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Wednesday
August 26, 1998

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Rules and Regulations

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

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

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1655

Thrift Savings Plan Loans

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Final rule.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) is adopting as final an amendment to the Board's Thrift Savings Plan (TSP) loan regulations without change. The amendment affects participants who are alleged to have submitted false information in support of their request for a TSP loan.

DATES: This final rule is effective August 26, 1998.

FOR FURTHER INFORMATION CONTACT: Elizabeth S. Woodruff, Federal Retirement Thrift Investment Board, 1250 H Street, NW, Washington, DC 20005; (202) 942–1661.

SUPPLEMENTARY INFORMATION: The Board administers the Thrift Savings Plan (TSP), a defined contribution plan for Federal employees established by the Federal Employees' Retirement System Act of 1986, Pub. L. 99–335, 100 Stat 514, codified, as amended, largely at 5 U.S.C. 8401–8479.

On April 14, 1997, the Board published a final rule governing TSP loans in the **Federal Register** (62 FR 18019). On June 1, 1998, the Board published a proposed rule with request for comments in the **Federal Register** (63 FR 29674) which amended the final loan regulations by adding paragraph (f) to § 1655.18. The amendment provides that, if the Board receives a written allegation from the spouse stating that a participant misrepresented his/her marital status or the address of the spouse of a CSRS participant, or that the participant submitted a Loan Agreement/Promissory Note with a forged signature of the spouse of a FERS participant, the Board will give the participant an opportunity to repay the loan within a 60-day period. If the participant does not repay the loan in full within the 60 days provided, the Board will conduct an investigation into the allegation. Where the Board finds evidence to suggest that the participant submitted false information, it will refer the case to the Department of Justice for criminal prosecution and, where the participant is still employed, to the Inspector General or other appropriate authority in the participant's employing agency for administrative action.

Regulatory Flexibility Act

I certify that this amendment will not have a significant economic impact on a substantial number of small entities. It will only affect TSP participants.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, section 201, Pub.L. 104–4, 109 Stat. 48, 64, the effect of these regulations on State, local, and tribal governments and on the private sector has been assessed. This regulation will not compel the expenditure in any one year of $100 million or more by any State, local, and tribal governments in the aggregate, or by the private sector. Therefore, a statement under section 202, 109 Stat. 48, 64–65, is not required.

Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), the Board 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 United States prior to publication of this rule in today's **Federal Register**. This rule is not a major rule as defined at 5 U.S.C. 804(2).

List of Subjects in 5 CFR Part 1655

Credit, Government employees, Pensions, Retirement.

Federal Retirement Thrift Investment Board.

Roger W. Mehle,

Executive Director.

For the reasons set forth in the preamble, part 1655 of chapter VI of title 5 of the Code of Federal Regulations is amended as follows:

PART 1655—LOAN PROGRAMS

1. The authority citation for part 1655 continues to read as follows:

Authority: 5 U.S.C. 8433(g) and 8474.

2. Section 1655.18 is amended by adding paragraph (f) to read as follows:

§ 1655.18 Spousal rights.

* * * * *

(f)(1) By signing the Loan Application and the Loan Agreement/Promissory Note, the participant represents that all information provided to the TSP during the loan process is true and correct, including statements concerning the participant's marital status and spouse's address at the time the application is filed and documentation that the current spouse has consented to the loan.

(2) If the Board receives a written allegation from the spouse that the participant may have misrepresented his/her marital status or the spouse's address (in the case of a CSRS participant), or that the signature of the spouse of a FERS participant was forged, the Board will submit the questioned document to the spouse and request that he or she state in writing that the information is false or that the spouse's signature has been forged. In the event of an alleged forgery, the Board will also request the spouse to provide at least three signature samples.

(3) If the spouse affirms the allegation in accordance with the procedure set forth in paragraph (f)(2) of this section and the loan has been disbursed, the Board will give the participant an opportunity to repay, within 60 days, the unpaid loan principal, plus unpaid interest. If the loan is repaid, the Board will not investigate the spouse's allegation.

(4) Paragraph (f)(3) of this section will not apply where the participant has received a final divorce decree before the funds are received by the Thrift Savings Plan.

(5) If the unpaid loan principal, plus unpaid interest, is not repaid to the Plan

in full within the time period provided in paragraph (f)(3) of this section, the Board will conduct an investigation into the allegation. If the participant has received a final divorce decree before the funds are received by the Thrift Savings Plan, the Board will begin its investigation immediately.

(6) If, during its investigation, the Board finds evidence to suggest that the participant misrepresented his/her marital status or spouse's address (in the case of a CSRS participant), or submitted the Loan Agreement/Promissory Note with a forged signature, the Board will refer the case to the Department of Justice for criminal prosecution and, if the participant is still employed, to the Inspector General or other appropriate authority in the participant's employing agency for administrative action.

(7) Upon receipt of an allegation described in paragraph (f)(2) of this section, the participant's account will be frozen and no withdrawal or loan will be permitted until after:

(i) 30 days have elapsed since the participant's spouse was sent a copy of the questioned document and no written affirmation of the alleged false information or forgery (together with signature samples in the case of an alleged forgery) has been received by the Board;

(ii) The loan is repaid pursuant to paragraph (f)(3) of this section;

(iii) The Executive Director concludes that the Board's investigation did not yield persuasive evidence that supports the spouse's allegation;

(iv) The Executive Director has been assured in writing by the spouse that any future request for a loan or withdrawal comports with the applicable requirement of notice or consent; or

(v) The participant is divorced.

[FR Doc. 98–22806 Filed 8–25–98; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 97–056–16]

Mediterranean Fruit Fly; Removal of Quarantined Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Mediterranean fruit fly regulations by removing the quarantined area in Dade County, FL, from the list of quarantined areas. The quarantine was necessary to prevent the spread of Medfly to noninfested areas of the United States. We have determined that the Mediterranean fruit fly has been eradicated from this area and that restrictions on the intrastate and interstate movement of regulated articles from this area are no longer necessary. This action relieves unnecessary restrictions on the intrastate and interstate movement of regulated articles from this area.

DATES: Interim rule effective August 24, 1998. Consideration will be given only to comments received on or before October 26, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97–056–16, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 97–056–16. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–8247; or e-mail: mstefan@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), is one of the world's most destructive pests of numerous fruits and vegetables. The Mediterranean fruit fly (Medfly) can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. The short life cycle of this pest permits the rapid development of serious outbreaks.

The Mediterranean fruit fly regulations (contained in 7 CFR 301.78 through 301.78–10 and referred to below as the regulations) restrict the movement of regulated articles from quarantined areas to prevent the spread of Medfly to noninfested areas of the United States. Since an initial finding of Medfly infestation in a portion of Dade County, FL, in April 1998, the quarantined areas in Florida have included portions of Dade, Highlands, Lake, Manatee, and Marion Counties.

In an interim rule effective on April 17, 1998, and published in the **Federal Register** on April 23, 1998 (63 FR 20053–20054, Docket No. 98–046–1), we added a portion of Dade County, FL, to the list of quarantined areas and restricted the intrastate and interstate movement of regulated articles from the quarantined area. In a second interim rule effective on May 5, 1998, and published in the **Federal Register** on May 11, 1998 (63 FR 25748–25750, Docket No. 97–056–11), we expanded the quarantined area in Dade County, FL. In a third interim rule effective May 13, 1998, and published in the **Federal Register** on May 19, 1998 (63 FR 27439–27440, Docket No. 97–056–12), we added a portion of Lake and Marion Counties, FL, to the list of quarantined areas and restricted the intrastate and interstate movement of regulated articles from the quarantined area. In a fourth interim rule effective on June 5, 1998, and published in the **Federal Register** on June 11, 1998 (63 FR 31887–31888, Docket No. 97–056–13), we added a portion of Manatee County, FL, to the list of quarantined areas and restricted the intrastate and interstate movement of regulated articles from the quarantined area. In a fifth interim rule effective August 7, 1998, and published in the **Federal Register** on August 13, 1998 (63 FR 43287–43289, Docket No. 97–056–15), we added a portion of Highlands County, FL, to the list of quarantined areas and restricted the intrastate and interstate movement of regulated articles from the quarantined area.

We have determined, based on trapping surveys conducted by the Animal and Plant Health Inspection Service (APHIS) and Florida State and county agency inspectors, that the Medfly has been eradicated from the quarantined area in a portion of Dade County, FL. The last finding of Medfly thought to be associated with the infestation in that portion of Dade County, FL, was April 2, 1998. Since that time, no evidence of infestation has been found in this area. We are, therefore, removing that portion of Dade County, FL, from the list of areas in § 301.78–3(c) quarantined because of the Medfly. Portions of Highlands and Manatee Counties remain quarantined.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without

prior opportunity for public comment. The portion of Dade County, FL, affected by this document was quarantined to prevent the Medfly from spreading to noninfested areas of the United States. Because the Medfly has been eradicated from this area, and because the continued quarantined status of that portion of Dade County, FL, would impose unnecessary regulatory restrictions on the public, immediate action is warranted to relieve restrictions.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make this action effective August 24, 1998. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

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

This interim rule amends the Medfly regulations by removing a portion of Dade County, FL, from quarantine for Medfly. This action affects the intrastate and interstate movement of regulated articles from this area. We estimate that there are seven entities in the quarantined area of Dade County, FL, that sell, process, handle, or move regulated articles; this estimate includes one mobile vendor and six stores/markets. The number of these entities that meet the U.S. Small Business Administration's (SBA) definition of a small entity is unknown, since the information needed to make that determination (i.e., each entity's gross receipts or number of employees) is not currently available. However, it is reasonable to assume that most of the seven entities are small in size, since the overwhelming majority of businesses in Florida, as well as the rest of the United States, are small entities by SBA standards.

The effect of this action on small entities should be minimally positive, as they will no longer be required to treat articles to be moved intrastate and interstate for Medfly.

Therefore, termination of the quarantine of that portion of Dade County, FL, should have a minimal economic effect on the small entities operating in this area. We anticipate that the economic impact of lifting the quarantine, though positive, will be no more significant than was the minimal impact of its imposition.

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

Executive Order 12372

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

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

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

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

§ 301.78–3 [Amended]

2. In § 301.78–3, paragraph (c), the entry for Florida is amended by removing the entry for Dade County.

Done in Washington, DC, this 21st day of August 1998.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–22907 Filed 8–25–98; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 20, 32, 35, 36, and 39

RIN 3150—AF46

Minor Corrections, Clarifying Changes, and a Minor Policy Change; Delay of Effective Date

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; delay of effective date.

SUMMARY: This document delays the effective date of a final rule that appeared in the **Federal Register** on July 23, 1998 (63 FR 39477), that makes minor corrections and clarifying changes to 10 CFR Part 20 and conforms other regulations with the Commission's 1991 revised radiation protection requirements. In addition, the final rule includes a minor policy change that raises the monitoring criteria for minors from 0.05 rem (0.5 mSv) to 0.1 rem (1 mSv) in a year and for declared pregnant women from 0.05 rem (.5 mSv) to 0.1 rem (1 mSv) during their pregnancies.

DATES: This document is effective on August 21, 1998. The effective date of the rule published at 63 FR 39477 is delayed until October 26, 1998.

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6219.

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission (NRC) issued a final rule on July 23, 1998 (63 FR 39477) that presented minor corrections, clarifying changes, and a minor policy change to 10 CFR Parts 20, 32, 35, 36, and 39. The effective date noted in that rule was August 24, 1998. A request was made by industry to delay the effective date to allow sufficient time for modification of procedures to comply with the new requirements. In response to this request, NRC is delaying the effective date of the final rule to October 26, 1998.

Dated at Rockville, Maryland, this 20th day of August, 1998.

For the Nuclear Regulatory Commission.

L. Joseph Callan,

Executive Director for Operations.

[FR Doc. 98–22862 Filed 8–21–98; 11:32 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AWP–12]

Revocation of Class D and E Airspace; Crows Landing, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action will revoke the Class D and Class E airspace at Crows Landing Airport, Crows Landing, CA. In 1993 the U.S. Navy transferred operation of Crows Landing Naval Auxiliary Landing Field (NALF) to the National Aeronautics and Space Administration (NASA) and changed the airport name to NASA Crows Landing. In 1995 the Airport Traffic Control Tower (ATCT) was decommissioned, therefore the required criteria for Class D airspace is no longer met. The removal of the Class D airspace will also cause the removal of the Class E airspace extensions to the Class D airspace.

EFFECTIVE DATE: 0901 UTC December 3, 1998. *Comment date:* Comments for inclusion in the Rules Docket must be received on or before September 25, 1998.

ADDRESSES: Send comments on the direct final rule in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace Branch, AWP–520, Docket No. 98–AWP–12, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

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

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

FOR FURTHER INFORMATION CONTACT: Debra Trindle, Air Traffic Division, Airspace Specialist, AWP–520.10, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6613.

SUPPLEMENTARY INFORMATION: The intended effect of this action is to remove the Class D and Class E airspace areas below 1200 feet above ground level (AGL) associated with Crows Landing NALF and to change the name to NASA Crows Landing Airport in the legal description of the controlled airspace. The controlled airspace extending upward from 1200 feet AGL will remain unchanged. Class D airspace areas are published in Paragraph 5000 and Class E airspace areas are published in Paragraphs 6002, 6004 and 6005 of FAA Order 7400.9D dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document would be subsequently removed from this Order, with the exception of the Class E airspace designated upward from 1200 feet AGL.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. This action removes previously designated controlled airspace associated with Crows Landing NALF and changes the name to NASA Crows Landing Airport. The intended effect of this action is to remove controlled airspace where no longer required. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on 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 or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–AWP–12.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

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

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP CA E5 NASA Crows Landing, CA [Revised]

NASA Crows Landing, CA
(lat. 37°24′29″ N, long. 121°06′34″ W)

That airspace extending upward from 1,200 feet above the surface bounded on the north by lat. 37°08′00″ N, on the east by the west edge of V–109, on the southwest by the northeast edge of V–107 and on the west by long. 121°31′04″ W.

* * * * *

Paragraph 6004 Class E airspace areas designated as an extension to a Class D or Class E surface area.

* * * * *

AWP CA E4 Crows Landing NALF, CA [Removed]

* * * * *

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

AWP CA E2 Crows Landing NALF, CA [Removed]

* * * * *

Issued in Los Angeles, California, on August 18, 1998.

John G. Clancy,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 98–22749 Filed 8–25–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD01–98–127]

RIN 2115–AE46

Special Local Regulation: Fireworks Displays Within the First Coast Guard District

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: This document provides notice of the dates and times of the special local regulations contained in 33 CFR 100.114, Fireworks Displays within the First Coast Guard District. All vessels will be restricted from entering the area of navigable water within a 500-yard radius of the fireworks launch platform for each event listed in the table below. Implementation of these regulations is necessary to control vessel traffic within the regulated area to ensure the safety of spectators.

EFFECTIVE DATE: The regulations in 33 CFR 100.114 are effective from one hour before the scheduled start of the event until thirty minutes after the last firework is exploded for each event listed in the table below. The events are listed chronologically by month with their corresponding number listed in the special regulation, 33 CFR 100.114.

ADDRESSES: Comments should be mailed to Commander (osr), First Coast Guard District, Captain John Foster Williams Federal Building, 408 Atlantic Ave., Boston, MA 02110–3350, or may be hand delivered to Room 734 at the same address between 8 a.m. and 4 p.m., Monday through Friday, except federal holidays. Comments will become part of this docket and will be available for inspection or copying at the above address.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Algernon J. Keith, Office of Search and Rescue branch, First Coast Guard District at (617) 223–8460.

SUPPLEMENTARY INFORMATION: This notice implements the special local regulations in 33 CFR 100.114 (62 FR 30988; June 6, 1997). All vessels are prohibited from entering a 500-yard radius of navigable water surrounding the launch platform used in each fireworks display listed below.

Table 1—Fireworks Displays

August

5. Summer Music Fireworks

Date: August 23, 1998
Time: 8:30 p.m. to 9:30 p.m.
Location: Niantic River, Harness Park, Waterford, CT.
Lat: 41°17.35 N, Long; 072°21.20 W (NAD 1983)

10. Norwich Harbor Day Fireworks

Date: August 30, 1998
Time: 8:30 p.m. to 10 p.m.
Location: Norwich Harbor, off American Wharf Marina, Norwich CT.
Lat: 40°31.16 N, Long: 072°04.83 W (NAD 1983)

September

2. Taste of Italy

Date: September 12, 1998
Time: 8:30 p.m. to 10 p.m.
Location: Norwich Harbor, off Norwich Marina, Norwich, CT
Lat: 40°59.5 N, Long: 072°06.5 W (NAD 1983)

Dated: August 11, 1998.

Robert F. Duncan,

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

[FR Doc. 98–22921 Filed 8–25–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–98–124]

RIN 2115–AE47

Drawbridge Operation Regulations: Lake Champlain, VT

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: Notice is hearby given that the District Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operating regulations listed at 33 CFR 117.993, governing the operation of the US2 Bridge mile 91.8, between South Hero Island and North Hero Island, across Lake Champlain, in Vermont. The deviation period will be from August 17, 1998 to October 15, 1998. This deviation will allow the Vermont Agency of Transportation (VAT) to not open the bridge for vessel traffic after 5 p.m. Monday through Thursday nights, during the deviation period. The purpose of the early closure is to provide an uninterrupted maintenance period during daylight hours.

DATES: This deviation is effective from August 17, 1998 to October 15, 1998.

FOR FURTHER INFORMATION CONTACT:

Mr. John McDonald, Project Officer at (617) 223–8364.

SUPPLEMENTARY INFORMATION: The Vermont Agency of Transportation requested a temporary deviation from the operating regulations at 33 CFR 117.993 governing the US2 Bridge between South Hero Island and North Hero Island across Lake Champlain, in Vermont, to paint the draw spans of the bridge.

This deviation to the operating regulations will allow the US2 Bridge to not open for vessel traffic after 5 p.m., Monday through Thursday, from August 17, 1998 through October 15, 1998. The bridge will operate on the normal operating schedule Friday through Sunday each week and on Labor Day, Monday, September 7, 1998. Vessels that can pass under the bridge without an opening may do so at all times. This deviation from the normal operating regulations is authorized under 33 CFR 117.35.

Dated: August 12, 1998.

Robert F. Duncan,

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

[FR Doc. 98–22920 Filed 8–25–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGDO5–98–017]

RIN 2115–AE47

Drawbridge Operation Regulations; Anacostia River, Washington, DC

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; extension of effective date.

SUMMARY: The Coast Guard is amending the temporary rule currently governing the operation of the Frederick Douglass Memorial (South Capitol Street) bridge across Anacostia River at mile 1.2 in Washington, D.C. This temporary rule extends the authorization to keep this bridge closed to navigation until November 23, 1998. This action is necessary to complete on-going extensive mechanical and electrical rehabilitation and maintain the bridge's operational integrity.

DATES: This temporary final rule is effective from 11:01 p.m. August 31, 1998 to 11 p.m. on November 23, 1998.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at the office of the Commander (Aowb), Fifth Coast Guard District, Federal Building, 4th Floor, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The telephone number is (757) 398–6222.

FOR FURTHER INFORMATION CONTACT: Ann Deaton, Bridge Administrator, Fifth Coast Guard District, (757) 398–6222.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. The Coast Guard was notified of the extension request on July 17, 1998. Subsequently, publication of a notice of proposed rulemaking and delay of effective date would be contrary to the public interest because immediate action is necessary to address the bridge's present inability to open safely.

Discussion of Regulation

On April 20, 1998, the Coast Guard published a Temporary Final Rule entitled ''Drawbridge Operation Regulations; Anacostia River, Washington, DC'' in the **Federal Register** (63 FR 19406). That regulation is effective from April 2, 1998 to 11 p.m. on August 31, 1998. During that period, necessary repairs consisting of the mechanical and electrical rehabilitation were being implemented for the modification of the bridge's swing span. However, during removal and disassembly of the machinery, serious flaws and defects were found in various gears and components which require additional repair or replacement. These gears and components are no longer available as standard equipment and require special ordering. A report, prepared by the contractor, revealed that the swing span had sustained added deflection or bend. This added deflection is seriously hampering the operation of the swing span and negatively impacting the operation of the machinery. The evaluation of the deficiencies, implementation of corrective measures, and unavailability of raw materials have seriously disrupted the contractor's ability to meet the August 31, 1998 date of completing the repairs and returning to successful operation of the swing span to marine traffic. Therefore, the Coast Guard is extending the closure period until November 23, 1998 so the repairs can be completed.

The Coast Guard has notified the affected users of the waterway of this closure extension. The U.S. Navy indicated that it will not be affected by the extension. The Coast Guard also contacted EPA's Office of Water Programs and the local Coast Guard unit (USCG Station St. Inigoes) of the bridge's extended inability to open for vessels, and they did not object. Additionally, vessels docked at a nearby marina can clear the bridge's vertical clearance in the closed position, which is 42 feet at mean high water. Therefore, vessels are not expected to be negatively impacted by this temporary rule.

Regulatory Evaluation

This temporary final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Due to the small number of requests for openings, the notification of affected public vessels of the United States, and the ability of vessels at the nearby marina to clear the bridge's closed-position vertical clearance, the impact on routine navigation is expected to be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard must consider whether this temporary final rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under section 3 of the Small Business Act (15 U.S.C. 632).

As a result of notifying the affected users of the waterway of the extension, the limited requests for vessel openings and the ability of nearby vessels to clear the bridge's closed-position vertical clearance, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirement under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

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

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (32)(2) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation based on the fact that it is a promulgation of the operating regulations for a drawbridge. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 117 as follows:

PART 117—[AMENDED]

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); Section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Effective 11:01 p.m. August 31, 1998 through November 23, 1998, Section 117.253 is amended by suspending paragraph (a) and adding paragraph (c) to read as follows:

§ 117.253 Anacostia River.

* * * * *

(c) From 8 a.m. on March 11, 1998 until 11 p.m. on November 23, 1998, the draw of the Frederick Douglass Memorial (South Capitol Street) bridge need not be opened for the passage of vessels.

Dated: August 14, 1998.

Roger T. Ruff, Jr.,

Vice Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 98–22919 Filed 8–25–98; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD068–3027a; FRL–6144–5]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Control of Volatile Organic Compounds From Sources That Store and Handle Jet Fuel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Maryland. This revision establishes and requires volatile organic compound (VOC) emission control requirements for sources that store or handle jet fuel. The intended effect of this action is to approve revisions to COMAR 26.11.13 into the Maryland SIP in accordance with the Clean Air Act.

DATES: This final rule is effective October 26, 1998 unless within September 25, 1998, adverse or critical comments are received. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland 21224.

FOR FURTHER INFORMATION CONTACT: Kristeen Gaffney at (215) 814–2092, or by e-mail at gaffney.kristeen@epamail.epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the above EPA Region III address.

SUPPLEMENTARY INFORMATION: On March 31, 1998, the State of Maryland submitted a formal revision to its SIP, which consists of amendments to existing state regulation COMAR 26.11.13, the ''Control of Gasoline and Volatile Organic Compound Storage and Handling.'' The purpose of the amendments to COMAR 26.11.13 are to establish VOC emission control requirements on sources that store and handle jet fuel. This revision was submitted to satisfy the requirements of sections 182 and 184 of the Clean Air Act to implement reasonably available control technology (RACT) on major sources of VOCs.

Summary of the SIP Revision

The provisions COMAR 26. 11.13 are the control requirements of VOC emissions from gasoline and VOC storage tanks. COMAR 26. 11.13 was amended to also apply to any source which handles or stores jet fuel. Sources handling or storing jet fuel were not previously subject to regulation 26.11.13. Jet fuel, also known as JP–4, has similar volatility properties as gasoline, is a significant source of VOC emissions and is stored and used at several major sources in Maryland. The purpose of these amended revisions is to apply controls constituting RACT on sources that store and handle jet fuel.

Formerly COMAR 26.11.13 only applied to sources that stored VOCs or gasoline. Gasoline was defined in COMAR 26.11.13 under section .01, ''Definitions'', as ''* * * fuel used for internal combustion engines''. The amended language in the rule consists entirely of a change to the definition of gasoline under section .01. The definition for the term ''gasoline'' found at 26.11.13.01 (B)(4) has been revised to read: ''Gasoline means a petroleum distillate or alcohol, or their mixtures, having a true vapor pressure within the range of 1.5 to 11 pounds per square inch absolute (psia) (10.3 to 75.6 kilonewton/square meter) that is used as fuel for internal combustion engines or aircraft.'' This is the only provision that was changed in the rule in the March 31, 1998 SIP submittal.

COMAR 26.11.13 applies statewide. All provisions of Rule 26.11.13 related to emission control requirements, monitoring, compliance, record-keeping, test methods now apply to sources that store and handle jet fuel. A summary of these provisions follows:

Requirements for large closed top storage tanks: Tanks must be equipped with gas-tight gauges and sampling devices and either: an internal floating roof with a primary and secondary seal; a pressure tank system that maintains pressure at all times; or a vapor control system to collect and dispose vapors. Seals must be checked and maintained in good condition. Visual inspections of the internal floating roof and seals must

be performed annually. All findings must be recorded. The Maryland Department of the Environment (MDE) shall be notified of any internal tank inspections at least 15 days prior to the inspection.

Requirements for large open top storage tanks: Open top tanks are prohibited for gasoline or VOCs with vapor pressures that exceed 11 psia. Open top tanks with a capacity greater than or equal to 40,000 gallons must be equipped with an external floating roof with a primary and secondary seal and roof drains. Seals must be checked and maintained in good condition. Semiannual visual inspections of the primary and secondary seals must be performed. The total secondary seal gap must be determined annually. All findings must be recorded. The MDE shall be notified of any tank inspections at least 15 days prior to the inspection. Records of all inspections, repairs and the average monthly storage temperature and throughput must be maintained for two years.

Requirements for bulk gasoline terminals: The loading system must be equipped with a vapor control system to collect and control at least 90% of vapors from the loading rack. The vapor control system and the gasoline loading equipment must assure that the gasoline tank truck pressure does not exceed 18 inches of water and vacuum does not exceed 6 inches of water. The vapor control system must be tested every 5 years, between May and September for leak-tight conditions. MDE must be notified in advance of all tests and receive a copy of the test results.

Requirements for bulk gasoline plants with a daily throughput of greater than or equal to 4,000 gallons: The loading rack must be equipped with a vapor balance system and a top submerged or bottom loading system. The vapor control system and the gasoline loading equipment must assure that the gasoline tank truck pressure does not exceed 18 inches of water and vacuum does not exceed 6 inches of water. All tank truck loading and transfer should be equipped with a vapor balance line.

Requirements for small storage tanks: Small storage tanks are defined as those with a capacity greater than or equal to 2,000 gallons but less than or equal to 40,000 gallons built before May 8, 1991; or with a capacity greater than or equal to 250 gallons but less than or equal to 40,000 gallons built after May 8, 1991. Loading systems between tanks and tank trucks must be equipped with a vapor balance line.

Requirements for gasoline tank trucks: Tank trucks must be certified as capable of sustaining a pressure change of not more than 3 inches of water in five minutes when pressurized to a gauge pressure of 18 inches of water, or evacuated to a gauge pressure of six inches of water. Certification tests must be performed annually and any repairs must be completed and retested within 15 days of the original test. The certification test expiration date must be displayed on all gasoline tank trucks.

General standards: A person may not load any gasoline or VOC with a total vapor pressure of 1.5 psia or greater into any truck or railroad car unless the loading connections are equipped with leak-proof fittings that close automatically on disconnection. Equipment must be maintained and operated in a manner to prevent liquid leaks during loading or unloading.

EPA has determined that the control requirements of COMAR 26.11.13 constitutes an acceptable level of RACT on major sources that store and handle jet fuel, a known VOC. EPA is approving this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse or critical comments be filed. This rule will be effective October 26, 1998 without further notice unless by September 25, 1998, adverse or critical comments are received. If EPA receives such comments, then EPA will publish a timely withdrawal of the direct final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this rule. Only parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this rule will be effective on October 26, 1998 and no further action will be taken on the proposed rule.

Final Action

EPA is approving the revisions to COMAR 26.11.13 submitted by the State of Maryland on March 31, 1998 as a revision to the Maryland SIP.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Administrative Requirements

A. Executive Order 12866 and 13045

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review. The final rule is not subject to E.O. 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks,'' because it is not an ''economically significant'' action under E.O. 12866.

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 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 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).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action to approve revisions to COMAR 26.11.13 relating to RACT for sources that store and handle jet fuel into the Maryland SIP must be filed in the United States Court of Appeals for the appropriate circuit by October 26, 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, Hydrocarbons, Incorporation by reference, Ozone, Reporting and recordkeeping requirements.

Dated: August 5, 1998.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart V—Maryland

2. Section 52.1070 is amended by adding paragraph (c)(130) to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

(130) Revisions to the Maryland State Implementation Plan submitted on March 31, 1998 by the Maryland Department of the Environment.

(i) Incorporation by reference.

(A) Letter of March 31, 1998 from the Maryland Department of the Environment transmitting revisions to Maryland's air quality regulation COMAR 26.11.13, pertaining to the control of VOC emissions from sources that store and handle jet fuel adopted by the Secretary of the Environment on March 28, 1997 and effective August 11, 1997.

(B) Revisions to COMAR 26.11.13.01(B)(4) the definition of ''gasoline.''

(ii) Additional Material: Remainder of March 31, 1998 Maryland State submittal pertaining to COMAR 26.11.13 control of VOCs from sources that store and handle jet fuel.

[FR Doc. 98–22795 Filed 8–25–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. NJ28–1–162–3; FRL–6151–2]

Approval and Promulgation of Air Quality Implementation Plans; State of New Jersey; Disapproval of the 15 Percent Rate of Progress Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of final rule.

SUMMARY: EPA hereby gives notification that pursuant to its authority under Clean Air Act (the Act), section 110(k)(4), in a December 12, 1997 letter, EPA notified New Jersey that the conditional interim approval of the New Jersey 15 Percent Rate of Progress Plan had been converted to a disapproval. The letter triggered the 18-month time clock for the mandatory application of sanctions under section 179(a) of the Act and the 24-month time clock for the Federal Implementation Plan (FIP) under section 110(c)(1). This also serves to amend Title 40, part 52 to note the conversion of the conditional interim approval to a disapproval.

EFFECTIVE DATE: This action is effective as of December 12, 1997.

ADDRESSES: Copies of New Jersey's original submittals and EPA's Technical Support Document are available at the following addresses for inspection of them during normal business hours:

Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866;

New Jersey Department of Environmental Protection, Office of Air Quality Management, Bureau of Air Quality Planning, 401 East State Street, CN418, Trenton, New Jersey 08625.

FOR FURTHER INFORMATION CONTACT: Paul R. Truchan, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249.

SUPPLEMENTARY INFORMATION: On April 30, 1997 (62 FR 23410), EPA proposed a conditional interim approval of New Jersey's December 31, 1996 and February 25, 1997 SIP submittals pertaining to New Jersey's 15 Percent Rate of Progress (ROP) Plan as well as taking action on other Clean Air Act requirements. On June 30, 1997, an interim final rule was published in the **Federal Register** (62 FR 35100) which granted a conditional interim approval of New Jersey's 15 Percent ROP Plan.

EPA's conditional interim approval of the 15 Percent ROP Plan was based on, among other things, the State starting the enhanced inspection and maintenance program component of the 15 Percent ROP Plan in sufficient time to achieve the 15 percent reduction in volatile organic compounds (VOC) emissions that the State relied upon to fulfill the 15 percent requirement. EPA granted the conditional interim approval of the 15 Percent ROP Plan based on New Jersey achieving the emission reductions from the enhanced inspection and maintenance program. Based on New Jersey's schedule and due to New Jersey's delays in starting the enhanced inspection and maintenance program, New Jersey cannot achieve the required 15 percent emission reductions.

As a result, EPA notified New Jersey by a December 12, 1997 letter that the

conditional interim approval of the New Jersey 15 Percent ROP Plan had been converted to a full disapproval pursuant to section 110(k) of the Clean Air Act (the Act), 42 U.S.C. 7410(k). This action taken on December 12, 1997 started a mandatory sanctions clock for the 15 Percent ROP Plan. Unless this clock is stopped, starting 18 months from December 12, 1997, increased emissions from new or modified major sources of VOCs and nitric oxides must be offset at a rate of two tons of reduction for every one ton of increased emissions, pursuant to section 179(b)(2) of the Act, 42 U.S.C. 7509(b)(2). Starting six months thereafter, restrictions on New Jersey's receipt of federal highway funds will also begin, pursuant to section 179(b)(1), 42 U.S.C. 7509(b)(1).

In addition, two Federal Implementation Plan (FIP) clocks began as a result of EPA's December 12, 1997 notification. First, a statutory 24-month 15 Percent ROP Plan FIP clock began for the New Jersey portion of the New York-Northern New Jersey-Long Island ozone nonattainment area, pursuant to section 110(c) of the Act, 42 U.S.C. 7410(c). Second, pursuant to a consent decree entered on March 26, 1997 in *American Lung Association of Northern Virginia, et al.* v. *Carol M. Browner,* Civ. No. 1:96CV01388, in the United States District Court for the District of Columbia, an expedited 15 Percent ROP Plan FIP clock began for the New Jersey portion of the Philadelphia-Wilmington-Trenton ozone nonattainment area. This clock requires that EPA propose a 15 Percent ROP Plan FIP by January 15, 1999 and adopt it by August 15, 1999. In order to stop the sanctions and FIP clocks, New Jersey must submit a new 15 Percent ROP Plan SIP and EPA must take rulemaking approval action on the submittal.

EPA's approval of New Jersey's enhanced inspection and maintenance program remains in effect. However, the December 12, 1997 letter began a sanctions clock for New Jersey's failure to implement its enhanced inspection and maintenance program, in accordance with section 179(a)(4) of the Act. Unless New Jersey begins implementation of its enhanced inspection and maintenance program, starting 18 months from December 12, 1997, increased emissions from new or modified major sources of VOCs and nitric oxides must be offset at a rate of two tons of reduction for every one ton of increased emissions. Starting six months thereafter, restrictions of New Jersey's receipt of federal highway funds will also begin.

The enhanced inspection and maintenance SIP approval was a separate action and the delayed start date has different consequences for the 15 Percent ROP Plan SIP than for the enhanced inspection and maintenance SIP. Specifically, the New Jersey enhanced inspection and maintenance program remains an approved part of the applicable implementation plan for New Jersey; therefore, no FIP requirements are triggered. This is because the start date was significant only for purposes of taking credit for reductions under the National Highway System Designation Act. However, the 15 Percent ROP Plan SIP was converted to a disapproval because the 15 Percent ROP Plan SIP was not viable without the reductions from enhanced inspection and maintenance that the State had projected based upon the start date.

Effective Date Under the Administrative Procedures Act

EPA has issued this action as a rulemaking because EPA has treated this type of action as rulemaking in the past. However, EPA believes that it would have the authority to issue this action in an informal adjudication, and is considering which administrative process-rulemaking or informal adjudication-is appropriate for future actions of this kind. Because EPA has issued this action as a rulemaking, the Administrative Procedures Act (APA) applies.

Today's action was effective on December 12, 1997. Under the APA, 5 U.S.C. 553(d)(3), agency rulemaking may take effect sooner than 30 days after the date of publication in the **Federal Register** if the Agency finds and publishes good cause to mandate an earlier effective date. Today's action concerns SIP deadlines that have already passed; and EPA previously cautioned the affected state that the SIP submission was overdue and that EPA was considering the action it is taking today. In addition, today's action simply provides notice of a ''clock'' that was initiated on December 12, 1997, which will not result in sanctions against the state for 18 months after December 12, 1997, and that the state may ''turn off'' through the submission of a complete and approvable SIP submittal meeting EPA policy and guidance. These reasons support an effective date prior to 30 days after the date of publication.

EPA believes that the good cause exception to the notice and comment rulemaking requirement applies to this rulemaking action. (Administrative Procedure Act (APA) section 553(a)(B)). Section 553(a)(B) of the APA provides that the Agency need not provide notice and an opportunity for comment if the Agency, for good cause, determines that notice and comment are ''impracticable, unnecessary, or contrary to the public interest.'' In the present circumstance, notice and comment are unnecessary. The conversion of the conditional interim approval to a disapproval does not require any judgment on the part of the Agency. The issue is clear that the Agency must convert the conditional interim approval to a disapproval based upon the 15 Percent ROP Plan notice, the enhanced inspection and maintenance plan notice and the consent decree entered on March 26, 1997 in *American Lung Association of Northern Virginia, et al.* v. *Carol M. Browner,* Civ. No. 1:96CV01388. No substantive review is required to determine that the state did not start the program. There is no dispute about the fact that the state did not start the enhanced inspection and maintenance program. Because there is nothing on which to comment, notice and comment rulemaking are unnecessary. In addition, EPA is obligated by Court Order to take these actions and the Court Order has previously been subject to notice in the **Federal Register** pursuant to section 113(g) of the Act, 42 U.S.C. 7413(g).

Remodeling Condition

EPA's June 30, 1997 conditional interim approval contained a remodeling condition (see 40 CFR 52.1580(b)(1)). On July 30, 1998, New Jersey satisfied the condition by submitting this remodeling. Therefore, section 1580(b)(1) is removed from the CFR.

Administrative Requirements

Executive Order (E.O.) 12866 and 13045

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review entitled, ''Regulatory Planning and Review.'' The final rule is not subject to E.O. 13045, entitled ''Protection of Children From Environmental Health Risks and Safety Risks,'' because it is not an ''economically significant'' action under E.O. 12866.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 600 *et seq.* generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements 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. This final rule will not have a significant impact on a substantial number of small entities because EPA's disapproval of the state's 15 Percent Plan under section 110 and subchapter I, part D of the Clean Air Act does not affect any existing requirements applicable to small entities. Any pre-existing federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect state-enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements at this time. Any new Federal requirements will be subject to separate notice and comment rulemaking at which time any impact on small entities will be determined. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates and E.O. 12875

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 annual costs to State, local, or tribal governments in the aggregate; or to 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. E.O. 12875 states that no federal executive department or agency shall promulgate any regulation not required by statute that creates an unfunded mandate on any state, local or tribal government.

EPA has determined that this disapproval action does not include a federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This federal action disapproves the State's 15 Percent ROP Plan, but does not affect any specific state or local control measures nor imposes any new requirements. Any new Federal requirements will be subject to separate notice and comment rulemaking at which time any costs will be determined. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. For these reasons, E.O. 12875 also does not apply.

Congressional Review Act—Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as amended 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. However, section 808 provides that any rule for which the issuing agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule) that notice and public procedure thereon are impracticable, unnecessary or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of December 12, 1997. 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).

Paperwork Reduction Act

This rule does not contain any information collection requirements which require OMB approval under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Pub. L. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

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 October 26, 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, Ozone.

Dated: August 14, 1998.

William J. Muszynski,

Deputy Regional Administrator, Region 2.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart FF—New Jersey

2. Section 52.1580 is amended by revising paragraph (b) as follows:

§ 52.1580 Conditional approval.

* * * * *

(b) 9 Percent Ozone Plan. New Jersey's December 31, 1996 and February 25, 1997 submittals for the 9 Percent Reasonable Further Progress Plan (9 Percent Plan) for the Northern New Jersey (New York, Northern New Jersey, Long Island Area) nonattainment area and the Trenton (Philadelphia, Wilmington, Trenton Area) nonattainment area, is conditionally approved for an interim period as referenced in paragraph (a) of this section. The condition for approvability is as follows: New Jersey must demonstrate by December 14, 1998 that the 9 percent emission reduction is still achievable in the Northern New Jersey and Trenton nonattainment areas as required by sections 182(b)(1) and 182(c)(2)(B) of the Clean Air Act and in accordance with EPA's policies and guidance.

3. New § 52.1581 is added to read as follows:

§ 52.1581 Part D approval status.

