: 26 U.S.C. 6402; 31 U.S.C. 321, 3701, 3711, 3716, 3720A, 3720D; E.O. 13019; 3 CFR, 1996 Comp., p. 216.

2. Section 285.11 is added to Subpart B to read as follows:

§ 285.11 Administrative wage garnishment.

(a) *Purpose.* This section provides procedures for Federal agencies to collect money from a debtor's

disposable pay by means of administrative wage garnishment to satisfy delinquent nontax debt owed to the United States.

(b) *Scope.* (1) This section applies to any Federal agency that administers a program that gives rise to a delinquent nontax debt owed to the United States and to any agency that pursues recovery of such debt.

(2) This section shall apply notwithstanding any provision of State law.

(3) Nothing in this section precludes the compromise of a debt or the suspension or termination of collection action in accordance with applicable law. See, for example, the Federal Claims Collection Standards (FCCS), 4 CFR parts 101–105.

(4) The receipt of payments pursuant to this section does not preclude a Federal agency from pursuing other debt collection remedies, including the offset of Federal payments to satisfy delinquent nontax debt owed to the United States. A Federal agency may pursue such debt collection remedies separately or in conjunction with administrative wage garnishment.

(5) This section does not apply to the collection of delinquent nontax debt owed to the United States from the wages of Federal employees from their Federal employment. Federal pay is subject to the Federal salary offset procedures set forth in 5 U.S.C. 5514 and other applicable laws.

(6) Nothing in this section requires agencies to duplicate notices or administrative proceedings required by contract or other laws or regulations.

(c) *Definitions.* As used in this section the following definitions shall apply:

Agency means a department, agency, court, court administrative office, or instrumentality in the executive, judicial, or legislative branch of the Federal Government, including government corporations. For purposes of this section, agency means either the agency that administers the program that gave rise to the debt or the agency that pursues recovery of the debt.

Business day means Monday through Friday. For purposes of computation, the last day of the period will be included unless it is a Federal legal holiday.

Certificate of service means a certificate signed by an agency official indicating the nature of the document to which it pertains, the date of mailing of the document, and to whom the document is being sent.

Day means calendar day. For purposes of computation, the last day of the period will be included unless it is a Saturday, a Sunday, or a Federal legal holiday.

Debt or *claim* means any amount of money, funds or property that has been determined by an appropriate official of the Federal Government to be owed to the United States by an individual, including debt administered by a third party as an agent for the Federal Government. *Delinquent nontax debt* means any nontax debt that has not been paid by the date specified in the agency's initial written demand for payment, or applicable agreement, unless other satisfactory payment arrangements have been made. For purposes of this section, the terms ''debt'' and ''claim'' are synonymous and refer to delinquent nontax debt.

Debtor means an individual who owes a delinquent nontax debt to the United States.

Disposable pay means that part of the debtor's compensation (including, but not limited to, salary, bonuses, commissions, and vacation pay) from an employer remaining after the deduction of health insurance premiums and any amounts required by law to be withheld. For purposes of this section, ''amounts required by law to be withheld'' include amounts for deductions such as social security taxes and withholding taxes, but do not include any amount withheld pursuant to a court order.

Employer means a person or entity that employs the services of others and that pays their wages or salaries. The term employer includes, but is not limited to, State and local Governments, but does not include an agency of the Federal Government.

Garnishment means the process of withholding amounts from an employee's disposable pay and the paying of those amounts to a creditor in satisfaction of a withholding order.

Withholding order means any order for withholding or garnishment of pay issued by an agency, or judicial or administrative body. For purposes of this section, the terms ''wage garnishment order'' and ''garnishment order'' have the same meaning as ''withholding order.''

(d) *General rule.* Whenever an agency determines that a delinquent debt is owed by an individual, the agency may initiate proceedings administratively to garnish the wages of the delinquent debtor.

(e) *Notice requirements.* (1) At least 30 days before the initiation of garnishment proceedings, the agency shall mail, by first class mail, to the debtor's last known address a written notice informing the debtor of:

(i) The nature and amount of the debt;

(ii) The intention of the agency to initiate proceedings to collect the debt through deductions from pay until the debt and all accumulated interest, penalties and administrative costs are paid in full; and

(iii) An explanation of the debtor's rights, including those set forth in paragraph (e)(2) of this section, and the time frame within which the debtor may exercise his or her rights.

(2) The debtor shall be afforded the opportunity:

(i) To inspect and copy agency records related to the debt;

(ii) To enter into a written repayment agreement with the agency under terms agreeable to the agency; and

(iii) For a hearing in accordance with paragraph (f) of this section concerning the existence or the amount of the debt or the terms of the proposed repayment schedule under the garnishment order. However, the debtor is not entitled to a hearing concerning the terms of the proposed repayment schedule if these terms have been established by written agreement under paragraph (e)(2)(ii) of this section.

(3) The agency will keep a copy of a certificate of service indicating the date of mailing of the notice. The certificate of service may be retained electronically so long as the manner of retention is sufficient for evidentiary purposes.

(f) *Hearing*—(1) *In general.* Agencies shall prescribe regulations for the conduct of administrative wage garnishment hearings consistent with this section or shall adopt this section without change by reference.

(2) *Request for hearing.* The agency shall provide a hearing, which at the agency's option may be oral or written, if the debtor submits a written request for a hearing concerning the existence or amount of the debt or the terms of the repayment schedule (for repayment schedules established other than by written agreement under paragraph (e)(2)(ii)) of this section.

(3) *Type of hearing or review.* (i) For purposes of this section, whenever an agency is required to afford a debtor a hearing, the agency shall provide the debtor with a reasonable opportunity for an oral hearing when the agency determines that the issues in dispute cannot be resolved by review of the documentary evidence, for example, when the validity of the claim turns on the issue of credibility or veracity.

(ii) If the agency determines that an oral hearing is appropriate, the time and location of the hearing shall be established by the agency. An oral hearing may, at the debtor's option, be conducted either in-person or by telephone conference. All travel

expenses incurred by the debtor in connection with an in-person hearing will be borne by the debtor. All telephonic charges incurred during the hearing will be the responsibility of the agency.

(iii) In those cases when an oral hearing is not required by this section, an agency shall nevertheless accord the debtor a ''paper hearing,'' that is, an agency will decide the issues in dispute based upon a review of the written record. The agency will establish a reasonable deadline for the submission of evidence.

(4) *Effect of timely request.* Subject to paragraph (f)(13) of this section, if the debtor's written request is received by the agency on or before the 15th business day following the mailing of the notice described in paragraph (e)(1) of this section, the agency shall not issue a withholding order under paragraph (g) of this section until the debtor has been provided the requested hearing and a decision in accordance with paragraphs (f)(10) and (f)(11) of this section has been rendered.

(5) *Failure to timely request a hearing.* If the debtor's written request is received by the agency after the 15th business day following the mailing of the notice described in paragraph (e)(1) of this section, the agency shall provide a hearing to the debtor. However, the agency will not delay issuance of a withholding order unless the agency determines that the delay in filing the request was caused by factors over which the debtor had no control, or the agency receives information that the agency believes justifies a delay or cancellation of the withholding order.

(6) *Hearing official.* A hearing official may be any qualified individual, as determined by the head of the agency, including an administrative law judge.

(7) *Procedure.* After the debtor requests a hearing, the hearing official shall notify the debtor of:

(i) The date and time of a telephonic hearing;

(ii) The date, time, and location of an in-person oral hearing; or

(iii) The deadline for the submission of evidence for a written hearing.

(8) *Burden of proof.* (i) The agency will have the burden of going forward to prove the existence or amount of the debt.

(ii) Thereafter, if the debtor disputes the existence or amount of the debt, the debtor must present by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. In addition, the debtor may present evidence that the terms of the repayment schedule are unlawful, would cause a financial hardship to the debtor, or that collection of the debt may not be pursued due to operation of law.

(9) *Record.* The hearing official must maintain a summary record of any hearing provided under this section. A hearing is not required to be a formal evidentiary-type hearing, however, witnesses who testify in oral hearings will do so under oath or affirmation.

(10) *Date of decision.* The hearing official shall issue a written opinion stating his or her decision, as soon as practicable, but not later than sixty (60) days after the date on which the request for such hearing was received by the agency. If an agency is unable to provide the debtor with a hearing and render a decision within 60 days after the receipt of the request for such hearing:

(i) The agency may not issue a withholding order until the hearing is held and a decision rendered; or

(ii) If the agency had previously issued a withholding order to the debtor's employer, the agency must suspend the withholding order beginning on the 61st day after the receipt of the hearing request and continuing until a hearing is held and a decision is rendered.