The conditional interim approval of the New Jersey 15 Percent ROP Plan (62 FR 35100) submitted on December 31, 1996 and February 25, 1997 by the New

Jersey Department of Environmental Protection was converted to a disapproval by a December 12, 1997 letter from EPA to New Jersey.

4. Section 52.1582 is amended by adding new paragraph (e) as follows:

§ 52.1582 Control strategy and regulations: Ozone (volatile organic substances) and carbon monoxide.

* * * * *

(e) The State of New Jersey's March 27, 1996 submittal for an enhanced motor vehicle inspection and maintenance (I/M) program, as amended on November 27, 1996 and April 1997, is approved pursuant to section 110 of the Clean Air Act, 42 U.S.C. 7410. However, since New Jersey failed to start its program by November 15, 1997, the interim approval granted under the provisions of Section 348 of the National Highway Systems Designation Act of 1995 (NHSDA), 23 U.S.C. 348, which allowed the State to take full credit in its 15 Percent ROP Plan for all the emission reduction credits in its proposal, converted to a disapproval when EPA sent finding letters to the State on December 12, 1997. The finding letters also informed the state that the underlying enhanced I/M program approval, pursuant to Section 110 of the Act, remained in effect as part of the federally enforceable SIP.

[FR Doc. 98–22791 Filed 8–25–98; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. NJ30–184; FRL–6151–4]

Approval and Promulgation of Implementation Plans; New Jersey; Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of New Jersey changing the inspection frequency of the current inspection and maintenance (I/M) program from annual to biennial and adding a gas cap inspection.

DATES: This approval becomes effective on September 25, 1998.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations: Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866 and New Jersey Department of Environmental Protection, East State Street, Trenton, New Jersey 08625.

FOR FURTHER INFORMATION CONTACT: Richard Graciano, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249. GRACIANO.RICHARD @EPAMAIL.EPA.GOV.

SUPPLEMENTARY INFORMATION:

I. Background

On February 26, 1998 New Jersey submitted a proposed revision to its State Implementation Plan (SIP) changing the inspection frequency, from annual to biennial, of its existing basic automobile inspection and maintenance (I/M) program during the transition period to a biennial enhanced I/M program. On June 5, 1998, the State submitted the final SIP revision providing analysis that quantifies the emission reduction loss as a result of switching to biennial testing, as well as the net benefit resulting from the addition of the gas cap test. Switching to biennial testing during the transition period will allow the State to accommodate decreased availability at the test-only stations while they are being retrofitted to conduct the new enhanced test.

New Jersey has had a basic I/M program in place since 1974. This program, in its current form, was subject to its most recent amendment on January 21, 1985, which was approved by EPA and incorporated into the SIP on September 17, 1992 (57 FR 42893). EPA conditionally approved New Jersey's enhanced I/M program on May 14, 1997 (62 FR 26405). On January 30, 1998, the State submitted performance standard modeling to EPA, fulfilling the remaining condition required by EPA in its approval notice.

Under provisions of sections 182, 184, and 187 of the Clean Air Act (Act), New Jersey is required to implement an enhanced I/M program throughout the entire State. In its July 10, 1995 and March 27, 1996 SIP submittals, the State indicated that the enhanced I/M program would require biennial inspections, and suggested that early implementation of biennial testing may be necessary to facilitate system upgrades.

Pursuant to section 193 of the Act, such a change could not be approved if it results in increased emissions of volatile organic compounds (VOCs) and/or carbon monoxide (CO), which could be the case if biennial testing is implemented under the current I/M program without other offsets. In order to offset the increased VOC emissions that could occur by going biennial, New Jersey is adding a test that checks the functional operation of vehicle gas caps. The gas cap checks will be implemented during the transition period from the existing program to the enhanced program rather than at the start of the enhanced program. New Jersey expects that this strategy will offset the increase in VOCs resulting from the conversion to biennial testing and has submitted modeling results that support this. New Jersey estimates that the resulting VOC emissions increase from changing the program frequency to biennial will be about 0.026 grams per mile. The VOC emissions reduction associated with the functional gas cap test are estimated to be about 0.033 grams per mile, resulting in a net benefit of 0.007 grams per mile.

New Jersey also estimates that CO emissions will increase about 0.365 grams per mile as a result of the change in inspection frequency. EPA acknowledges that the most efficient means to achieve significant carbon monoxide reduction and ultimate attainment is through the speedy implementation of the State's enhanced I/M program. Specifically, EPA expects that the State's enhanced I/M implementation will result in excess carbon monoxide benefits beyond the required performance standard. These are approximately 0.526 grams per mile.

These air quality benefits cannot be achieved without accommodating the practical obstacles associated with retrofitting test-only stations, which include transitional biennial testing.

Since the State was proceeding with a construction and operation contract process for its approved enhanced program (and recently awarded this contract), at New Jersey's request, EPA agreed to proceed with an expedited decision process for this revision to the existing program. As a result, approval of this revision was proposed on May 13, 1998, under a procedure called parallel processing, whereby EPA can propose rulemaking action concurrently with the State's procedures for amending its regulations (63 FR 26562). If the State's proposed revision had substantially changed, EPA would have been obligated to evaluate those changes and publish another notice of proposed rulemaking. This final rulemaking action by EPA is taking place because New Jersey's SIP revision has been adopted, as proposed, by the State and submitted formally to EPA for incorporation into the SIP.

II. Public Comments/Response to Comments

This section discusses the content of the comments submitted to the docket during the federal comment period for the notice of proposed rulemaking, published in the May 13, 1998 **Federal Register**, and provides EPA's responses to those comments. Comments were received from the State of New York only. Copies of the original comment letter is available at EPA's Region II office at the address listed in the **ADDRESSES** section of this document.

Comment—Noncomplying Schedule

The New York State Department of Environmental Conservation (NYSDEC) commented that the New Jersey proposal does not comply with EPA's interim Final Rule because the enhanced I/M program did not start on November 15, 1997 or by February 1, 1998, and as a result New Jersey will not comply with the 18-month NHSDA short term evaluation clock that expires on December 14, 1998. NYSDEC also commented that EPA has not converted the proposed approval to a disapproval, and that New Jersey cannot be allowed to claim any emission reduction credits toward the 15 Percent or Rate of Progress Plans if the program begins on January 1, 2000.

Response to Comment: EPA maintains that today's action is wholly consistent with EPA's interim Final Rule. While EPA agrees that New Jersey cannot be allowed to claim any emission reduction credits toward the 15 Percent Plans if the program begins on January 1, 2000, it does not agree that this emission credit shortfall warrants a disapproval of the underlying enhanced I/M program.

By letter dated December 12, 1997, EPA informed New Jersey of its decisions to disapprove the State's 15 Percent Plan pursuant to section 110(k) of the Act, which triggered its own sanctions and the FIP clock, and to begin sanctions for New Jersey's failure to implement its enhanced I/M program, in accordance with section 179(a)(4) of the Act. The enhanced I/M SIP approval was a separate action and the delayed start date has different consequences for the 15 Percent Plan than for the enhanced I/M SIP.

Specifically, the New Jersey enhanced I/M program remains an approved part of the applicable implementation plan for New Jersey because it meets all of the federal regulatory requirements. The start date was significant for purposes of taking credit for reductions under the NHSDA. Furthermore, unless New Jersey begins implementation of its enhanced I/M program, starting 18 months from December 12, 1997, increased emissions from new or modified sources of VOCs and nitrogen oxides must be offset at a rate of two tons of reduction for every one ton of increased emissions. Starting six months thereafter, restrictions of New Jersey's receipt of federal highway funds will also begin. NYSDEC should also note that the 15 Percent Plan was converted to a disapproval because the 15 Percent Plan was not viable without the reductions from the enhanced I/M program that New Jersey had projected based upon the February 1998 start date. At present, New Jersey must submit a revised 15 Percent Plan which does not rely upon its enhanced I/M program to achieve the necessary emission reductions.

Comment—Inadequate Mobile Modeling

NYSDEC made several comments on New Jersey's modeling analysis suggesting it was inadequate because the State claims credits from use of final cutpoints at the start of the enhanced program. In addition, NYSDEC commented that New Jersey's assumption of inspections at change of ownership is not justified, that New Jersey's did not adequately support the claim of 100 percent credit for the technician training and certification program, and that the State failed to use locally specific inputs.

Response to Comment: This rulemaking action is limited to New Jersey's request to change the testing frequency of the existing basic program. NYSDEC's comments refer to New Jersey's performance standard modeling analysis for the enhanced I/M program and are therefore beyond the scope of this document. However, EPA will take these comments into consideration when evaluating New Jersey's final program submittal to take place once the enhanced program has begun.

III. Conclusion

New Jersey's June 5, 1998 submittal of the SIP revision request contained no changes from the proposed revision submitted on February 26, 1998, and there were no comments that would impact on this decision. As a result, EPA is moving forward with this approval. Had the State's submittal contained substantial changes, EPA would have evaluated them to determine their effect on the overall submittal and published another notice of proposed rulemaking.

With respect to this approval, EPA reiterates the requirement that testing frequency conversion under the terms of the SIP only applies after the State awards the necessary construction contracts for its enhanced I/M program.

IV. Administrative Requirements

A. Executive Order 12866 and 13045

The Office of Management and Budget (OMB) has exempted this regulatory action from review under Executive Order (E.O.) 12866 entitled, Regulatory Planning and Review. The proposed rule is not subject to E.O. 13045 entitled, Protection of Children from Environmental Health Risks and Safety Risks, because it is not an ''economically significant'' action under E.O. 12866.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements 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. This final rule will not have a significant impact on a substantial number of small entities because 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 create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of 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 annual costs to State, local, or tribal governments in the aggregate; or to 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 annual 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 October 26, 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, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Ozone, Volatile organic compounds.

Dated: August 14, 1998.

William J. Muszynski,

Acting Regional Administrator, Region 2.

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

Subpart FF—New Jersey

2. Section 52.1582 is amended by adding new paragraph (f) to read as follows:

52.1582 Control strategy and regulations: Ozone (volatile organic substances) and carbon monoxide.

* * * * *

(f) The State of New Jersey's June 5, 1998 submittal for the conversion of the inspection frequency of the current inspection and maintenance (I/M) program from annual to biennial in order to facilitate the upgrade of the existing state lanes to accommodate the testing equipment for the enhanced program has been approved by EPA. The State will be adding a gas cap inspection to the current I/M program, which will result in a net increase in overall emissions reductions.

[FR Doc. 98–22792 Filed 8–25–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300695; FRL 6021–5]

RIN 2070–AB78

Triclopyr; 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 triclopyr and its metabolites in or on fish and shellfish at 0.2 part per million (ppm) and 5.0 ppm, respectively, for an additional one and one-half-year period, to June 30, 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 on aquatic sites. 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 of 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 August 26, 1998. Objections and requests for hearings must be received by EPA, on or before October 26, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, OPP–300695, 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–300695, must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Follow the instructions in Unit II. of this preamble. No Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: By mail: Libby Pemberton, 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. 272, CM#2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–9364; e-mail: pemberton.libby@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of September 5, 1997 (62 FR 46888) [(FRL 5738–8)], 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 triclopyr and its metabolites in or on fish and shellfish at 0.2 and 5.0 ppm, respectively, with

an expiration date of December 31, 1998. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement of 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 triclopyr on aquatic sites for this year growing season due to continued infestation of the state's wetlands by Purple loosestrife *Lythrum salicaria*. After having reviewed the submission, EPA concurs that emergency conditions exist for this state. EPA has authorized under FIFRA section 18 the use of triclopyr on aquatic sites for control of Purple loosestrife in waterways.

EPA assessed the potential risks presented by residues of triclopyr in or on fish and shellfish. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of September 5, 1997 (62 FR 46888). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is extended for an additional one and one-half-year period. Although this tolerance will expire and is revoked on June 30, 2000, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on fish and shellfish after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

I. Objections and Hearing Requests

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

Any person may, by October 26, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

II. Public Record and Electronic Submissions

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

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

Electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number OPP–300695]. No CBI should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

III. Regulatory Assessment Requirements

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

Since this extension of an existing time-limited tolerance does not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et*

seq.) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

IV. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this 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: August 11, 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.

§180.417 [Amended]

2. In §180.417, by amending paragraph (b) by changing the dates for the commodities ''Fish'' and ''Shellfish'' from ''12/31/98'' to read ''6/30/00''.

[FR Doc. 98–22530 Filed 8–25–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300669; FRL–5795–2]

RIN 2070–AB78

Deltamethrin; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of deltamethrin in or on food and feed items as a result of use in food and feed handling establishments at 0.05 parts per million (ppm). AgrEvo Environmental Health requested this tolerance under the Federal Food, Drug and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (Pub. L. 104–170). This tolerance was requested under petition number PP 7F4820 (formerly 4H5710).

DATES: This regulation is effective August 26, 1998. Objections and requests for hearings must be received by EPA on or before October 26, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300669], 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–300669], 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–300669]. 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: George LaRocca, 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) 305–6100, e-mail: larocca.george @epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of April 30, 1997 (62 FR 23455)(FRL–5600–8), which announced that AgrEvo Environmental Health, 95 Chestnut Ridge Road, P.O. Box 30, Montvale, NJ 07645 had submitted pursuant to section 408 of the FFDCA 21 U.S.C. 346a(d)8, a petition, PP 7F4820, that proposed amending 40 CFR part 180 by establishing a tolerance to permit residues of the insecticide deltamethrin [(1*R*, 3*R*)-3-(2,2,-dibromovinyl)-2,2-dimethylcyclopropanecarboxylic acid (*S*)-alpha-cyano-3-phenoxybenzyl ester] in or on food and feed items as a result of use in food and feed handling establishments at 0.05 ppm. This petition was initially announced in the **Federal Register** of February 8, 1995 [60 FR 7539](FRL–4926–4). A proposed rule proposing a tolerance of 0.02 ppm was published for comment in the **Federal Register** dated November 30, 1995 [60 FR 61504](FRL–4983–5). On February 14, 1996, the German Ministry of Health commented that the proposed tolerance level of 0.02 ppm is not justified because in the European Community the tolerance for deltamethrin on food and feed items is 0.05 ppm. They indicated that the import of products to the United States from the European Community could have deltamethrin residues greater than 0.02 ppm and as a result may be rejected.

AgrEvo Environmental Health initially objected to any increase of the tolerance based on concerns that establishing the tolerance level at 0.05 ppm could result in an unnecessary increase in the percent of the Reference Dose (RfD) used by this use pattern and could create difficulties in obtaining future use/tolerances for deltamethrin due to dietary risk.

In response, EPA assessed the incremental effect of this tolerance

increase (0.02 to 0.05 ppm) on dietary exposure and concluded that there would be no significant change on the percentage of the RfD utilized for the food/feed handling establishment use when the Agency uses anticipated residues rather than tolerance levels in its dietary exposure analysis. The 0.02 ppm tolerance was based on the limit of quantitation (LOQ) of the enforcement method since the residue field study showed that residues found in food and feed items were below 0.02 ppm when the food/feed was uncovered (label directions require food/feed to be covered during application) and thus quantifiable residues of deltamethrin in food/feed were not expected. When using anticipated residues for these food/feed handling establishment uses, EPA uses a value of one-half the LOQ, i.e., 0.001 ppm in its dietary exposure assessment regardless of whether the tolerance is set at 0.02 or 0.05 ppm. Thus increasing the tolerance to 0.05 ppm will not affect the dietary risk of future crop uses of deltamethrin and is in keeping with the Agency's initiative to align U.S. tolerances with Codex tolerances when feasible.

In a letter dated March 26, 1996, AgrEvo Environmental Health requested that the proposed food/feed additive tolerances be increased from 0.02 ppm to 0.05 ppm.

On November 26, 1997, EPA published in the **Federal Register** (62 FR 62993)(FRL–5756–2), a final rule establishing tolerances for residues of deltamethrin and tralomethrin on various crops. Both chemicals were combined for risk assessment analysis under FQPA because tralomethrin is rapidly metabolized by animals to deltamethrin as a result of debromination. Results of the rat metabolism study supports this combined analysis. The same FQPA analysis was used for setting this tolerance in or on food and feed items since the exposure information from this use pattern was included in the original analysis.

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

Percent of crop treated estimates are derived from Federal and private market survey data. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of percent of crop treated, the Agency is reasonably certain that exposure is not understated for any significant subpopulation group. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups, to pesticide residues. For this pesticide, the most highly exposed population subgroup (non-nursing infants <1 year 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 deltamethrin and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for residues of deltamethrin in or on food and feed items as a result of use in food and feed handling establishments at 0.05 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data for both deltamethrin and tralomethrin 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 deltamethrin and tralomethrin are discussed below.

1. *Deltamethrin*— i. A battery of acute toxicity studies places technical deltamethrin in Toxicity Category III for acute dermal (LD_{50} > 2,000 milligrams/kilogram (mg/kg)), acute inhalation (LC_{50} = 2.2 mg/l), and primary eye irritation; Category IV for acute oral (LD_{50} > 5,000 mg/kg) and primary dermal irritation. Deltamethrin is a non-sensitizer. The NOEL for acute delayed neurotoxicity is greater than 5,000 mg/kg.

ii. In a subchronic oral toxicity study, deltamethrin was administered to 20 Sprague-Dawley rats/sex/dose in polyethylene glycol 200 by gavage at dose levels of 0, 0.1, 1.0, 2.5, or 10.0 mg/kg/day for 13 weeks. The lowest observed effect level (LOEL) for males is 2.5 mg/kg/day, based on depressed body weights and body weight gains. The LOEL for females is 10 mg/kg/day, based on some hypersensitivity observed during neurotoxicity testing. The NOEL for males and females is 1.0 and 2.5 mg/kg/day, respectively. This subchronic oral toxicity study in rats is classified as core minimum.

iii. In a subchronic oral toxicity study, deltamethrin was administered to 3–5 beagle dogs/sex/dose in polyethylene glycol in gelatine capsules at dose levels of 0, 0.1, 1.0, 2.5 or 10.0 mg/kg/day for 13 weeks. The LOEL is 2.5 mg/kg/day, based on gastro-intestinal disturbance and stimulation of the nervous system as noted in the clinical signs of toxicity for both sexes. The NOEL is 1.0 mg/kg/day. This subchronic oral toxicity study in dogs is classified as core minimum. A NOEL of 1.0 mg/kg/day is supported. At higher levels, stimulation of the nervous system is noted (the LOEL is set at 2.5 mg/kg/day, but effects were more definite at 10 mg/kg/day).

iv. In a 21–day subchronic dermal toxicity study, five Sprague-Dawley rats/sex/dose were dermally exposed to 6 ml/kg of deltamethrin for 6 hours/day at dose levels of 0, 100, 300, or 1,000 mg/kg/day (limit test). The LOEL for males is 300 mg/kg/day, based on slightly decreased body weight gain supported by marginally decreased food consumption. The NOEL for males is 100 mg/kg/day. The LOEL for females was not observed. The NOEL for females is > 1,000 mg/kg/day (limit dose).

v. In a 3-week inhalation toxicity study, deltamethrin was administered to 8 CD rats/sex/dose at concentrations of 0.003, 0.0096, or 0.0563 mg/l for 6 hours/day for 5 days/week (14 exposures total). The LOEL is 0.0096 mg/l, based on signs of irritation (nerve stimulation) and reduced body weight gains in males and elevated Na+ levels

in both males and females. The NOEL is 0.003 mg/l.

vi. In a chronic toxicity study, deltamethrin was administered to 8 beagle dogs/sex/dose in the diet at dose levels of 0, 0.026, 0.261, or 1.134 mg/kg/day for males and 0, 0.024, 0.271, or 1.061 mg/kg/day for females for 24 months. The NOEL is ≤ 40 ppm (equivalent to 1.134 mg/kg/day for males and 1.061 mg/kg/day for females). A LOEL was not observed. Sufficient data to support a NOEL of > 40 ppm have been generated.

vii. In a chronic toxicity study, deltamethrin was administered to 80 Charles River CD-1 mice/sex/dose in the diet at dose levels of 0, 0.12, 0.61, 3.1, or 12 mg/kg/day for males and 0, 0.15, 0.76, 3.8, or 15 mg/kg/day for females. The NOEL is ≧ 12 mg/kg/day for males or ≧ 15 mg/kg/day for females. A LOEL was not observed.

viii. In a chronic toxicity study, deltamethrin was administered to 90 Charles River CD rats/sex/dose in the diet at dose levels of 0, 0.1, 1.0, or 2.5 mg/kg/day. The LOEL is 2.5 mg/kg/day based on decreased body weight gains noted in both sexes. The NOEL is 1.0 mg/kg/day. Under the conditions of this study, there was no evidence of carcinogenic potential.

ix. In a developmental toxicity study, deltamethrin was administered to 16 New Zealand White rabbits/dose in 0.5% carboxymethyl cellulose by gavage at dose levels of 0, 10, 25, or 100 mg/kg/day from days 7 through 19 of gestation. The maternal LOEL is 25 mg/kg/day, based on treatment-related clinical findings (decreased defecation). The maternal NOEL is 10 mg/kg/day. The developmental LOEL is 100 mg/kg/day, based on treatment-related increases in the fetal incidence of several skeletal variations and a positive trend for litter incidence of two of these variations (unossified pubic and tail bones). The developmental NOEL is 25 mg/kg/day. The developmental toxicity study in the rabbit is classified core minimum.

x. In a developmental toxicity study, deltamethrin was administered to 25 Charles River Crl:CD VAF/Plus rats/dose in corn oil by gavage at dose levels of 0, 1.0, 3.3, or 11 mg/kg/day from days 6 through 15 of gestation. Because of excessive toxicity at 11 mg/kg/day, an additional group of 25 rats dosed at 7 mg/kg/day was added. The maternal LOEL is 7 mg/kg/day, based on treatment-related increases in mortality, clinical findings (increased salivation), and decreased body weight gains during dosing. The maternal NOEL is 3.3 mg/kg/day. There were no treatment-related effects on fetal deaths or resorptions, altered growth, or developmental malformations or variations (external, visceral, and skeletal) noted at any dose level. The developmental NOEL is ≧ 11 mg/kg/day. A developmental LOEL was not observed.

xi. In three different developmental toxicity studies, deltamethrin was administered to mice, rats, and rabbits. Mice: Mice were dosed at 0, 0.1, 1.0, or 10 mg/kg/day on gestational days 6–17 and were sacrificed on day 18. The maternal NOEL is ≧ 10 mg/kg/day. There was no maternal LOEL observed. The developmental LOEL is 1.0 mg/kg/day based on increased incidence (fetal and/or litter) of delayed ossification of the sternebrae and paws together with decreased fetal body weights. The developmental NOEL is 0.1 mg/kg/day. Rats: Rats were dosed at 0, 0.1, 1.0, or 10 mg/kg/day on days 6–18 of gestation and were sacrificed on day 21. The maternal LOEL is 10 mg/kg/day based on slightly reduced body weights. The maternal NOEL is 1.0 mg/kg/day. The developmental LOEL is equivocally set at 10 mg/kg/day, based only on a statistically significant increased incidence (fetal and/or litter) or delayed ossification of the sternebrae. The developmental NOEL is 1.0 mg/kg/day. Rabbits: Rabbits were dosed at 0, 1, 4, or 16 mg/kg/day on days 6–19 of gestation and were sacrificed on day 28; two separate groups of rabbits received 16 mg/kg/day. The maternal NOEL is ≧ 16 mg/kg/day. There was no maternal LOEL observed. The developmental LOEL is 16 mg/kg/day based on increased fetal losses and decreased fetal weights. The developmental NOEL is 4 mg/kg/day.

In mice, although the developmental effects appear to occur in the absence of maternal toxicity (indicating possible increased susceptibility), low confidence was assigned to these study results due to: The age of the study (conducted in 1976); the lack of adequate description of the experimental methods used; and the lack of adequate criteria (e.g., fetal/litter incidences were not adequately differentiated).

xii. In a three-generation reproduction study, deltamethrin was administered to 10 male and 20 female Charles River CD rats/dose in the diet at doses of 0, 0.1, 1.0, or 2.5 mg/kg/day. Parental toxicity was not demonstrated at any dose level. The NOEL for systemic toxicity is ≧ 2.5 mg/kg/day. The LOEL for systemic toxicity was not observed. Reproductive toxicity was not demonstrated at any dose level. The NOEL for reproductive toxicity is ≧ 2.5 mg/kg/day. The reproductive LOEL was not observed.

xiii. There is no mutagenicity concern. There are three acceptable studies: One reverse mutation assay; one *in vitro* chromosome aberration study; one UDS assay in primary rat hepatocytes. All these studies were negative. A dominant lethal study is also available but has not been officially reviewed. A quick assessment indicated that it is also negative.

xiv. Studies on metabolism. Deltamethrin ^{14}C-labeled at either the benzyl (BD) or the dimethyl (DMD) portion of the molecule was relatively well absorbed. Urine and fecal excretions were almost complete at 48 hours post-dosing. Seven days after dosing, 31–56% of the radioactivity administered was recovered in the urine, 36–59% recovered in the feces, < 0.2% recovered in tissues (fat was highest) and < 1.2% recovered in carcass. Fecal extracts contained mostly unabsorbed, unchanged deltamethrin (17–46% of BD dose and 21–35% of DMD dose).

xv. Studies on neurotoxicity. With the exception of the acute delayed neurotoxicity study, no neurotoxicity studies are available.

xvi. The following studies are considered data gaps in the toxicology data base: Acute and subchronic neurotoxicity. These studies will be required under a special Data Call-In letter pursuant to section 3(c)(2)(B) of FIFRA. Although these data are lacking, EPA has sufficient toxicity data to support these tolerances and these additional studies are not expected to significantly change its risk assessment.

2. *Tralomethrin*— i. A battery of acute toxicity studies places technical tralomethrin in Toxicity Category II for acute oral LD_{50}, acute inhalation LC_{50}, primary eye irritation; Category III for acute dermal LD_{50}; Category IV for primary dermal irritation. Tralomethrin is not a sensitizer. The NOEL for acute delayed neurotoxicity is greater than 6,000 mg/kg.

ii. In a rat oral toxicity study, tralomethrin was administered to 20 CD rats/sex/dose via gavage at dose levels of 0, 1, 6, or 18 mg/kg/day for 13 weeks (91 days). The LOEL for this 13–week rat oral toxicity study is 6 mg/kg/day based on decreased liver weights. The NOEL is 1 mg/kg/day.

iii. In a 13–week dog feeding study, tralomethrin in polyethylene glycol was administered to 5 beagle dogs/sex/group via capsule at dose levels of 0, 0.1, 1.0, or 10 mg/kg/day. The LOEL for this 13–week dog feeding study is 10 mg/kg/day based on neurological and hematological effects. The NOEL is 1 mg/kg/day.

iv. In a 1–year dog feeding study, tralomethrin in corn oil was administered to eight beagle dogs/sex/group by capsule at dose levels of 0.75, 3.0, and 10.0 mg/kg/day. The high dose level was excessively toxic and was reduced to 8.0 mg/kg/day at 4 weeks and to 6.0 mg/kg/day on week 14. The low dose level was increased from 0.75 to 1.0 mg/kg/day during week 14. The LOEL in this 1–year dog feeding study is 3.0 mg/kg/day, based on reduced body weight gain, tremors, and ptyalism. The NOEL is 0.75/1.0 mg/kg/day.

v. In a mouse carcinogenicity study, tralomethrin in corn oil was administered to 80 CD-1 mice/sex/dose by gavage at dose levels of 0.75, 3.0, or 10.0 mg/kg/day for up to 2 years. The systemic LOEL in this mouse carcinogenicity study is 3 mg/kg/day, based on skin lesions in male and female mice. The systemic NOEL is 0.75 mg/kg/day. Under the conditions of this study, there was no evidence of carcinogenic potential.

vi. In rat chronic toxicity/carcinogenicity study, tralomethrin in corn oil was administered to 80 CD rats/sex/dose by gavage at dose levels of 0.75, 3.0, or 12.0 mg/kg/day for up to 2 years. The LOEL is 3 mg/kg/day in male and female rats based on decreased body weight gain in males and decreased food and water consumption in males and females at 3.0 mg/kg/day. The NOEL is 0.75 mg/kg/day. Under the conditions of this study, there was no evidence of carcinogenic potential.

vii. In a rat developmental study, tralomethrin in corn oil was administered to 25 female Sprague-Dawley CD rats per group at 0, 2, 6, or 18 mg/kg/day via gavage on days 6–17 of gestation. On day 21 the rats were sacrificed and pups delivered by cesarean section. The maternal LOEL is 18 mg/kg/day based on one treatment-related death at this dose level. The maternal NOEL is 6 mg/kg/day. There was no developmental toxicity noted at any dose level. There were no treatment-related increases in malformations or variations found upon external, internal, and skeletal examination of the fetuses. A developmental LOEL was not observed. The developmental NOEL is ≧ 18 mg/kg/day.

viii. In a developmental study, tralomethrin corn oil was administered to 15 female New Zealand white rabbits per group at 0, 2, 8, or 32 mg/kg/day via gavage on days 6–18 of gestation. There was no maternal toxicity noted at any dose level. In a developmental study, tralomethrin (purity not indicated) in corn oil was administered to 15 female New Zealand white rabbits per group at 0, 2, 8, or 32 mg/kg/day via gavage on days 6–18 of gestation. On Day 28 the dams were sacrificed and pups delivered. A maternal LOEL was not observed. The maternal NOEL is ≧ 32 mg/kg/day. There was no developmental toxicity noted at any dose level. A developmental LOEL was not observed. The developmental NOEL is ≧ 32 mg/kg/day.

ix. In a two-generation rat reproductive toxicity study, tralomethrin in corn oil was administered to COBS CD rats by gavage at dose levels of 0, 0.75, 3.0, or 12.0 mg/kg/day. The LOEL for parental toxicity is 3.0 mg/kg/day, based on decreased body weight gains. The NOEL for parental toxicity is 0.75 mg/kg/day. Reproductive toxicity was demonstrated at the mid- and high-doses. The LOEL for reproductive toxicity is 0.75 mg/kg/day, based on litters with smaller than normal pups. A reproductive NOEL was not observed.

x. There does not appear to be a concern for mutagenicity, however, all studies should be revisited, particularly, the mouse lymphoma. There are three reviewed studies that are not classified for acceptability: one mouse lymphoma assay; one *in vitro* chromosome aberration study in CHO cells and one UDS assay in primary rat hepatocytes. The mouse lymphoma assay tested negatively without activation and was moderately positive with activation. The other two assays tested negatively.

xi. The metabolism studies indicate that tralomethrin is rapidly debrominated to deltamethrin. It is then further metabolized to alcohols, carboxylic acids, glucuronides, glycine and sulfate conjugates.

xii. No mammalian neurotoxicity studies are available. The acute delayed neurotoxicity study in the hen is summarized in section one.

B. Toxicological Endpoints

The synthetic pyrethroid, tralomethrin is rapidly metabolized to deltamethrin. The toxicology data bases for deltamethrin and tralomethrin were combined in order to determine appropriate endpoints for risk assessment as discussed above. Results of the rat metabolism study support this action.

1. *Acute toxicity*. EPA has established a NOEL of 1.0 mg/kg/day based on combined acute dietary dog studies with a combined deltamethrin/tralomethrin data base. This NOEL is based on an uncertainty factor of 100 to account for both interspecies extrapolation and intraspecies variability.

2. *Short- and intermediate-term toxicity*. There is no concern for short and intermediate term toxicity. There is no dermal or systemic toxicity at 1,000 mg/kg/day in 21 day dermal study in rats.

3. *Chronic toxicity*. EPA has established the RfD for deltamethrin at 0.01 mg/kg/day. This RfD is based on a NOEL of 1.0 mg/kg/day from subchronic dog and rat toxicity studies. The NOEL is based on decreased body weight gain in rats. This RfD is based on an uncertainty factor of 100 to account for both interspecies extrapolation and intraspecies variability.

4. *Carcinogenicity*. There is no evidence of carcinogenicity in either rats or mice.

C. Exposures and Risks

1. *From food and feed uses*. Tolerances have been established (40 CFR 180.435 and 180.422) for the residues of deltamethrin and tralomethrin, in or on a variety of raw agricultural commodities. For the purposes of the risk assessment, the data bases for deltamethrin and tralomethrin have been combined. EPA notes that the acute dietary risk assessments used Monte Carlo modeling (in accordance with Tier 3 of EPA's June 1996 ''Acute Dietary Exposure Assessment'' guidance document) incorporating anticipated residues and percent crop treated refinements. Field trial data and FDA monitoring data were used to generate anticipated residues of residue distribution for Monte Carlo analyses. Chronic dietary risk assessments used anticipated residues and percent crop treated refinements. Risk assessments were conducted by EPA to assess dietary exposures and risks from deltamethrin and tralomethrin 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 1 day or single exposure. The NOEL used for the acute dietary exposure was 1.0 mg/kg/day. Potential acute exposures from food commodities were estimated using a Tier 3 acute dietary risk assessment (Monte Carlo Analysis). The MOE (99.9th percentile) for the U.S. population based on an acute dietary exposure of 0.000728 mg/kg/day is 1,373. For children 1–6 years old (most highly exposed population) the MOE based on an acute dietary exposure of 0.001855 mg/kg/day is 539. The Agency has no cause for concern if total exposure calculated for the 99.9th percentile yields an MOE of 100 or larger.

ii. *Chronic exposure and risk.* Potential chronic exposures were estimated using NOVIGEN's DEEM (Dietary Exposure Evaluation Model). The RfD used for the chronic dietary analysis is 0.01 mg/kg/day. Using tolerance values and anticipated residues discussed above, the risk assessment resulted in use of 0.2% of the RfD for the general U.S. population and 0.5% of the RfD for children 1–6 years old.

Section 408(b)(2)(E) authorizes EPA to consider available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on the time frame it deems appropriate. Section 408(b)(2)(F) allows the Agency to use data on the actual percent of crop treated when establishing a tolerance only where the Agency can make the following findings: (a) That the data used are reliable and provide a valid basis for showing the percentage of food derived from a crop that is likely to contain residues; (b) that the exposure estimate does not underestimate the exposure for any significant subpopulation and; (c) where data on regional pesticide use and food consumption are available, that the exposure estimate does not understate exposure for any regional population. In addition, the Agency must provide for periodic evaluation of any estimates used.

The percent of crop treated estimates for deltamethrin were derived from Federal and market survey data. EPA considers these data reliable. A range of estimates are supplied by this data and the upper end of this range was used for the exposure assessment. By using this upper end estimate of percent crop treated, the Agency is reasonably certain that exposure is not underestimated for any significant subpopulation. 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. Review of this regional data allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. To meet the requirement for data on anticipated residues, EPA will issue a Data Call-In (DCI) notice pursuant to FFDCA section 408(f) requiring submission of data on anticipated residues in conjunction with approval of the registration under FIFRA.

2. *From drinking water.* Deltamethrin and tralomethrin are immobile in soil and will not leach into groundwater. Additionally, due to their insolubility and lipophilic nature, any residues in surface water will rapidly and tightly bind to soil particles and remain with sediment. A screening evaluation of leaching potential of a typical pyrethroid was conducted using EPA's Pesticide Root Zone Model (PRZM3). Based on this screening assessment, the potential concentrations of a pyrethroid in ground water at depths of 1 and 2 meters are essentially zero (much less than 0.001 ppb). Therefore, EPA concludes that residues are not expected to occur in drinking water.

i. *Acute exposure and risk.* Acute drinking water exposure is estimated for the U.S. population to be 0.000014 mg/kg/day with an MOE of 69,093. For non-nursing infants less than 1 year old the exposure is 0.000028 with an MOE of 35,895.

ii. *Chronic exposure and risk.* Chronic drinking water exposure is estimated for the U.S. population to be zero and for the non-nursing infants 0.000001 mg/kg/day. Zero percent of the RfD is occupied by both population groups.

3. *From non-dietary exposure.* Deltamethrin and tralomethrin are broad spectrum insecticides registered for use on a variety of food and non-food agricultural commodities. Non-agricultural registered uses include turf and lawn care treatments, broadcast carpet treatments, spot, crack and crevice treatment, lawn and garden sprays and indoor and outdoor residential and industrial establishments.

To evaluate non-dietary exposure, the ''flea infestation control'' scenario was chosen to represent a plausible but worst case non-dietary (indoor and outdoor) non-occupational exposure. This scenario provides a situation where deltamethrin and/or tralomethrin is commonly used and they can be used concurrently for a multitude of uses, e.g., spot and/or broadcast treatment of infested indoor surfaces such as carpets and rugs, treatment of pets and treatment of the lawn. This hypothetical situation provides a very conservative, upper bound estimate of potential non-dietary exposures. Consequently, if health risks are acceptable under these conditions, the potential risks associated with other more likely scenarios would also be acceptable.

Because tralomethrin is rapidly metabolized to deltamethrin, and the toxicology profiles of deltamethrin and tralomethrin are virtually identical, a non-dietary and aggregate (non-dietary + chronic dietary) exposure/risk assessment has been conducted for the combination of both active ingredients. The total exposure to both materials was expressed as ''deltamethrin equivalents'' and these were compared to the toxicology endpoints identified.

The total aggregate non-dietary exposure including lawn, carpet, and pet uses (in mg/kg/day) are: 0.00002 for adults; 0.000503 for children aged 1–6 years; and 0.000543 for infants less than 1 year old.

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).

Although deltamethrin and tralomethrin are similar to other members of the synthetic pyrethroid class of insecticides, EPA does not have, at this time, available data to determine whether deltamethrin and tralomethrin have 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, deltamethrin and tralomethrin do not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that deltamethrin and tralomethrin have a common mechanism of toxicity with other substances.

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

1. *Acute risk.* The acute aggregate risk assessment takes into account exposure from food and drinking water. The potential acute exposure from food and water to the U.S. population for deltamethrin and tralomethrin is 0.000742 mg/kg/day with an MOE of 1,348. This acute dietary exposure estimate is considered conservative, using anticipated residue values and percent crop-treated data in conjunction with Monte Carlo analysis.

2. *Chronic risk.* Using the ARC exposure assumptions described above, EPA has concluded that aggregate exposure to deltamethrin and tralomethrin from food will utilize 0.2% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is children 1–6 years old discussed in Unit II.F of this preamble. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. The potential short- and intermediate-term aggregate risk for the U.S. population is an exposure 0.000042 mg/kg/day with an MOE of 49,000. EPA concludes that there is reasonable certainty that no harm will result from aggregate exposure to deltamethrin and tralomethrin residues.

E. Aggregate Cancer Risk for U.S. Population

Deltamethrin and tralomethrin do not yet have carcinogenicity classification; however, there is no evidence of carcinogenicity in any of the chronic studies. Therefore, a carcinogenicity risk analysis is not required.

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

1. *Safety factor for infants and children*— i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of deltamethrin and tralomethrin, EPA considered data from developmental toxicity studies in the rat and rabbit and a two-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

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

ii. *Developmental toxicity studies.* See toxicological profile in Unit II.A of this preamble.

iii. *Reproductive toxicity study.* See toxicological profile in Unit II.A of this preamble.

iv. *Pre- and post-natal sensitivity.* There is no evidence of additional sensitivity to young rats or rabbits following prenatal exposure to deltamethrin or tralomethrin.

v. *Conclusion.* Based on the above, EPA concludes that reliable data support use of the standard hundredfold uncertainty factor, and that an additional uncertainty factor is not needed to protect the safety of infants and children.

2. *Acute risk.* The potential acute exposure from food and drinking water to the most sensitive population subgroup, children 1–6 years old is 0.001867 mg/kg/day with an MOE of 535. The Agency has no cause for concern if total acute exposure calculated for the 99.9th percentile yields an MOE of 100 or larger.

3. *Chronic risk.* Using the conservative exposure assumptions described above, EPA has concluded that aggregate exposure to deltamethrin and tralomethrin from food will utilize 0.5% of the RfD for infants and children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health.

4. *Short- or intermediate-term risk.* EPA has concluded that potential short- or intermediate-term aggregate exposure of deltamethrin and tralomethrin from chronic dietary food and drinking water (considered to be a background exposure level) plus indoor and outdoor residential exposure to infants (less than 1 year old) is 0.000057 mg/kg/day with an MOE of 1,800. For children (1–6 years old) the exposure is 0.000055 mg/kg/day with an MOE of 2,700.

5. *Special docket.* The complete acute and chronic exposure analyses (including dietary, non-dietary, drinking water, and residential exposure, and analysis of exposure to infants and children) used for risk assessment purposes can be found in the Special Docket for the FQPA under the title ''Risk Assessment for Extension of Tolerances for Synthetic Pyrethroids.'' Further explanation regarding EPA's decision regarding the additional safety factor can also be found in the Special Docket.

EPA concludes that there is reasonable certainty that no harm will result to infants and children from aggregate exposure to deltamethrin and tralomethrin.

G. 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.

III. Other Considerations

A. Metabolism in Plants and Animals

EPA has reviewed the results of animal metabolism studies and has concluded that the metabolism of deltamethrin in animals is adequately understood for the purposes of these tolerances. The absorption of deltamethrin appears to be highly dependent upon the route and vehicle of administration. Once absorbed, deltamethrin is rapidly and extensively metabolized and excreted through urine and feces, almost completed within the first 48 hours. The residue of concern is deltamethrin.

B. Analytical Enforcement Methodology

The analytical method designated HRAV-7B is adequate for enforcement purposes. Multiresidue methods data for tralomethrin, deltamethrin, and trans-deltamethrin have been sent to the Food and Drug Administration.

C. Magnitude of Residues

Adequate residue data were provided to support tolerances of 0.05 ppm. Residue levels of deltamethrin in food and/or feed items after applications to food and feed handling establishments were below the level of quantitation (LOQ) i.e., below 0.02 ppm. There is no reasonable expectation of secondary residues in eggs, meat, milk or poultry from the proposed use as delineated in 40 CFR 180.6(a)(3).

D. International Residue Limits

Deltamethrin is a broad spectrum insecticide used throughout the world to control pests of livestock, crops, ornamental plants and turf, and household, commercial and industrial food use areas. A reevaluation of the maximum residue limits (MRLs) was conducted in 1994, in accordance with the EC Directive (91/414/EEC) Registration Requirements for Plant Protection Products. A comparison of the proposed CODEX MRL's and tolerances for deltamethrin in or on food and feed items is presented below:

Commodity	Proposed/Current MRL (CODEX) in ppm	Proposed/Established Tolerance (US EPA) in ppm
Food/Feed Items	0.05	0.05

Since the CODEX MRL's are the same as the proposed U.S. EPA tolerance, there is no concern for international harmonization.

IV. Conclusion

Therefore, a tolerance is established for residues of deltamethrin in or on food and feed items as a result of use in food and feed handling establishments 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 October 26, 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 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–300669] (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 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 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 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: June 10, 1998.

James J. Jones,

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 § 180.435, paragraph (a) by designating the text following the paragraph heading as paragraph (a)(1) and by adding paragraph (a)(2) to read as follows:

§ 180.435 Deltamethrin; tolerances for residues.

(a) *General.* * * *

(2) A tolerance of 0.05 ppm is established for residues of the insecticide deltamethrin (1*R*,3*R*)-3-(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylic acid (*S*)-alpha-cyano-3-phenoxybenzyl ester and its major metabolites, trans deltamethrin (*S*)-alpha-cyano-*m*-phenoxybenzyl-(1*R*,3*R*)-3-(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylate and alpha-*R*-deltamethrin[(*R*)-alpha-cyano-*m*-phenoxybenzyl-(1*R*,3*R*)-3-(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylate] as follows:

(i) In or on all food/feed items (other than those covered by a higher tolerance as a result of use on growing crops) in food/feed handling establishments.

(ii) The insecticide may be present as a residue from application of deltamethrin in food handling establishments, including food service, manufacturing and processing establishments, such as restaurants, cafeterias, supermarkets, bakeries, breweries, dairies, meat slaughtering and packing plants, and canneries, feed handling establishments including feed manufacturing and processing establishments, in accordance with the following prescribed conditions:

(A) Application shall be limited to general surface and spot and/or crack and crevice treatment in food/feed handling establishments where food/feed and food/feed products are held, processed, prepared and served. General surface application may be used only when the facility is not in operation provided exposed food/feed has been covered or removed from the area being treated. Spot and/or crack and crevice application may be used while the facility is in operation provided exposed food/feed is covered or removed from the area being treated prior to application. Spray concentration shall be limited to a maximum of 0.06 percent active ingredient. Contamination of food/feed or food/feed contact surfaces shall be avoided.

(B) To assure safe use of the insecticide, its label and labeling shall conform to that registered with the U.S. Environmental Protection Agency and shall be used in accordance with such label and labeling.

* * * * *

[FR Doc. 98–22529 Filed 8–25–98; 8:45 am]

BILLING CODE 6560–50–F

Proposed Rules

Federal Register
Vol. 63, No. 165
Wednesday, August 26, 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.

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2635

RIN 3209–AA04

Standards of Ethical Conduct for Employees of the Executive Branch

AGENCY: Office of Government Ethics (OGE).

ACTION: Proposed rule amendments.

SUMMARY: The Office of Government Ethics is proposing minor amendments to the sections on seeking other employment and outside activities in the regulation governing standards of ethical conduct for executive branch employees, to conform with interpretive advice and to improve clarity.

DATES: Comments are invited and must be received before October 26, 1998.

ADDRESSES: Send comments to the Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917, Attention: G. Sid Smith.

FOR FURTHER INFORMATION CONTACT: G. Sid Smith, Senior Associate General Counsel, Office of Government Ethics; telephone: 202–208–8000; TDD: 202–208–8025; FAX: 202–208–8037; Internet E-mail address: usoge@oge.gov (for E-mail messages, the subject line should include the following sentence—Rulemaking to amend standards of ethical conduct sections on seeking employment and outside activities).

SUPPLEMENTARY INFORMATION:

I. Background

Some six years ago, the Office of Government Ethics (OGE) issued a final rule establishing the executive branch standards of ethical conduct, pursuant to section 201(a) of Executive Order 12674 (57 FR 35006–35067, August 7, 1992). These standards and the examples therein, as amended and codified at 5 CFR part 2635, are the primary source of guidance for ethics officials and employees throughout the executive branch in applying the fourteen fundamental principles of ethical conduct contained in the Executive order. In a final rule published at 62 FR 48746–48748 (September 17, 1997), OGE amended the standards of ethical conduct regulation, by removing superseded references to the former honorarium bar, reflecting statutory changes on procurement integrity, adding references to a recent regulation on conflicts of interest (5 CFR part 2640), and making other minor corrections and updates.

Based on feedback from the executive branch ethics community, OGE believes that the standards of ethical conduct are generally fulfilling the intended goals of the Executive order in establishing useful, practical guidelines for employees. Over the past six years, OGE has provided interpretive advice to department and agency ethics officials on the application of these standards, as specific fact patterns have arisen. As a result, OGE has determined that selected provisions in the standards should now be amended, in order to codify some of that advice and to clarify the intended meaning of the regulatory language. In a separate rulemaking, OGE published a proposed rule to accomplish that with respect to certain provisions in subpart B (Gifts From Outside Sources). By this current rulemaking, OGE is proposing similarly minor amendments to provisions of the standards of ethical conduct in subpart F (Seeking Other Employment) and subpart H (Outside Activities), in order to further codify interpretive advice and to improve clarity.

II. Analysis of Proposed Amendments

Subpart F

Subpart F of the standards of ethical conduct regulation (5 CFR part 2635) implemented certain provisions of a criminal statute and an Executive order, specifically: (1) 18 U.S.C. 208, restricting employees' official participation in matters wherein a person or organization with whom they are negotiating for or have an arrangement concerning prospective employment has a financial interest, and (2) sections 101(h) and 101(j) of Executive Order 12674, directing employees to act impartially in official matters and not to engage in seeking or negotiating for outside employment that conflicts with official duties and responsibilities. See references to these implementation goals in the preamble to OGE's proposed rule on standards of ethical conduct (56 FR 33786, July 23, 1991), and in § 2635.601 of the final rule. Because these provisions of the criminal statute and Executive order are so closely related, they were combined for implementation at subpart F, with a requirement generally for disqualification from participation in certain matters when an employee is ''seeking other employment,'' a term that encompasses both negotiating and other specified lesser contacts.

Sections 2635.601 and 2635.602 in that subpart suggest that its coverage may be limited to situations where the employee's ''performance or nonperformance of official duties will affect'' the financial interests of a prospective employer. A somewhat more accurate test, for purposes of 18 U.S.C. 208, is stated in § 2635.604(a), § 2635.605(a), and § 2635.606(a), which is that coverage extends to participation in ''a particular matter that has a direct and predictable effect'' on those financial interests. The criminal statute does not limit its application to situations where one's performance of official duties will affect a financial interest, but instead focuses on whether a matter in which the employee participates will affect the financial interest. Further, the statute is triggered only if the effect on the financial interest will be direct and predictable.

This variation among sections of the regulation was an unintended result of the process by which provisions on prospective employment in the criminal statute and Executive order were implemented jointly. As questions from ethics officials have arisen concerning these apparent discrepancies, OGE has advised that the requirements of 18 U.S.C. 208 control. In order to more clearly align the provisions of subpart F with that advice and the criminal statute, OGE proposes to amend § 2635.601 and § 2635.602 accordingly.

Additionally, OGE proposes to amend § 2635.601, § 2635.602, § 2635.604, § 2635.605, and § 2635.606, to clarify initially in each section that the restrictions apply only when the employee would be ''participating personally and substantially'' in a particular matter. These modifications will further ensure that subpart F is consistent with 18 U.S.C. 208 and in conformance with OGE advice.

Subpart H

Section 2635.807(a) in subpart H of the standards of ethical conduct regulation directs that employees shall not receive compensation from any source other than the Government for teaching, speaking or writing that relates to their official duties. This section implemented several principles of Executive Order 12674, primarily the prohibitions in sections 101(c) and 101(g) against employee misuse of nonpublic information and use of public office for private gain, as well as the principle in section 101(n) that an employee shall endeavor to avoid actions creating even the appearance of such violations. See references to these implementation goals in the preamble to OGE's proposed rule on standards of ethical conduct (56 FR 33790, July 23, 1991) and in the preamble to the final regulation (57 FR 35036, August 7, 1992). Section 2635.807(a) also embodies the criminal prohibition at 18 U.S.C. 209 on receipt of any supplementation of Government salary as compensation for services as a Government employee.

Essential to the understanding and meaning of this section of the regulation is a clear definition of the term ''receive.'' Paragraph (a)(2)(iv) thereof defines ''receive'' to include actual or constructive receipt of compensation, such that the employee has the right to exercise dominion and control over the compensation and to direct its subsequent use, and it includes certain indirect payments to charitable organizations, relatives, and others. When the standards of ethical conduct regulation was issued in 1992, OGE believed that this definition would adequately apprise employees of the extent of the restrictions on receipt of compensation in § 2635.807(a). It has become apparent, however, that there may be some confusion about when receipt occurs for compensation that is deferred or made in advance. For example, some departing employees have negotiated contracts to undertake speaking, teaching or writing activities that may be related to official duties, whereby compensation will be: (1) deferred until after leaving Government service, for activities performed during Government service, or (2) paid while the individual is still a Government employee, as an advance for activities to be performed after leaving Government service. In response to employees and agency ethics officials who have raised these issues, OGE has advised that in both circumstances described above, compensation would be viewed as received, in violation of § 2635.807(a).

In order to codify this interpretive advice and intent with regard to these issues, OGE proposes to amend the definition of ''receive'' in § 2635.807(a). To the extent possible, this will also promote consistency with a related regulation and OGE advice concerning the term ''receive'' as it pertains to the statutory 15% limit on outside earned income and restrictions on compensation for outside employment that apply to certain senior noncareer officials (see 5 CFR 2636.303(c)).

III. Matters of Regulatory Procedure

Executive Order 12866

In promulgating these proposed rule amendments, OGE has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. These proposed amendments have also been reviewed by the Office of Management and Budget under that Executive order.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this rulemaking will not have a significant economic impact on a substantial number of small entities because it primarily affects Federal executive branch agencies and their employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because these proposed amendments do not contain any information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in Part 2635

Conflict of interests, Executive branch standards of ethical conduct, Government employees.

Approved: April 1, 1998.

Stephen D. Potts,

Director, Office of Government Ethics.

For the reasons set forth in the preamble, the Office of Government Ethics proposes to amend part 2635 of subchapter B of chapter XVI of title 5 of the Code of Federal Regulations, as follows:

PART 2635—[AMENDED]

1. The authority citation for part 2635 continues to read as follows:

Authority: 5 U.S.C. 7301, 7351, 7353; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

§ 2635.601 [Amended]

2. Section 2635.601 is amended by removing the words ''who otherwise would be affected by the performance or nonperformance of the employees' official duties.'' from the end of the first sentence and adding the words ''whose financial interests would be directly and predictably affected by particular matters in which the employees participate personally and substantially.'' in their place, and by adding the new sentence ''See § 2635.402 and § 2640.103 of this chapter.'' between the second and third sentences.

§ 2635.602 [Amended]

3. Section 2635.602 is amended by removing the words ''the employee's official duties would affect'' from the first sentence of the undesignated introductory text and adding the words ''particular matters in which the employee will be participating personally and substantially would directly and predictably affect'' in their place, and by removing the words ''affected by the performance or nonperformance of his official duties'' from the first sentence of the note following the undesignated introductory text and adding the words ''affected directly and predictably by particular matters in which he participates personally and substantially'' in their place.

4. Section 2635.603 is amended by revising paragraph (d) to read as follows:

§ 2635.603 Definitions.

* * * * *

(d) *Direct and predictable effect, particular matter,* and *personal and substantial* have the respective meanings set forth in § 2635.402(b)(1), (3), and (4).

§ 2635.604 [Amended]

5. Section 2635.604 is amended by adding the words ''personally and substantially'' after the word ''participate'' in the first sentence of paragraph (a).

§ 2635.605 [Amended]

6. Section 2635.605 is amended by adding the words ''personally and substantially'' after the word ''participate'' in the first sentence of paragraph (a), and by adding the words ''personally and substantially'' after the word ''participate'' in the first sentence of paragraph (b).

§ 2635.606 [Amended]

7. Section 2635.606 is amended by removing the words ''taking official action'' from the first sentence of paragraph (a) and adding the words ''participating personally and substantially'' in their place.

§ 2635.807 [Amended]

8. Section 2635.807 is amended by adding the new sentence ''This includes compensation paid in advance to an employee for activities to be performed in the future, and compensation deferred to the future for activities that are performed while an employee.'' after the first sentence in paragraph (a)(2)(iv).

[FR Doc. 98–22864 Filed 8–25–98; 8:45 am]

BILLING CODE 6345–01–U

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 1 and 2

[Docket No. 97–018–3]

RIN 0579–AA95

Licensing Requirements for Dogs and Cats

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of reopening and extension of comment period.

SUMMARY: We are reopening and extending the comment period for our advance notice of proposed rulemaking that announced that we are considering several changes to the Animal Welfare regulations to ensure the humane handling, care, and treatment of dogs and cats, while concentrating our regulatory efforts on those facilities that present the greatest risk of noncompliance with the regulations. This extension will provide interested persons with additional time in which to prepare comments on the advance notice of proposed rulemaking.

DATES: Consideration will be given only to comments on Docket No. 97–018–2 that are received on or before September 23, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97–018–2, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 97–018–2. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room. Alternatively, comments may be submitted via the Internet on an electronic form located at http://comments.aphis.usda.gov. Comments submitted on the electronic form need only be submitted once.

FOR FURTHER INFORMATION CONTACT: Dr. Bettye Walters, Veterinary Medical Officer, AC, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1234, (301) 734–7833.

SUPPLEMENTARY INFORMATION: On June 24, 1998, we published in the **Federal Register** (63 FR 34333–34335, Docket No. 97–018–2) an advance notice of proposed rulemaking that announced that we are considering several changes to the Animal Welfare regulations at 9 CFR parts 1 and 2 to ensure the humane handling, care, and treatment of dogs and cats, while concentrating our regulatory efforts on those facilities that present the greatest risk of noncompliance with the regulations. Comments on the advance notice of proposed rulemaking were required to be received on or before August 24, 1998.

In response to requests from several organizations, we are reopening and extending the public comment period on Docket No. 97–018–2 until September 23, 1998. This action will allow interested groups and individuals additional time to prepare and submit comments.

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

Done in Washington, DC, this 21st day of August 1998.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–22908 Filed 8–25–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–184–AD]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Falcon 2000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Dassault Model Falcon 2000 series airplanes. This proposal would require modification of the front galley and rear lavatory water heaters. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent failure of the water heater control thermostat and the associated electrical relay, which could lead to overheating of the water and damage to the adjacent wiring, and consequent smoke and fumes in the passenger cabin and possible injury to the flight crew and passengers.

DATES: Comments must be received by September 25, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–184–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–184–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–184–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Dassault Model Falcon 2000 series airplanes. The DGAC advises that it has received reports of overheating on certain BFGoodrich water heaters, part number (P/N) 8921082G2 (Dassault Aviation Falcon Jet water heaters P/N 770224–501). Investigation revealed that the water heater control thermostat and the associated power shut-off relay of the associated heater resistor failed, which resulted in overheating of the water and damage to the adjacent wiring. Such failure, if not corrected, could result in smoke and fumes in the passenger cabin and possible injury to passengers and the flight crew.

Explanation of Relevant Service Information

Dassault Aviation has issued Service Bulletin F2000–115 (F2000–38–4), dated December 17, 1997, which describes procedures for modification of the water heaters for the front galley and rear lavatory. The modification includes removal of the thermostat and installation of an improved interchangeable overheat safety thermostat, which provides an additional means to directly shut off power to the water heater resistor in the event that the thermostat and associated relay fail.

The Dassault service bulletin references BFGoodrich Service Bulletin SB8921082G2–38–2, dated February 10, 1998, as an additional source of service information to accomplish the modification of the water heaters. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

The DGAC classified the Dassault service bulletin as mandatory and issued French airworthiness directive 97–185–003(B)R1, dated November 19, 1997, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the Dassault service bulletin described previously.

Cost Impact

The FAA estimates that 23 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed modification, and that the average labor rate is $60 per work hour. Required parts would cost approximately $240 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $8,280, or $360 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Dassault Aviation: Docket 98–NM–184–AD.

Applicability: Model Falcon 2000 series airplanes equipped with BFGoodrich water heaters, part number (P/N) 8921082G2, or Dassault Aviation Falcon Jet P/N 770224–501; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an

alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the water heater control thermostat and the associated electrical relay, which could lead to overheating of the water and damage to the adjacent wiring, and consequent smoke and fumes in the passenger cabin and possible injury to the flight crew and passengers, accomplish the following:

(a) Within 7 months or 330 flight hours after the effective date of this AD, whichever occurs first, modify the water heaters for the front galley and rear lavatory, in accordance with the Accomplishment Instructions of Dassault Aviation Service Bulletin F2000–115 (F2000–38–4), dated December 17, 1997.

Note 2: The Dassault service bulletin references BFGoodrich Service Bulletin SB8921082G2–38–2, dated February 10, 1998, as an additional source of service information for accomplishment of the modification.

(b) As of the effective date of this AD, no person shall install on any airplane a BFGoodrich water heater having P/N 8921082G2 or a Dassault Aviation Falcon Jet water heater having P/N 770224–501.

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

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

Note 4: The subject of this AD is addressed in French airworthiness directive 97–185–003(B)R1, dated November 19, 1997.

Issued in Renton, Washington, on August 19, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–22817 Filed 8–25–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–185–AD]

RIN 2120–AA64

Airworthiness Directives; Construcciones Aeronauticas, S.A. (CASA) Model C–212 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all CASA Model C–212 series airplanes, that currently requires replacement of the cover of the power control quadrant pedestal with a cover that incorporates slot protection. This action would require repetitive inspections for deterioration or damage of the slot protection installed in the cover of the power control quadrant pedestal. This action also would require eventual modification of the cover, which would constitute terminating action for the repetitive inspections. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent deterioration of the slot protection installed in the cover of the power control quadrant pedestal, which could allow foreign objects to jam or interfere with the power or trim control system and result in reduced controllability of the airplane.

DATES: Comments must be received by September 25, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–185–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Construcciones Aeronauticas, S.A., Getafe, Madrid, Spain. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–185–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No.98–NM–185–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On June 23, 1988, the FAA issued AD 87–05–05 R2, amendment 39–5968 (53 FR 26039, July 11, 1988), applicable to all CASA Model C–212 series airplanes, to require replacement of the cover of the power control quadrant pedestal with a cover that incorporates slot protection. That action was prompted by reports that additional protection was needed to prevent foreign objects from dropping into the power control quadrant pedestal, which could jam or interfere with the power or trim control system. The requirements of that AD are intended to prevent reduced controllability of the airplane.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the slot protection that was installed in the cover of the power control quadrant pedestal in accordance with AD 87–05–05 R2 has been found to have deteriorated on certain in-service airplanes. Such deterioration can result in foreign objects dropping into the power control quadrant pedestal, and jamming or interfering with the power or trim control system.

Explanation of Relevant Service Information

The manufacturer has issued CASA C–212 Service Bulletin SB–212–76–08, dated April 12, 1993, which describes procedures for modification of the cover of the power control quadrant pedestal by replacing the existing slot protection with new, improved slot protection. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The Dirección General de Aviación (DGAC), which is the airworthiness authority for Spain, classified this service bulletin as mandatory and issued Spanish airworthiness directive 04/96, dated May 13, 1996, in order to assure the continued airworthiness of these airplanes in Spain. The Spanish airworthiness directive also requires repetitive visual inspections to determine the condition of the slot protection.

FAA's Conclusions

This airplane model is manufactured in Spain and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 87–05–05 R2 to require repetitive visual inspections for deterioration or damage (e.g., deformation or cuts) of the slot protection installed in the cover of the power control quadrant pedestal. This action also would require eventual modification of the cover by replacing the existing slot protection with new, improved slot protection, which would constitute terminating action for the repetitive inspections. The modification would be required to be accomplished in accordance with the service bulletin described previously.

Differences Between Proposed Rule and Foreign AD

The proposed AD would differ from the parallel Spanish airworthiness directive in that it would mandate accomplishment of the terminating action for the repetitive inspections. The Spanish airworthiness directive requires accomplishment of that action only if deterioration is found.

Mandating the terminating action is based on the FAA's determination that long-term continued operational safety will be better assured by modifications or design changes to remove the source of the problem, rather than by repetitive inspections. Long-term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous continual inspections, has led the FAA to consider placing less emphasis on inspections and more emphasis on design improvements. The proposed modification requirement is in consonance with these conditions.

Cost Impact

There are approximately 38 airplanes of U.S. registry that would be affected by this proposed AD.

The inspection that is proposed in this AD action would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $2,280, or $60 per airplane, per inspection cycle.

The modification that is proposed in this AD action would take approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $1,200 per airplane. Based on these figures, the cost impact of the modification proposed by this AD on U.S. operators is estimated to be $52,440, or $1,380 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–5968 (53 FR 26039, July 11, 1988), and by adding a new airworthiness directive (AD), to read as follows:

Construcciones Aeronauticas, S.A. (CASA): Docket 98–NM–185–AD. Supersedes AD 87–05–05 R2, amendment 39–5968.

Applicability: Model C–212 series airplanes, as listed in CASA C–212 Service Bulletin 212–76–08, dated April 12, 1993; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been

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

Compliance: Required as indicated, unless accomplished previously.

To prevent deterioration of the slot protection installed in the cover of the power control quadrant pedestal, which could allow foreign objects to jam or interfere with the power or trim control system and result in reduced controllability of the airplane, accomplish the following:

(a) Within 300 hours time-in-service or 3 months after the effective date of this AD, whichever occurs first, perform a visual inspection for deterioration or damage of the slot protection installed in the cover of the power control quadrant pedestal.

(1) If no deterioration or damage is detected, repeat the inspection thereafter at intervals not to exceed 300 hours time-in-service or 3 months, whichever occurs first.

(2) If any deterioration or damage is detected, or if no slot protection is installed, prior to further flight, accomplish the modification required by paragraph (b) of this AD.

(b) Within 12 months after the effective date of this AD, modify the cover of the power control quadrant pedestal by installing new, improved slot protection, in accordance with CASA C–212 Service Bulletin SB–212–76–08, dated April 12, 1993. Such modification constitutes terminating action for the inspection requirements of paragraph (a) of this AD.

(c)(1) 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.

(c)(2) Alternative methods of compliance, approved previously in accordance with AD 87–05–05 R2, amendment 39–5968, are not considered to be approved as alternative methods of compliance with this AD.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

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

Note 3: The subject of this AD is addressed in Spanish airworthiness directive 04/96, dated May 13, 1996.

Issued in Renton, Washington, on August 19, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–22814 Filed 8–25–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–191–AD]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB 2000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Saab Model SAAB 2000 series airplanes. This proposal would require replacement of the outboard trunnion pin of the shock strut on the main landing gear (MLG) with a new and improved outboard trunnion pin. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent failure of the outboard trunnion pin due to fatigue cracking, which could result in collapse of the MLG.

DATES: Comments must be received by September 25, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–191–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linkoping, Sweden. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–191–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–191–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfartsverket (LFV), which is the airworthiness authority for Sweden, notified the FAA that an unsafe condition may exist on certain Saab Model SAAB 2000 series airplanes. The LFV advises that it has received a report indicating that, during fatigue testing, the outboard trunnion pin of the shock strut on the main landing gear (MLG) failed. Failure of the outboard trunnion pin may have been caused by the use of certain material susceptible to fatigue cracking. Such failure of the outboard trunnion pin, if not corrected, could result in collapse of the MLG.

Explanation of Relevant Service Information

SAAB has issued Service Bulletin 2000–32–042, dated March 27, 1998, including Attachments 1 and 2, dated June 1997, which describes procedures for replacement of the outboard trunnion pin of the shock strut on the (MLG), with a new and improved outboard trunnion pin, which is stronger and has a longer fatigue life. Accomplishment of the action specified in the service bulletin is intended to adequately address the identified unsafe condition. The LFV classified this service bulletin as mandatory and issued Swedish airworthiness directive 1–123, dated March 30, 1998, in order to assure the continued airworthiness of these airplanes in Sweden.

FAA's Conclusions

This airplane model is manufactured in Sweden 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 LFV has kept the FAA informed of the situation described above. The FAA has examined the findings of the LFV, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the action specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 3 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed replacement, and that the average labor rate is $60 per work hour. Parts would be supplied by the manufacturer to the operators at no cost. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $360, or $120 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

SAAB Aircraft AB: Docket 98–NM–191–AD.

Applicability: Model SAAB 2000 series airplanes, serial numbers –002 through –050 inclusive, –052, and –053; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the outboard trunnion pin due to fatigue cracking, which could result in collapse of the main landing gear (MLG), accomplish the following:

(a) Prior to the accumulation of 8,200 total landings, or within 60 days after the effective date of this AD, whichever occurs later, replace the outboard trunnion pin of the shock strut on the MLG with a new and improved outboard trunnion pin, in accordance with Saab Service Bulletin 2000–32–042, dated March 27, 1998, including Attachments 1 and 2, dated June 1997.

(b) As of the effective date of this AD, no person shall install on any airplane an outboard trunnion pin having part number (P/N) AIR132900 or AIR134608.

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

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

Note 3: The subject of this AD is addressed in Swedish airworthiness directive 1–123, dated March 30, 1998

Issued in Renton, Washington, on August 19, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–22816 Filed 8–25–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–29–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A320 series airplanes. This proposal would require repetitive inspections to detect fatigue cracking of the lower surface panel on the wing center box; and repair, if necessary. This proposal also would require modification of the lower surface panel on the wing center box, which constitutes terminating action for the repetitive inspections. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent fatigue cracking of the lower surface panel on the wing center box, which could result in reduced structural integrity of the airplane.

DATES: Comments must be received by September 25, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–29–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–29–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–29–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A320 series airplanes. The DGAC advises that, during full-scale fatigue testing on a Model A320 test article, fatigue cracking occurred at 109,217 simulated flights between frames 41 and 42 on the right and left sides of the lower surface panel on the wing center box. Such fatigue cracking, if not corrected, could result in reduced structural integrity of the airplane.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A320–57–1082, Revision 01, dated December 10, 1997, which describes procedures for performing repetitive high frequency eddy current inspections to detect fatigue cracking of the lower surface panel on the wing center box; and repair, if necessary. Accomplishment of the repair would eliminate the need for the repetitive inspections of the repaired area.

In addition, Airbus has issued Service Bulletin A320–57–1043, Revision 2, dated May 14, 1997, which describes procedures for modification of the lower surface panel on the wing center box. The modification involves shot peening of the external side of the lower surface panel near the fuel pump aperture where the thickness changes. Accomplishment of this modification also would eliminate the need for the repetitive inspections described in Airbus Service Bulletin A320–57–1082, Revision 01.

Accomplishment of the actions specified in these service bulletins is intended to adequately address the identified unsafe condition. The DGAC classified Airbus Service Bulletin A320–57–1082, Revision 01, as mandatory and issued French airworthiness directive 97–309–104(B), dated October 22, 1997, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins, except as discussed below. Accomplishment of the modification of the lower surface panel on the wing center box constitutes terminating action for the repetitive inspections.

Differences Between Proposed Rule and Service Bulletin

Operators should note that, although Airbus Service Bulletin A320–57–1082,

Revision 01, dated December 10, 1997, specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by either the FAA or the DGAC (or its delegated agent). In light of the type of repair that would be required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, the FAA has determined that, for this proposed AD, a repair approved by either the FAA or the DGAC would be acceptable for compliance with this proposed AD.

Differences Between Proposed Rule and Foreign AD

Operators should note that, unlike the procedures described in French airworthiness directive 97–309–104(B), dated October 22, 1997, this proposed AD would not permit further flight if fatigue cracks are detected on the lower surface panel of the wing center box. The FAA has determined that, because of the safety implications and consequences associated with such fatigue cracking, any subject lower surface panel that is found to be cracked must be repaired prior to further flight in accordance with a method approved by the FAA or the DGAC (or its delegated agent).

In addition, the proposed AD would differ from the parallel French airworthiness directive in that it would mandate the accomplishment of the terminating action for the repetitive inspections. The French airworthiness directive provides for that action as optional.

Mandating the terminating action is based on the FAA's determination that long-term continued operational safety will be better assured by modifications or design changes to remove the source of the problem, rather than by repetitive inspections. Long-term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous continual inspections, has led the FAA to consider placing less emphasis on inspections and more emphasis on design improvements. The proposed modification requirement is in consonance with these conditions.

Cost Impact

The FAA estimates that 60 airplanes of U.S. registry would be affected by this proposed AD. It would take approximately 2 work hours per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $7,200, or $120 per airplane, per inspection cycle.

It would take approximately 2 work hours per airplane to accomplish the modification, at an average labor rate of $60 per work hour. There are no parts necessary to accomplish the modification. Based on these figures, the cost impact of the modification proposed by this AD on U.S. operators is estimated to be $7,200, or $120 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Industrie: Docket 98–NM–29–AD.

Applicability: Model A320 series airplanes on which Airbus Modification 22418 (reference Airbus Service Bulletin A320–57–1043, Revision 2, dated May 14, 1997) has not been accomplished, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the lower surface panel on the wing center box, which could result in reduced structural integrity of the airplane, accomplish the following:

(a) Except as provided by paragraph (e) of this AD: Prior to the accumulation of 20,000 total flight cycles, or within 60 days after the effective date of this AD, whichever occurs later, perform a high frequency eddy current inspection to detect fatigue cracking of the lower surface panel on the wing center box, in accordance with Airbus Service Bulletin A320–57–1082, Revision 01, dated December 10, 1997. Repeat the eddy current inspection thereafter at intervals not to exceed 7,500 flight cycles until the actions required by paragraph (c) of this AD are accomplished.

(b) Except as provided by paragraph (d) of this AD: If any cracking is detected during any inspection required by paragraph (a) of this AD, prior to further flight, repair in accordance with Airbus Service Bulletin A320–57–1082, Revision 01, dated December 10, 1997. Accomplishment of the repair constitutes terminating action for the repetitive inspections for the repaired area only.

(c) Prior to the accumulation of 25,000 total flight cycles, or within 60 days after the effective date of this AD, whichever occurs later: Perform a high frequency eddy current inspection to detect fatigue cracking of the lower surface panel on the wing center box, in accordance with Airbus Service Bulletin A320–57–1082, Revision 01, dated December 10, 1997.

(1) If no cracking is detected: Prior to further flight, modify the lower surface panel

on the wing center box, in accordance with Airbus Service Bulletin A320–57–1043, Revision 2, dated May 14, 1997. Accomplishment of the modification constitutes terminating action for the requirements of this AD.

(2) Except as provided by paragraph (d) of this AD, if any cracking is detected: Prior to further flight, repair in accordance with Airbus Service Bulletin A320–57–1082, Revision 01, dated December 10, 1997; and modify any uncracked area in accordance with Airbus Service Bulletin A320–57–1043, Revision 2, dated May 14, 1997. Accomplishment of the repair of cracked area(s) and modification of uncracked area(s) constitutes terminating action for the requirements of this AD.

(d) If any cracking is detected during any inspection required by paragraph (b) or (c)(2) of this AD, and the applicable service bulletin specifies to contact Airbus for an appropriate action: Prior to further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Gènèrale de l'Aviation Civile (or its delegated agent).

(e) The actions required by paragraph (a) of this AD are not required to be accomplished if the requirements of paragraph (c) of this AD are accomplished at the time specified in paragraph (a) of this AD.

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

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

Note 3: The subject of this AD is addressed in French airworthiness directive 97–309–104(B), dated October 22, 1997.

Issued in Renton, Washington, on August 19, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–22819 Filed 8–25–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–188–AD]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB SF340A and SAAB 340B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Saab Model SAAB SF340A and SAAB 340B series airplanes. This proposal would require a one-time visual inspection of the main landing gear (MLG) brake assemblies to determine the brake configuration, and reconfiguration, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent an incorrect brake combination configuration of the MLG, and consequent reduced controllability of the airplane during take-off and landing.

DATES: Comments must be received by September 25, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–188–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–188–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–188–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfartsverket (LFV), which is the airworthiness authority for Sweden, notified the FAA that an unsafe condition may exist on certain Saab Model SAAB SF340A and SAAB 340B series airplanes. The LFV advises that, during testing of improved brakes that were modified in accordance with SAAB Service Bulletin 340–32–113, Revision 1, dated February 9, 1998 (SAAB Modification 2898), the airplane handling was unbalanced, which resulted in degraded brake performance during landing. Investigation revealed that the unbalanced condition was due to the installation of an incorrect combination of main landing gear (MLG) brake assemblies. This condition, if not corrected, could result in reduced controllability of the airplane during take-off and landing.

Explanation of Relevant Service Information

SAAB has issued Service Bulletin 340–32–114, dated May 4, 1998, which describes procedures for a one-time visual inspection of the MLG brake assemblies to determine the brake configuration, and reconfiguration of the brake assemblies, if necessary. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The LFV classified this service bulletin as mandatory and issued Swedish airworthiness directive 1–127, dated May 5, 1998, in order to assure the continued airworthiness of these airplanes in Sweden.

FAA's Conclusions

These airplane models are manufactured in Sweden and are 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 LFV has kept the FAA informed of the situation described above. The FAA has examined the findings of the LFV, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 276 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $16,560, or $60 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

SAAB AIRCRAFT AB: Docket 98–NM–188–AD.

Applicability: Model SAAB SF340A series airplanes having serial numbers (S/N) –004 through –159 inclusive, and SAAB 340B series airplanes having S/N's –160 through –439 inclusive; on which SAAB Modification 2898 (reference SAAB Service Bulletin 340–32–113, dated November 14, 1997, or Revision 1, dated February 9, 1998) has been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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 an incorrect brake combination of the main landing gear (MLG), and consequent reduced controllability of the airplane during take-off and landing, accomplish the following:

(a) Within 2 months after the effective date of this AD, perform a one-time visual inspection of the MLG brake assemblies to determine the brake configuration, in accordance with Saab Service Bulletin 340–32–114, dated May 4, 1998.

(1) If the configuration of the brake assemblies is specified in Table 1 of the service bulletin as permissible combinations, no further action is required by this AD.

(2) If the configuration of the brake assemblies is not specified in Table 1 of the service bulletin as a permissible combination, prior to further flight, reconfigure the brake assemblies, in accordance with the service bulletin.

(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.

Note 3: The subject of this AD is addressed in Swedish airworthiness directive 1–127, dated May 5, 1998.

Issued in Renton, Washington, on August 19, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–22821 Filed 8–25–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 98N–0044]
RIN 0910–AA59

Regulations on Statements Made for Dietary Supplements Concerning the Effect of the Product on the Structure or Function of the Body; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to September 28, 1998, the comment period for the proposed rule that appeared in the **Federal Register** of April 29, 1998 (63 FR 23624). The document proposed regulations defining the types of statements that can be made concerning the effect of a dietary supplement on the structure or function of the body. Interested persons were given until August 27, 1998, to comment on the proposed rule. This action is being taken in response to requests for an extension of the comment period.

DATES: Written comments by September 28, 1998.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Jeanne Latham, Center for Food Safety and Applied Nutrition (HFS–456), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4697.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 29, 1998 (63 FR 23624), FDA issued a proposed rule defining the types of statements that can be made concerning the effect of a dietary supplement on the structure or function of the body.

Interested persons were given until August 27, 1998, to comment on the proposal. FDA has received several requests for an extension of the comment period. After evaluating these requests, the agency has decided to extend the comment period on the proposed rule until September 28, 1998.

To be considered, written comments regarding the proposed rule must be received by September 28, 1998, by 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 Docket No. 98N–0044. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 20, 1998.

William K. Hubbard,
Associate Commissioner for Policy Coordination.

[FR Doc. 98–22813 Filed 8–25–98; 8:45 am]
BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 864]

RIN 1512–AAD7

Yountville Viticultural Area (98R–28P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) has received a petition for the establishment of a viticultural area in Napa County, California, to be known as ''Yountville.'' This proposal is the result of a petition submitted by Yountville appellation committee.

DATES: Written comments must be received by October 26, 1998.

ADDRESSES: Send written comments to: Chief, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, D.C. 20091–0221 (Attn: Notice No. 864). Copies of the petition, the proposed regulation, the appropriate maps, and written comments will be available for public inspection during normal business hours at: ATF Public Reading Room, Office of Public Affairs and Disclosure, Room 6480, 650 Massachusetts Avenue, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Thomas B. Busey, Specialist, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, D.C. 20226, (202) 927–8230.

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury decision ATF–53 (43 FR 37672, 54624) revising regulations in 27 CFR part 4. These regulations allow the establishment of definitive viticultural areas. The regulations allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. On October 2, 1979, ATF published Treasury decision ATF–60 (44 FR 56692) which added a new part 9 to 27 CFR, providing for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographic features, the boundaries of which have been delineated in Subpart C of part 9.

Section 4.25(e)(2), Title 27, CFR, outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale, and;

(e) A copy (or copies) of the appropriate U.S.G.S. map(s) with the proposed boundaries prominently marked.

Petition

ATF has received a petition from Mr. Richard Mendelson, submitted on behalf of a number of wineries and grape growers in the Yountville area. The proposed viticultural area is located entirely within the Napa Valley. It contains approximately 8260 acres, of which 3500 are planted to vineyards. The proposed viticultural area was determined by extending the wine growing area from around the town of Yountville until it abuts the already established viticultural areas of Oakville on the north, Stags Leap District on the east, and Mt. Veeder on the west. On the south is an area called Oak Knoll which has petitioned to be considered a viticultural area.