(11) *Content of decision.* The written decision shall include:

(i) A summary of the facts presented;

(ii) The hearing official's findings, analysis and conclusions; and

(iii) The terms of any repayment schedules, if applicable.

(12) *Final agency action.* The hearing official's decision will be the final agency action for the purposes of judicial review under the Administrative Procedure Act (5 U.S.C. 701 *et seq.*).

(13) *Failure to appear.* In the absence of good cause shown, a debtor who fails to appear at a hearing scheduled pursuant to paragraph (f)(4) of this section will be deemed as not having timely filed a request for a hearing.

(g) *Wage garnishment order.* (1) Unless the agency receives information that the agency believes justifies a delay or cancellation of the withholding order, the agency shall send, by first class mail, a withholding order to the debtor's employer within 30 days after the debtor fails to make a timely request for a hearing (i.e., within 15 business days after the mailing of the notice described in paragraph (e)(1) of this section), or, if a timely request for a hearing is made by the debtor, within 30 days after a final decision is made by the agency to proceed with garnishment.

(2) The withholding order sent to the employer under paragraph (g)(1) of this section shall be in a form prescribed by the Secretary of the Treasury on the agency's letterhead and signed by the head of the agency or his/her delegatee. The order shall contain only the information necessary for the employer to comply with the withholding order. Such information includes the debtor's name, address, and social security number, as well as instructions for withholding and information as to where payments should be sent.

(3) The agency will keep a copy of a certificate of service indicating the date of mailing of the order. The certificate of service may be retained electronically so long as the manner of retention is sufficient for evidentiary purposes.

(h) *Certification by employer.* Along with the withholding order, the agency shall send to the employer a certification in a form prescribed by the Secretary of the Treasury. The employer shall complete and return the certification to the agency within the time frame prescribed in the instructions to the form. The certification will address matters such as information about the debtor's employment status and disposable pay available for withholding.

(i) *Amounts withheld.* (1) After receipt of the garnishment order issued under this section, the employer shall deduct from all disposable pay paid to the applicable debtor during each pay period the amount of garnishment described in paragraph (i)(2) of this section.

(2)(i) Subject to the provisions of paragraphs (i)(3) and (i)(4) of this section, the amount of garnishment shall be the lesser of:

(A) The amount indicated on the garnishment order up to 15% of the debtor's disposable pay; or

(B) The amount set forth in 15 U.S.C. 1673(a)(2) (Restriction on Garnishment). The amount set forth at 15 U.S.C. 1673(a)(2) is the amount by which a debtor's disposable pay exceeds an amount equivalent to thirty times the minimum wage. *See* 29 CFR 870.10.

(3) When a debtor's pay is subject to withholding orders with priority the following shall apply:

(i) Unless otherwise provided by Federal law, withholding orders issued under this section shall be paid in the amounts set forth under paragraph (i)(2) of this section and shall have priority over other withholding orders which are served later in time. Notwithstanding the foregoing, withholding orders for family support shall have priority over withholding orders issued under this section.

(ii) If amounts are being withheld from a debtor's pay pursuant to a withholding order served on an employer before a withholding order

issued pursuant to this section, or if a withholding order for family support is served on an employer at any time, the amounts withheld pursuant to the withholding order issued under this section shall be the lesser of:

(A) The amount calculated under paragraph (i)(2) of this section, or

(B) An amount equal to 25% of the debtor's disposable pay less the amount(s) withheld under the withholding order(s) with priority.

(iii) If a debtor owes more than one debt to an agency, the agency may issue multiple withholding orders provided that the total amount garnished from the debtor's pay for such orders does not exceed the amount set forth in paragraph (i)(2) of this section. For purposes of this paragraph (i)(3)(iii), the term *agency* refers to the agency that is owed the debt.

(4) An amount greater than that set forth in paragraphs (i)(2) and (i)(3) of this section may be withheld upon the written consent of debtor.

(5) The employer shall promptly pay to the agency all amounts withheld in accordance with the withholding order issued pursuant to this section.

(6) An employer shall not be required to vary its normal pay and disbursement cycles in order to comply with the withholding order.