Evidence That The Name Of The Area Is Locally Or Nationally Known

An historical survey written by Charles Sullivan spells out the historical use of the name Yountville and vineyard plantings dating back to the late 1800's. Numerous references exist indicating the general use of the name ''Yountville'' to refer to the petitioned area. The petitioner included copies of title pages of various publications, guide and tour book references, public and private phone book listings and Federal and State agency maps, to illustrate the use of the name. For example, an ad for wine in the 1880's stresses the source of the grapes for the wine as ''Yountville.'' Yountville is also prominently mentioned in James Halliday's Wine Atlas of California.

Historical or Current Evidence That the Boundaries of the Viticultural Area Are as Specified in the Petition

According to the petitioner, the boundaries establish a grape growing area with an identifiable character, based on climate, topography, and historical tradition. The Yountville area boundaries were determined by extending the grape growing area from around the town itself until it abuts the already established viticultural areas of Oakville on the north, Stags Leap District on the east and Mt. Veeder on the west and an area called Oak Knoll on the south, which is currently under consideration on whether it should be recognized as a viticultural area. The proposed boundaries of the area were determined by already existing AVA's and by the distinguishing physical features of the area. The boundary lines are accurately described using the features on the submitted U.S.G.S maps. In sum, the petitioner believes the proposed boundaries encompass an area of remarkable uniformity with respect to soils, climate and existing AVA's.

The history of viticulture in the Napa Valley begins with George C. Yount. Yount first visited the Napa Valley in 1831. He was granted his Rancho Caymus on March 3, 1836. It amounted to approximately 11,000 acres and covered the valley and foothills from the Bale Slough in the north to a line which runs through the town of Yountville today. By the 1840's he had established a small vineyard. In 1855, he commissioned a surveyor to lay out the city. The new community was christened Sebastopol. In 1887, two years after Yount's death, the town was renamed in honor of its founder.

Evidence Relating To The Geographical Features (Climate, Soil, Elevation, Physical Features, Etc.) Which Distinguish Viticultural Features Of The Proposed Area From Surrounding Areas

According to the petitioner, the geographical features of the proposed viticultural area set it apart from the surrounding area in the Napa Valley and produce a unique microclimate. The distinguishing features of the proposed viticultural area are the Napa River, the Napa Valley floor, the alluvial soils, the hills north of Yountville called the Yountville Mounts and the hills west of Yountville which form the western boundary of the Napa Valley.

The petitioner has submitted evidence showing that the weather is specific to the Yountville area with cool marine air currents reaching the Yountville Mounts (northern border of the proposed area) and which form a weather barrier to further expansion of the fogs and winds. Also the soils which form the alluvial fan just across the southern boundary of the Yountville area can be seen to come from the Dry Creek watershed (see U.S.G.S. maps). The soils just north of the Yountville border come from the hills that form the western side of the area. The line along Ragatz Lane was selected to delineate the two areas. The soils between Yountville and Stags Leap District can be seen to differ north of the Yountville crossroad with the Rector canyon being the parent and the area between the Napa River and the Silverado Trail belonging to the hills immediately to the east.

According to the petitioner, the Yountville area, and specifically the area near and west of the town of Yountville, is one of the coolest vineyard regions of the Napa Valley viticultural area with long, cool growing season for grapevines. The Amerine and Winkler (1944) climate scheme rates this area as a Region II climate in a typical year, with a growing season degree-day totals of 2600 to 2900. This makes the area around the town of Yountville warmer than most of the Carneros viticultural area, but cooler than parts of Mt. Veeder and Oakville.

According to the petitioner, the Yountville area is unusual as a Napa Valley floor viticultural region in that it is not dominated geomorphically by large alluvial fans. It is most similar geologically to the Stags Leap District, which also is dominated by an old Napa River channel. However, the petitioner alleges that the Yountville area is also geologically and geomorphologically distinct from the Stags Leap District , as Yountville was an area of intense coastal deposition along what must have been a nearshore current set up on the western side of the valley. The only similar coastal deposits found in the Napa Valley are in the Hagen Road area east of the City of Napa off Olive Hill Lane. Geomorphic deposits strongly influence soil types in the regions. Pronounced differences in soils are seen between Yountville, Oakville, the Stags Leap District, Mt. Veeder, and the proposed Oak Knoll viticultural area.

Proposed Boundaries

The boundaries of the proposed Yountville viticultural area may be found on four U.S.G.S. Quadrangle (7.5 Minute Series) maps titled: Napa, CA (1951); Rutherford, CA (1951); Sonoma, CA (1951); and Yountville, CA (1951).

Public Participation-Written Comments

ATF requests comments from all interested persons. Comments received on or before the closing data will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so. However, assurance of consideration can only be given on or before the closing date.

ATF will not recognize any submitted material as confidential and comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comments. The name of the person submitting a comment is not exempt from disclosure.

Comments may be submitted by facsimile transmission to (202) 927–8602, provided the comments: (1) are legible; (2) are 8 1/2″ x 11″ in size, (3) contain a written signature, and (4) are three pages or less in length. This limitation is necessary to assure reasonable access to the equipment. Comments sent by FAX in excess of three pages will not be accepted. Receipt of FAX transmittals will not be acknowledged. Facsimile transmitted comments will be treated as originals.

Any person who desires an opportunity to comment orally at a public hearing on the proposed regulation should submit his or her request, in writing, to the Director within the 60-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(j)) and its implementing regulations, 5 CFR Part 1320, do not apply to this notice of proposed

rulemaking because no requirement to collect information is proposed.

Regulatory Flexibility Act

It is hereby certified that this proposed regulation will not have a significant impact on a substantial number of small entities. The establishment of a viticultural area is neither an endorsement nor approval by ATF of the quality of wine produced in the area, but rather an identification of an area that is distinct from surrounding areas. ATF believes that the establishment of viticultural areas merely allows wineries to more accurately describe the origin of their wines to consumers, and helps consumers identify the wines they purchase. Thus, any benefit derived from the use of a viticultural area name is the result of the proprietor's own efforts and consumer acceptance of wines from the region.

Accordingly, a regulatory flexibility analysis is not required because the proposal, if promulgated as a final rule, is not expected (1) to have significant secondary, or incidental effects on a substantial number of small entities; or (2) to impose, or otherwise cause a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Executive Order 12866

It has been determined that this proposed regulation is not a significant regulatory action as defined by Executive Order 12866. Accordingly, this proposal is not subject to the analysis required by this executive order.

Drafting Information

The principal author of this document is Thomas B. Busey, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practices and procedures, Consumer protection, Viticultural areas, and Wine.

Authority and Issuance

Title 27, Code of Federal Regulations, Part 9, American Viticultural Areas, is proposed to be amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

Par. 2. Subpart C is amended by adding § 9.160 to read as follows:

§ 9.160 Yountville.

(a) *Name.* The name of the viticultural area described in this section is ''Yountville.''

(b) *Approved maps.* The appropriate maps for determining the boundary of the Yountville viticultural area are four 1:24,000 Scale U.S.G.S. topography maps. They are titled:

(1) Napa, CA 1951 photorevised 1980.

(2) Rutherford, CA 1951 photorevised 1968.

(3) Sonoma, CA 1951 photorevised 1980.

(4) Yountville, CA 1951 photorevised 1968.

(c) *Boundary.* The Yountville viticultural area is located in the State of California, entirely within the Napa Valley viticultural area. The boundaries of the Yountville viticultural area, using landmarks and points of reference found on appropriate U.S.G.S. maps are as follows:

(1) Beginning on the Rutherford quadrangle map at the intersection of the 500 foot contour line with an unnamed stream known locally as Hopper Creek north of the center of Section 3, T6N, R5W, Mount Diablo Meridan (MDM);

(2) Then along the unnamed stream (Hopper Creek) southeasterly, and at the fork in Section 3, northeasterly along the stream to the point where the stream intersects with an unnamed dirt road in the northwest corner of Section 2, T6N, R5W, MDM;

(3) Then in a straight line to the light duty road to the immediate northeast in Section 2, then along the light duty road in a northeasterly direction to the point at which the road turns 90 degrees to the left;

(4) Then northerly along the light duty road 625 feet, then northeasterly (N 40° by 43′) in a straight line 1,350 feet, along the northern property line of Assessor's Parcel Number 27–380–08, to State Highway 29, then continuing in a straight line approximately 500 feet to the peak of the 320 plus foot hill along the western edge of the Yountville hills;

(5) Then east to the second 300 foot contour line, then along said contour line around the Yountville hills to the north to the point at which the 300 foot line exits the Rutherford quadrangle for the second time;

(6) Then, on the Yountville quadrangle map, in a straight line in a northeasterly direction approximately N34° by 30′E approximately 1,000 feet to the 90 degree bend in the unimproved dirt road shown on the map, then along that road, which coincides with a fence line to the intersection of Conn Creek and Rector Creek;

(7) Then along Rector Creek to the northeast past Silverado Trail to the Rector Reservoir spillway entrance, then south approximately 100 feet to the 400 foot contour line, then southerly along the 400 foot contour line approximately 4200 feet to the intersection with a gully in section 30, T7N, R4W, MDM;

(8) Then southwesterly down the center of the gully approximately 800 feet to the medium duty road known as Silverado Trail, then southeasterly along the Silverado Trail approximately 590 feet to the medium duty road known locally as Yountville Cross Road;

(9) Then southwesterly along the Yountville Cross Road (denoted as GRANT BDY on the map) approximately 4,700 feet to the main branch of the Napa River, then following the western boundary of the Stags Leap District viticultural area, first southerly down the center of the Napa River approximately 21,000 feet, then leaving the Napa River northeasterly in a straight line approximately 900 feet to the intersection of the Silverado Trail with an intermittent stream at the 60 foot contour line in T6N, R4W, MDM;

(10) Then along the Silverado Trail southerly approximately 3,200 feet, passing into the Napa quadrangle, to a point which is east of the confluence of Dry Creek with the Napa River; then west approximately 600 feet to said confluence; then northwesterly along Dry Creek approximately 3,500 feet, passing into the Yountville quadrangle to a fork in the creek; then northwesterly along the north fork of Dry Creek approximately 5,700 feet to the easterly end of the light duty road labeled Ragatz Lane;

(11) Then southwesterly along Ragatz Lane to the west side of State Highway 29, then southerly along Highway 29 by 982 feet to the easterly extension of the north line boundary of Napa County Assessor's parcel number 034–170–015, then along the north line of APN 034–170–015 and its extension westerly 3,550 feet to the dividing line Between R4W and R5W on the Napa quadrangle, then southwesterly approximately 1000 feet to the peak denoted as 564 (which is about 5,500 feet easterly of the northwest corner of the Napa quadrangle); then southwesterly approximately 4,000 feet to the peak northeast of the reservoir gauging station denoted as 835.

(12) Then southwesterly approximately 1,500 feet to the reservoir

gauging station, then west to the 400 foot contour line on the west side of Dry Creek, then northwesterly along the 400 foot contour line to the point where the contour intersects the north line of Section 10. T6N, R5W, MDM, immediately adjacent to Dry Creek on the Rutherford, CA map;

(13) Then northwesterly along Dry Creek approximately 6,500 feet to BM503, then northeasterly approximately 3,000 feet to the peak denoted as 1478, then southeasterly approximately 2,300 feet to the beginning of the creek known locally as Hopper Creek, then southeasterly along Hopper Creek approximately 2,300 feet to the point of beginning.

Signed: August 19, 1998.

John W. Magaw,

Director.

[FR Doc. 98–22875 Filed 8–25–98; 8:45 am]

BILLING CODE 4810–31–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[KY–216–FOR]

Kentucky Regulatory Program

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

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: OSM is reopening the public comment period on a proposed amendment to the Kentucky regulatory program (hereinafter the ''Kentucky program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of changes to provisions of the Kentucky regulations pertaining to subsidence and subsidence control, water replacement, impoundments, definitions, sedimentation ponds, hydrology, and permits. The amendment is intended to revise the Kentucky program to be consistent with the corresponding Federal regulations.

DATES: Written comments must be received by 4:00 p.m., [E.S.T.], September 10, 1998.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to William J. Kovacic, Director, at the address listed below.

Copies of the Kentucky program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Lexington Field Office.

William J. Kovacic, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503, Telephone: (606) 233–2494.

Department of Surface Mining Reclamation and Enforcement, 2 Hudson Hollow Complex, Frankfort, Kentucky 40601, Telephone: (502) 564–6940.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Director, Lexington Field Office, Telephone: (606) 233–2494.

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program

On May 18, 1982, the Secretary of the Interior conditionally approved the Kentucky program. Background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the May 18, 1982, **Federal Register** (47 FR 21404). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 917.11, 917.13, 917.15, 917.16, and 917.17.

II. Description of the Proposed Amendment

By letter dated July 30, 1997 (Administrative Record No. KY–1410), Kentucky submitted a proposed amendment to its program revising section 405 of the Kentucky Administrative Regulations (KAR) at 8:001, 8:030, 8:040, 16:001, 16:060, 16:090, 16:100, 16:160, 18:001, 18:060, 18:090, 18:100, 18:160, and 18:210. The proposed amendment was announced in the September 5, 1997, **Federal Register** (62 FR 46933).

On November 14, 1997, a Statement of Consideration of public comments received by Kentucky was filed with the Kentucky Legislative Research Committee. As a result of the comments, by letter dated March 4, 1998, Kentucky made changes to the original submission (Administrative Record No. KY–1422). The revisions were made at 405 KAR 8:040, 16:060, 18:060, and 18:210. By letter dated July 14, 1998 (Administrative Record No. KY–1431), Kentucky submitted the final version of the proposed amendments. Following are the changes to 405 KAR made in the final submission and not previously described in the September 5, 1997, **Federal Register** notice. Deletions of previously proposed language will not be described in this notice nor will revisions concerning nonsubstantive wording, format, or organizational changes.

Kentucky deleted the phrase or a variation of the phrase, ''but not limited to,'' in the definitions of ''Coal Processing Plant,'' ''Community or Institutional Building,'' ''Sedimentation Pond,'' ''Surface Blasting Operations,'' and ''Significant Imminent Environmental Harm.'' The phrase was also deleted at 405 KAR 8030: 3(3), 11(2)(a), 13(1)(b), 13(3), 14(5), 15(5), 23(1)(g), 24(4)(e), 27(2)(e), 34(6), 37(1)(b); at 405 KAR 8040: 3(3), 11(2)(a), 13(1)(b), 13(3), 14(5), 15(5), 24(4)(e), 26(3)(e), 34(6), 37(1)(b); at 405 KAR 16:060: 1(4)(b), 2(2), 8(2)(a); and at 405 KAR 18:060 1(1)(b) and 2(2).

At section 8:001—Definitions (405 KAR Chapter 8), Kentucky cites the Kentucky Revised Statutes (KRS) at 350.028 (1), (5), and 350.465(2) as the authorization to promulgate administrative regulations for surface and underground coal mining operations. Kentucky defines the following terms:

Acquisition means purchase, lease, or option of the land for the purpose of conducting or allowing through resale, lease, or option, the conduct of surface coal mining and reclamation operations.

The definition of *Community or Institutional Building* is slightly revised from the original submission to clarify ''for another public service'' as a possible use. The word ''primarily'' is also deleted to described the listed uses.

Historically Used for Cropland means land that: (a) Has been used for cropland for any of five years or more of the ten years immediately preceding the application or acquisition of the land for the purpose of conducting a surface coal mining and reclamation operation; (b) would likely have been used for cropland for any five of the ten years immediately preceding the acquisition or application, but for some fact of ownership or control of the land unrelated to the productivity of the land; (c) falls outside the five of ten years criteria, but the cabinet determines is clearly cropland on the basis of additional cropland history of (1) surrounding land, and (2) the land under consideration.

The definition of *Material Damage* is revised from the original submission to delete the reference to 405 KAR 18:210.

Kentucky is also adding a new section 2 (Incorporation by Reference) to incorporate. ''ASTM Standard D 388–77, Standard Specification for Classification of Coals by Rank,'' (1977), American Society for Testing and Materials. The address where the document may be inspected, copied, or obtained is provided.

At section 8:030—Surface Coal Mining Permits, Kentucky cites KRS 350.028(1),(5), 350.060(3), and 350.465(2) as the authorization to promulgate administrative regulations for surface and underground coal mining operations.

Kentucky is deleting subsection 4(3) which states, ''Nothing in this section shall be construed to afford the cabinet the authority to adjudicate property title disputes.''

At subsection 12(4), Kentucky is requiring that water quality analysis and sampling be conducted according to: ''Standard Methods for the Examination of Water and Wastewater,'' or 40 CFR Parts 136 and 434.

At subsection 20(3), Kentucky is requiring that wetlands delineations be conducted in accordance with: Corps of Engineers Wetlands Delineation Manual and Regulatory Guidance Letter #90–7, ''National Lists of Plant Species that Occur in Wetlands and Biological Reports and Summary'', and ''List of Hydric Soils of the U.S.''

At subsection 32(3)(e), Kentucky is modifying its original submission language to state, ''The determination shall include a finding on whether the proposed surface mining activities may proximately result in contamination, diminution or interruption of an underground or surface source of water within the permit area or adjacent area that is used for domestic, agricultural, industrial or other legitimate use.

Kentucky is adding new subsection 38 (Incorporation by Reference) to incorporate the documents referenced in subsections 12(4) and 20(3). The address where the documents may be inspected, copied, or obtained is also provided.

At section 405 KAR 8:040—Underground Coal Mining Permits, Kentucky cites KRS 350.028 (1), (5), 350.151(1), and 350.465(2) as the authorization to promulgate the administrative regulations for surface and underground coal mining operations.

Kentucky is deleting subsection 4(3) which states, ''Nothing in this section shall be construed to afford the cabinet the authority to adjudicate property title disputes.''

At subsection 20(3), Kentucky is requiring that wetlands delineations be conducted in accordance with: The Corps of Engineers Wetlands Manual and Regulatory Guidance Letter #90–7, ''National Lists of Plant Species that Occur in Wetlands and Biological Reports and Summary,'' and ''List of Hydric Soils of the U.S.''

At new subsection 26(1)(d) 1 and 2, Kentucky is requiring that a permit application include a survey of the quantity and quality of each water supply for domestic, agricultural, industrial, or other legitimate use within the permit area and adjacent area that could be contaminated, diminished, or interrupted by subsidence. If the applicant cannot make this survey because the owner will not allow access to the site, the applicant shall include documentation of the denial of access. The applicant shall pay for its technical assessment or engineering evaluation used to determine the quantity and quality of a water supply for domestic, agricultural, industrial, or other legitimate use. The applicant shall provide copies of the survey and any technical assessment or engineering evaluation to the property owner and the cabinet. If the owner or his/her representative is present at the time a survey, technical assessment, or engineering evaluation is conducted, the report shall include the name of the person. If the owner disagrees with the results, he/she may submit in writing to the cabinet and permittee, a detailed description of the specific areas of disagreement. The cabinet may require additional measure to ensure that adequate and accurate information is included and to ensure compliance with 405 KAR 18:210.

At subsection 32(3)(e), Kentucky is modifying its original submission language to state, ''The determination shall include a finding on whether the proposed underground mining activities conducted after July 16, 1994, may proximately result in contamination, diminution, or interruption of an underground or surface source of water within the permit area or adjacent areas that is used for domestic, agricultural, industrial, or other legitimate use.''

Kentucky is adding a new subsection 39 (Incorporation by Reference) to incorporate the same documents specified at subsection 38 above.

At section 405 KAR 16:001—Definitions (405 KAR Chapter 16), Kentucky cites KRS 350.028(1) and 350.465(2) as the authorization to promulgate administrative regulations for surface and underground coal mining operations. Kentucky defines the following terms:

Acquisition is defined in the same manner as in section 8:001 above.

Durable Rock means rock that: (a) Doesn't slake in water; (b) is not reasonably expected to degrade to a size or condition that will block, cause failure of, impair or restrict the effectiveness of the internal drainage system; (c) has been demonstrated to have a slake durability index value of 90 or greater as determined by: the ''Method for Determination of Slake Durability (Kentucky Method 64–513–79),'' or a test method that yields an equivalent measure of durability based upon correlation of results with Kentucky Method 64–513–79.

Historically Used for Cropland is defined in the same manner as in section 8:001 above.

In Situ Process means: (a) in situ gasification, (b) in situ leaching, (c) slurry mining, (d) solution mining, (e) borehole mining, (f) fluid recovery mining, or (g) another activity conducted on surface or underground in connection with: in-place distillation, retorting, leaching, or chemical or physical processing of coal.

Kentucky is adding new section 2 (Incorporation by Reference) to incorporate: ''ASTM Standard D 388–77, Standard Specification for Classification of Coals by Rank and ''Method for Determination of Slake Durability Index, Kentucky Method 64–513–79.'' The address where the documents may be inspected, copied, or obtained is also provided.

At section 405 KAR 16:060—General Hydrologic Requirements, Kentucky cites KRS 350.028(1),(5), 350.151(1), and 350.465(2) as the authorization to promulgate administrative regulations for surface and underground coal mining operations.

At subsection 4(1), Kentucky is requiring that acid drainage and toxic drainage be avoided by identifying, burying, and treating materials which may adversely affect water quality, or be detrimental to vegetation or to public health and safety if not buried and treated.

At subsection 8(1)(a), Kentucky is requiring that if it receives a citizen's complaint under 405 KAR 12:030 that the person's water supply has been adversely impacted by the activities of a permittee named in the complaint, the cabinet shall promptly notify the permittee of the complaint. At subsection 8(2)(a), Kentucky is clarifying that the notice referred to is the notice from the cabinet.

At section 405 KAR 16:090—Sedimentation Ponds, Kentucky cites KRS 350.028(1),(5), 350.151(1), and 350.465(2) as the authorization to promulgate administrative regulations

for surface and underground coal mining operations.

At section 405 KAR 16:100—Permanent and Temporary Impoundments, Kentucky cites KRS 350.028(2), (5), 350.51(1), and 350.465(2) as the authorization to promulgate administrative regulations for surface and underground coal mining operations. Only minor, nonsubstantive wording changes were made.

At section 405 KAR 16:160—Coal Mine Waste Dams and Impoundments, Kentucky cites KRS 350.028(2), (5), 350.15(1), and 350.465(2) as the authorization to promulgate administrative regulations for surface and underground mining operations.

At subsection 3(1)(a), Kentucky is specifying that it may require a duration longer than a 6-hour precipitation event if safety concerns warrant a longer time period.

At section 405 KAR 18:001—Definitions (405 KAR Chapter 18), Kentucky defines the following terms:

Acquisition, Community or Institutional Building, Historically Used for Cropland, and *Sedimentation Pond* are defined in the same manner as in section 8:001 above.

Durable Rock and *In Situ Process* are defined in the same manner as in section 16:001 above.

Kentucky is adding new section 2 (Incorporation by Reference) to incorporate the same documents listed in 16:001, section 2 above.

At 405 KAR 18:060—General Hydrologic Requirements, Kentucky cites KRS 350.028(1),(5), 350.151(1), and 350.465(2) as the authorization to promulgate administrative regulations for surface and underground coal mining operations.

At subsection 4(1), Kentucky is making the same changes described in subsection 16:060 4(1) above.

At subsections 12(1)(a) and 2(a), Kentucky is making the same changes described in subsections 16:060 8(1)(a) and 2(a) above.

At 405 KAR 18:090—Sedimentation Ponds, Kentucky cites KRS 350.028(1),(5), 350.151(1), and 350.465(2) as the authorization to promulgate administrative regulations for surface and underground coal mining operations.

At subsection 5(7), Kentucky is making the same changes described at 16:090 5(5) above.

At 405 KAR 18:100—Permanent and Temporary Impoundments, Kentucky cites KRS 350.028(2),(5), 350.151(1), and 350.465(2) as the authorization to promulgate administrative regulations for surface and underground coal mining operations. Only minor, nonsubstantive wording changes were made.

At 405 KAR 18:160—Coal Mine Waste Dams and Impoundments, Kentucky cites KRS 350.028(2),(5), 350.151(1), and 350.465(2) as the authorization to promulgate administrative regulations for surface and underground coal mining operations.

At subsection 3(1)(a), Kentucky is making the same changes described in section 16:160 3(1)(a) above.

At section 405 KAR 18:210—Subsidence Control, Kentucky cites KRS 350.028(2),(5), 350.151(1), and 350.465(2) as the authorization to promulgate administrative regulations for surface and underground coal mining operations.

At subsection 1(4)(a), Kentucky is requiring the permittee to conduct and submit to the cabinet a survey of the condition of each noncommercial building or occupied residential dwelling and related structures that may be materially damaged or for which the reasonably foreseeable use may be diminished by subsidence within the area encompassed by the applicable angle of draw.

At subsection 1(4)(b), Kentucky is clarifying that if an owner disagrees with the survey described in this section and chooses to submit a written description of the areas of disagreement, he/she must do so within 30 days after receiving a copy of the survey. The cabinet is then required to promptly notify the permittee.

At subsection 1(4)(c), Kentucky is prohibiting underground operations within 1,500 feet horizontally of a structure for which a survey is required unless the permittee has submitted the survey or documentation that he cannot perform it because the owner will not allow access to the site and the time period for written disagreement by the owner has expired without a written disagreement being received. If a dispute arises over the adequacy of the survey, the cabinet shall establish, based upon site specific conditions, a horizontal distance of 1,500 feet or less which the cabinet deems adequate to ensure the structure will not be damaged by subsidence, and underground operations shall not be conducted within that distance until a determination has been made on the dispute. The cabinet shall make a determination within 30 days after receiving the written disagreement.

At subsection 1(4)(d), Kentucky is requiring that if requested in writing by the permittee and approved in writing by the cabinet, the permittee shall comply with the requirements of this paragraph instead of paragraph (c). The numerical magnitude of the angle of draw shall not be established under this paragraph. The permittee's request for approval under this paragraph shall include a map or maps that show the horizontal separation between the underground workings and each structure that is necessary to ensure that the structure is outside the surface area encompasses by the angle of draw. The request shall also include drawings, calculations, and other relevant supporting information to demonstrate, to the satisfaction of the cabinet, the validity of the permittee's map information. Underground operations shall not be conducted closer to a structure than the horizontal distance established under this paragraph based upon the angle of draw unless the permittee has submitted the required presubsidence survey or documentation that he cannot perform the survey because the owner will not allow access to the site and the time period for written disagreement by the owner has expired without a written disagreement being received. If a dispute arises over the adequacy of the survey, underground operations shall not be conducted within the horizontal distance established under this paragraph until the cabinet has made a determination on the dispute. The cabinet shall make a determination within 30 days after receiving the written disagreement.

At subsection 1(4)(e), Kentucky clarifies that this subsection applies: (1) to extraction of coal under a permit, permit amendment, and permit revision issued after the effective date of this regulation, and (2) 180 days after the effective date of this regulation, to extraction of coal under a permit, permit amendment, and permit revision issued prior to the effective date of this regulation.

At subsection 2(1), Kentucky is changing the 3-month notification requirement to 90 days.

At subsection 2(2), Kentucky is requiring that if notice has been properly given and subsequent emergencies or other unforseen conditions in underground mining necessitate mining beneath the property or structure sooner that 90 days after the notice, the permittee shall immediately provide additional written notice to the owner or occupant that the mining will be conducted sooner than 90 days if approved by the cabinet. The permittee shall submit a written request for approval, including a description of the emergency or other unforseen conditions that necessitate mining sooner than 90 days after the initial

notice. If the cabinet determines that conditions necessitate mining sooner than 90 days after the initial notice, and if the required presubsidence condition survey of structures, or documentation of denial of access to conduct the survey, has been submitted, and the cabinet has made a determination on a dispute, if any, that has arisen over the adequacy of the survey, the cabinet may approve the request. The cabinet shall promptly notify the permittee in writing of its determination. However, in no case shall mining be conducted beneath the property or structure sooner than 10 days after the additional notice is given, unless the 10-day notice period is expressly waived by the owner in writing.

At section 2(3)(b), Kentucky is requiring that the notification include dates that specific areas are anticipated to be undermined.

At section 3(2), Kentucky is adding ''occupied residential'' to modify ''dwellings'' as they pertain to repair of damage.

At subsection 3(4)(d), Kentucky provides that presumption may be rebutted if the evidence establishes that the damage: (1) predated the mining, (2) was proximately caused by another factor and not the subsidence, (3) occurred outside the surface area within which subsidence was actually caused by the mining in question.

At subsection 4(1), Kentucky provides that under specified conditions, the cabinet may limit the percentage of coal extracted under or adjacent to the feature, facility, aquifer, or body of water.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. Specifically, OSM is seeking comments on the revisions described above to the original submission. If the amendment is deemed adequate, it will become part of the Kentucky program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under ''DATES'' or at locations other than the Lexington Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

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

Executive Order 12988

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

National Environmental Policy Act

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

Paperwork Reduction Act

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

Regulatory Flexibility Act

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

Unfunded Mandates

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

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 19, 1998.

Michael K. Robinson,

Acting Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 98–22929 Filed 8–25–98; 8:45 am]

BILLING CODE 4310–05–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1202

RIN 3095–AA66

Privacy Act Regulations

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would streamline NARA regulations implementing the Privacy Act of 1974 by revising and simplifying policies for release of medical information, clarifying whom in NARA individuals contact with Privacy Act requests and appeals, and removing detailed internal NARA operating procedures that do not belong in the regulation. NARA is taking this action after conducting a review of its existing Privacy Act regulations in accordance with Executive Order 12866.

DATES: Comments must be received by October 26, 1998.

ADDRESSES: Comments must be sent to Regulation Comment Desk, Policy and Communications Staff (NPOL), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001.

FOR FURTHER INFORMATION CONTACT: Nancy Allard at (301) 713–7360, extension 226, or Mary Ronan at (301) 713–6025, extension 226.

SUPPLEMENTARY INFORMATION: This rule is a significant regulatory action for the purposes of Executive Order 12866, and has been reviewed by OMB. As required by the Regulatory Flexibility Act, it is

hereby certified that this proposed rule will not have a significant impact on small entities.

List of Subjects in 36 CFR Part 1202

Archives and records, Privacy.

For the reasons set forth in the preamble, NARA proposes to revise part 1202 of title 36, Code of Federal Regulations, to read as follows:

PART 1202—REGULATIONS IMPLEMENTING THE PRIVACY ACT OF 1974

Subpart A—General Provisions

Sec.
1202.1 Scope of part.
1202.4 Definitions.
1202.6 Contact point for Privacy Act assistance and referrals.
1202.10 Collection and use.
1202.12 Standards of accuracy.
1202.14 Rules of conduct.
1202.16 Safeguarding systems of records.
1202.18 Inconsistent issuances of NARA superseded.
1202.20 Records of other agencies.
1202.22 Subpoena and other legal demands.

Subpart B—Disclosure of Records

1202.30 Conditions of disclosure.
1202.32 Procedures for disclosure.
1202.34 Accounting of disclosures.

Subpart C—Individual Access to Records

1202.40 Forms of request.
1202.42 Special requirements for medical records.
1202.44 Granting access.
1202.46 Denials of access.
1202.48 Appeal of denial of access within NARA.
1202.50 Records available at a fee.
1202.52 Prepayment of fees over $250.
1202.54 Form of payment.

Subpart D—Requests to Amend Records

1202.60 Submission of requests to amend records.
1202.62 Review of requests to amend records.
1202.64 Approval of requests to amend.
1202.66 Denial of requests to amend.
1202.68 Agreement to alternative amendments.
1202.70 Appeal of denial of request to amend a record.
1202.72 Statements of disagreement.
1202.74 Judicial review.

Subpart E—Exemptions

1202.90 Specific exemptions.

Authority: 5 U.S.C. 552a; 44 U.S.C. 2104(a).

Subpart A—General Provisions

§ 1202.1 Scope of part.

(a) This part governs requests for NARA organizational records and certain records of defunct agencies under the Privacy Act, 5 U.S.C. 552a (hereinafter referred to as the Act). This part applies to all NARA records, as defined in § 1202.4, which contain personal information about an individual and some means of identifying the individual, and which are contained in a system of records as defined in 5 U.S.C. 552a(a)(5) from which information is retrieved by use of an identifying particular assigned to the individual. The part prescribes procedures for notifying an individual of NARA systems of records which may contain a record pertaining to him or her; procedures for gaining access and contesting the contents of such records, and other procedures for carrying out the provisions of the Act.

(b) Policies and procedures governing the disclosure and availability of NARA operational records in general are in part 1250 of this chapter.

§ 1202.4 Definitions.

For the purposes of this part:

Access means a transfer of a record, a copy of a record, or the information in a record to the subject individual, or the review of a record by the subject individual.

Agency means agency as defined in 5 U.S.C. 552(f).

Defunct agency records means the records in a Privacy Act system of an agency that has ceased to exist without a successor in functions that have not yet been transferred to the National Archives of the United States.

Disclosure means a transfer by any means of a record, a copy of a record, or the information contained in a record to a recipient other than the subject individual, or the review of a record by someone other than the subject individual.

Individual means a citizen of the United States or an alien lawfully admitted for permanent residence.

Maintain includes maintain, collect, use, or disseminate.

NARA Privacy Act appeal official means the Deputy Archivist of the United States for appeals of denials of access to or amendment of records maintained in a system of records, except where the system manager is the Inspector General. The term means the Archivist of the United States for appeals of denial of access to or amendment of records in systems of records maintained by the Inspector General.

Record means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his or her education, financial transactions, medical history and criminal or employment history, and that contains his or her name or an identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint, voiceprint, or photograph. For purposes of this part, ''record'' does not include archival records that have been transferred to the National Archives of the United States.

Routine use means, with respect to the disclosure of a record, the use of that record for a purpose which is compatible with the purpose for which it was collected.

Solicitation means a request by a NARA officer or employee that an individual provide information about himself or herself.

Statistical record means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by 13 U.S.C. 8.

Subject individual means the individual named or discussed in a record or the individual to whom a record otherwise pertains.

System manager means the NARA employee who is responsible for the maintenance of a system of records and for the collection, use, and dissemination of information therein.

System of records means a group of any records under the control of NARA from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifier assigned to that individual.

§ 1202.6 Contact point for Privacy Act assistance and referrals.

Requests for assistance and referral to the responsible system manager or other NARA employee charged with implementing these regulations should be made to the NARA Privacy Act Officer, National Archives and Records Administration, Room 4400, 8601 Adelphi Rd., College Park, MD 20740–6001.

§ 1202.10 Collection and use.

(a) *General.* Any information used in whole or in part in making a determination about an individual's rights, benefits, or privileges under NARA programs will be collected directly from the subject individual to the greatest extent practicable. The system manager also will ensure that information collected is used only in conformance with the provisions of the Act and this part.

(b) *Solicitation of information.* System managers will ensure that at the time information is solicited the subject individual is informed of the authority for collecting that information, whether

providing the information is mandatory or voluntary, the purposes for which the information will be used, the routine uses of the information, and the effects on the individual, if any, of not providing the information. The director of the NARA forms management program will ensure that forms used to solicit information are in compliance with the Act and this part.

(c) *Solicitation of social security number.* (1) Before a NARA employee or NARA contractor requires an individual to disclose his or her social security number, NARA will ensure that either:

(i) The disclosure is required by Federal law; or

(ii) The disclosure was required under a Federal law or regulation adopted before January 1, 1975, to verify the identity of an individual, and the social security number will become a part of a system of records in existence and operating before January 1, 1975.

(2) If solicitation of the social security number is authorized under paragraph (c)(1)(i) or (ii) of this section, the NARA employee or NARA contractor who requests an individual to disclose his or her social security number must first inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority the number is solicited, and the uses that will be made of it.

(d) *Soliciting information from third parties.* A NARA employee or NARA contractor will inform third parties who are requested to provide information about another individual of the purposes for which the information will be used.

§ 1202.12 Standards of accuracy.

The system manager will ensure that all records which are used by NARA to make a determination about any individual are maintained with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to ensure fairness to the individual.

§ 1202.14 Rules of conduct.

All NARA employees and/or NARA contractors involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record, must review the provisions of 5 U.S.C. 552a and the regulations in this part, and must conduct themselves in accordance with the rules of conduct concerning the protection of personal information in the NARA Standards of Conduct.

§ 1202.16 Safeguarding systems of records.

The system manager will ensure that appropriate administrative, technical, and physical safeguards are established to ensure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained. Personnel information contained in both manual and automated systems of records will be protected by implementing the following safeguards:

(a) Official personnel folders, authorized personnel operating or work folders, and other records of personnel actions effected during a NARA employee's Federal service or affecting the employee's status and service, including information on experience, education, training, special qualifications and skills, performance appraisals, and conduct, will be stored in a lockable metal filing cabinet when not in use by an authorized person. A system manager may employ an alternative storage system providing that it furnishes an equivalent degree of physical security as storage in a lockable metal filing cabinet.

(b) System managers, at their discretion, may designate additional records of unusual sensitivity which require safeguards similar to or greater than those described in paragraph (a) of this section.

(c) System managers will permit access to and use of automated or manual personnel records only to persons whose official duties require such access, or to subject individuals or their representatives as provided by this part.

§ 1202.18 Inconsistent issuances of NARA superseded.

Any policies and procedures in any NARA issuance which are inconsistent with the policies and procedures in this part are superseded to the extent of that inconsistency.

§ 1202.20 Records of other agencies.

(a) *Records accessioned into the National Archives of the United States.* Archival records which were contained in systems of records of agencies and which have been transferred to the National Archives of the United States are exempt from most provisions of the Privacy Act (see 5 U.S.C. 552a(l)(2) and (l)(3)). Rules governing access to such records are contained in subchapter C of this chapter.

(b) *Current records of other agencies.* If NARA receives a request for access to records which are the primary responsibility of another agency, but which are maintained by or in the temporary possession of NARA on behalf of that agency in a regional records service facility, NARA will refer the request to the agency concerned for appropriate action. NARA will advise the requester that the request has been forwarded to the responsible agency. (See 5 U.S.C. 552a(l)(1)).

(c) *Records in Government-wide Privacy Act systems.* Records in the custody of NARA which are the primary responsibility of another agency, e.g., the Office of Personnel Management (OPM) or the Office of Government Ethics (OGE), are governed by the regulations promulgated by that agency pursuant to the Act.

(d) *Records of defunct agencies in the custody of NARA.* Records of defunct agencies in the custody of NARA at a NARA records center but not yet accessioned into the National Archives of the United States are governed by the regulations in this part.

§ 1202.22 Subpoenas and other legal demands.

Access to NARA systems of records by subpoena or other legal process will be made in accordance with the provisions of part 1250 of this chapter for NARA operational records and records of defunct agencies not yet accessioned into the National Archives of the United States and part 1254 of this chapter for archival records, records center holdings, and donated historical materials.

Subpart B—Disclosure of Records

§ 1202.30 Conditions of disclosure.

No NARA employee may disclose any record in a system of records to any person or to another agency without the express written consent of the subject individual unless the disclosure is:

(a) To NARA employees who have a need for the information in the official performance of their duties;

(b) Required by the provisions of the Freedom of Information Act, as amended;

(c) For a routine use as published in a notice in the **Federal Register**;

(d) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to title 13 U.S.C.;

(e) To a recipient who has provided NARA with advance adequate written assurance that the record will be used solely as a statistical research or reporting record. (The record will be transferred in a form that is not individually identifiable. In addition to deleting personal identifying information from records released for statistical purposes, the system manager

will ensure that the identity of the individual cannot reasonably be deduced by combining various statistical records.) The written statement must include as a minimum:

(1) A statement of the purpose for requesting the records; and

(2) Certification that the records will be used only for statistical purposes;

(f) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government; or for evaluation by the Archivist or the designee of the Archivist to determine whether the record has such value;

(g) To another agency or instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity, if the activity is authorized by law, and if the head of the agency or instrumentality or his or her other designated representative has made a written request to NARA specifying the particular portion desired and the law enforcement activity for which the record is sought;

(h) To a person showing compelling circumstances affecting the health or safety of an individual, not necessarily the individual to whom the record pertains. Upon such disclosure, a notification must be sent to the last known address of the subject individual;

(i) To either House of Congress or to a committee or subcommittee (joint or of either House, to the extent that the matter falls within its jurisdiction);

(j) To the Comptroller General or any of his authorized representatives in the course of the performance of the duties of the General Accounting Office;

(k) Pursuant to the order of a court of competent jurisdiction; or

(l) To a consumer reporting agency in accordance with 31 U.S.C. 3711(e).

§ 1202.32 Procedures for disclosure.

(a) Address all requests for disclosure of records pertaining to a third party to the NARA Privacy Act Officer, National Archives and Records Administration, Room 4400, 8601 Adelphi Rd., College Park, MD 20740–6001. Upon receipt of such request, NARA will verify the right of the requester to obtain disclosure pursuant to § 1202.30. Upon verification, the system manager will make the requested records available. NARA will acknowledge requests within 10 workdays and will make a decision within 30 workdays, unless NARA notifies the requester that the time limit must be extended for good cause.

(b) If NARA determines that the disclosure is not permitted under § 1202.30, the system manager will deny the request in writing. The requester will be informed of the right to submit a request for review and final determination to the appropriate NARA Privacy Act Appeal Officer.

(1) The Archivist of the United States is the NARA Privacy Act Appeal Officer for records maintained by the Office of the Inspector General. Requests for review involving records for which the Inspector General is the system manager must be addressed to the NARA Privacy Act Appeal Officer (N), National Archives and Records Administration, 8601 Adelphi Rd., College Park, MD 20470–6001.

(2) The Deputy Archivist of the United States is the appeal officer for all other NARA records. Requests for review involving all other records must be addressed to the NARA Privacy Act Appeal Officer (ND), National Archives and Records Administration, 8601 Adelphi Rd., College Park, MD 20470–6001.

§ 1202.34 Accounting of disclosures.

(a) Except for disclosures made pursuant to § 1202.30(a) and (b), an accurate accounting of each disclosure will be made and retained for 5 years after the disclosure or for the life of the record, whichever is longer. The accounting will include the date, nature, and purpose of each disclosure, and the name and address of the person or agency to whom the disclosure is made.

(b) The system manager also will maintain in conjunction with the accounting of disclosures:

(1) A full statement of the justification for the disclosures;

(2) All documentation surrounding disclosure of a record for statistical or law enforcement purposes; and

(3) Evidence of written consent by the subject individual to a disclosure, if applicable.

(c) Except for the accounting of disclosures made under 1202.30(g) or of disclosures made from exempt systems (see subpart E of this part), the accounting of disclosures will be made available to the subject individual upon request. Procedures for requesting access to the accounting are in subpart C of this part.

Subpart C—Individual Access to Records

§ 1202.40 Forms of requests.

(a) Individuals seeking access to their records or to any information pertaining to themselves which is contained in a system of records should notify the NARA Privacy Act Officer, National Archives and Records Administration, Rm. 4400, 8601 Adelphi Rd., College Park, MD 20740-6001.

(b) The request must be in writing and must bear the legend ''Privacy Act Request'' both on the request letter and on the envelope. The request letter must contain:

(1) The complete name and identifying number of the NARA system as published in the **Federal Register**;

(2) The full name and address of the subject individual;

(3) A brief description of the nature, time, place, and circumstances of the subject individual's association with NARA; and

(4) Any other information which the subject individual believes would help NARA to determine whether the information about the individual is included in the system of records.

(c) NARA will answer or acknowledge the request within 10 workdays of its receipt by NARA.

(d) NARA at its discretion, may accept oral requests for access to a NARA system of records, subject to verification of identity.

§ 1202.42 Special requirements for medical records.

When NARA receives a request for access to medical records, if NARA believes, in good faith, that disclosure of medical and/or psychological information directly to the subject individual could have an adverse effect on that individual, the subject individual may be asked to designate in writing a physician or mental health professional to whom he or she would like the records to be disclosed, and disclosure that otherwise would be made to the subject individual will instead be made to the designated physician or mental health professional.

§ 1202.44 Granting access.

(a) Upon receipt of a request for access to non-exempt records, NARA will make such records available to the subject individual or shall acknowledge the request within 10 workdays of its receipt by NARA. The acknowledgment will indicate when the system manager will make the records available.

(b) If NARA anticipates more than a 10-day delay in making a record available, NARA also will include in the acknowledgment specific reasons for the delay.

(c) If a subject individual's request for access does not contain sufficient information to permit the system manager to locate the records, NARA will request additional information from the individual and will have 10

workdays following receipt of the additional information in which to make the records available or to acknowledge receipt of the request and to indicate when the records will be available.

(d) Records will be made available for authorized access during normal business hours at the NARA offices where the records are located.

(1) Requesters must be prepared to identify themselves by producing at least one piece of identification bearing a name or signature and either a photograph or physical description, e.g., a driver's license or employee identification card. NARA reserves the right to ask the requester to produce additional pieces of identification to assure NARA of the requester's identity. If the individual is unable to produce suitable identification, he or she must sign a statement asserting that he or she is the subject individual and stipulating that he or she understands the criminal penalty for perjury and the penalty in the Privacy Act for requesting or obtaining access to records under false pretenses (5 U.S.C. 552a(i)(3)). NARA will provide a form for this purpose.

(2) Requesters must sign a form indicating that they have been given access.

(e) At the written request of a subject individual, NARA may provide access by mailing a copy of the requested records to that individual or to another person designated by the subject individual. In the request, the subject individual must provide a copy of proof of identity, such as an electrostatic copy of a driver's license, or a statement asserting he or she is the subject individual and stipulating that he or she understands the criminal penalty for perjury and the penalty in the Privacy Act for requesting or obtaining access to records under false pretenses (5 U.S.C. 552a(i)(3)).

(f) Upon request, a system manager will permit a subject individual to examine the original of a non-exempt record, will provide the individual with a copy of the record, or both.

(g) Subject individuals may either pick up a record in person or receive it by mail. A system manager may not make a record available to a third party for delivery to the subject individual, except for medical records as outlined in § 1202.42, or at the explicit written direction of the subject individual in accordance with paragraph (h) of this section.

(h) Subject individuals who wish to have a person of their choosing review, accompany them in reviewing, or obtain a copy of a record must, prior to the disclosure of their record, sign a statement authorizing the disclosure. The system manager will maintain this statement with the record.

(i) The procedure for access to an accounting of disclosures is identical to the procedure for access to a record as set forth in this section.

§ 1202.46 Denials of access.

(a) A system manager may deny a subject individual access to his or her record only on the grounds that NARA has published rules in the **Federal Register** exempting the pertinent system of records from the access requirement and the record is exempt from disclosure under the Freedom of Information Act, as amended (FOIA). Exempt systems of records are described in subpart E of this part.

(b) Upon receipt of a request for access to a record which is contained within an exempt system of records, NARA will:

(1) Review the record to determine whether all or part of the record must be released to the requester in accordance with § 1202.44, notwithstanding the inclusion of the record within an exempt system of records; and

(2) Disclose the record in accordance with § 1202.44 or notify the requester that the request has been denied in whole or in part.

(c) If the request is denied in whole or in part, the notice will include a statement specifying the applicable Privacy Act and FOIA exemptions and advising the requester of the right to appeal the decision as provided in § 1202.74.

§ 1202.48 Appeal of denial of access within NARA.

(a) Requesters denied access in whole or part to records pertaining to them may file with NARA an appeal of that denial. The appeal must be postmarked no later than 35 calendar days after the date of the denial letter from NARA.

(1) The Archivist of the United States is the NARA Privacy Act Appeal Official for records maintained by the Office of the Inspector General. Appeals involving records for which the Inspector General is the system manager must be addressed to NARA Privacy Act Appeal Official (N), National Archives and Records Administration, Washington, DC 20408.

(2) The Deputy Archivist of the United States is the NARA Privacy Act Appeal Official for all other NARA records. All other appeals must be addressed to NARA Privacy Act Appeal Official (ND), National Archives and Records Administration, Washington, DC 20408.

(b) Each appeal to the NARA Privacy Act Appeal Official must be in writing. The appeal must bear the legend ''Privacy Act—Access Appeal,'' on both the face of the letter and the envelope.

(c) Upon receipt of an appeal, the NARA Privacy Act Appeal Official will consult with the system manager, legal counsel, and such other officials as may be appropriate. If the NARA Privacy Act Appeal Official, in consultation with these officials, determines that the request for access should be granted because the subject records are not exempt, the NARA Privacy Act Appeal Official will immediately either instruct the system manager in writing to grant access to the record in accordance with § 1202.44 or shall grant access and will notify the requester of that action.

(d) If the NARA Privacy Act Appeal Official, in consultation with the officials specified in paragraph (c) of this section, determines that the appeal should be rejected, the NARA Privacy Act Appeal Official immediately will notify the requester in writing of that determination. This action will constitute NARA's final determination on the request for access to the record and will include:

(1) The reason for the rejection of the appeal; and

(2) Notice of the requester's right to seek judicial review of NARA's final determination, as provided in § 1202.74.

(e) The final NARA determination will be made no later than 30 workdays from the date on which the appeal is received by the NARA Privacy Act Appeal Official. The NARA Privacy Act Appeal Official may extend this time limit by notifying the requester in writing before the expiration of the 30 workdays. The NARA Privacy Act Appeal Official's notification will include an explanation of the reasons for the extension of time.

§ 1202.50 Records available at a fee.

NARA will waive fees for copies of records for the first 100 pages copied or when the cost to collect the fee will exceed the amount collected. When a fee is charged, the charge per copy is $0.30 per page if NARA makes the copy or $0.10 per page if the requester makes the copy on a NARA self-service copier. Fees for other reproduction processes are computed upon request.

§ 1202.52 Prepayment of fees over $250.

If the system manager determines that the estimated total fee is likely to exceed $250, NARA will notify the individual that the estimated fee must be prepaid prior to NARA's making the records available. NARA will remit any excess amount paid by the individual or bill

the individual for an additional amount if there is a variation between the final fee charged and the amount prepaid.

§ 1202.54 Form of payment.

Payment shall be by check or money order payable to the National Archives and Records Administration and shall be addressed to the NARA Privacy Act Officer.

Subpart D—Requests To Amend Records

§ 1202.60 Submission of requests to amend records.

Subject individuals who desire to amend any record containing personal information about themselves should write to the NARA Privacy Act Officer, except that a current NARA employee who desires to amend personnel records should write to the Director, Human Resources Services Division. Each request must include evidence of and justification for the need to amend the pertinent record. Each request must bear the legend ''Privacy Act—Request To Amend Record'' prominently marked on both the face of the request letter and the envelope.

§ 1202.62 Review of requests to amend records.

(a) NARA will acknowledge receipt of a request to amend a record within 10 workdays. If possible, the acknowledgment will include the system manager's determination either to amend the record or to deny the request to amend as provided in § 1202.66.

(b) When reviewing a record in response to a request to amend, the system manager will assess the accuracy, relevance, timeliness, and completeness of the existing record in light of the proposed amendment. The system manager will determine whether the amendment is justified. With respect to a request to delete information, the system manager also will review the request and existing record to determine whether the information is relevant and necessary to accomplish an agency purpose required to be accomplished by law or Executive order.

§ 1202.64 Approval of requests to amend.

If the system manager determines that amendment of a record is proper in accordance with the request to amend, he or she promptly will make the necessary amendment to the record and will send a copy of the amended record to the subject individual. NARA will advise all previous recipients of the record, using the accounting of disclosures, of the fact that an amendment has been made and give the substance of the amendment. Where practicable, NARA will send a copy of the amended record to previous recipients.

§ 1202.66 Denial of requests to amend.

If the system manager determines that an amendment of a record is improper or that the record should be amended in a manner other than that requested by an individual, NARA will advise the requester in writing of the decision. The denial letter will state the reasons for the denial of the request to amend; include proposed alternative amendments, if appropriate; state the requester's right to appeal the denial of the request to amend; and state the procedure for appealing.

§ 1202.68 Agreement to alternative amendments.

If the denial of a request to amend a record includes proposed alternative amendments and if the requester agrees to accept them, the requester must notify the system manager who will make the necessary amendments in accordance with § 1202.64.

§ 1202.70 Appeal of denial of request to amend a record.

(a) A requester who disagrees with a denial of a request to amend a record may file an appeal of that denial.

(1) If the denial was signed by a NARA system manager other than the Inspector General, the requester must address the appeal to the NARA Privacy Act Appeal Official (ND), Washington, DC 20408.

(2) If the denial was signed by the Inspector General, the requester must address the appeal to the NARA Privacy Act Appeal Official (N), Washington, DC 20408.

(3) If the requester is an employee of NARA and the denial to amend involves a record maintained in the employee's Official Personnel Folder, or in another Government-wide system maintained by NARA on behalf of another agency, NARA will provide the requester the name and address of the appropriate appeal official in that agency.

(b) Each appeal to the NARA Privacy Act appeal official must be in writing and must be postmarked no later than 35 calendar days from the date of NARA denial of a request to amend a record. The appeal must bear the legend ''Privacy Act—Appeal,'' both on the face of the letter and the envelope.

(c) Upon receipt of an appeal, the NARA Privacy Act appeal official will consult with the system manager, legal counsel, and such other officials as may be appropriate. If the NARA Privacy Act appeal official, in consultation with these officials, determines that the record should be amended as requested, he or she immediately will instruct the system manager to amend the record in accordance with § 1202.64 and will notify the requester of that action.

(d) If the NARA Privacy Act appeal official, in consultation with the officials specified in paragraph (c) of this section, determines that the appeal should be rejected, the NARA Privacy Act appeal official immediately will notify the requester in writing of that determination. This action will constitute the NARA final determination on the request to amend the record and will include:

(1) The reasons for the rejection of the appeal;

(2) Proposed alternative amendments, if appropriate, which the requester subsequently may accept in accordance with § 1202.68;

(3) Notice of the requester's right to file a Statement of Disagreement for distribution in accordance with § 1202.72; and

(4) Notice of the requester's right to seek judicial review of the NARA final determination, as provided in § 1202.74.

(e) The NARA final determination will be made no later than 30 workdays from the date on which the appeal is received by the NARA Privacy Act appeal official. In extraordinary circumstances, the NARA Privacy Act appeal official may extend this time limit by notifying the requester in writing before the expiration of the 30 workdays. The NARA Privacy Act appeal official's notification must include a justification for the extension of time.

§ 1202.72 Statements of disagreement.

Upon receipt of a NARA final determination denying a request to amend a record, the requester may file a Statement of Disagreement with the appropriate system manager. The Statement of Disagreement must include an explanation of why the requester believes the record to be inaccurate, irrelevant, untimely, or incomplete. The system manager will maintain the Statement of Disagreement in conjunction with the pertinent record and will include a copy of the Statement of Disagreement in any disclosure of the pertinent record. The system manager will provide a copy of the Statement of Disagreement to any person or agency to whom the record has been disclosed only if the disclosure was subject to the accounting requirements of § 1202.34.

§ 1202.74 Judicial review.

Within 2 years of receipt of a NARA final determination as provided in

§ 1202.48 or § 1202.70, a requester may seek judicial review of that determination. A civil action must be filed in the Federal District Court in which the requester resides or has his or her principal place of business or in which the NARA records are situated, or in the District of Columbia.

Subpart E—Exemptions

§ 1202.90 Specific exemptions.

(a)(1) The following systems of records are eligible for exemption under 5 U.S.C. 552a(k)(1) because they contain information specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order. Accordingly, these systems of records are exempt from the following sections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), and (e)(4) (G) and (H):

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Personnel Security Case Files—NARA 24

(2) Exemptions from the particular subsections are justified for the following reasons:

(i) From subsection (c)(3) because accounting for each disclosure could result in the release of properly classified information which would compromise the national defense or disrupt foreign policy.

(ii) From the access and amendment provisions of subsection (d) because access to the records in these systems of records could result in the release of properly classified information which would compromise the national defense or disrupt foreign policy. Amendment of either of these series of records would interfere with ongoing investigations and law enforcement or national security activities and impose an impossible administrative burden by requiring investigations to be continuously reinvestigated.

(iii) From subsection (e)(1) because verification of the accuracy of all information to the records could result in the release of properly classified information which would compromise the national defense or disrupt foreign policy.

(iv) From subsection (e)(4) (G) and (H) because these systems are exempt from the access and amendment provisions of subsection (d) pursuant to subsection (k)(1) of the Privacy Act.

(b)(1) The following system of records is eligible for exemption under 5 U.S.C. 552a(k)(2) because it contains investigatory material compiled for law enforcement purposes other than material within the scope of subsection (j)(2) of 5 U.S.C. 552a. However, if any individual is denied any right, privilege or benefit that he would otherwise be entitled by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material will be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to January 1, 1975, under an implied promise that the identity of the source would be held in confidence. Accordingly, the following system of records is exempt from subsections (c)(3), (d), (e)(1) and (e)(4) (G) and (H), and (f) of 5 U.S.C. 552a:

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(2) Exemptions from the particular subsections are justified for the following reasons:

(i) From subsection (c)(3) because release of disclosure accounting could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of the investigation and the fact that they are subjects of the investigation, and reveal investigative interest by not only the Inspector General (OIG), but also by the recipient agency. Since release of such information to the subjects of an investigation would provide them with significant information concerning the nature of the investigation, release could result in the destruction of documentary evidence, improper influencing of witnesses, endangerment of the physical safety of confidential sources, witnesses, and law enforcement personnel, the fabrication of testimony, flight of the subject from the area, and other activities that could impede or compromise the investigation. In addition, accounting for each disclosure could result in the release of properly classified information which would compromise the national defense or disrupt foreign policy.

(ii) From the access and amendment provisions of subsection (d) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation, of the existence of that investigation; of the nature and scope of the information and evidence obtained as to his activities; of the identity of confidential sources, witnesses, and law enforcement personnel, and of information that may enable the subject to avoid detection or apprehension. These factors would present a serious impediment to effective law enforcement where they prevent the successful completion of the investigation, endanger the physical safety of confidential sources, witnesses, and law enforcement personnel, and/or lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony. In addition, granting access to such information could disclose security-sensitive or confidential business information or information that would constitute an unwarranted invasion of the personal privacy of third parties. Amendment of the records would interfere with ongoing investigations and law enforcement activities and impose an impossible administrative burden by requiring investigations to be continuously reinvestigated.

(iii) From subsection (e)(1) because the application of this provision could impair investigations and interfere with the law enforcement responsibilities of the OIG for the following reasons:

(A) It is not possible to detect relevance or necessity of specific information in the early stages of a civil, criminal or other law enforcement investigation, case, or matter. Relevance and necessity are questions of judgment and timing, and it is only after the information is evaluated that the relevance and necessity of such information can be established.

(B) During the course of any investigation, the OIG may obtain information concerning actual or potential violations of laws other than those within the scope of its jurisdiction. In the interest of effective law enforcement, the OIG should retain this information, as it may aid in establishing patterns of inappropriate activity, and can provide valuable leads for Federal and other law enforcement agencies.

(C) In interviewing individuals or obtaining other forms of evidence during an investigation, information may be supplied to an investigator which relates to matters incidental to the primary purpose of the investigation but which may relate also to matters under the investigative jurisdiction of another agency. Such information cannot readily be segregated.

(iv) From subsection (e)(4) (G) and (H) because this system is exempt from the access and amendment provisions of subsection (d) pursuant to subsection (k)(1) and (k)(2) of the Privacy Act.

(v) From subsection (f) because this system is exempt from the access and amendment provisions of subsection (d) pursuant to subsection (k)(1) and (k)(2) of the Privacy Act.

(c)(1) The following system of records is eligible for exemption under 5 U.S.C. 552a(k)(5) because it contains investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to January 1, 1975, under an implied promise that the identity of the source would be held in confidence. Accordingly, this system of records is exempt from 5 U.S.C. 552a(d)(1).

Personnel Security Case Files, NARA—24

(2) Exemptions from the particular subsection is justified as access to records in the system would reveal the identity(ies) of the source(s) of information collected in the course of a background investigation. Such knowledge might be harmful to the source who provided the information as well as violate the explicit or implicit promise of confidentiality made to the source during the investigation. Disclosure might violate the privacy of third parties.

Dated: August 17, 1998.

John W. Carlin,

Archivist of the United States.

[FR Doc. 98–22672 Filed 8–25–98; 8:45 am]

BILLING CODE 7515–01–P

POSTAL SERVICE

39 CFR Part 111

New Specifications for Automated Flats

AGENCY: Postal Service.

ACTION: Proposed Rule.

SUMMARY: The flat sorting machine (FSM) 1000 is capable of processing mailpieces that cannot be processed on the FSM 881. FSM 1000 machines are being retrofitted with barcode readers. Mailpieces that currently do not qualify for automation flat rates will be eligible for the automation flat rates if their pieces meet the size and other criteria for processing on the FSM 1000 as described below, are prepared with correct ZIP+4 or delivery point barcodes, and meet other preparation requirements.

DATES: Comments must be received on or before September 16, 1998.

ADDRESSES: Mail or deliver written comments to the Manager, Mail Preparation and Standards, USPS Headquarters, 475 L'Enfant Plaza SW, Room 6800, Washington DC 20260–2405.

Copies of all written comments will be available for inspection and photocopying at USPS Headquarters Library, 475 L'Enfant Plaza SW, 11th Floor N, Washington, DC between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Karen A. Magazino, (202) 268–3854.

SUPPLEMENTARY INFORMATION: On October 4, 1998, the USPS plans to extend the automation flats rates to pieces prepared as automated flats that meet the physical mailpiece requirements for the FSM 1000 flat sorting machine.

Deployment of 340 FSM 1000s is near completion in major processing and distribution centers nationwide. Barcode reader deployment for the FSM 1000s will be completed by February 1999. Newspapers, tabloids, heavier magazines, catalogs, and many kinds of polywrap that cannot be processed on existing FSM 881 equipment can be processed on FSM 1000 equipment and will now be able to qualify for automation discounts. Newspapers and tabloids must have two folds; the second fold must be perpendicular to the original fold.

Testing has shown that larger pieces can be processed on FSM 1000 machines. Separate size, weight, and thickness dimensions for mail that can be processed on the FSM 1000 will be added to the eligibility criteria for automation flat rates in Domestic Mail Manual (DMM) C820. The FSM 1000 can process a piece up to 12 inches high by 15¾ inches in length. For the FSM 1000, the length is the longest edge except that for pieces that are folded or have a bound edge, the dimension parallel to the folded or bound edge is the length. (This is different than the definitions of length and height for mailpieces processed on FSM 881s, for which the dimension parallel to the folded or bound edge is the height.) The dimensions for folded pieces or pieces with a bound edge processed on the FSM 1000 increase 3¾ inches in length (i.e., the bound edge) but decrease 3 inches in height (i.e., the edge perpendicular to the bound edge). The minimum dimensions for all flats processed on the FSM 1000 is 4 inches height by 4 inches length provided the mailpiece is thicker than ¼ inch. Mailpieces up to 5 inches in length must be at least ¼ inch thick. The minimum thickness for pieces 5 inches or more in length is 0.009 inch thick.

Testing of flat mailpieces demonstrated that as the length of the piece decreases the thickness may increase. The maximum thickness requirements for the FSM 1000 mail are 1.25 inches if the mailpiece is 13 inches long or less. Flats longer than 13 inches up to 15¾ inches cannot exceed ⅞ inch thick. Test results showed that pieces within these dimensions meet the flexibility criteria for the FSM 1000; therefore, specifications for FSM 1000 pieces do not contain separate flexibility rules.

The maximum weight for First-Class mail pieces processed on the FSM 1000 will be 11 ounces (13 ounces after rate case implementation, January 10, 1999), up to 16 ounces for Standard Mail A, and 6 pounds for Periodicals.

For pieces processed on the FSM 1000 the correct and properly prepared POSTNET barcode must be placed at least ⅛ inch from any edge of the mailpiece however, since there has been a demonstrated ''slump'' on certain mailpieces we strongly recommend at least 2 inches from the dimension that is the length (the longest edge or, if bound or folded, the bound or folded edge).

For pieces processed on the FSM 1000 barcode requirements found in C840.4.0, C840.5.0 and C840.6.0 still apply.

Pieces to be processed on the FSM 1000 may be prepared with polywrap under the guidelines specified in Postal Bulletin 21940 (2–27–97), except that only physical property number 2, haze, will be required for pieces to be processed on the FSM 1000. Pieces prepared with FSM 1000 approved polywrap must bear a separate marking from pieces prepared with FSM 881 approved polywrap to indicate the flat sorting machine for which the polywrap was approved. Mailers will be given a 6 month grace period to begin using the new polywrap markings that specify whether it is FSM 881 approved or FSM 1000 approved.

Although the Postal Service is extending the discount to pieces that can be processed on FSM 1000 equipment, it does not wish to encourage mailers to prepare pieces in a manner that would cause them to migrate from the more productive FSM 881 machines to processing on the FSM 1000 machines. In addition to productivity concerns, a large migration could also cause equipment capacity problems. Therefore, the Postal Service is proposing that in order to qualify for the automation flats rates, mailpieces that meet the current automation flat

height, length, thickness, and weight dimensions applicable to the FSM 881 machines under DMM C820.2.0 must continue to meet the current specifications for turning ability and deflection (current DMM C820.5.0, proposed DMM C820.6.0), and if prepared with polywrap, continue to meet all the polywrap criteria in Postal Bulletin 21940 (2–27–97) including physical properties 1 through 7.

When presorting mail for the automation flat-size rates, pieces meeting the FSM 881 dimensions must be prepared in separate packages from pieces that meet the FSM 1000 dimensions. When preparing packages of pieces meeting the dimensions for the FSM 881, mailers may combine pieces of non-identical weights provided appropriate postage payment methods are used. Likewise, within a package of pieces meeting the dimensions for the FSM 1000, mailers may combine pieces of non-identical weights provided appropriate postage payment methods are used. Separate package minimums must be met for each type of package (i.e., 10 pieces per package for First-Class and Standard Mail (A) and 6 pieces per package for Periodicals). This will allow packages of mail to be sorted to the appropriate flats processing equipment at sack or tray opening units and at pallet breakdown operations. Both types of automation flats packages (FSM 881 and FSM 1000 packages) may be placed in the same tray (First-Class) or in the same sack (Periodicals and Standard Mail (A)). For Periodicals and Standard Mail (A) both types of automation flats packages (FSM 881 and FSM 1000 packages) may be placed on the same pallet.

In addition, for Periodicals sacked mail, FSM 881 and FSM 1000 packages may be combined with nonautomation packages in 3-digit, SCF, ADC, and mixed ADC sacks and/or pallets. Periodicals automation flats packages must be placed in separate 5-digit sacks from Periodicals nonautomation packages. First-Class and Standard Mail (A) mailings, automation rate mail must continue to be separately trayed (First-Class) or sacked (Standard Mail (A)) or palletized from nonautomation rate mail.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 401(a), the Postal Service invites comments on the following proposed revisions of the Domestic Mail Manual, incorporated by reference in the Code of Federal Regulations. See 39 CFR Part 111.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Amend the Domestic Mail Manual as set forth below:

C CHARACTERISTICS AND CONTENT

C800 Automation-Compatible Mail

* * * * *

C820 Flats

[Amend 1.0 by changing the term ''7.0'' to ''8.0'' and adding additional standards for FSM 881 and FSM 1000 pieces to read as follows:]

1.0 BASIC STANDARDS

Flats claimed at automation rates must meet the standards in 1.0 through 8.0 and the general and specific standards for mailability and the class of mail and rate claimed. Pieces meeting the dimensions for FSM 881 processing under 2.0 (height, length, thickness and weight) must also meet the turning ability and deflection requirements in 6.0 in order to qualify for the automation flats discount. If polywrap is used with pieces meeting the dimensions under 2.0, the polywrap must meet all of the physical properties in Exhibit 4.1a in order to qualify for the automation flats discount. Pieces that do not meet the dimensions for height, length, thickness and weight under 2.0 (FSM 881 pieces), but that meet the dimensions in 3.0 are designated as FSM 1000 pieces. Such FSM 1000 pieces need not meet the turning ability and deflection requirements in 6.0 and, if prepared with polywrap, the polywrap must only meet physical property number 2 in Exhibit 4.1a.

[Amend the heading of 2.0 to read as follows.]

2.0 DIMENSIONS FOR FSM 881 PROCESSING

* * * * *

[Delete the second sentence of section 2.3 b(2).]

* * * * *

[Redesignate 3.0 through 7.0 as 5.0 through 9.0, respectively. Insert new 3.0 and 4.0 to read as follows.]

3.0 DIMENSIONS FOR FSM 1000 PROCESSING

3.1 Determining Length and Height

The length and height of an automation compatible flat-size mailpiece is not determined by the orientation of the address. Instead, for this standard:

a. For a piece prepared as a single sheet or in an envelope, full length wrapper, or full-length sleeve, the length is the longest dimension. The height is the dimension perpendicular to the length.

b. For a piece that has a bound or folded edge (e.g., a newspaper, tabloid, heavier magazine and catalog), the length is the dimension parallel to the bound or folded edge. The height is the dimension perpendicular to the length. If the piece is folded more than once or bound and then folded, the length of the mailpiece is based on the final fold.

3.2 Final Fold

A flat-size piece with a final fold must be designed so that the address is in view when the final folded edge is to the right and any intermediate bound or folded edge is at the bottom.

3.3 Shape and Size

Pieces must meet the following requirements:

a. Height: no more than 12 inches or less than 4 inches high.

b. Length: no more than 15¾ inches or less than 4 inches long.

c. Minimum Thickness:

(1) Pieces at least 5 inches long, 0.009 inch thick.

(2) Pieces at least 4 inches long, but less than 5 inches long, 0.25 inch thick.

d. Maximum thickness:

(1) Pieces 13 inches long or less, the maximum thickness is 1.25 inches thick.

(2) Pieces longer than 13 inches up to and including 15¾ inches the maximum thickness is ⅞ inch thick.

3.4 Maximum Weight

Maximum weight limits are as follows:

a. For First-Class Mail, 11 ounces (13 ounces as of January 10, 1999).

b. For Periodicals, 6 pounds.

c. For Standard Mail (A), less than 16 ounces.

4.0 COVERINGS

4.1 Polywrap Films

The Postal Service will allow plastic manufacturers to use the results of their American Standard Testing Methods (ASTM) product tests to certify that the polywrap films meet or exceed the minimum requirements for the physical properties outlined in Exhibit 4.1a and Exhibit 4.1b

USPS Polywrapped Flats Mailing Specifications for FSM 881

Exhibit 4.1a—Physical Properties

Automation flat pieces that meet the height, length, thickness, and weight dimensions for the FSM 881 in 2.0 must meet all seven properties on this table. Automation flat pieces that do not meet the height, length, thickness, or weight dimensions in 2.0, but meet the dimensions for the FSM 1000 in 3.0, may be prepared with polywrap that only meets property number 2, haze.

Property	Requirement	Test method	Comment
1. Kinetic Coefficient of Friction, MD	<0.28	ASTM D1894	Stainless steel finish must be in accordance with ASTM A 480/A 480M.
a. Film on Stainless Steel with No. 8 (Mirror) Finish			
b. Film on Film	0.20 to 0.40	ASTM D1894	
2. Haze	<70	ASTM D1003	Address labels are an alternative to meeting this requirement.
3. Secant Modulus, 1% elongation a. TD, psi	>40,000	ASTM D882	
b. MD, psi	>50,000	ASTM D882	
4. Tensile Strength TD, psi	>2,000	ASTM D882	
MD, psi	>3,000	ASTM D882	
5. Density, g/cc	0.900 to 0.950.	ASTM D1505	
6. Nominal Gauge, in	>0.001	ASTM D374	
7. Static Charge, kv	<2.0	ASTM D4470	Antistatic additives can regulate this charge.

Exhibit 4.1b—Configuration Requirement Wrap Instruction

1. The polywrapped flat shall be machinable according to USPS–STD–28A and as outlined in DMM 53 section C820 Flats. Shrink wrapped mailpieces shall be approved if they conform to the machinable flat requirements according to USPS–STD–28A and as outlined in DMM53 section C820 Flats.

2. Wrap direction shall be specified as around the shorter axis of the mailpiece so that the seam is along the addressed side of the mailpiece, oriented from top to bottom. This seam must not cover any part of the address and barcode read areas.

3. Overhang of not more than 1.5 inches of polywrap shall be allowed at the top of the mailpiece when the contents are shaken down to the bottom of the package. Overhang on the sides shall not be more than 0.25 inch, however, the piece shall not be wrapped so tightly as to deform the product.

4.2 Polywrap Certification Process

The polywrap certification program requires plastic manufacturers to obtain and provide an official certification of conformance from ASTM that their polywrap material meets the USPS Polywrap Flats Mailing Specifications described in Exhibit 4.1a and Exhibit 4.1b. Prior to their initial mailing, mailers must submit for evaluation barcoded sample pieces that meet both applicable DMM mailing standards for automated flats and the minimum standards for polywrapped flats. Mailpiece design analysts (MDAs) must authorize a mailer to claim the automation rates for flats for any flat-size barcoded piece prepared in a polywrap film that has been independently certified if the prepared mailpiece meets all other mail preparation standards for polywrapped flats such as overhang, seam, static and barcode readability. Local Business Mail Entry Units are to notify the MDA of any barcoded, polywrapped mailing submitted, claiming automation rates for flats that does not meet the wrapping requirements for polywrapped pieces.

4.3 Submission of Samples for Evaluation

A mailer who wishes to have sample pieces reviewed for authorization must submit samples to the Manager, business Mail Entry for review by an MDA. Each sample submitted must consist of at least 30 polywrapped barcoded sample mailpieces with a Certification of Compliance that the polywrap material meets the physical property specifications in Table 1 and Table 2, for the FSM 881 mailpieces and the FSM 1000 mailpieces.

4.4 Mailpiece Identification

Once approved for entry at the automation rates for flats, a mailing must be endorsed to show that it is an automation-compatible polywrapped flat-size piece. The mailer may meet this requirement by adding ''USPS (company name of vendor) FSM 881 Approved Automatable Polywrap'' or ''USPS (company name of vendor) FSM 1000 Approved Automatable Polywrap,'' as applicable, on the address side of the piece, preferably below the postage area or in another visible location on the outside of the mailpiece. The polywrap endorsement may also be printed directly on the polywrap material. Other locations for the endorsement and abbreviation for the company name are acceptable if approved by the MDA. Mailer's not currently using the appropriate mailpiece identification marking will have until April 4, 1999, to comply.

4.5 Suspension of Approval

Any mailing found to be improperly prepared will not be accepted at the automation rates for flats. The repeated submission of non-machinable mailings is cause for exclusion from the polywrap flat automation rates.

[Delete renumbered 5.1. Renumber 5.2 and 5.3 as 5.1 and 5.2.]

* * * * *

6.0 TABS, WAFER SEALS, TAPE, AND GLUE

[Amend the first sentence in renumbered 5.0 to clarify that tabs,

seals, tape and glue are not required, to read as follows.]

Although not required, mailpieces may be prepared with tabs, wafer seals, cellophane tape, or permanent glue (continuous or spot) if these sealing devices do not interfere with the recognition of the barcode, rate marking, postage information, and delivery and return addresses.

7.0 TURNING ABILITY AND DEFLECTION

7.1 Turning Ability

[Amend renumbered 6.1 by adding ''881'' to read as follows:]

A flat-size mailpiece meeting the FSM 881 dimensions in 2.0 must fit between two concentric arcs drawn on a horizontal flat surface, one with a radius of 15.72 inches and the other with a radius of 16.72 inches in one of these ways:

7.2 Deflection

[Renumber Exhibit 5.2 as Exhibit 6.2; amend renumbered 6.2 by adding ''881'' to read as follows:]

A flat-size mailpiece meeting the FSM 881 dimensions in 2.0 must be rigid enough so that, when placed flat on a surface to extend unsupported 5 inches off that surface, no part of the edge of the piece that is opposite the bound, folded, or final folded edge (as applicable) deflects more than 1¾ inches (if the piece is less than ⅛ inch thick) or more than 2⅜ inches (if the piece is from ⅛ to ¾ inch thick). See Exhibit 6.2.

* * * * *

C840 Barcoding Standards

* * * * *

3.0 BARCODE LOCATION—FLAT-SIZE PIECE

[Revise 3.0 to read as follows:]

On any flat-size piece claimed at an automation rate the barcode may be anywhere on the address side that is at least ⅛ inch from any edge of the piece. For FSM 1000 pieces, is it preferred that the barcode be placed at least 2 inches from the dimension that is the length for that type of automation piece (the longest edge, or for pieces with a folded or bound edge, the folded or bound edge). That portion of the surface of the piece on which the barcode is printed must meet the reflectance standards in 5.0. The address side may bear only one POSTNET-format barcode (i.e., the correct barcode for the delivery address on the mailpiece). Other mailer-applied non-POSTNET barcodes may appear on the address side if their format is not intelligible or not confusing to automated postal equipment. Address block barcodes are subject to the standards in 2.5a through 2.5e.

* * * * *

M820 Flat-Size Mail

1.0 BASIC STANDARDS

* * * * *

[Revise the second sentence of 1.5 to read as follows:]

1.5 Package Preparation

All pieces must be prepared in packages. Firm packages must not be included in mailings prepared under M820. Pieces meeting the size dimensions for the FSM 881 under C820.2.0 must be prepared in separate packages from pieces that do not meet the FSM 881 dimensions (but that meet the dimensions for FSM 1000 processing). Each FSM 881 package and each FSM 1000 package must separately meet the package size minimum number of pieces in 2.1, 3.1, or 4.1 as applicable for the class of mail. When the total number of FSM 881 or FSM 1000 pieces for a specific presort destination (e.g., the 5-digit ZIP Code 12345) meets or exceeds the applicable minimum package size, the pieces for that presort destination must be banded into a package or packages labeled to that presort destination in accordance with the standards for the rate claimed. The physical size of each package for that specific presort destination may contain the exact package minimum, more pieces than the package minimum, or fewer pieces than the package minimum depending on the size of the pieces in the mailing or the total quantity of the pieces to that destination. Rate eligibility is not affected when a physical package for a presort destination contains fewer pieces than the minimum package size for the above reasons, provided the total number of FSM 881 pieces physically packaged for that presort destination, or provided the total number of FSM 1000 pieces physically packaged for that presort destination, meets or exceeds the rate eligibility package minimum under E140, E240, or E640.

[Renumber 1.6 and 1.7 as 1.7 and 1.8, respectively, and insert new 1.6 to read as follows.]

1.6 Sack Preparation

Mailers may combine FSM 881 packages and FSM 1000 packages in the same tray (First-Class Mail) or in the same sack (Standard Mail (A) and Periodicals).

* * * * *

[Amend the heading of renumbered 1.8 to read ''Exception—Periodicals Packages.'']

[Insert new 1.9 to read as follows.]

1.9 Exception—Periodicals Automation and Nonautomation

For Periodicals, packages of automation mail (both FSM 881 and FSM 1000 packages) prepared under 3.1 and packages of nonautomation mail prepared under M200.2.4 c–f may be sacked together under 3.2 d–e and 3.3. Automation and nonautomation packages may not be combined in 5-digit sacks. Under this exception, documentation required under P012 must identify the mail claimed at each rate by package and sack sortation level. Under this exception, nonautomation mail continues to qualify for rates under E230 and automation mail continues to qualify for rates under E 240 (i.e., rates for pieces in automation flats packages are based on the package level and rates for pieces in nonautomation flats packages are based on the package and sack level).

* * * * *

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 98–22937 Filed 8–25–98; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD068–3027b; FRL–6144–6]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Control of Volatile Organic Compounds From Sources That Store and Handle Jet Fuel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Maryland for the purpose of establishing volatile organic compound control requirements on sources that store or handle jet fuel. In the Final Rules section of this **Federal Register**, EPA is approving Maryland's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set

forth in the direct final rule and the accompanying technical support document. If no adverse comments are received in response to this rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by September 25, 1998.