(7) Any assignment or allotment by an employee of his earnings shall be void to the extent it interferes with or prohibits execution of the withholding order issued under this section, except for any assignment or allotment made pursuant to a family support judgment or order.

(8) The employer shall withhold the appropriate amount from the debtor's wages for each pay period until the employer receives notification from the agency to discontinue wage withholding. The garnishment order shall indicate a reasonable period of time within which the employer is required to commence wage withholding.

(j) *Exclusions from garnishment.* The agency may not garnish the wages of a debtor who it knows has been involuntarily separated from employment until the debtor has been reemployed continuously for at least 12 months. The debtor has the burden of informing the agency of the circumstances surrounding an involuntary separation from employment.

(k) *Financial hardship.* (1) A debtor whose wages are subject to a wage withholding order under this section, may, at any time, request a review by the agency of the amount garnished, based on materially changed circumstances such as disability, divorce, or catastrophic illness which result in financial hardship.

(2) A debtor requesting a review under paragraph (k)(1) of this section shall submit the basis for claiming that the current amount of garnishment results in a financial hardship to the debtor, along with supporting documentation. Agencies shall consider any information submitted in accordance with procedures and standards established by the agency.

(3) If a financial hardship is found, the agency shall downwardly adjust, by an amount and for a period of time agreeable to the agency, the amount garnished to reflect the debtor's financial condition. The agency will notify the employer of any adjustments to the amounts to be withheld.

(l) *Ending garnishment.* (1) Once the agency has fully recovered the amounts owed by the debtor, including interest, penalties, and administrative costs consistent with the FCCS, the agency shall send the debtor's employer notification to discontinue wage withholding.

(2) At least annually, an agency shall review its debtors' accounts to ensure that garnishment has been terminated for accounts that have been paid in full.

(m) *Actions prohibited by the employer.* An employer may not discharge, refuse to employ, or take disciplinary action against the debtor due to the issuance of a withholding order under this section.

(n) *Refunds.* (1) If a hearing official, at a hearing held pursuant to paragraph (f)(3) of this section, determines that a debt is not legally due and owing to the United States, the agency shall promptly refund any amount collected by means of administrative wage garnishment.

(2) Unless required by Federal law or contract, refunds under this section shall not bear interest.

(o) *Right of action.* The agency may sue any employer for any amount that the employer fails to withhold from wages owed and payable to an employee in accordance with paragraphs (g) and (i) of this section. However, a suit may not be filed before the termination of the collection action involving a particular debtor, unless earlier filing is necessary to avoid expiration of any applicable statute of limitations period. For purposes of this section, ''termination of the collection action'' occurs when the agency has terminated collection action in accordance with the FCCS or other applicable standards. In any event, termination of the collection action will have been deemed to occur if the agency has not received any payments to satisfy the debt from the particular debtor whose wages were subject to garnishment, in whole or in part, for a period of one (1) year.

Dated: April 30, 1998.

Richard L. Gregg,

Commissioner.

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federal register

Wednesday
May 6, 1998

Part III

The President

Proclamation 7089—Asian/Pacific American Heritage Month, 1998
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The President

Proclamation 7089 of April 30, 1998

Asian/Pacific American Heritage Month, 1998

By the President of the United States of America

A Proclamation

Like millions of others who left their homelands to come to America, the first Asian and Pacific Island immigrants who arrived here in the 19th century were seeking a better life than the one they left behind. Many were poor; many had suffered oppression; but all were strengthened by a rich culture, an ancient heritage, a belief in freedom's promise, and a willingness to work for their share of the American Dream.

For many, however, that dream was deferred. These courageous men and women from Asia and the Pacific Islands were met in America by prejudice as they strived to make a living and establish a home in their adopted country.

These brave new Americans would prevail over every hardship. Whether working in the gold fields of California, laboring on the sugar and pineapple plantations of Hawaii, constructing the transcontinental railway, or creating their own businesses, Asian and Pacific Americans succeeded in building new lives for themselves and their families.

Today, Asian and Pacific Americans are helping to build a vibrant America. They are leaders in medical and scientific research, in the halls of Congress, in the classrooms of our educational institutions, in business, labor, the arts, and every other human endeavor. They are building economic and technological bridges across the Pacific and beyond, which will ensure America's leadership well into the next millennium. These sons and daughters of Cambodia, China, Indonesia, India, Japan, Korea, Laos, the Philippines, Thailand, Vietnam, and so many other Asian and Pacific lands have enriched our national life and culture with their energy and talents, with their commitment to family and community, and with their enduring reverence for freedom.