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

FOR FURTHER INFORMATION CONTACT: Kristeen Gaffney, (215) 814–2092, at the EPA Region III address above.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations Section of this **Federal Register**.

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

Dated: August 5, 1998.

Thomas C. Voltaggio

Acting Regional Administrator, Region III.

[FR Doc. 98–22796 Filed 8–25–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 14

RIN 1018–AD98

Humane and Healthful Transport of Wild Mammals, Birds, Reptiles and Amphibians to the United States

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Fish and Wildlife Service withdraws the June 6, 1997 proposed rule to amend 50 CFR part 14, subpart J, pertaining to the establishment of standards for the humane and healthful transport of live reptiles and amphibians to the United States. We promulgated this proposed rule under the authority of the Lacey Act, as amended, enacted on November 16, 1981. This action is being taken in part to allow for the completion of the current revision process of the *Live Animals Regulations* (LAR) of the International Air Transport Association (IATA).

This decision was made to allow us to explore all possible opportunities to align United States humane and healthful transport regulations with the IATA LAR standards, which have generally been adopted by the international community, including the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and the European Community (EC), as their required humane transport standards.

ADDRESSES: Director, U.S. Fish and Wildlife Service, c/o Office of Management Authority, either by mail 4401 N. Fairfax Drive, Room 700, Arlington, VA 22203, or by fax (703) 358–2298, or by e-mail to R9OMA__CITES @mail.fws.gov.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Weissgold, Office of Management Authority, U.S. Fish and Wildlife Service, telephone (703) 358–1917, fax (703) 358–2298, or e-mail Bruce__Weissgold@mail.fws.gov.

SUPPLEMENTARY INFORMATION: In the proposed rule of June 6, 1997 (62 FR 31044), we recognized three justifications for amending 50 CFR Part 14, subpart J. First, the Lacey Act Amendments of 1981 (U.S.C. 42(c)) prohibit the transportation of all classes of species into the United States under inhumane or unhealthful conditions, and require that the United States Government promulgate regulations governing the transportation of wildlife. We established rules for the humane and healthful transport of wild mammals and birds to the United States on June 17, 1992 (57 FR 27094) in 50 CFR Part 14 subpart J.

Therefore, we proposed to extend 50 CFR Part 14, subpart J to include rules for the transport of reptiles and amphibians in order to more fully comply with the Lacey Act, which requires the humane transport of all animals and the promulgation of necessary regulations. Furthermore, many reptiles and amphibians are species included in the Appendices of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). CITES requires that all species listed on the CITES Appendices be packed and shipped in accordance with the IATA LAR.

Our second justification for the proposed amendment to the rule is the need to protect the well-being of reptiles and amphibians during transport. The proposed amendment to 50 CFR Part 14, subpart J responded to this problem by providing the Division of Law Enforcement with the authority to cite shippers for failure to comply with specific regulatory requirements even where, by chance, high mortality has not resulted. This additional authority would help us ensure increased compliance with humane and healthful shipping standards, and thus reduce mortality and injury for transported reptiles and amphibians.

Finally, the proposed amendments to 50 CFR Part 14 subpart J would enable us to process the high and increasing volume of reptiles and amphibians entering the United States, and provide a mechanism for adequate data capture and recording or inhumane and unhealthful transport conditions. Specifically, the proposed regulations would equip us with rules that address the particular biological requirements of reptiles and amphibians, and enable us to respond better to the problems associated with transporting these species, and to record instances of mortality of animals in transit and/or substandard shipping conditions.

IATA intends to convene a meeting of its Live Animals and Perishables Board (LAPB) in Montreal, Canada, in October 1998. One component of this meeting would be the introduction, consideration, and debate of amendments to its LAR for reptiles and amphibians. We would like to reevaluate our rule-making effort following the outcome of the IATA revision process, which may include modifications to the packing standards associated with the IATA LAR Container Requirements, specifically regulating the shipping of live reptiles and amphibians.

After proposing amendments to 50 CFR part 14, subpart J, we received a large number of comments from the general public, both in writing, and verbally at public meetings in New York City (January 17, 1998) and Los Angeles (January 27, 1998). Substantial information was received during the comment periods to warrant changes to our proposed rule. The comments that we received covered a broad array of positions, including biological, technical, legal, and animal welfare issues associated with the proposed rule. Some commenters considered our proposals harmful to live reptiles and amphibians in commerce by being

overly regulatory and not based on the biological requirements of the animals. Other commenters indicated that we had favored the commercial reptile and amphibian industry in our proposal and had not proposed sufficiently stringent standards to ensure humane and healthful transport conditions for these animals. We are continuing to evaluate the comments we received to determine their applicability to our rulemaking process, and whether they could apply to our anticipated discussion with IATA on amending their regulations. Once the IATA revision process is complete, we will determine whether it is applicable to our rulemaking efforts in this area and whether another proposed rule is warranted.

Author: The author of this notice is Bruce Weissgold (see **FOR FURTHER INFORMATION CONTACT** section).

Authority: The authority for this action is the Lacey Act, as amended (18 U.S.C. 42(c)).

Dated: August 20, 1998.

Donald Barry,

Assistant Secretary, Fish and Wildlife and Parks.

[FR Doc. 98–22889 Filed 8–21–98; 3:19 pm]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF03

Endangered and Threatened Wildlife and Plants; Notice of Additional Public Hearing on the Proposal To List the Contiguous United States Distinct Population Segment of the Canada Lynx as a Threatened Species; and the Captive Population of Canada Lynx Within the Coterminous United States (lower 48 States) as Threatened Due to Similarity of Appearance, With a Special Rule

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of additional public hearing.

SUMMARY: The Fish and Wildlife Service (Service), pursuant to the Endangered Species Act of 1973, as amended (Act), provides notice of one additional public hearing on the proposed threatened status of the contiguous United States population of the Canada lynx.

DATES: The comment period closes on September 30, 1998. There will be eleven public hearings, including one additional public hearing in Idaho on September 17, 1998 from 2 p.m. until 4 p.m. and from 6 p.m. until 8 p.m.

ADDRESSES: Written comments and materials concerning this proposal may be submitted at the hearings or sent directly to Field Supervisor, U.S. Fish and Wildlife Service, Montana Field Office, 100 N. Park Ave., Suite 320, Helena, Montana 59601. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

The additional hearing will be held at the Rodeway Inn, 1115 North Custis Rd., Boise, ID.

FOR FURTHER INFORMATION CONTACT: Kemper McMaster at 406/449–5225; or by fax at 406/449–5339 (see **ADDRESSES** section).

SUPPLEMENTARY INFORMATION: Public hearings on this proposal will be held in the following locations:

Western States

Colorado

Wednesday, July 22, 1998 from 7 p.m. until 9 p.m. at the Ramada Inn, 124 W. 6th St., Glenwood Springs, Colorado. This public hearing will be preceded by an informational open house from 6 p.m. to 7 p.m.

Tuesday, July 28, 1998, from 7 p.m. until 9 p.m. at the Sheraton Denver West, 360 Union Boulevard, Lakewood, Colorado. This public hearing will be preceded by an informational open house from 6 p.m. to 7 p.m.

Idaho

Thursday, September 10, 1998, from 2 p.m. until 4 p.m. and from 6 p.m. until 8 p.m. at the Coeur d'Alene Inn and Conference Center, 414 West Appleway Avenue, Coeur d'Alene, Idaho.

Thursday, September 17, 1998, from 2 p.m. until 4 p.m. and from 6 p.m. until 8 p.m. at the Rodeway Inn, 1115 North Curtis Road, Boise, Idaho.

Montana

Tuesday, July 21, 1998, from 2 p.m. until 4 p.m. and from 6 p.m. until 8 p.m. at the Colonial Inn Best Western, 2301 Colonial Drive, Helena, Montana.

Wednesday, July 22, 1998, from 2 p.m. until 4 p.m. and from 6 p.m. until 8 p.m. at Cavanaugh's at Kalispell Center, 20 North Main, Kalispell, Montana.

Oregon

Tuesday September 15, 1998, from 2 p.m. until 4 p.m. and from 6 p.m. until 8 p.m. at Eastern Oregon University, Hoke University Center, 1410 L Avenue, Rooms 201–203, LaGrande, Oregon.

Washington

Tuesday, September 8, 1998, from 2 p.m. until 4 p.m. and from 6 p.m. until 8 p.m. at the Cedars Inn, 1 Appleway, Okanogan, Washington.

Wyoming

Wednesday, August 12, 1998, from 2 p.m. until 4 p.m. and from 6 p.m until 8 p.m. at the Cody Auditorium, Cody Club Room, 1234 Beck Avenue, Cody, Wyoming.

Eastern States

Maine

Tuesday, September 15, 1998 from 7 p.m. until 9 p.m. at the Old Town High School, 240 Stillwater Avenue, Old Town, Maine.

Great Lakes States

Wisconsin

Tuesday, September 15, 1998 from 7 p.m. to 9 p.m. at the Northern Great Lakes Center on County Road G near Hwy 2, west of Ashland, Wisconsin. This public hearing will be preceded by an informational open house from 6 p.m. to 7 p.m.

Background

On July 8, 1998, the Service proposed to list the contiguous United States population segment of the Canada lynx (*Lynx canadensis*) as threatened, pursuant to the Endangered Species Act of 1973, as amended (Act) (63 FR 36994). This population segment includes the States of Washington, Oregon, Idaho, Montana, Utah, Wyoming, Colorado, Minnesota, Wisconsin, Michigan, Maine, New Hampshire, Vermont, New York, Pennsylvania and Massachusetts. The contiguous United States population segment of the Canada lynx is threatened by human alteration of forests, low numbers as a result of past overexploitation, expansion of the range of competitors (bobcats (*Felix rufus*) and coyotes (*Canis latrans*)), and elevated levels of human access into lynx habitat. The proposal lists the captive population of Canada lynx within the coterminous United States (lower 48 States) as threatened due to similarity of appearance with a special rule.

Section 4(b)(5)(E) of the Act (16 U.S.C. 1531 *et seq.*) requires that a public hearing be held if it is requested within 45 days of the publication of the proposed rule. An additional public hearing was requested by the Governor of Idaho within the allotted time period. The Service has scheduled an additional public hearing in Boise, Idaho (See above Supplemental Information).

Oral and written comments will be accepted and treated equally. Parties wishing to make statements for the record should bring a copy of their statements to the hearings. Oral statements may be limited in length, if the number of parties present at the hearings necessitates such a limitation. There are no limits to the length of written comments or materials presented at the hearings or mailed to the Service. Written comments carry the same weight as oral comments. Legal notices announcing the date, time, and location of the hearings are being published in newspapers concurrently with this **Federal Register** notice.

Comments from all interested parties must be received by September 30, 1998.

Author

The primary author of this notice is Jeri Wood, U.S. Fish and Wildlife Service, 1387 S. Vinnell Way, #368, Boise, Idaho 83704.

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: August 3, 1998.

Thomas J. Dwyer,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 98–21120 Filed 8–25–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF04

Endangered and Threatened Wildlife and Plants; Proposed Rule To Remove the Peregrine Falcon in North America From the List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to remove the peregrine falcon (*Falco peregrinus*) in North America from the List of Endangered and Threatened Wildlife. The Service proposes this action because the available data indicate that this species has recovered following restrictions on organochlorine pesticides in the United States and Canada and following implementation of successful management activities. Currently, a minimum of 1,388 American peregrine falcon pairs are found in Alaska, Canada, and the Western United States, and a minimum of 205 peregrine falcon pairs are found in the Eastern and Midwestern United States. Overall productivity goals in four American peregrine falcon recovery plans were met or exceeded, and most recovery goals for the eastern peregrine falcon population have been met. The proposed action, if finalized, would remove the American peregrine falcon (*Falco peregrinus anatum*) as an endangered species from the List of Endangered and Threatened Wildlife and would remove the designation of endangered due to similarity of appearance for any free-flying peregrine falcons within the 48 conterminous States. It would remove all Endangered Species Act protections from all subspecies and populations of North American *Falco peregrinus*. It would not affect protection provided to this species by the Migratory Bird Treaty Act (MBTA) and the Convention on International Trade in Endangered Species (CITES). It would not affect the endangered listing status of the Eurasian peregrine falcon (*Falco peregrinus peregrinus*) under the Endangered Species Act.

This proposed rule includes a proposed 5-year post-delisting monitoring plan as required for species that are delisted due to recovery. Monitoring will include population trends, productivity, and contaminant exposure. This proposed rule also provides notice that the collection of information from the public expected to be associated with the monitoring has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act of 1995.

DATES: Comments from all interested parties on the peregrine delisting proposal must be received by November 24, 1998. Public hearing requests must be received by October 13, 1998.

Comments from all interested parties on the collection of information from the public during the 5-year monitoring period will be considered if received on or before October 26, 1998. OMB has up to 60 days to approve or disapprove information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by September 25, 1998.

ADDRESSES: Comments and other information concerning this proposal to remove the peregrine falcon from the endangered species list should be sent to Diane Noda, Field Supervisor, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, California 93003 (facsimile: (805)644–3958). Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Comments and suggestions on specific information collection requirements should be sent to the Desk Officer for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. The comments and suggestions should also be directed to Rebecca Mullin, Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 224 ARLSQ, 1849 C Street, N.W., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Robert Mesta at the above Ventura, California, address, or at (805) 644–1766, for further information on the proposed removal of the peregrine falcon from the endangered species list. To request a copy of the information collection request, explanatory information and related forms, contact Rebecca Mullin at (703) 358–2287.

SUPPLEMENTARY INFORMATION:

Background

The peregrine falcon is a medium-sized raptor weighing approximately 1000 grams (36 ounces) and having a wing span of 112 centimeters (44 inches). The adult peregrine falcon has a dark gray back and crown, dark bars or streaks on a pale chest and abdomen, and heavy malar (cheek) stripes on the face. Immature falcons are buff-colored in front and have dark brown backs; adults are white or buff in front and bluish-gray on their backs. Peregrines prey almost entirely on other birds, and occasionally on bats, caught in midair.

The peregrine falcon has an almost worldwide distribution, with three subspecies recognized in North America (Brown and Amadon 1968). The Peale's falcon (*F.p. pealei*) is a year-round resident of the northwest Pacific coast from northern Washington through British Columbia to the Aleutian Islands. The Arctic peregrine falcon (*F.p. tundrius*) nests in the tundra of Alaska, Canada, and Greenland and is typically a long-distance migrant, wintering as far south as South America. The American peregrine falcon occurs throughout much of North America from the subarctic boreal forests of Alaska and Canada south to Mexico. The American peregrine falcon nests from central Alaska, central Yukon Territory, and northern Alberta and Saskatchewan, east to the Maritimes and

south (excluding coastal areas north of the Columbia River in Washington and British Columbia) throughout western Canada and the United States to Baja California, Sonora, and the highlands of central Mexico (48 FR 8799, March 1, 1983). American peregrine falcons that nest in subarctic areas generally winter in South America, while those that nest at lower latitudes exhibit variable migratory behavior; some are nonmigratory (Yates *et al.* 1988).

Since the early 1970s, efforts to reestablish peregrine falcons in the Eastern and Midwestern United States have successfully returned this species to areas from which it had been extirpated (See ''Eastern United States'' under ''Peregrine Falcon Recovery''). Peregrine falcons are now found nesting in all States within their historical range east of the 100th meridian, except for Rhode Island and Arkansas.

Peregrine falcons declined precipitously in North America following World War II (Kiff 1988). Research implicated organochlorine pesticides, mainly 1,1,1-trichloro-2,2-bis(*p*-chlorophenyl)-ethane (DDT), applied in the United States and Canada during this same period, as causing the decline (for a review, see Risebrough and Peakall 1988). Use of these chemicals peaked in the 1950s and early 1960s and continued through the early 1970s. Organochlorines and their metabolites, including DDT and its principal metabolite DDE (1,1-dichloro-2,2-bis(*p*-chlorophenyl)-ethylene), aldrin, dieldrin, and others, are stable, persistent compounds that are stored in the fatty tissues of animals ingesting contaminated food (Fyfe *et al.* 1988). Peregrine falcons and other animals near the top of the food web, including ospreys (*Pandion haliaetus*), bald eagles (*Haliaeetus leucocephalus*), and brown pelicans (*Pelecanus occidentalis*), gradually accumulated these toxins by eating contaminated prey.

Organochlorines can affect peregrine falcons either by causing direct mortality or by adversely affecting reproduction. Because mortality in wild birds is difficult to study, the effect of organochlorines on mortality is not as well known as the effects on reproduction. Organochlorines can adversely affect reproduction by causing egg breakage, addling, hatching failure, and abnormal reproductive behavior by the parent birds (Risebrough and Peakall 1988). DDE, a metabolite of DDT, prevents normal calcium deposition during eggshell formation, resulting in thin-shelled eggs that are susceptible to breakage during incubation. In general, populations laying eggs with shells that averaged greater than 17 percent thinner than normal, pre-DDT eggs had such high rates of reproductive failure that the number of peregrine falcon pairs declined (Peakall and Kiff 1988).

During the period of DDT use in North America, eggshell thinning and nesting failures were widespread in peregrine falcons, and in some areas, successful reproduction virtually ceased (Hickey and Anderson 1969). As a result, there was a slow but drastic decline in the number of peregrine falcons in many areas of North America. The degree of exposure to these pesticides varied among different regions, and peregrine falcon numbers in more contaminated areas suffered greater declines. Peregrine falcons that nested outside of agricultural and forested areas where DDT was heavily used were affected less, although some individuals wintered in areas of pesticide use. Presumably all individuals ate some migratory prey containing organochlorines (for reviews, see Hickey and Anderson 1969; Kiff 1988; Peakall and Kiff 1988).

Peregrine falcons nesting in the agricultural and forested areas east of the Mississippi River in the United States and in Eastern Canada south of the boreal forest were the most heavily contaminated and were essentially extirpated by the mid-1960's (Berger *et al.* 1969). Peregrine falcons in the Great Plains States east of the Rocky Mountains and south of the boreal forest in Canada and the United States were also extirpated in the DDT era (Cade 1975, Enderson *et al.* 1995). No active eyries were found in surveys of 133 formerly used peregrine falcon eyries in the latter part of the 1964 nesting season in the Eastern United States and the Maritime Provinces in Canada (Berger *et al.* 1969). By 1975, there were only three peregrine falcon pairs in Alberta, and no other peregrine falcon pairs were found south of latitude 60° North and east of the Rocky Mountains in Canada (Erickson *et al.* 1988).

West of the 100th meridian, peregrine falcons were not extirpated, but were significantly reduced. Only 33 percent of historical nest sites in the Rocky Mountains were still occupied by 1965 (Enderson 1969). The peregrine falcon disappeared as a breeding species from southern California, and major declines also occurred in other parts of the western United States and in much of southern Canada and the Northwest Territories (Kiff 1988). In contrast, peregrine falcons in most areas of the Pacific coast of Alaska remained fairly stable during this period, owing to their lower exposure to organochlorine pesticides. Throughout much of western North America, the exact degree of most local declines remains somewhat speculative due to a lack of accurate pre-pesticide era census data. For example, in the southwestern United States and mainland Mexico, peregrine falcons were not censused until after the beginning of the use of organochlorines (Kiff 1988).

Previous Federal Actions

Population declines due to negative impacts of DDT and its metabolites on peregrine falcon reproduction and survival led the Service to list two of the three North American subspecies, the Arctic peregrine falcon (*Falco peregrinus tundrius*) and the American peregrine falcon, as endangered in 1970 under the Endangered Species Conservation Act of 1969 (Pub.L. 91–135, 83 Stat. 275). Arctic and American peregrine falcons were included in the list of threatened and endangered foreign species on June 2, 1970 (35 FR 8495), and the native list of endangered and threatened species on October 13, 1970 (35 FR 16047). Upon passage of the Endangered Species Act (Act) of 1973, the native and foreign species lists were combined into a single list of endangered and threatened species. Both the American and Arctic peregrine falcon subspecies were listed as endangered throughout their respective ranges. Only the Peale's peregrine falcon was reproducing at near normal levels with only traces of DDT.

On March 1, 1983 (48 FR 8796), the Service published a proposed rule to (1) reclassify the Arctic peregrine falcon from endangered to threatened, (2) clarify that the peregrines nesting in western Washington were to be considered American peregrine falcons for purposes of the Act, and (3) designate all free-flying peregrine falcons in the 48 conterminous States as endangered under similarity of appearance provisions under section 4(e) of the Act. A rule finalizing the proposal was published on March 20, 1984 (49 FR 10520). Pursuant to the similarity of appearance provisions, species that are not considered to be endangered or threatened may nevertheless be treated as such for the purpose of providing protection to a species that is biologically endangered or threatened.

On June 12, 1991, the Service announced in the **Federal Register** (56 FR 26969) a notice of status review of the American peregrine falcon and the Arctic peregrine falcon. The Arctic peregrine falcon was subsequently removed as a threatened species from the List of Endangered and Threatened Wildlife on October 5, 1994 (59 FR 50796) but was still protected from

direct take in the lower 48 States due to the similarity of appearance provision because the American peregrine falcon was still listed as endangered.

The Service published an Advanced Notice of a Proposal to Remove the American Peregrine Falcon from the List of Endangered and Threatened Wildlife (60 FR 34406) on June 30, 1995, based on data indicating this subspecies was recovered following restrictions on the use of organochlorine pesticides in the United States and Canada and because of successful management activities, including the reintroduction of captive-bred and relocated wild hatchling peregrine falcons. Current data provides additional support for recovery of all North American peregrine falcons, including the American peregrine falcon subspecies (Table 1).

TABLE 1. AMERICAN PEREGRINE FALCON AND EASTERN PEREGRINE FALCON RECOVERY PLAN GOALS AND CURRENT (1997) RECOVERY STATUS.

Recovery plan	Delisting goal	Current status	Comments/degree to which delisting goals are met
Alaska:			
Pairs	28 pairs	301 pairs	Exceeded goal by 273 pairs.
Productivity (young/pair)	1.8 yg/pr	2.0 yg/pr	Exceeded goal.
DDT (parts per million)	less than 5 ppm	3.5 ppm	Exceeded goal.
Eggshell thinning	less than 10%	12.1%	Goal not met, but has not prevented recovery; goal probably too conservative.
Canada:			
Pairs	60 pairs (10 each in 6 zones).	319 pairs	Exceeded goal by 259 pairs.
Productivity	1.5 yg/pr	1.8 yg/pr	Exceeded goal.
Pacific Coast:			
Pairs	185 pairs	239 pairs	Exceeded goal by 54 pairs.
Productivity	1.5 yg/pr	1.5 yg/pr	Goal met.
Rocky Mountain/Southwest:			
Pairs	183 pairs	529 pairs	Exceeded goal by 346 pairs.
Productivity	1.25 yg/pr	1.4 yg/pr	Exceeded goal.
Eggshell thinning	less than 10%		Goal measured by only a few States; cannot be assessed.
Eastern:			
Pairs	175–200 pairs (with no fewer than 20–25 in each of 5 recovery zones).	174 pairs	Exceeded goal in 3 zones; goals in other 2 zones probably have been met; an additional 31 peregrine falcon pairs occur in several Midwestern States not included under the Eastern Plan.

Peregrine Falcon Recovery

The most significant factor in the recovery of the peregrine falcon was the restriction placed on the use of organochlorine pesticides. Use of DDT was banned in Canada in 1970 and in the United States in 1972 (37 FR 13369, July 7, 1972). Restrictions that controlled the use of aldrin and dieldrin were imposed in the United States in 1974 (39 FR 37246, October 18, 1974). Since implementation of these restrictions, residues of the pesticides have significantly decreased in many regions where they were formerly used. Consequently, reproductive rates in most surviving peregrine falcon populations in North America improved, and numbers began to increase (Kiff 1988).

Section 4(f) of the Act directs the Service to develop and implement recovery plans for listed species. Recovery plans for peregrine falcons called for captive rearing and release of birds in several areas of North America. In the Eastern United States where peregrine falcons were extirpated, the initial recovery objective was to reestablish peregrine falcons through the release of offspring from a variety of wild stocks being held in captivity by falconers. The first experimental releases of captive-produced young occurred in 1974 and 1975 in the United States.

Later, reintroduction was also pursued in Eastern Canada using only *Falco peregrinus anatum* breeding stock from the boreal part of the species' range. All peregrine falcons released to augment wild populations in western North America west of the 100th meridian, where small numbers of American peregrines survived the pesticide era, were derived from western *F. p. anatum* stock.

In Alaska and northwest Canada, American peregrine falcon populations were locally depressed, but enough individuals survived the pesticide era to allow populations to expand without the need for release of captive-bred falcons. Likewise, in the Southwestern United States, very few captive-bred birds were released, and populations recovered naturally following restrictions on the use of organochlorine pesticides. In southwest Canada, the northern Rocky Mountain States, and the Pacific Coast States, however, local populations were greatly depressed or extirpated, and over 3400 young American peregrine falcons were released to promote recovery in those areas (Enderson *et al.* 1995).

American peregrine falcon population growth was noted in Alaska in the late 1970s (Ambrose *et al.* 1988b) and by 1980 in many other areas (Enderson *et al.* 1995). The rate of increase varied among regions of North America, undoubtedly influenced by variation in patterns of pesticide use, potential differences in the rate of pesticide degradation, and the degree to which local populations had declined. Populations in some portions of the range of American peregrine falcons, such as Alaska and northwest Canada and Southwestern United States, reached densities several years ago that suggested recovery was approaching completion (Ambrose *et al.* 1988b; Mossop 1988; G. Holroyd, Canadian Wildlife Service, *in litt.* 1993; Enderson *et al.* 1995). Residual organochlorine pesticide contamination continues to affect eggshells in some areas, such as portions of coastal California (Jarman 1994) and western Texas (Bonnie R. Mckinney, Texas Parks and Wildlife

Department, pers. comm. 1997), but these effects are localized. Despite these localized effects and the variation in the rate of increase among regions, local populations throughout North America have increased in size, and positive trends in nearly all areas suggest that an extensive recovery of American peregrine falcons has taken place.

Eastern Peregrine Population

The Eastern peregrine population has a relatively unique history and complex status under the Act. As stated previously, peregrine falcons were extirpated in the eastern United States and southeastern Canada by the mid-1960s. In 1974, shortly after the passage of the Endangered Species Act of 1973, the National Audubon Society sponsored a meeting of experts in peregrine biology, including representatives from the Service, to address the conservation of the species in North America. This sparked the beginning of an effort to reestablish the peregrine in the East through the introduction of offspring from parents of multiple subspecies. Peregrine falcons were raised in captivity from parent subspecies then listed as endangered (*Falco peregrinus anatum, F. p. tundrius, F. p. peregrinus*), unlisted subspecies (*F. p. pealei, F. p. brookei*, etc.), and combinations of these subspecies. The first experimental releases of captive-produced young in the eastern States occurred in 1974 and 1975. These and future releases, coordinated by the Service, State fish and wildlife agencies, and representatives of The Peregrine Fund, demonstrated that hacking, the practice of retaining and feeding young captive-bred birds in partial captivity until they learn to fly and hunt on their own, was an effective method of introducing captive-bred peregrines to the wild (U.S. Fish and Wildlife Service 1991). Releases, primarily of *Falco peregrinus anatum*, continue on a small scale today.

In 1978, the Director of the Service issued a policy statement confirming support for the use of North American peregrines to establish an Eastern peregrine falcon population, supported with endangered species funds, and the use of peregrines from other geographic areas for specific research purposes. The policy applied only to peregrine falcons in the east.

In 1979, the Service published the first Eastern Peregrine Falcon Recovery Plan, the first of four U.S. regional plans to be developed, to guide the restoration of the peregrine in the East. The Eastern Plan covered the areas extending to the western borders of the States of Minnesota, Iowa, Missouri, Arkansas, Louisiana, and included the Gulf Coast of Texas. The primary objective of the Plan was to restore a new self-sustaining population of peregrine falcons in the eastern United States through preservation and management of essential habitat, captive propagation and release, protection of the population from take, elimination of harmful environmental pollutants, and public education.

Reflecting a 1983 Department of the Interior Solicitor opinion that progeny of intercrosses between listed and unlisted species were not covered under the Act, the Service modified the regulatory status of mixed heritage birds. Through the rulemaking process reclassifying the Arctic peregrine falcon from threatened to endangered status (48 FR 8796, March 1, 1983; 49 FR 10520, March 20, 1984), all free-flying *Falco peregrinus* in the lower 48 States were designated as Endangered due to Similarity of Appearance to ''pure'' listed American and Arctic peregrines (*F. p. anatum* and *F. p. tundrius*). This was done because the intercrossed birds were not readily distinguishable from American and Arctic peregrines, making enforcement of the taking prohibitions of the Act for listed subspecies difficult. The Similarity of Appearance provision of section 4(e) of the Act provides that species (or subspecies or other groups of wildlife) that are not considered to be biologically Endangered or Threatened may nevertheless be treated as such for the purpose of providing protection to a species that is. Accordingly, to ensure protection from illegal take of American and Arctic peregrine falcons that may be nesting, migrating, or wintering in the lower 48 States, the Service extended the taking prohibitions of section 9 of the Act to all free-flying peregrines in the lower 48 States through the Similarity of Appearance provision.

The 1983 Solicitor opinion that progeny of intercrosses were not covered by the Act was subsequently withdrawn by the Solicitor's Office in 1990. Thus, notwithstanding the Similarity of Appearance designation, the Service has continued to fully support the restoration of the Eastern peregrine under the 1991 revised Eastern recovery plan. The Eastern peregrine falcon is being considered on a par with the American peregrine falcon.

Recovery Status

Section 4(f) of the Act directs the Service to develop and implement recovery plans for listed species. In some cases, the Service appoints recovery teams of experts to assist in the writing of recovery plans. In cooperation with the Service, recovery teams produced four regional peregrine falcon recovery plans, including three recovery plans for the American peregrine falcon in Alaska and the Western United States, and one for the peregrine in the Eastern United States. Although no United States recovery plans established recovery criteria for peregrine falcons nesting outside of the United States, the Canadian Wildlife Service published an *Anatum* Peregrine Falcon Recovery Plan (Erickson *et. al.* 1988) for American peregrine falcons in Canada. The current status of the subspecies in Mexico is discussed below, although no recovery plan or recovery objectives were established for Mexico.

To aid in assessing peregrine falcon recovery, the current status is compared to specific recovery plan objectives for American peregrine falcons in (1) Alaska, (2) Canada, (3) the Pacific Coast, and (4) the Rocky Mountains and the Southwest, and for (5) the peregrine falcons in the Eastern United States.

Alaska

The Peregrine Falcon Recovery Plan, Alaska Population (Alaska Recovery Plan) (U.S. Fish and Wildlife Service 1982a) includes both Arctic and American peregrine falcons nesting in Alaska. The following discussion relates only to provisions regarding the American peregrine falcon, as the Arctic peregrine falcon was delisted on October 5, 1994 (59 FR 50796).

The Alaskan Recovery Plan established recovery objectives based on four measurements for assessing the status of American peregrine falcons including (1) population size, (2) reproductive performance, (3) pesticide residues in eggs, and (4) eggshell thickness. The recovery objectives included (1) 28 nesting pairs in 2 specified study areas (16 in upper Yukon and 12 in upper Tanana), (2) an average of 1.8 young per territorial pair, (3) average organochlorine concentration in eggs of less than 5 ppm (parts per million ppm, wet weight basis DDE), and (4) eggshells no more than 10 percent thinner than pre-DDT era eggshells. The Alaska Recovery Plan suggested that these objectives be maintained in the specified study areas for 5 years before reclassifying from endangered to threatened status and remain constant or improve for an additional 5 years before delisting.

Surveys were conducted in the two study areas, the upper Yukon and Tanana Rivers, for which historical population data were available using consistent methodology from 1973 to

the present so trends would be discernable. Surveys conducted between 1966 and 1997 along the upper Yukon River demonstrated increases in the number of occupied nesting territories from a low of 11 known pairs in 1973 to 44 pairs in 1997 (Ambrose *et al.* 1988b; Robert Ambrose, U.S. Fish and Wildlife Service, *in litt.* 1997a). Similarly, along the upper Tanana River, the number of occupied nesting territories increased from 2 in 1975 to 27 in 1997 (R. Ambrose, *in litt.* 1997a). The recovery objective of 28 occupied nesting territories in the 2 study areas was first achieved (post-DDT) in 1982 and the number has increased steadily since that time to the current level of 71 occupied nesting territories in 1997 (R. Ambrose, pers. comm. 1997). Thus, the recovery objective of 28 occupied nesting territories has been achieved and surpassed for 15 years.

Productivity measured along the upper Yukon and Tanana Rivers fell to a low of about 1.0 young per territorial pair per year (yg/pr) in the late 1960s, but began to increase in the mid-1970s. By 1982, productivity exceeded the objective of 1.8 yg/pr and varied between approximately 1.6 and 3.0 yg/pr each year since then; the annual average productivity was 2.0 yg/pr (N=283 nests/pairs) between 1994 and 1997 (R. Ambrose, *in litt.* 1997a). From the late 1970s to the present, productivity was sufficient to allow an average annual increase of approximately 8 percent in the number of breeding pairs. Productivity was similar in several other areas in interior Alaska (R. Ambrose, pers. comm. 1997). A minimum of 301 breeding pairs of American peregrine falcons currently nest in Alaska.

Mean concentrations of DDE in peregrine falcon eggs in excess of 15–20 ppm are associated with high rates of nesting failure, whereas productivity is usually sufficient to maintain population size if residues average less than this concentration (Peakall *et al.* 1975, Newton *et al.* 1989). In Alaska, average DDE residues in American peregrine falcons averaged 12.2 ppm from 1979 to 1984, 5.8 ppm from 1988 to 1991, and 3.5 ppm from 1993 to 1995 (R. Ambrose, *in litt.* 1997b) and probably declined below the recovery objective of 5 ppm sometime between 1984 and 1988 (Ambrose *et al.* 1988a).

In Alaska, eggshells were estimated to be as much as 20–22 percent thinner than pre-DDT era shells in the mid-1960s (Cade *et al.* 1968). By the early 1980s, shells were about 14 percent thinner than before the DDT era (Ambrose *et al.* 1988a; R. Ambrose, pers. comm. 1995). Eggshell thickness averaged 13.0 percent from 1979 to 1984, 13.1 from 1988 to 1991 and 12.1 from 1993 to 1995 (R. Ambrose, *in litt.* 1997b). The average thickness of pre-DDT American peregrine falcon eggs from Alaska is not precisely known, so current estimates of thinning could be inaccurate to some degree. Reproduction has been sufficient, however, to allow consistent population growth since the late 1970's, and productivity has, on average, exceeded its stated recovery objective for 15 years.

In summary, based on the most current information (1997 survey and early 1990 contamination data) the Service concludes that the basic goals underlying all four objectives have been met or exceeded. The number of pairs occupying nesting territories in the two study areas and productivity exceeded, on average, the recovery objectives for the past 15 years. Neither DDE residues in eggs nor eggshell thinning has prevented a dramatic population growth since the late 1970's.

Canada

The 1988 *Anatum* Peregrine Falcon Recovery Plan for Canada (Canadian Recovery Plan) (Erickson *et al.* 1988) categorizes the historical range of the American peregrine falcon throughout Canada into three regions, which include the Western Mountains, Interior Plains, and the Eastern Seaboard and Great Lakes. These regions are subdivided into nine zones on the basis of historical population levels, habitat, political boundaries, and restoration needs. The zones are (1) Maritime, (2) Great Lakes, (3) Prairies, (4) Mackenzie River Valley, (5) Northern Mountains, (6) Southern Mountains, (7) Eastern Mackenzie Watershed, (8) Western Canadian Shield, and the (9) Eastern Canadian Shield. Coastal British Columbia is excluded from consideration in the Canadian Recovery Plan since this area is considered to be occupied by *F. p. pealei.*

The goal of the Canadian Recovery Plan is to increase the wild American peregrine falcon population in Canada so the subspecies is no longer considered endangered or threatened by the Committee on the Status of Endangered Wildlife in Canada. The proposed objectives are (1) to establish by 1992 a minimum of 10 territorial American peregrine falcon pairs in each of Zones 1 to 6 and (2) to establish by 1997, in each of 5 of these 6 zones, a minimum of 10 pairs naturally fledging 15 (1.5 yg/yr) or more young annually, measured as a 5-year average beginning in 1993. No recovery goals were established for Zones 7, 8, and 9. The Canadian Recovery Plan does not contain separate objectives for reclassification of the subspecies in Canada from its current endangered status to threatened.

The Canadian Wildlife Service has coordinated and published a national range-wide peregrine falcon population survey once every 5 years starting in 1990. The results of the 1995 national population survey were used in the following status summary of the American peregrine falcon in Canada (Ursula Banasch, Canadian Wildlife Service, *in litt.* 1997).

There are 98 known nest sites in Zones 1 and 2 (southern Ontario and Quebec, northern Great Lakes, Bay of Fundy and Labrador), and surveys located 64 pairs. There are 98 known nest sites in Zone 3 (Manitoba, Saskatchewan and Alberta), and surveys located 41 pairs. There are 117 known nest sites in Zone 4 (eastern N.W. Territories), and surveys located 83 pairs. There are 125 known nest sites in Zone 5 (Yukon), and surveys located 113 pairs. There are 50 known nest sites in Zone 6 (Interior British Columbia), and surveys located 18 pairs. The total known number of pairs for all six zones in 1995 was 319, with minimum goals achieved for every recovery zone.

The only comprehensive range-wide productivity surveys available to the Service were the national population surveys coordinated by the Canadian Wildlife Service in 1990 and 1995 (U. Banasch, *in litt.* 1997; Holroyd and Banasch 1996). Surveys conducted in the intervening years were not nationally coordinated and therefore were not complete. Thus, the Service used the combined average annual productivity data collected in the 1990 and 1995 surveys to address this recovery objective.

In Zones 1 and 2, average productivity was 1.7 yg/pr (N=104 nests) . In Zone 3, average productivity was 1.5 yg/pr (N=55). In Zone 4, average productivity was 2.0 yg/pr (N=171). In Zone 5, average productivity was 1.8 yg/pr (N=626). No productivity data were available for Zone 6. The 2-year average annual productivity for the Canadian population of American peregrine falcons was 1.8 yg/pr.

In summary, the Canadian Recovery Plan identified two objectives to determine recovery for the American peregrine falcon population in Canada. Based on current available information, it is apparent that both objectives have been met. The total number of pairs for all 6 zones in 1995 was 319, with minimum goals achieved for every recovery zone. This count exceeds the total recovery goal of 60 pairs by 259. The average annual productivity data

for 1990 and 1995 either met or exceeded objectives in 5 of the 6 zones with an average annual productivity of 1.8 yg/pr for the Canadian American peregrine falcon population.

Although the Canadian Recovery Plan did not identify pesticide residue or eggshell thinning levels as recovery objectives, 205 eggs and 62 samples from 28 specimens of peregrine falcons were collected in Canada between 1965 and 1987 to assess organochlorine residue concentrations. In all three subspecies (*Falco peregrinus anatum, F. p. tundrius, F. p. pealei*) the proportion of specimens having residue concentrations above established critical values (concentration at which egg failure occurs, which varies among organochlorine contaminants) has decreased and can be correlated with improvements in the reproductive success of the population (Peakall *et al.* 1990).

Pacific Coast

The Pacific Coast Recovery Plan (U.S. Fish and Wildlife Service 1982b) for the American Peregrine Falcon, Pacific Population, recommends that (1) 122 pairs be established in a specified distribution spanning California, Washington, Oregon, and Nevada and that (2) these pairs achieve an average fledging success of 1.5 yg/pr for consideration of reclassification to threatened status. It further recommends that with attainment of (3) 185 wild, self-sustaining pairs (California 120, Oregon 30, Washington 30, Nevada 5) and (4) an average fledging success of 1.5 yg/pr for a 5-year period the subspecies can be considered for delisting. Only the latter two objectives regarding delisting are discussed in this proposal. The Pacific Population Plan defines a ''self-sustaining'' population as one whose natural productivity without human management is equal to or greater than its mortality.

By 1976, because of DDT, no American peregrine falcons could be found at 14 historical sites in Washington; Oregon had also lost most of its peregrine falcons. In addition, only 1 or 2 pairs remained on the California coast, with no more than 10 nest sites known to be occupied in the entire State (Cade 1994). A steadily increasing number of American peregrine falcon pairs breeding in Washington, Oregon, and Nevada were indicated by surveys from 1991 to 1997; known pairs in Washington increased from 17 to 44, in Oregon from 23 to 42, and in Nevada from 3 to 6 (Gary Herron, Nevada Division of Wildlife, pers. comm. 1997; Martin Nugent, Oregon Department of Fish and Wildlife, *in litt.* 1997; David Anderson, Washington Department of Fish and Game, *in litt.* 1997). The number of American peregrine falcons in California increased from an estimated low of 5–10 breeding pairs in the early 1970's (Herman 1971) to a minimum of 147 occupied sites in 1997 (Santa Cruz Predatory Bird Research Group 1997). The increase in California has been concurrent with the restriction of DDT and management that included the release of over 750 American peregrine falcons, including captive-reared and relocated wild hatchlings, through 1997 (Walton 1997). Recovery of American peregrine falcons in some areas of California, however, has been impeded by continuing elevated DDT levels (Jarman 1994, Walton 1997). Based on currently available information, it is evident that the first recovery objective has been met; a minimum known population of 239 pairs exceeds the delisting goal of 185 by 54 pairs, and the distribution goals also have been met in all four States. Surveys conducted from 1991 to 1997 demonstrate a steadily increasing number of American peregrine falcon pairs, indicating that natural productivity is greater than mortality in this recovery region.

Productivity measured in Washington between 1993 and 1997 ranged from 1.3 to 1.8 yg/pr, with an average of 1.5 yg/pr (N=159) (D. Anderson, *in litt.* 1997). In Oregon, productivity between 1993 and 1997 ranged from 0.8 to 1.9 yg/pr, with an average of 1.3 yg/pr (N=127) (M. Nugent, *in litt.* 1997). Between 1993 and 1997, productivity in California ranged from 1.4 to 1.7 yg/pr, (N=356) with an average of 1.6 yg/pr (J. Linthicum, *in litt.* 1997). No productivity data were available for Nevada.

Productivity, an important measure of population health, can be difficult to determine in wide-ranging species nesting in remote landscapes that are often difficult to access. However, data available indicate that the average productivity from 1993 to 1997 in Washington, Oregon and California was 1.5 yg/pr; therefore, the Service considers this objective to be met.

The release of captive-bred American peregrine falcons was suspended in Nevada in 1989, in California in 1992 (although the relocation of wild hatchlings continued), and in Oregon and Washington in 1995. The effect of these releases on population growth and stability in this region are not yet completely known. As a result of lower than expected first-year mortality of released birds, the augmentation program accelerated the growth of the Pacific population (Brian Walton, Santa Cruz Predatory Bird Research Group, pers. comm. 1997).

The Pacific Population Plan did not identify pesticide residue or eggshell thinning levels as recovery objectives. However, organochlorine residues and eggshell thinning have been measured in California since the early 1970's. Jarman (1994) reported DDE concentrations in 105 peregrine eggs collected in 1987–1992 from California, and 11 eggs from Oregon from 1990 to 1993. Data collected in 9 study regions in California (Jarman 1994) indicated the highest concentrations of DDE were found in California eggs from the Channel Islands and midcoast with 21 and 13 ppm, respectively. The southern coast and San Francisco regions had the lowest concentrations of 5.5 and 4.3 ppm, respectively. The DDE concentrations in eggs collected along the coast of California (between San Francisco Bay and 34° N) did not decrease between 1969 and 1992 (Jarman 1994). Eggs from Oregon contained DDE levels of 10 ppm.

Eggshells from coastal California continue to show thinning. In northern and central coastal California, eggshells collected between 1975 and 1995 averaged 17.7 and 19.1 percent thinner than pre-DDT era, respectively (J. Linthicum, *in litt.* 1996). In northern interior California, where 104 of the 186 sites known to be active at least once since 1975 (1975–1993), eggshells averaged 15.6 percent thinner than pre-DDT era shells (J. Linthicum, *in litt.* 1996). Eggshells collected on the Channel Islands off the southern coast of California in 1992–1995 averaged 19.4 percent thinner than those collected in California prior to 1947 (J. Linthicum, *in litt.* 1996). In montane California, the average has been 15 percent thinner than normal, and in eggshells from the southern interior (coastal mountains) sites the average has been 17.9 percent thinner than normal (J. Linthicum, *in litt.* 1996). Urban pairs experienced eggshell thinning averaging 8.7 percent in the San Francisco area and 10.9 in the Los Angeles/Orange County area. A summary of 633 clutch mean measurements representing 1,237 samples of one or more eggshells collected between 1975 and 1995 from the historical range of the American peregrine falcon in California averaged 16.1 percent thinning (J. Linthicum, *in litt.* 1996). However, current reproduction supports an expanding population in most areas despite high organochlorine residue concentrations and associated eggshell thinning that still occurs in some areas of the Pacific population.

Rocky Mountain/Southwest

The American Peregrine Falcon Rocky Mountain/Southwest Population Recovery Plan (U.S. Fish and Wildlife Service 1984) established three recovery objectives for reclassification, including (1) increasing the *Falco peregrinus anatum* population in the Rocky Mountain/Southwest region to a minimum of 183 breeding pairs with the following distribution: Arizona (46), Colorado (31), Idaho (17), Montana (20), Nebraska (1), New Mexico (23), North Dakota (1), South Dakota (1), Texas (8), Utah (21), and Wyoming (14); (2) sustaining a long-term average production of 1.25 yg/pr without manipulation by 1995; and (3) observing eggshell thickness within 10 percent of pre-DDT eggshells for a 5-year span.

The prairie States of North Dakota, South Dakota, Nebraska, Kansas, and Oklahoma contain little peregrine falcon habitat, and historical data are incomplete. No recovery goals for a specific number of peregrine falcon pairs were set for Kansas or Oklahoma; peregrine falcons are not known to have nested in Oklahoma. Currently, Nebraska and Kansas each have one peregrine falcon pair (Tordoff, Martell, and Redig 1997); no peregrine falcon pairs are known to occur in North Dakota, South Dakota, or Oklahoma.

The Rocky Mountain/Southwest population of the American peregrine falcon has made a profound comeback since the late 1970's when surveys showed no occupied nest sites in Idaho, Montana, or Wyoming and few pairs in Colorado, New Mexico, and the Colorado Plateau, including parts of southern Utah and Arizona (Cade 1994). Surveys conducted from 1991 to 1997 indicate that the number of American peregrine falcon pairs in the Rocky Mountain/Southwest population is steadily increasing. In 1991, this population supported 367 known pairs; in 1997 the number of pairs increased to 575 (Greg Beatty, Arizona Game and Fish Department, *in litt.* 1997). Surveys conducted from 1992 to 1997 showed that, with the exception of Idaho, North Dakota, and South Dakota, all States within the Rocky Mountain/Southwest population have met their specific recovery goals for breeding pairs.

The current minimum known number of peregrine falcon pairs for each State include Arizona 159, Colorado 81, Idaho 15, Montana 23, Nebraska 1, New Mexico 40, North Dakota 0, South Dakota 0, Texas 15, Utah 154, Wyoming 40, and Kansas 1 (Jennifer Fowler-Propst, U.S. Fish and Wildlife Service, *in litt.* 1996; G. Beatty, *in litt.* 1997; James H. Enderson, Western Peregrine Falcon Recovery Team, pers. comm. 1997; Frank Howe, Utah Division of Wildlife Resources, *in litt.* 1997; John Beals, Idaho Fish and Game, pers. comm. 1997; Bill Heinrich, The Peregrine Fund, pers. comm. 1997; Mckinney 1994; B. R. Mckinney, pers. comm. 1997; Dennis Flath, Montana Department of Fish and Parks, *in litt.* 1977). The current Rocky Mountain/Southwest population is 529, which surpasses the recovery objective of 183 by 346 pairs.

Between 1989 and 1997 the average productivity in Arizona was 1.1 yg/pr (N=294) (Ward and Siemens 1995; Duane Shroufe, Arizona Game and Fish Dept., *in litt.* 1996; G. Beatty, *in litt.* 1997). Although recent productivity averages have fallen below the 1.25 yg/pr recovery goal, Arizona has sustained a 24-year average of 1.4 yg/pr.

In 1973, 1974, and 1975, productivity in Colorado was 0.2, 1.9, and 0.7 yg/pr respectively, reflecting the irregular and generally poor productivity typical of the 1970's (Platt and Enderson 1988). From 1990 to 1997, production averaged 1.5 yg/pr (Gerry Craig, Colorado Division of Wildlife, *in litt.* 1995; J.H. Enderson, pers. comm. 1997). Productivity measured in Colorado from 1972 to 1997 ranged from 0 to 2.5 yg/pr, with an average of 1.5 yg/pr (N=611) for the 26-year period (G. Craig, *in litt.* 1995; J.H. Enderson, pers. comm. 1997).

In Idaho, productivity recorded from 1988 to 1997 ranged from 0 to 2.5 yg/pr, with an average of 1.7 yg/pr for this 10-year period (N=103) (Wayne Melquist, Idaho Fish and Game, *in litt.* 1996; J. Beals, pers. comm. 1997). In Montana, productivity between 1984 and 1997 ranged from 0.3 to 3.0 yg/pr, with an average of 1.7 yg/pr for the 14-year period (N=119) (D. Flath, pers. comm. 1997; Duane Shroufe, Arizona Game and Fish Department, *in litt.* 1996). In Nebraska, productivity between 1992 and 1997 for a single pair ranged from 0 to 3.0 yg/pr, with an average of 1.0 yg/pr for the 6-year period (N=6) (L. Kiff, *in litt.* 1997).

New Mexico has sustained an 11-year (1986–1997) average productivity of 1.71 yg/pr (N=246) (Sartor O. Williams, New Mexico Dept. of Game & Fish, *in litt.* 1997). Productivity in 1995, 1996, and 1997 was 1.3 (N=43), 1.5 (N=44), and 1.6 (N=40) yg/pr, respectively (J. Fowler-Propst, *in litt.* 1997). New Mexico has maintained a 22-year average productivity of 1.6 yg/pr.

In Texas, productivity recorded from 1975 to 1997 ranged from 0 to 2.3 yg/pr, with an average of 0.9 yg/pr for the 23-year period (Mckinney 1994; B. Mckinney, pers. comm. 1997). Peregrine falcon surveys conducted in the Big Bend National Park, Texas, between 1986 and 1989 recorded an average productivity of 1.08 yg/pr (Moore 1989).

In Utah, between 1985 and 1987, productivity averaged 0.8 yg/pr. From 1991 to 1996, productivity ranged from 0.9 to 2.0 yg/pr, with an average of 1.3 yg/pr for the 6-year period (Bunnell 1994; F.H. Howe, *in litt.* 1997). In Wyoming, productivity between 1984 and 1997 ranged from 0.9 to 3.0 yg/pr with an average of 1.7 yg/pr for the 14-year period (Joe White, Wyoming Game and Fish Department, *in litt.* 1995; B.H. Heinrich, pers. comm. 1997). In Kansas, productivity between 1993 and 1997 ranged from 0 to 3.0 yg/pr, with an average of 1.0 yg/pr for the 4-year period (L. Kiff, *in litt.* 1997).

With the exception of Texas, Nebraska, and Kansas, the long-term productivity goal of 1.25 yg/pr for the Rocky Mountain/Southwest region has been exceeded by all States with breeding American peregrine falcons. Although Texas has exceeded its goal for number of pairs, heavy metal contamination, particularly mercury, in adults and nestlings may be depressing productivity (Andrew Sansom, Texas Parks and Wildlife Department, *in litt.* 1995). Residual mercury contamination from mines operated along the Rio Grande River in the early 1900's are the suspected source of this contamination (B. Mckinney, pers. comm. 1997). Nebraska and Kansas have had only one peregrine falcon pair each since 1992, and breeding has been sporadic in both States.

The average productivity for the nine States supporting breeding populations is 1.4 yg/pr, well above the goal of 1.25 yg/pr goal. Even though Texas, Nebraska, and Kansas have not yet met the productivity goal, productivity throughout the Rocky Mountain/Southwest region has been more than sufficient for recruitment to exceed mortality, so dramatic population growth has resulted.

In Arizona, eggshells collected between 1978 and 1983 averaged 14.2 percent thinner, and 20 eggshell replicates collected from 1989 to 1994 averaged 13 percent thinner than pre-DDT era eggshells (Ellis *et al.* 1989, Ward and Siemens 1995). In Colorado and New Mexico, shells from 260 eggs laid between 1977 and 1985 averaged 12 percent thinner than pre-DDT eggshells (Enderson *et al.* 1988). In another analysis of eggs from New Mexico, eggshells collected in 1977 averaged 20 percent thinner than pre-DDT eggshells, but in 1985 averaged only 14 percent thinner (Ponton *et al.* 1988). Eggshell thickness measurements for Colorado from 1973 to 1997 included a maximum

of 25.1 percent thinner and a minimum of 6.0 percent thinner than pre-DDT eggshells, with an average thinning of 13.5 percent. Only in Colorado has the objective for eggshell thickness been achieved. In 1990, 1991, 1992, 1993, and 1994 measurements of 10.6, 11.7, 8.6, 8.1, and 6.0 percent thinning, respectively, the average of the annual means was 9.0 percent thinning for this period (G. Craig, *in litt.* 1995). Although the recovery objective was not met in other States in the region, there is a general trend toward thicker eggshells in measurements taken since the mid-1970's (L. Kiff, pers. comm. 1995).

In summary, the first recovery objective in the Rocky Mountain/Southwest Recovery Plan has been met; the current population of 529 pairs exceeds the goal of 183 pairs by 346 pairs. These pairs are distributed throughout the Rocky Mountain/Southwest States. By the mid-1980's the practice of fostering chicks into active nests was terminated; therefore, the long-term average productivity this recovery region has demonstrated has been accomplished without nest manipulation. The second objective of 1.25 yg/pr for 5 years has been met by all Rocky Mountain/Southwest States that have breeding American peregrine falcons except Texas, Nebraska, and Kansas. The current reproductive level of the 10 States with breeding populations (including Texas, Nebraska, and Kansas) is 1.4 yg/pr, exceeding the second objective. Therefore, the Service considers the intent of this objective met. Based on the degree of recovery achieved, the third objective, that average eggshell thickness is within 10 percent of the pre-DDT era average for 5 years, appears to be conservative. The increase in numbers of American peregrine falcons indicates the subspecies has recovered without the necessity of reaching this specific recovery objective.

The Rocky Mountain/Southwest Recovery Plan did not identify pesticide residue levels as a recovery objective. However, organochlorine pesticide residues in American peregrine falcon eggs measured in Colorado and New Mexico between 1973 and 1979 averaged 26 ppm DDE, but the average declined to 15 ppm by 1980–1983 (Enderson *et al.* 1988). The average concentration in eggs collected in Colorado from 1986 to 1989 was 11 ppm; however, the sample included only 5 eggs (Jarman *et al.* 1993).

Eastern United States

The Peregrine Falcon, Eastern Population Recovery Plan, first published in 1979 (Eastern Plan) and revised in 1985 and 1991 (U.S. Fish and Wildlife Service 1991), addressed the recovery of the peregrine falcon in the Eastern United States, which was established beginning in 1974 and 1975 by releasing captive-bred peregrine falcons of mixed genetic heritage. The recovery plan established two recovery objectives including (1) a minimum of 20–25 nesting pairs in each of 5 recovery units to be established and sustained for a minimum of 3 years, and (2) an overall minimum of 175–200 pairs demonstrating successful, sustained nesting. The five recovery units are (1) Mid-Atlantic Coast, (2) Northern New York and New England, (3) Southern Appalachians, (4) Great Lakes, and (5) Southern New England/Central Appalachians.

The first recovery objective has been substantially achieved, with 3 of the 5 recovery units (Mid-Atlantic Coast, Northern New York and New England, and Great Lakes) surpassing 20–25 nesting pairs of peregrine falcons for 3 years. The Mid-Atlantic Coast unit had 58 pairs fledging 76 young in 1997 and averaged 60 pairs and 90 fledglings annually from 1995 to 1997. The Northern New York and New England unit had 49 pairs fledging 65 young in 1997 and averaged 43 pairs and 59 fledglings annually from 1995 to 1997 (Mike Amaral, U.S. Fish and Wildlife Service, *in litt.* 1997). The Great Lakes unit had 42 pairs fledging 78 young in 1997 and averaged 36 pairs and 63 fledglings from 1995 to 1997 (L. Kiff, *in litt.* 1997). The Southern Appalachians unit had 11 pairs fledging 23 young in 1997, and the Southern New England and Central Appalachians unit had 14 pairs fledging 20 young in 1997 (L. Kiff, *in litt.* 1997; David Flemming, U.S. Fish and Wildlife Service, *in litt.* 1997). In 1997, there was a total of 174 pairs counted in the 5 Eastern State recovery units, almost the minimum recovery level of the Eastern Plan. The recovery goal, however, may already have been exceeded because up to 10 percent of territorial pairs in any given year escape detection and are not counted (Cade *et al.* 1988a). Importantly, the number of territorial pairs recorded in the eastern peregrine falcon recovery area has increased an average of 10 per cent annually for the past 5 years (1992–1997). Equally important is that the productivity of these pairs during the same 5-year period has averaged 1.5 fledged young per territorial pair.

As of 1997, there were at least 31 peregrine pairs in 6 Midwestern States nesting outside the recovery area delineated for those States in the 1991 recovery plan—the birds are nesting successfully in a greater area than believed likely in 1991. Peregrine falcons now found in Midwestern States are the result of captive-reared and released birds and others that probably came from the peregrine falcons released in the eastern States. Although there appears to be a zone of no nesting in the northeastern Great Plains that separates the western native American peregrine falcons from the introduced eastern peregrine falcons (C. Kjos, pers. comm. 1997), the genetic origins of the midwestern peregrine falcons are unknown, and the potential for interchange of individuals between the two areas cannot be dismissed. There are now more than 200 pairs of peregrine falcons in the Midwestern and Eastern States where peregrine falcons had been extirpated.

Mexico

None of the existing recovery plans written for peregrine falcons in North America established recovery criteria for birds that nest in Mexico. There is very little historical or recent information on peregrine falcons in Mexico for accurately assessing their current status in Mexico.

Porter *et al.* (1988) reported 42 known nesting territories on the western side of the Baja California Peninsula. From 1966 through 1971, only three pairs occurred in this region and none were found in 1976 (Porter *et al.* 1988), indicating a substantial decline had occurred by the mid-1970's. Most of these territories apparently have not been checked since that time, but seven pairs were located in 1985–1992 in areas not occupied in the years just before (Massey and Palacios 1994).

In 1993, three active American peregrine falcon nests were discovered in Ojo de Liebre (Scammon's) Lagoon on the western side of the Baja California Peninsula in an area without historical nesting records (Castellanos *et al.* 1994). The central west coast of the Baja California Peninsula was an important breeding area with an historical population of about 13 pairs (Banks 1969). Between 1980 and 1994, Castellanos *et al.* (1997) conducted breeding surveys of American peregrine falcons in this area of the coast and found 10 nesting pairs. Castellanos *et al.* (1997) studied the reproductive success of three pairs in 1993 and five pairs in 1994 located at Ojo de Liebre and San Ignacio Lagoons. An average of three eggs, 1.8 nestlings, and 1.6 fledglings were produced per nest. This productivity appears to be within the range of normal productivity for healthy populations (Cade *et al.* 1988b). These observations suggest some recent

recovery on the west coast of the Baja California Peninsula.

On the western (Gulf of California) side of mainland Mexico, Porter *et al.* (1988) reported 23 historical nest sites. A number of new nest sites were found in this area in 1966–1984, increasing the number of known nest sites to 51. Territory occupancy averaged about 82 percent in 1967–1971 and 77 percent in 1971–1975, indicating that territory occupancy in that area never declined as significantly as on the west side of the Baja California Peninsula. Porter and Jenkins (1988) believed that the number of occupied territories in the Gulf area increased after 1967 following a reduction in DDE residues in prey.

Between 1989 and 1997, Robert Mesta, U.S. Fish and Wildlife Service, (*in litt.* 1997) found three pairs of American peregrine falcons, one pair on the Rio Aros and two on the Rio Yaqui, Sonora. Hunt *et al.* (1988) found 14 occupied American peregrine falcon nesting territories in the highlands of northeast Mexico in 1982. In this area and adjacent West Texas, territory occupancy averaged about 70 percent during 1973–1985.

Most of what is known about productivity and pesticide residues in Mexico comes from the western mainland near the Gulf of California. Porter *et al.* (1988) found that productivity along the Gulf of California in 1965–1984 was ''somewhat less than normal,'' and 5 addled eggs collected in 1976–1984 averaged 12.8 ppm DDE with a range of 2.4 ''25.0 ppm (Porter and Jenkins 1988). DDE residues in prey in the Gulf area declined from the 1960's to the 1980's, and this decline correlated with increases in productivity and the number of breeding pairs (Porter and Jenkins 1988). Some prey, however, still contained high pesticide residues, and reproduction appeared to be affected by organochlorine at 3 of 15 nests examined (Porter and Jenkins 1988).

Hunt *et al.* (1988) found that only 5 of 14 pairs produced young in northeast Mexico in 1982. Hunt *et al.* (1988) reported significant DDE residues in peregrine falcon prey species in western Texas in the mid 1980's, but prey species in Mexico were not sampled.

In summary, there has been little research on the distribution, numbers, and status of American peregrine falcons in Mexico, and most research took place in the Baja California Peninsula and the Gulf of California regions. Numbers on the west coast of the Baja California Peninsula declined significantly (Porter *et al.* 1988), but observations suggest that numbers may have increased in recent years (Massey and Palacios 1994, Castellanos *et al.* 1994, Castellanos *et al.* 1997). In the Gulf of California area, territory occupancy never was known to drop below 77 percent (Porter *et al.* 1988), but it increased in the 1970's and 1980's (Porter and Jenkins 1988). An unknown number of pairs inhabit the Chihauhuan Desert and the Sierra Madre Occidental in the interior of Mexico.

No information on population trends for American peregrine falcons in Mexico is available; however, the status of the Mexican population may be similar to that of the population occupying similar habitat in nearby Arizona (G. Hunt, pers. comm. 1997). Exposure to organochlorine-based pesticides continues to be a threat to Mexican-nesting populations. In 1997, as part of the North American Free Trade Agreement (NAFTA), the Commission for Environmental Cooperation (CEC) established a North American Regional Action Plan (NARAP) on DDT, which proposes a phased reduction, resulting in the eventual elimination of DDT used for malaria control in Mexico. Specific goals of the NARAP are to (1) reduce the use of DDT for malaria control in Mexico by 80 percent in 5 years (beginning in 1997); (2) eliminate the illegal use of DDT in agriculture in Mexico; (3) develop a cooperative approach to minimize movement of malaria-infected mosquitos across borders and reduce the illegal importation of DDT; and (4) advance global controls on DDT production, export and use.

Eliminating protection for peregrine falcons under the Act is unlikely to increase the risk to American peregrine falcons nesting in Mexico. Adverse effects of organochlorine pesticides in the environment remains an international concern, not only for peregrine falcons nesting in Mexico, but for peregrine falcons wintering in or migrating through Latin America. By undertaking the steps proposed in the NARAP, the United States, Canada, and Mexico are committing to ongoing cooperative activities and yearly reporting on progress made on these initiatives and objectives. Annual reports will be submitted to the North American Working Group for the Sound Management of Chemicals, and subsequently disseminated to the Council of the Commission for Environmental Cooperation and the public.

Summary of Peregrine Falcon Recovery

Five regional peregrine falcon recovery plans, four for American peregrine falcons in Canada and the Western United States and one for the Eastern United States introduced peregrine falcon population, were written to guide recovery efforts and establish criteria to be used in measuring recovery. These recovery plans included objectives using population size and reproductive performance to measure recovery. Only two of the recovery plans included specific objectives that applied to pesticide residues in eggs and eggshell thinning. The combined population size goal for the 4 American peregrine falcon recovery plans is 456 pairs. Currently, a minimum of 1,388 pairs occupy the range of the American peregrine falcon in Alaska, Canada, and the Western United States, 174 peregrine falcon pairs are found in the 5 recovery units included in the Eastern Plan, and an additional 31 peregrine falcon pairs occur in Midwestern States in areas not included in the Eastern Plan recovery units.

Other objectives, including those for pesticide residues in eggs and the degree to which eggshells are thinner than pre-pesticide era eggshells, vary among the plans. In the case of eggshell thinning, current measurements obtained in some areas fall short of recovery objectives. Eggshell thinning was originally suggested by recovery teams as an indicator of whether organochlorine contamination was preventing species recovery. Despite the failure of populations in localized areas to meet recovery objectives, overall, populations of American peregrine falcons have increased considerably. This increase continues to occur even after reintroduction efforts have been curtailed. The consistent and geographically widespread trends in increasing population size demonstrate that current levels of reproductive failure, pesticide residues, and eggshell thinning still affecting American peregrine falcons in some areas have not prevented recovery of the subspecies in most of North America. Exposure to environmental contaminants remains a concern that must continue to be addressed internationally in order to protect nesting, migrating, and wintering populations of American peregrine falcons outside the United States.

Summary of Issues and Recommendations

In the Advanced Notice of a Proposal to Remove the American Peregrine Falcon from the List of Endangered and Threatened Wildlife (60 FR 34406, June 30, 1995), the Service requested that all interested parties provide data and comments on the status and possible proposal to delist the American

peregrine falcon. The Service provided the governments of Canada and Mexico with the Advanced Notice. Canada responded and provided data but gave no position on the proposal, and Mexico did not respond. The Service received a total of 171 comment letters from 43 States and Canada, which included 12 Federal resource and 32 State resource agencies, 41 falconry associations or falconers, 13 conservation organizations, and 45 private individuals. Of the responses received, 92 supported the proposal to delist, 46 opposed the proposal, 13 supported downlisting, and 20 expressed no opinion. These comments and responses are available for public inspection, by appointment, during normal business hours (see ''Addresses''). Those responses objecting to the Service's proposal contained several concerns, presented below with the Service's response.

Issue 1: The data do not support delisting the American peregrine falcon throughout its range in the continental United States. There should be a combination of downlisting, delisting, and no change in status for individual recovery areas based on the degree of attainment of recovery plan objectives regarding not only numbers of peregrine falcons, but also productivity and eggshell thinning goals. The Service should consider downlisting the American peregrine falcon to threatened rather than delisting.

Service Response: Data for 1996–1997, which were not available at the time of the advanced delisting notice, have been included in this proposed rule. These more recent data show improvements in numbers of breeding pairs of peregrine falcons and productivity since 1994 (Refer to Table 1, ''Recovery Status,'' and ''Summary of American Peregrine Falcon Recovery''), and demonstrate that goals set for numbers and productivity by the four American peregrine falcon recovery plans have been met or exceeded. The combined population size goal for the 4 American peregrine falcon recovery plans is 456 pairs. Currently, a minimum of 1,388 known pairs occupy sites in Alaska, Canada, and the Western United States. A number of additional pairs have probably been undetected.

Only the Alaska recovery plan set a goal for DDT levels, and only two recovery plans (Alaska and Rocky Mountain/Southwest) specified objectives for eggshell thinning. The Alaska Plan set a delisting goal of less than 5 ppm DDT and less than 10 percent eggshell thinning. Recent data for American peregrine falcon eggs indicate DDT levels at less than 3.5 ppm, exceeding that goal, and eggshell thinning is at 12.5 percent. Measurements for eggshell thinning have not been consistently taken in the Rocky Mountain/Southwest States. Colorado has met the recovery plan eggshell thinning goal of less than 10 percent; the average of the annual means for 1990–1994 was 9.0 percent. Data for other States show a general trend toward thicker eggshells since the mid-1970's (refer to ''Rocky Mountain/Southwest'' under ''Recovery Status''). Overall productivity goals were met or exceeded in the four American peregrine falcon recovery plans using productivity as a recovery criterion.

Three of five peregrine falcon recovery units in the Eastern United States have met recovery goals, and 174 pairs documented in 1997 indicate the overall recovery goal of 175–200 pairs has probably been met when considering that up to 10 percent of territorial pairs in any given year escape detection (Cade *et al.* 1988a). In addition, another 31 pairs are nesting in areas of the Midwest outside the recovery units specified in the eastern plan but nevertheless contribute to overall restoration goals.

The Service believes that the species has essentially achieved the goals established for recovery and, in many areas, has exceeded the goals. The Service believes the available information supports full delisting of the species throughout its range, although some recovery plan areas are experiencing slower recovery due to fluxes in productivity or residual DDT/DDE impacts. The trends in productivity, however, as well as DDT/DDE reduction, clearly indicate continued population increases. The Service believes that, when viewed on a range-wide or even region-wide basis, the species clearly is not in danger of extinction throughout a significant portion of its range and warrants full delisting.

Issue 2: American peregrine falcons should not be delisted because they have not been restored throughout the historical range.

Service Response: Restoration of the American peregrine falcon throughout the historical range was not a goal of any of the recovery plans written for this subspecies and is not required for recovery. Generally, the goal of a recovery program is to restore the species to a point at which protection under the Act is no longer required. To be recovered, a species must not be endangered with extinction, or be likely to become endangered within the foreseeable future. As a species recovers in numbers and populations expand, more of the historical range can be reoccupied where appropriate habitat remains. In the case of the peregrine falcon, a significant amount of unoccupied but suitable habitat remains, so continued expansion is expected.

Issue 3: There are gaps in the scientific knowledge about American peregrine biology. A population viability analysis has not been done; genetic diversity, viable population size, knowledge of population dynamics, and long-term stability of populations have not been determined.

Service Response: A complete understanding of the biology of a species is not required to determine a species' conservation status under the Act. Population viability analyses are important tools for attempting to quantify threats to a species, particularly those facing loss and fragmentation of habitat, and the consequences of conservation actions, as well as aiding in identifying critical factors for study, management, and monitoring. These analyses are not essential, however, to determine when a species has achieved recovery, particularly in the case of the American peregrine falcon. It is evident that recovery of this subspecies has been largely achieved by eliminating the use of DDT and by successful management activities, including the reintroduction of captive-bred American peregrine falcons. Recovery goals established for the species have been met or exceeded, with few exceptions.

Issue 4: Organochlorine pesticides still persist within the breeding range of the American peregrine falcon and continue to depress natural productivity.

Service Response: Continued exposure to organochlorines in areas outside the U.S. remains a concern that must be addressed internationally. The North American Regional Action Plan on DDT, an ongoing effort under the North American Working Group for the Sound Management of Chemicals, has specific goals to reduce and eliminate the use of DDT and advance global controls on DDT production, export and use. Monitoring organochlorine exposure and productivity of American peregrine falcon populations breeding and nesting in Mexico and Latin America could potentially be funded and part of post-delisting monitoring for this subspecies. American peregrine falcons have increased throughout their historical range in the U.S. despite the continued presence of organochlorine residues in certain populations (e.g., coastal California). American peregrine falcon populations have met or

exceeded recovery goals in the four recovery plans (Table 1), and the Service believes removing the endangered status of this subspecies is appropriate. Bioaccumulation of organochlorine residues will be monitored in the United States during the minimum 5-year post-delisting monitoring period. Refer to ''Summary of Factors Affecting the Species, E. *Other natural or manmade factors affecting its continued existence*'' for an in-depth discussion. See also Service response to issue 9.

Issue 5: The continued unrestricted use of organochlorine pesticides in Latin America places the American peregrine falcon at risk of contamination while on migration and on its wintering grounds.

Service Response: Comparisons of blood samples collected during fall and spring migration indicate that, although migrant peregrine falcons accumulate pesticides while wintering in Latin America, DDE residues in the blood taken from female peregrine falcons captured during spring migration at Padre Island, Texas decreased between 1978 and 1994 below levels that would affect reproduction (Henny *et al.* 1996). Despite the continued use of organochlorines in Latin America, the American peregrine falcon has recovered over most of its historic range, and Arctic peregrine falcons, which also winter in Latin America, have been delisted. Refer to ''Summary of Factors Affecting the Species, E. *Other natural or manmade factors affecting its continued existence*'' for an in-depth discussion. The North American Working Group for the Sound Management of Chemicals promotes a regional perspective that encourages the active involvement of Central and South American countries in the implementation of the North American Regional Action Plan (NARAP) on DDT, and is facilitating international cooperation on combating malaria in these regions without the continued use of organochlorine pesticides.

Issue 6: The take of American peregrine falcons for falconry after its delisting will create an additional threat to the subspecies.

Service Response: Delisting the American peregrine falcon will not affect the protection given to all migratory bird species, including the peregrine falcon, under the Migratory Bird Treaty Act. The regulations issued pursuant to the Migratory Bird Treaty Act allow for issuance of permits to take raptors for falconry provided the taking will not threaten wildlife populations (50 CFR 21.28 and 13.21(b)). The Service will establish biological criteria for the issuance of permits for take of peregrine falcons for falconry to ensure the taking does not negatively impact wild populations, particularly those in need of further recovery. These criteria will pertain to all wild North American peregrine falcons and will apply to all current and future falconry and raptor propagation permit holders. Until such time as these criteria are in place, take for falconry and raptor propagation purposes under the Migratory Bird Treaty Act will not be authorized. The Service expects to finalize the criteria before it issues a final decision on this delisting proposal. The effects of take for falconry will be assessed during the minimum 5-year post-delisting monitoring period following delisting. Refer to ''Summary of Factors Affecting the Species'' (paragraph D) and ''Effects of this Rule'' for further information.

Issue 7: The Service cannot consider delisting the American peregrine falcon until all recovery goals in the four existing recovery plans for this subspecies have been met or exceeded.

Service Response: Section 4(f) of the Act directs the Service to develop and implement recovery plans for species of animals or plants listed as endangered or threatened. Recovery is the process by which the decline of an endangered or threatened species is arrested or reversed and threats to its survival are neutralized so that long-term survival in nature can be ensured. The goal of this process is the maintenance of secure, self-sustaining wild populations of species with the minimum investment of resources. One of the main purposes of the recovery plan is to enumerate goals (guidelines) that will help the Service to determine when recovery for a particular species has been achieved. The Act does not require that all of the specific recovery goals for a listed species must be met or exceeded before it can be delisted.

The Service determines whether recovery has been achieved based on a species' performance relative to the goals set in its recovery plan and the best available scientific information. A species is recovered when it is no longer endangered with extinction (i.e., endangered), or likely to become endangered within the foreseeable future throughout all or a significant portion of its range (i.e., threatened). The peregrine falcon meets these requirements for removal from the List of Endangered and Threatened Wildlife.

The American peregrine falcon has either met, exceeded, or is very close to meeting the recovery goals set for this subspecies throughout its range, and the specific goals not met are not factors preventing recovery. The Service considers that the intent of all the objectives have been met and that the recovery of the species justifies a proposal to delist.

Issue 8: The eastern peregrine falcon population has not met the recovery goals set for it in the Eastern Recovery Plan and, therefore, should not be delisted.

Service Response: Current data, through 1997, on the status of the eastern peregrine falcon population indicate that the intent of the recovery goals set for this population have been met. The recovery plan established two recovery objectives including (1) a minimum of 20–25 nesting pairs in each of five recovery units to be established and sustained for a minimum of 3 years, and (2) an overall minimum of 175–200 pairs demonstrating successful, sustained nesting. Three of the five recovery units (Mid-Atlantic Coast, Northern New York and New England, and Great Lakes) have surpassed the nesting pair goal for 3 years. The Southern Appalachians and Southern New England/Central Appalachians units may not yet have achieved the recommended number of breeding pair goals established for those areas. However, the overall minimum of 175–200 successful pairs in the eastern region has been largely achieved, and over the past 5 years (1992–1997), the number of territorial pairs has increased an average of 10 per cent annually. There are now more than 200 pairs of peregrine falcons in the midwestern and eastern States where falcons had been extirpated, and pairs are successfully nesting throughout a greater range that anticipated in 1991. The Service believes the intent of the recovery objectives have been satisfied and that recovery of the peregrine in the eastern United States is sufficiently established. Refer to ''Recovery Status'' for additional discussion on this subject.

Issue 9: The status of the American peregrine falcon in Mexico has not been adequately addressed.

Service Response: While population status and trends for falcons nesting in Sonora and the highlands of Central Mexico is not known, American peregrine falcon populations in the United States and Canada, including those migrating from Latin America to nest, have met or exceeded the criteria for delisting. Removing protection for the species under United States domestic law is not anticipated to either benefit or harm American peregrine falcons in Mexico. Environmental exposure to organochlorine pesticides continues to be a concern for resident nesting American peregrine falcons in Sonora and the highlands of Central

Mexico, because it is likely that productivity in these local populations is being adversely affected. Delisting does not eliminate the need for continued international efforts regarding contaminants monitoring in Mexico. Current DDT production is restricted to one facility in Mexico, which supplies DDT for authorized government use in malaria vector control. DDT is registered only for use in government-sponsored public health campaigns, and continues to be an important tool in the fight against malaria transmission, although new, less environmentally harmful measures are being investigated. Sixty percent of Mexico's territory, from sea level to 1,800 meters above sea level, presents favorable conditions for malaria transmission. This includes the Pacific coast, the Gulf of Mexico slopes, the Yucatan peninsula and interior basins of the high plateau. In some cases, targeted malaria control areas may overlap with nesting American peregrine falcons. Refer to ''Mexico'' under ''Recovery Status'' for additional discussion on this subject.

Issue 10: Post-declassification monitoring for 5 years is essential.

Service Response: The Service agrees. The Endangered Species Act requires the Secretary to implement a system in cooperation with the States to monitor effectively for not less than 5 years the status of all species which have recovered to the point that protection of the Act is no longer required (section 4(g)). If it becomes evident during the course of the post-delisting monitoring that the species again required protection of the Act, it would be relisted. Refer to ''Monitoring'' under ''Future Conservation Measures'' for the proposed development of a post-delisting monitoring program for the peregrine falcon, and the conditions under which this subspecies might be relisted.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act, set forth the procedures for listing, reclassifying, and delisting species on the Federal lists. A species may be listed if one or more of the five factors described in section 4(a)(1) of the Act threatens the continued existence of the species. A species may be delisted, according to 50 CFR 424.11(d), if the best scientific and commercial data available substantiate that the species is neither endangered or threatened because of (1) extinction, (2) recovery, or (3) because the original data for classification of the species were in error.

After a thorough review of all available information, the Service has determined a substantial peregrine falcon recovery has taken place since the early 1980's. The Service determines that none of the five factors addressed in section 4(a)(1) of the Act, and discussed below, is currently affecting the species, including the American peregrine falcon subspecies and introduced peregrine falcon populations, such that the species is endangered (in danger of extinction throughout all or a significant portion of its range) or threatened (likely to become endangered in the foreseeable future throughout all or a significant portion of its range). These factors and their application to the peregrine falcon in North America are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Peregrine falcons occupy a variety of habitat types and nest from the boreal forest region of Alaska and Canada, through much of Canada and the western United States, south to parts of central and western Mexico. Nesting habitat includes cliffs and bluffs in boreal forests, coastal cliffs and islands, urban skyscrapers and other structures, and cliffs and buttes in southwestern deserts. In some breeding areas, such as the southern United States, some or all of the birds remain year-round on their nesting territories. In other breeding areas, particularly in high latitudes, many or all of the individuals are highly migratory; these individuals occupy a number of regions and habitat types throughout the year as they nest, migrate to and from wintering areas, and occupy their wintering ranges. Due to the extensive geographic distribution of the peregrine falcon, the wide variety of habitat types in which the species nests, and the immense area that some of the more migratory individuals occupy during a year, the peregrine falcon occupies an extremely broad array of areas and habitats throughout its range. As a result, the degree to which peregrine falcons have been affected by human-caused habitat modification varies widely by region, habitat type, and individual falcons within the population.