As we approach the 21st century, Asian and Pacific Americans are playing an increasingly important role in the life of our Nation, helping us to maintain our leadership in the global economy. More important, they are inspiring us to embrace the wider world, to recognize and appreciate the blessing of our great diversity, and to become one America.

To honor the accomplishments of Asian and Pacific Americans and to recognize their many contributions to our Nation, the Congress, by Public Law 102–450, has designated the month of May as ''Asian/Pacific American Heritage Month.''

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim May 1998 as Asian/Pacific American Heritage Month. I call upon the people of the United States to observe this month with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of April, in the year of our Lord nineteen hundred and ninety-eight, and of the Independence of the United States of America the two hundred and twenty-second.

William J. Clinton

[FR Doc. 98–12216
Filed 5–5–98; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7090 of May 1, 1998

Law Day, U.S.A., 1998

By the President of the United States of America

A Proclamation

In 1787, when the founders of this great Nation set forth the guiding principles of our new democracy in the Preamble to the Constitution, among their primary goals was to ''establish Justice.'' These visionary American leaders revered the law, understanding that its proper practice would simultaneously free us and protect us, enabling us to steer a steady course between the opposing dangers of tyranny and anarchy. Today, our country, built upon the foundation of equal justice for all, is renowned throughout the world for legally enshrining fundamental human rights. Recognizing the importance of law to the life of our Nation, we set aside one day each year to reflect on our judicial system and to celebrate both the security and the freedom it guarantees.

Our laws ensure that the rights set forth in the Constitution and its Amendments are protected in our everyday lives: our right to worship as we choose, to speak freely, to vote in free elections, to be safe from arbitrary arrest. Justice for all is central to our democracy, and we must strive to ensure that all Americans have equal access to the judicial system. Unfortunately, each year many of our most vulnerable citizens are denied the legal assistance they need because they cannot afford it.

I am proud that our Federal Government is making an investment to address this problem through the work of the Legal Services Corporation (LSC). For almost 25 years, the LSC has funded local offices that give our citizens access to the legal help they need to secure child support, escape domestic violence, or fight unscrupulous lenders. Last year alone, 4 million poor Americans, the majority of whom were women and children, were helped by LSC offices.

Without laws, our democracy would wither; without access to our legal system, there can be no true justice. We must affirm and strengthen our national legal services system to ensure that all Americans have an equal opportunity to enjoy the rights and liberties guaranteed in our Constitution. As we observe Law Day, let us reaffirm our faith in the rule of law and strive to secure justice for all our people.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, in accordance with Public Law 87–20 of April 7, 1961, do hereby proclaim May 1, 1998, as Law Day. I urge the people of the United States to consider anew how our laws protect our freedoms and contribute to our national well-being. I call upon members of the legal profession, civic associations, educators, librarians, public officials, and the media to promote the observance of this day with appropriate programs and activities. I also call upon public officials to display the flag of the United States on all government buildings throughout the day.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of May, in the year of our Lord nineteen hundred and ninety-eight, and of the Independence of the United States of America the two hundred and twenty-second.

William J. Clinton

[FR Doc. 98–12217
Filed 5–5–98; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7091 of May 1, 1998

Loyalty Day, 1998

By the President of the United States of America

A Proclamation

More than two centuries ago, our Nation's founders, with clear vision and courageous hearts, fashioned a new form of government for our new country. They created a government that honors human dignity and protects individual rights—a democracy strong enough to withstand external threats, secure enough to allow dissent from within, and responsive enough to help our citizens achieve their dreams. In doing so, America's founders created a Nation that inspired loyalty from its citizens and gave hope to oppressed peoples around the world.

Since then, generations of Americans have reaffirmed their loyalty and devotion to our country. During times of war, Americans have fought and died to defend our liberty and promote the ideals of democracy. In times of peace, we have strived to preserve the rights secured for us in the Constitution and to ensure that every American enjoys the full protection of those rights. And throughout the decades, Americans have strived to build upon the ''more perfect Union'' envisioned by our country's founders.

On Loyalty Day, as we formally acknowledge our faith in America and in this great democracy, let us rededicate ourselves to the continuing quest for a more perfect union. Let us have the courage not only to recognize our differences, but also to build on the dreams we share and on the values we hold in common. Let us reaffirm our belief in freedom, equality, justice, and opportunity for all of our people. And let us show to all the world that our diversity is a source of lasting strength and renewal.

The Congress, by Public Law 85–529, has designated May 1 of each year as ''Loyalty Day'' to remind us of the many blessings we enjoy as citizens of this great land.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim May 1, 1998, as Loyalty Day. I urge all Americans to recognize the heritage of American freedom, to honor the memory of those who have served and sacrificed in defense of that freedom, and to express our loyalty to our Nation through appropriate patriotic programs, ceremonies, and activities. I also call upon Government officials to display the flag of the United States in support of this national observance.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of May, in the year of our Lord nineteen hundred and ninety-eight, and of the Independence of the United States of America the two hundred and twenty-second.

William J. Clinton

[FR Doc. 98–12218
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Billing code 3195–01–P

Presidential Documents

Proclamation 7092 of May 4, 1998

Older Americans Month, 1998

By the President of the United States of America

A Proclamation

In just over a decade from now, the first of America's 77 million baby boomers will celebrate their 65th birthdays. Fortunately, visionary programs like Social Security, Medicare, and the Older Americans Act will help to make life easier for them as they reach this milestone.

For more than 60 years, Social Security has provided our older citizens with a measure of economic security. For more than 30 years, Medicare has given them access to quality health care and the latest in medical advances. And older Americans in need of greater assistance have been able to look to programs under the Older Americans Act for the critical home and community-based care services that have enabled millions of elderly men and women to live independently. Together, these farsighted measures have played a major role in dramatically reducing the poverty rate and extending the longevity of older Americans, allowing our citizens to grow old with dignity and peace of mind.

This year's Older Americans Month celebration centers around the theme ''Living Longer; Growing Stronger in America.'' As we enter a new century and address the challenges of an aging America, we must commit ourselves to the health and welfare of our older Americans and to protecting and strengthening Medicare and Social Security. One of the most important achievements of the Balanced Budget Act that I signed last summer was its unprecedented reform of the Medicare program. This bipartisan effort extends the life of the Medicare Trust Fund for a decade, includes new health plan choices, and adds coverage of preventive benefits. The legislation also established the National Bipartisan Commission on the Future of Medicare to, among other things, review and analyze the financial condition of Medicare so that it remains as strong for our children as it has been for our parents.

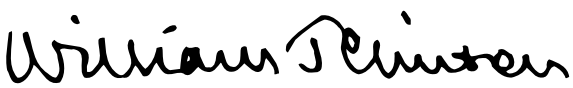
We must respond with equal resolve to the increasing strains on the Social Security system. Now that we have succeeded in dramatically reducing the Federal budget deficit, I have called on the Congress to reserve all of the anticipated budget surplus until we have a comprehensive plan to strengthen Social Security for the 21st century. We are holding a series of regional conferences throughout the year to engage in a national discussion on the future of Social Security, both to raise awareness of the problem and to allow all Americans to contribute their ideas for a solution. At the end of the year, I will host a bipartisan White House Conference on Social Security to summarize the lessons we learn from this dialogue and to map out an effective strategy that will enable us to ensure that Social Security will be there for future generations of Americans.

During Older Americans Month—and throughout the year—I encourage all Americans to pay tribute to our older citizens and to follow their example by planning for the future. As individuals, we should take care of our health through proper diet, exercise, and appropriate preventive care, and we should plan for our future financial security by participating in retirement and savings programs. As families and communities, we can help older Americans to remain active and independent members of our communities.

And as a Nation, we must recognize our obligation to those who will come after us by preserving and strengthening Medicare and Social Security for the 21st century and beyond.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim May 1998 as Older Americans Month. I call upon Government officials, businesses, communities, educators, volunteers, and all the people of the United States to acknowledge the contributions older Americans have made, and continue to make, to the life of our Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of May, in the year of our Lord nineteen hundred and ninety-eight, and of the Independence of the United States of America the two hundred and twenty-second.



[FR Doc. 98–12219
Filed 5–5–98; 8:45 am]
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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.

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