As human population has grown in North America, the rate of habitat alteration has unquestionably increased. Certainly some peregrine falcon habitat has been destroyed, such as the many wetlands drained in recent years that were previously used by peregrine falcons for foraging or as migratory staging areas during spring and fall. But peregrine falcons have colonized many cities in North America due to the abundance of nest sites on buildings and the abundance of prey, such as feral rock doves (*Columba livia*), that thrive in urban areas. Therefore, some forms of habitat modification have negatively affected peregrine falcons while other forms have benefited them. It would be difficult to estimate the net, overall effect of habitat modification on the species throughout North America.

Although the rate of habitat modification in North America has increased in recent decades, the number of American peregrine falcons occupying the region has increased substantially since the late 1970's or early 1980's. In several parts of their range, including parts of Alaska, the Yukon and Northwest Territories, California, and the southwestern United States, the number of breeding pairs has increased rapidly in recent years, and some local populations now occur at very high densities (R. Ambrose, pers. comm. 1997; G. Holroyd, pers. comm. 1997; Enderson *et al.* 1995). Because these rapid population growth rates and high densities were achieved despite considerable habitat modification in North America, the Service concludes that habitat modification or destruction has not been a limiting factor in peregrine recovery. It does not currently threaten the existence of the American peregrine falcon nor is it likely to in the foreseeable future.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Delisting the peregrine falcon will not result in overutilization because the delisting will not affect protection provided to all subspecies of the peregrine falcon by the Migratory Bird Treaty Act. The take of all migratory birds, including peregrine falcons, is governed by the Migratory Bird Treaty Act's regulation of the taking of migratory birds for educational, scientific, and recreational purposes and requiring harvest be limited to levels that prevent overutilization (See ''D. The inadequacy of existing regulatory mechanisms'').

C. Disease or Predation

Although individuals are vulnerable to disease and predation, these factors are not known to affect the peregrine falcon at the population level. Great horned owls are natural predators of peregrine falcons (U.S. Fish and Wildlife Service 1991) and may be responsible for the slow recovery of peregrine falcons in two recovery areas

in the reestablished eastern population (M. Amaral *in litt.* 1995). Great horned owl predation was not documented as a significant cause of the decline in peregrine falcons and has not affected the species' overall recovery.

D. The Inadequacy of Existing Regulatory Mechanisms

Upon delisting, peregrine falcons will no longer be protected from take and commerce by the Endangered Species Act. However, peregrine falcons will still be protected by the Migratory Bird Treaty Act (16 U.S.C. 703). Section 704 of the Migratory Bird Treaty Act states that the Secretary of the Interior is authorized and directed to determine if, and by what means, the take of migratory birds should be allowed and to adopt suitable regulations permitting and governing the take. In adopting regulations, the Secretary is to consider such factors as distribution and abundance to ensure that take is compatible with the protection of the species.

The Migratory Bird Treaty Act and its implementing regulations (50 CFR Parts 20 and 21) prohibit take, possession, import, export, transport, selling, purchase, barter, or offering for sale, purchase or barter, any migratory bird, their eggs, parts, and nests, except as authorized under a valid permit (50 CFR 21.11). Certain exceptions apply to employees of the Department of the Interior to enforce the Migratory Bird Treaty Act, to Federal Government employees, and to State game departments, municipal game farms or parks, and public museums, public zoological parks, accredited institutional members of the American Association of Zoological Parks and Aquariums (now called the American Zoo and Aquarium Association) and public scientific or educational institutions.

The Migratory Bird Treaty Act and implementing regulations allow for the taking and use of migratory birds, but require that such use not adversely affect populations. Regulations at 50 CFR 21.28 and 21.30 specifically authorize the issuance of permits to take, possess, transport and engage in commerce with raptors for falconry purposes and for propagation purposes. Certain criteria must be met prior to issuance of these permits, including a requirement that the issuance will not threaten a wildlife population (50 CFR 13.21(b)(4)). The Service will develop specific biological criteria to govern the take of peregrine falcons prior to authorizing take for falconry and raptor propagation under the Migratory Bird Treaty Act. No take of wild North American peregrines will be authorized until these criteria are in place. The criteria will apply to all current and future falconry and raptor propagation permit holders. In addition to considering the effect on wild populations, issuance of raptor propagation permits requires that the Service consider whether suitable captive stock is available and whether wild stock is needed to enhance the genetic variability of captive stock (50 CFR 21.30(c)(4)). These regulatory provisions under the Migratory Bird Treaty Act will adequately protect against excessive take of peregrine falcons (see additional discussion of the Migratory Bird Treaty Act in the Effects of this Rule section below). Protective measures could be expanded, if necessary, by promulgation of a regulation under the Migratory Bird Treaty Act by the Service following or during the assessment of the effects of this take on peregrine falcons during the 5-year post-listing monitoring period. Therefore, in the event the peregrine falcon is delisted under the Endangered Species Act, the Service has authority under the Migratory Bird Treat Act to ensure the conservation of the species.

In the absence of habitat protection under the Endangered Species Act, there are no other existing Federal laws that specifically protect the habitat of this species (see ''Critical Habitat''); however, loss of habitat has not been identified as a threat to the species and was not a factor identified as contributing to the species original decline.

An important regulatory mechanism affecting peregrine falcons is the requirement that pesticides be registered with the Environmental Protection Agency (EPA). Under the authority of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136), the Environmental Protection Agency requires environmental testing of all new pesticides. Testing the effects of pesticides on representative wildlife species prior to pesticide registration is specifically required. This protection from effects of pesticides would not be altered by delisting the peregrine falcon.

On July 1, 1975, peregrine falcons were included in Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). This treaty was established to prevent international trade that may be detrimental to the survival of plants and animals. Generally, both import and export permits are required by the importing and exporting countries before an Appendix I species may be shipped, and Appendix I species may not be imported for primarily commercial purposes. Although CITES does not itself regulate take or domestic trade, CITES permits may not be issued if the export will be detrimental to the survival of the species or if the specimens were not legally acquired. This protection would not be altered by delisting the peregrine falcon under the Act.

Peregrine falcons will still be afforded some protection by land management agencies under laws such as the National Forest Management Act (16 U.S.C. 1600) and the Federal Land Management and Policy Act (43 U.S.C. 1701). National Forest Management Act regulations specify that ''fish and wildlife habitat shall be managed to maintain viable populations of existing native and desired non-native vertebrate species in the planning area.'' (36 CFR 219.19). Guidelines for each planning area must provide for a diversity of plant and animal communities based on the suitability of a specific land area. Regional Foresters are responsible for identifying sensitive species occurring within their Region. Sensitive species are those that may require special management emphasis to ensure their viability and to preclude trends toward endangerment that would result in the need for Federal listing. In the event the peregrine falcon is delisted, Regional Foresters will consider the need for designating the peregrine falcon as a sensitive species to ensure that forest management activities do not contribute to a need for relisting. The Federal Land Policy and Management Act requires that public lands be managed to protect the quality of scientific, ecological, and environmental qualities, among others, and to preserve and protect certain lands in their natural condition to provide food and habitat for fish and wildlife.

Federal delisting of the peregrine falcon will not remove the peregrine falcon from State threatened and endangered species lists, or suspend any other legal protections provided by State law. States may have more restrictive laws protecting wildlife, including restrictions on falconry, and may retain State threatened or endangered status for the peregrine falcon. Falconry permits will still be required under Federal migratory bird regulations, which are administered by cooperating States under a Federal/State permit application program (50 CFR 21.28).

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Egg collecting, shooting, harvest for falconry, habitat destruction, climate change, and the extinction of passenger pigeons were all proposed as possible

factors causing or contributing to the decline in peregrine falcon populations in North America; however, no evidence supports any of these factors as causing the widespread reproductive failure and population decline that occurred. In contrast, an overwhelming body of evidence has been accumulated showing that organochlorine pesticides affected survival and reproductive performance sufficiently to cause the decline. There currently is no question within the scientific community that contamination with organochlorines was the principal cause for the drastic declines and extirpations in peregrine falcon populations that took place in most parts of North America.

Although the use of organochlorine pesticides has been restricted in the United States and Canada since the early 1970s, use continues in areas of Latin America. It has been shown, by comparing blood samples collected during fall and spring migration, that migrant peregrine falcons bioaccumulate organochlorines while wintering in Latin America (Henny *et al.* 1982). Henny *et al.* (1996) demonstrated that DDE residues in the blood taken from female peregrine falcons captured during spring migration at Padre Island, Texas decreased between 1978 and 1994. In second-year peregrines, residues dropped from 1.43 ppm in 1978–1979 to only 0.25 ppm in 1994 and from 0.88 to 0.41 ppm for older peregrines; these levels are well below those that would affect reproduction.

The widespread reproductive failure and population crash in North America coincided with the period of heavy organochlorine use in the United States. Although there was not an immediate lowering of pesticide residues in eggs following restrictions on the use of organochlorines north of Mexico (Enderson *et al.* 1995), residues gradually declined following the restrictions (Ambrose et al. 1988b, Enderson *et al.* 1988, Peakall *et al.* 1990), and most surviving populations began to increase in numbers thereafter. Despite the continued use of organochlorines in Latin America, populations of American peregrine falcons in North America have recovered substantially in recent years. In fact, Arctic peregrine falcons that winter predominantly in Latin America recovered to the point that the subspecies was removed from the List of Threatened and Endangered Wildlife on October 4, 1994 (59 FR 50796).

Additionally, some of the avian prey used during the nesting season by peregrine falcons throughout North America also winter in Latin America. Many of these prey return to their nesting areas with pesticide residues accumulated during the winter (Fyfe *et al.* 1990). Peregrine falcons preying upon these birds during the summer are further exposed to Latin American pesticides. While overall, pesticide use in Latin America has apparently not adversely affected reproductive success and productivity in American peregrine falcon populations in North America, monitoring levels of organochlorines in the subspecies must continue, and more effort must be placed in monitoring and remediating organochlorine exposure in populations nesting and migrating outside the United States.

The Service recognizes that certain populations of American peregrine falcons have recovered to a lesser degree and that in some of these populations organochlorine residues are still high and reproductive rates remain lower than normal. The Channel Islands off southern California are still plagued by high organochlorine residues and eggshell thinning (Jarman 1994). Despite the residual effects of organochlorines on the Channel Islands, this population is continuing to increase, although some of the increase could be the result of the release of a significant number of captive-bred young (B. Walton, pers. comm. 1997) or dispersal from other areas where recovery is greater. Based on published values in the literature, detected concentrations of DDT in peregrine falcon eggs collected in New Jersey were sufficient to impact reproduction. Productivity and eggshell thinning data, however, did not support a conclusion of reproductive impairment due to DDT contamination (U.S. Fish and Wildlife Service and New Jersey Department of Environmental Protection 1997). Jarman (1994) suggested that these locally higher egg residues result from a local point source of DDT or DDE. As a result, the effects are localized, and the observations do not reflect the current status of peregrine falcons as a whole. In general, numbers of peregrine falcons have increased throughout their historical ranges despite the effects of localized organochlorine residues.

Similarly, American peregrine falcons in southwest Canada have not recovered as well as in most other regions of North America. Despite the release of several hundred captive-bred young in the prairie Provinces and western Canada (Holroyd and Banasch 1990), the number of pairs occupying territories is still well below the number of known historical nest sites (G. Holroyd, *in litt.* 1993), which is probably an underestimate of the actual number of historical nest sites. In southern Canada, including the prairie region, the proportion of reintroduced young that entered the breeding population has been considerably lower than in the United States (Peakall 1990, Enderson *et al.* 1995). The factor or factors causing this lower recruitment rate remain unknown, but survivorship of peregrine falcons released into this area may be lower than in adjacent portions of the subspecies' range. Pesticide residues in American peregrine falcon eggs do not appear to be higher in southwest Canada than in the United States (Peakall *et al.* 1990). Therefore, higher residual organochlorine contamination is apparently not responsible, and the number of pairs occupying this region continues to increase.

In summary, exposure to organochlorine pesticides caused drastic population declines in peregrine falcons. Following restrictions on the use of organochlorines in the United States and Canada, residues in eggs declined and reproduction rates improved. Improved reproduction, combined with the release of thousands of captive-reared young and relocated wild hatchlings, allowed the American peregrine falcon to recover and peregrine falcons to be successfully reestablished in those areas of the historical range from which the species had been extirpated. Pesticide residues, reproductive rates, and the rate of recovery have varied among regions within the vast range of this species. In some areas, such as portions of California, the lingering effects of DDT have caused reproductive rates to remain low. Point source contamination may even cause continued reproductive problems in these areas in California. In southwest Canada, the rate of recovery, or onset of recovery, apparently lagged behind most other areas, but recent trends suggest that historical nest sites will continue to be gradually recolonized. Although the recovery of the peregrine falcon is not complete throughout all parts of the historical range in North America, those areas in which recovery has been slow represent a small portion of the species' range. Furthermore, evidence collected in recent years shows that a combination of lingering residues of organochlorines in North America and contamination resulting from the continued use of organochlorines in Latin America has not prevented a widespread and substantial recovery of peregrine falcons as numbers of peregrine falcons continue to increase. The Service concludes, therefore, that the continued existence of the American peregrine falcon and the reestablished peregrine

populations in the eastern and Midwestern States are no longer threatened by exposure to organochlorine pesticides.

Due to the reduction in the effects of pesticides and widespread positive trends in population size, the Service believes that the American peregrine falcon has recovered and is no longer endangered with extinction or likely to become endangered within the foreseeable future throughout all or a significant portion of its range. The Service proposes to remove the peregrine falcon from the List of Endangered and Threatened Wildlife, removing endangered status for the American peregrine falcon and the Similarity of Appearance provision for all free-flying peregrine falcons within the 48 conterminous States.

Effects of This Rule

Finalization of this proposed rule will affect the protection afforded to peregrine falcons under the Endangered Species Act. It will not affect the status of the Eurasian peregrine falcon (*F. p. peregrinus*), currently listed under the Act as endangered wherever it occurs. The endangered designation under the Act for the American peregrine falcon will be removed and the designation of ''Endangered due to Similarity of Appearance'' designation for all free-flying peregrine falcons found within the 48 conterminous United States, including the Arctic and Peale's peregrine falcons and the reestablished eastern and midwestern populations, will be removed. Therefore, taking, interstate commerce, import, and export of North American peregrine falcons will no longer be prohibited under the Act. In addition, Federal agencies will no longer be required to consult with the Service under section 7 of the Act in the event activities they authorize, fund or carry out adversely affect peregrine falcons. However, removal of the protection of the Endangered Species Act will not affect the protection afforded all migratory bird species, including all peregrine falcons, under the Migratory Bird Treaty Act.

The Migratory Bird Treaty Act governs the taking, killing, possession, transportation, and importation of migratory birds, their eggs, parts, and nests. Implementing regulations (50 CFR 20 and 21) include provisions for the taking of migratory birds for educational, scientific, and recreational purposes. Special regulations pertaining to raptors are found in 50 CFR 21.28 to 21.30. These regulations allow for the taking, possession, transport, import, purchase, and barter of raptors for purposes of falconry and captive propagation pursuant to State and Federal permits. If this delisting proposal is finalized, the taking of peregrine falcons from the wild for falconry and propagation will be allowable. Unpermitted take of peregrine falcons for falconry and raptor propagation will be a violation of the Migratory Bird Treaty Act. In accordance with general permit regulation requirements that the issuance of permits not threaten wildlife populations (50 CFR 13.21(b)), authorization to take peregrines under the Migratory Bird Treaty Act will be subject to biological criteria that will be issued by the Service. The criteria will pertain to all wild North American peregrine falcons and will apply to all current and future falconry and raptor propagation permit holders. Take of peregrines will not be authorized under the Migratory Bird Treaty Act until these biological criteria are in place. The Service expects to issue final criteria prior to finalizing a decision on this proposal to delist the peregrine.

The take and use of peregrine falcons must comply with appropriate State regulations. State regulations applying to falconry currently vary among States and are subject to change over time. The applicable State regulations may be more but not less restrictive than Federal regulations.

This rule will not affect the peregrine falcon's Appendix I status under CITES, and CITES permits will still be required to import and export peregrine falcons to and from the United States. CITES permits will not be granted if the export will be detrimental to the survival of the species or if the falcon was not legally acquired.

Critical Habitat

Critical habitat for the American peregrine falcon includes five areas in northern California (50 CFR 17.95). The Act defines critical habitat as ''specific areas within the geographical area occupied by the species, at the time it is listed on which are found those physical or biological features essential to the conservation of the species and which may require special management considerations or protection.'' Since critical habitat can be designated only for species listed as endangered or threatened under the Act, existing critical habitat will lose this current designation when the American peregrine falcon is delisted.

Future Conservation Measures

Section 4(g)(1) of the Act requires that the Secretary of the Interior, through the Service, implement a monitoring program for not less than 5 years for all species that have been recovered and delisted. The purpose of this requirement is to develop a program that detects the failure of any delisted species to sustain itself without the protective measures provided by the Act. If at any time during the 5-year monitoring program, data indicate that protective status under the Act should be reinstated, the Service can initiate listing procedures, including, if appropriate, emergency listing. At the conclusion of the monitoring period, the Service will review all available information to determine if relisting, the continuation of monitoring, or the termination of monitoring is appropriate.

Monitoring

The Service's Region 1 in consultation with Service biologists in Regions 2, 3, 4, 5, 6, and 7 will coordinate with existing recovery teams, working groups, State resource agencies, and interested scientific organizations to develop and implement an effective 5-year monitoring program to track the population status of the peregrine falcon. The Service will encourage Canada and Mexico to establish monitoring plans that will produce comparable data.

The Service will use, to the fullest extent possible, information routinely collected by researchers and land managers in a variety of organizations and agencies. This data, however, will only supplement data collected under a systematic monitoring program. Sites or areas will be specifically selected for monitoring to provide a subset of data that is representative of the species' status throughout its range. The following minimum measures will be used to track the status of the peregrine falcon, although the specific approaches to monitoring may vary among regions.

1. Annual Occupancy Surveys

To detect changes in the use of nesting territories, samples of breeding pairs will be surveyed each breeding season in a statistically valid manner. Survey areas, timing, and survey methods must be consistent among surveys conducted over several years.

2. Productivity

To assess productivity, the number of young produced per territorial pair will be recorded in the survey areas. The Service will also use information from all study areas where appropriate data are available in addition to systematic monitoring of productivity of selected sites.

3. Contaminants

In areas where depressed reproduction may be caused by residual organochlorine pesticides, eggshell thickness and contaminant concentrations in addled eggs will be analyzed to monitor organochlorines pesticides and other environmental contaminants. Additional sampling to detect contaminants may include blood analysis and collection of egg and blood samples from peregrine falcons in selected areas where reproduction is not depressed by environmental contaminants to detect changes in contaminant levels on a broader scale in the United States, as well as to continue to evaluate the effects of contaminants on American peregrines migrating to Latin America in winter.

The North American Regional Action Plan (NARAP) on DDT was developed by parties to the North American Free Trade Agreement (NAFTA), working with the Secretariat for the (North American) Commission for Environmental Cooperation (CEC), under Council Resolution #95–05. This tri-lateral forum between the United States, Canada, and Mexico, may provide funding opportunities for monitoring organochlorine exposure, and productivity in American peregrine falcon populations nesting in Mexico.

4. Take for Falconry

Authorization to take peregrine falcons for falconry purposes under the Migratory Bird Treaty Act will be subject to biological criteria established by the Service. The Service will work with the States to monitor levels of actual take of peregrine falcons authorized under State/Federal falconry and raptor propagation permits.

After completion of the mandated 5-year monitoring program, the Service will review all available monitoring data to determine whether relisting, continuation of monitoring, or termination of monitoring is appropriate. The Service will consider relisting if, during or after the 5-year monitoring effort, the Service determines a reversal of recovery has taken place. The Service will consider relisting the peregrine falcon if (1) major breeding areas do not maintain 60 percent occupancy of sites, as measured by the number of sites documented as occupied by peregrine pairs in the first year of monitoring; (2) there is a clear and substantial trend of reduced productivity below that of growing or stable populations (i.e., average productivity drops below 1.0 young per territorial pair for two consecutive surveys, without mitigating circumstances, such as abnormal weather conditions); (3) exposure to organochlorine pesticides, organophosphate pesticides, or other environmental contaminants increases to levels shown to be deleterious to the species in more than a few, isolated populations; or (4) in the case of other extenuating circumstances that would warrant relisting.

If the Service determines at the end of the mandatory 5-year monitoring period that recovery is complete, and factors that led to the listing of subspecies of peregrine falcon, or any new factors, have been sufficiently reduced or eliminated, monitoring may be reduced or terminated. If data show that peregrine falcon populations are declining or if one or more factors that have the potential to cause decline are identified, the Service will continue monitoring beyond the 5-year period and may modify the monitoring program based on an evaluation of the results of the initial 5-year monitoring program.

Public Comments Solicited

The Service requests comments on three aspects of this proposed rulemaking: (1) the proposed removal of the peregrine falcon from the List of Endangered and Threatened Wildlife, (2) the clarity of this proposal, pursuant to Executive Order 12866, which requires agencies to write clear regulations, and (3) the collection of information from the public during the 5-year monitoring period, which requires Office of Management and Budget (OMB) approval under the Paperwork Reduction Act.

Proposed Delisting

The Service intends that any final action resulting from this proposal to remove the peregrine falcon from the List of Endangered and Threatened Wildlife will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments should be sent to the Service's Ventura, California, Field Office (see **ADDRESSES** section). Comments particularly are sought concerning:

(1) biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) additional information concerning the range, distribution, and population size of this species;

(3) current or planned activities in the range of this subspecies and their possible impacts on this species;

(4) data on population trends in Mexico;

(5) information and comments on the potential impacts of falconry on peregrine falcon populations; and

(6) information and comments pertaining to the proposed monitoring program contained in this proposal.

The final decision on this proposal for the peregrine falcon will take into consideration the comments and any additional information received by the Service during the comment period.

The Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of publication of this proposal. Such requests must be made in writing and sent to the Ventura Field Office address in the **ADDRESSES** section at the beginning of this proposed rule.

Executive Order 12866

Executive Order 12866 requires agencies to write regulations that are easy to understand. The Service invites your comments on how to make this proposal easier to understand including answers to questions such as the following: (1) Is the discussion in the ''Supplementary Information'' section of the preamble helpful in understanding the proposal? (2) Does the proposal contain technical language or jargon that interferes with its clarity? (3) Does the format of the proposal (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? What else could the Service do to make the proposal easier to understand?

Send a copy of any comments that concern how the Service could make this notice easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW, Washington, DC 20240. You may also e-mail the comments to: Exsec@ios.doi.gov.

Paperwork Reduction Act

OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act, require that interested members of the public and affected agencies have an opportunity to comment on agency information collection and recordkeeping activities (see 5 CFR 1320.8(d)). The Service intends to collect information from the public during the mandatory 5-year monitoring period following delisting of the peregrine falcon. A description of the information collection burden and the comments requested on this

collection are included in the Paperwork Reduction Act section below.

Paperwork Reduction Act

Section 4(g) of the Endangered Species Act requires that all species that are delisted due to recovery be monitored for a minimum of 5 years. A general description of the information that will be collected during the monitoring period was provided above in the *Monitoring* section of this proposal. Implementation of the monitoring plan will include collections of information from the public that require approval by OMB under the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3501 et seq.). Simultaneous to publication of this proposed delisting rule, the Service is initiating the process of information collection approval from OMB. The Service 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 Service intends to collect information from researchers and land managers in a variety of organizations and agencies. Some of the information gathered will be part of already ongoing State, Federal, or private monitoring programs. The Service also will use information from other study areas where appropriate data are available. The information collected will allow the Service to detect any failure of the species to sustain itself following delisting. If during this monitoring period the Service determines that the species is not sufficiently maintaining its recovered status, the species could be relisted as endangered or threatened under the Act.

The Service estimates approximately 20 respondents to requests for information on the status of peregrine falcon per year. Different respondents may provide one or more types of information. A total of 12.5 burden hours per year are estimated for the potential 20 respondents, as indicated in the following table.

Type of information	Number of requests annually *	Average time required per response (minutes)	Annual burden hours
Nest occupancy	20	15	5
Productivity	20	15	5
Contaminants	10	15	2.5

* The total number of individual respondents anticipated is 20. The figures in this column should not be viewed cumulatively.

OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act, require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). Comments are invited on—(1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and, (4) ways to minimize the burden of the collection of information on respondents, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments on information collection should be sent to OMB and to the Service's Information Collection Clearance Officer at the addresses included in the **ADDRESSES** section at the beginning of this proposed rule.

National Environmental Policy Act

The Service has determined that an Environmental Assessment or Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Listing Priority Guidance

The Service has implemented a series of listing priority guidance since 1996 to clarify the order in which it will process rulemaking actions. The need for this guidance arose following major disruptions in the Service's listing budget beginning in Fiscal Year 1995 and a moratorium on certain listing actions during parts of Fiscal Years 1995 and 1996. The intent of the guidance is to focus Service efforts on listing actions that will provide the greatest conservation benefits to imperiled species in the most expeditious and biologically sound manner. The Service's Listing Priority Guidance for Fiscal Years 1998 and 1999 was published on May 8, 1998 (63 FR 25502) and reflects the significant progress the Service has made in addressing its backlog. The Fiscal Year 1998 and 1999 Listing Priority Guidance gives highest priority (Tier 1) to processing emergency rules to add species to the Lists of Endangered and Threatened Wildlife and Plants; second priority (Tier 2) to processing final determinations on proposals to add species to the lists, processing new proposals to add species to the Lists, processing administrative findings on petitions (to add species to the lists, delist species, or reclassify listed species), and processing a limited number of proposed or final rules to delist or reclassify species; and third priority (Tier 3) to processing proposed or final rules designating critical habitat. Processing of this delisting proposal is a Tier 2 action.

Processing of this proposed delisting conforms with the guidance for Fiscal Years 1998 and 1999. The processing of certain high-priority delisting actions will result in significant, albeit indirect, conservation benefits. As long as a species remains on the endangered and threatened list, Service funds are expended reviewing regulated activities pursuant to section 10 (prohibited activities) and engaging in consultations with other Federal agencies under section 7 (interagency cooperation) of the Act. Following delisting, resources currently devoted to these activities will be redirected to other listed species more deserving of conservation efforts. Moreover, the Service is obligated to keep the lists of endangered and threatened species accurate.

References Cited

A complete list of all references cited herein is available upon request from the Ventura Fish and Wildlife Field Office (see **ADDRESSES** section).

Author

The primary author of this proposed rule is Robert Mesta, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office (see **ADDRESSES** section), (805/644–1766).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

For the reasons set out in the preamble, the Service hereby proposes to amend part 17, subchapter B of chapter I, Title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

§ 17.11 [Amended]

2. Section 17.11(h) is proposed to be amended by removing the entries for the ''Falcon, American peregrine, *Falco peregrinus anatum*'' and ''Falcon, peregrine, *Falco peregrinus*'' under ''BIRDS'', from the List of Endangered and Threatened Wildlife. [Note—This rule does not affect the entry for ''Falcon, Eurasian peregrine, *Falco peregrinus peregrinus*.]

§ 17.95 [Amended]

3. Amend section 17.95(b) by removing the critical habitat entry for ''American peregrine falcon (*Falco peregrinus anatum*).''

Dated: July 31, 1998.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 98–22934 Filed 8–25–98; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 63, No. 165

Wednesday, August 26, 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

Farm Service Agency

Commodity Credit Corporation

Notice and Request for Approval of a New Information Collection

AGENCIES: Farm Service Agency and the Commodity Credit Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Commodity Credit Corporation (CCC) and Farm Service Agency (FSA) to request approval of a new information collection in support of the peanut poundage quota program as authorized by the Federal Agriculture Improvement and Reform Act of 1996 (1996 Act).

DATES: Comments on this notice must be received on or before October 26, 1998 to be assured consideration.

ADDITIONAL INFORMATION OR COMMENTS: Amy Kriskovich, Marketing Specialist, Tobacco and Peanuts Division, Farm Service Agency, United States Department of Agriculture, STOP 0514, 1400 Independence Avenue, SW, Washington, DC 20250–0514, (202) 720–7120, facsimile (202) 690–1536; Internet e-mail, amykriskovich@wdc.fsa.usda.gov.

SUPPLEMENTARY INFORMATION:

Title: Peanuts, 7 CFR part 729.

OMB Control Number: 0560–0186.

Type of Request: Approval of a new information collection.

Abstract: The 1996 Act provides for a non-refundable peanut marketing assessment (PMA) to be collected from peanut handlers and peanut producers. Peanut handlers are responsible for remitting the PMA to CCC. Peanut handlers have the option to pay the PMA using a new PMA payment alternative, NationsBank DirectPay touch-tone phone service. Peanut handlers must enroll in the NationsBank DirectPay service by registering on form CCC–1047, Authorization Agreement For Peanut Handler's Automatic Marketing Assessment Payments. NationsBank DirectPay service allows peanut handlers to make automated PMA payments to CCC.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 10 minutes per response.

Respondents: Peanut Handlers.

Estimated Number of Respondents: 30.

Estimated Total Annual Burden of Respondents: 5 hours.

Comments are requested regarding, but not limited to: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; or (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments should be sent to the Desk Office for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Charles Hatcher, at the address listed above. All comments will become a matter of public record.

OMB is required to make a decision concerning the collection(s) of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 60 days of publication.

Signed at Washington, DC, on August 18, 1998.

George W. Aldaya,

Acting Administrator, Farm Service Agency and Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 98–22848 Filed 8–25–98; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Issuance of Additional Secured Debt by Electric Distribution Borrowers

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Utilities Service (RUS) hereby issues a generic notice to those electric distribution borrowers that presently have mortgages that prohibit the issuance of additional secured debt without the consent of RUS (*i.e.*, most mortgages entered into before 1996) that RUS hereby approves their issuance of additional secured notes, provided that the terms and conditions contained in the model forms of mortgage and loan contract in use by RUS since January 1996 are satisfied.

DATES: This generic approval extends to electric distribution borrowers who notified RUS of their intention to issue additional secured debt on or after February 20, 1998, under the circumstances set out in this notice.

FOR FURTHER INFORMATION CONTACT: Sue Arnold, Office of the Assistant Administrator, Electric Program, Rural Utilities Service, United States Department of Agriculture, 1400 Independence Avenue, SW, Stop 1560, Room 4024–S, Washington, DC 20250–1500. Phone: 202–690–1078. FAX: 202–690–0717. E-mail: sarnold@rus.usda.gov.

SUPPLEMENTARY INFORMATION: The Rural Utilities Service (RUS) makes and guarantees loans for electric facilities to serve consumers in rural areas pursuant to the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*) (RE Act). These loans are ordinarily secured through the use of a common mortgage with RUS and at least one supplemental lender.

Under the form of common mortgage RUS used from the early 1970's until early 1996 (Old Mortgage), the borrower could not issue additional secured debt without first obtaining the approval of RUS. RUS exercised broad discretion in exercising its right to approve additional secured debt case-by-case. The exercise of rights in these cases is sometimes referred to as approving a ''lien accommodation,'' (although that broad term also encompasses many other similar actions by RUS that are not

covered by this notice). As the RUS program matured, this case-by-case approach to approving all additional secured debt became less workable for RUS, its borrowers, and supplemental lenders.

On July 18, 1995, at 60 FR 36881, RUS published 7 CFR Part 1718, Loan Security Documents for Electric Borrowers, that issued a new model form of mortgage (New Mortgage) for electric distribution borrowers. In a related action, on December 29, 1995, at 60 FR 67395, RUS amended 7 CFR Part 1718 to issue a new model form of loan contract (New Loan Contract) for electric distribution borrowers. The New Mortgage and New Loan Contract went into use for all electric distribution loans or guarantees approved by RUS after January 29, 1996.

Among other things, these new forms of loan documents replaced many subjective standards and practices that required RUS, as mortgagee, to review borrower requests for routine additional financings case-by-case. Sections 2.01 and 2.02 of the New Mortgage and §§ 6.13 and 6.14 of the New Loan Contract establish objective tests for the issuance of new debt that qualifies as secured under the borrower's mortgage. No lien accommodations are required for additional financing that complies. Because of the success of the objective approach, RUS is extending it to those electric distribution borrowers still operating under the Old Mortgage. RUS expects that this action will also eliminate the confusion associated with maintaining two different standards for the routine issuance of electric distribution debt during the period the RUS program transitions from the Old Mortgage form to the New Mortgage form.

This **Federal Register** Notice is a generic notice of approval, under 7 CFR 1717.600(c), allowing electric distribution borrowers operating under the Old Mortgage to issue additional debt without prior RUS approval under the same terms and conditions as borrowers with the New Mortgage and New Loan Contract.

Specifically, an electric distribution borrower with an Old Mortgage may now, without first obtaining any RUS approval, issue additional debt to refinance or refund existing secured debt or to acquire, procure, or construct eligible property additions if the borrower satisfies the terms and conditions for the issuance of such debt contained in the New Mortgage and New Loan Contract.

The model forms of the New Mortgage and New Loan Contract are published in RUS regulations as appendices to 7 CFR 1718, subparts B and C, respectively. The applicable provisions in the New Mortgage are §§ 1.01, 2.01 and 2.02 and Exhibit A. The applicable provisions in the New Loan Contract are Article I—Definitions, §§ 6.13 and 6.14 of Article VI—Negative Covenants, and Exhibits C–1 and C–2 (forms of certifications). The regulation, including appendices, is available on the RUS homepage at www.usda.gov/rus.

RUS may, upon written notice to a borrower, prospectively amend or annul this approval as set forth in 7 CFR 1717.600. Nothing in this notice of approval is intended to affect the rights of any other lender. Any electric distribution borrower that does not qualify for the approval contained in this notice, must continue to refer to its existing mortgage and RUS loan contract and RUS regulations including 7 CFR 1717, subparts R and S for the terms and conditions for issuing additional secured debt.

Authority: 7 U.S.C. 901 *et seq.*

Dated: August 21, 1998.

Christopher A. McLean,

Acting Administrator, Rural Utilities Service.

[FR Doc. 98–22932 Filed 8–25–98; 8:45 am]

BILLING CODE 3410–15–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 the provisions of the Paperwork Reduction Act (44 USC Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Foreign Fishing Vessel Permit Applications.

Agency Form Number(s): None.

OMB Approval Number: 0648–0089.

Type of Request: Extension of a currently approved collection.

Burden: 50 hours.

Number of Respondents: 50.

Avg. Hours Per Response: 1 hour.

Needs and Uses: Section 204 of the Magnuson-Stevens Fishery Conservation and Management Act provides for the issuance of foreign fishing permits. This information collection covers the submission of application information necessary to evaluate and act on permit applications.

Affected Public: Businesses or other for-profit organizations.

Frequency: On occasion, annually.

Respondent's Obligation: Required to obtain or retain benefits.

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, NW, Washington, DC 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, NW, Washington, DC 20503.

Dated: August 20, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–22903 Filed 8–25–98; 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 the provisions of the Paperwork Reduction Act (44 USC Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Fishermen's Contingency Fund.

Agency Form Number(s): NOAA 88–164 and NOAA 88–166.

OMB Approval Number: 0648–0082.

Type of Request: Extension of a currently approved collection.

Burden: 2,017 hours.

Number of Respondents: 200.

Avg. Hours Per Response: 5 minutes for the 15-day report, 10 hours for the application.

Needs and Uses: Title IV of the Outer Continental Shelf Lands Act Amendments established the Fishermen's Contingency Fund to compensate commercial fishermen for property or economic loss caused by oil and gas obstructions on the U.S. Outer Continental Shelf. The Fund is funded by fees assessed oil and gas companies operating on the Outer Continental Shelf. In order to receive compensation, a claim must file with the National Marine Fisheries Service. The documentation is used to determine if the claimant is eligible for compensation and to determine the amount of payment.

Affected Public: Individuals, businesses or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

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, NW, Washington, DC 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, NW, Washington, DC 20503.

Dated: August 20, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–22904 Filed 8–25–98; 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 the provisions of the Paperwork Reduction Act (44 USC Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: National Marine Sanctuary Permits.

Agency Form Number(s): None.

OMB Approval Number: 0648–0141.

Type of Request: Revision of a currently approved collection.

Burden: 877 hours.

Number of Respondents: 482 (multiple responses).

Avg. Hours Per Response: Ranges between 15 minutes and 2 hours depending on the requirement.

Needs and Uses: The Marine Protection, Research, and Sanctuaries Act, provides for the establishment of National Marine Sanctuaries. The intended effect is to protect the conservation, recreational, ecological, historical, research, education and aesthetic qualities of these special areas. The Sanctuary regulations list specific activities that are prohibited. These otherwise prohibited activities are permissible if a permit is issued by NOAA. This information collection includes the applications for these permits and reports submitted following the conduct of the permitted activity. The application is used to make a decision on whether or not the project is of value and to determine if there are adequate safeguards to protect the environment.

Affected Public: Not-for-profit institutions, businesses or other for-profit organizations, individuals, federal government, state, local or tribal government.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

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, NW, Washington, DC 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, NW, Washington, DC 20503.

Dated: August 20, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–22905 Filed 8–25–98; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA), Commerce..

ACTION: To give firms an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

Lost of Petition Action by Trade Adjustment Assistance for Period 07/16/98–08/15/98

Firm name	Address	Date petition accepted	Product
Fabry Glove and Mitten Company	1201 Main Street, Green Bay, WI 54301	07/20/98	Winter sports gloves of leather and non-leather.
Networks International Corp	15237 Broadmoor Street, Shawnee Mission, KS 66223.	07/20/98	Electronic filters and oscillators.
Branford Wire and Manufacturing Co., Inc.	PO Box 677, Mountain Home, NC 28758	07/23/98	Stainless steel wire.
Seafood Producers Cooperative	507 Katlian Street, Sitka, AK 99835	07/23/98	Fresh and frozen salmon.
Sanford White Company, Inc	PO Box 157, Pawtucket, RI 02862	07/30/98	Jewelry.
General Machine Co. of NJ	301 Smalley Avenue, Middlesex, NJ 08846.	07/31/98	Food blenders and dryers for dyes, foods, cements and cosmetics.
Kinematics and Controls Corp	14 Burt Drive, Deer Park, NY 11729	07/31/98	Liquid level sensors and automatic and semiautomatic vacuum/volumetric fillers.
Ribco Manufacturing, Inc	191 Georgia Avenue, Providence, RI 02905.	07/31/98	Clasps and buckles for clothing, leather goods and footwear.
Screen Creations Ltd	804 Texas Court, O'Fallon, MO 63366	07/31/98	Screen printed shirts.
Pinquist Tool & Die Co., Inc	57 Meserole Avenue, Brooklyn, NY 11222.	08/03/98	Metal stampings.
Hostar Marine Transport Systems, Inc	One Kendrick Way, Wareham, MA 02571.	08/03/98	Marine transport trailers, boat stands and dollies.
G.N. Ostrander, Inc	720 Military Parkway, Suite D, Mesquite, TX 75159.	08/05/98	Brooms.
Lakewood Cabinetry	PO Box 388, Langley, OK 74350	08/05/98	Wood kitchen cabinets.

Firm name	Address	Date petition accepted	Product
Gilbert & Nash Company, Inc	1100 Prospect Lane, Kaukauna, WI 54130.	08/14/98	Guiding and tensioning equipment for endless fabrics.

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by Trade Adjustment Assistance, Room 7315, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: August 19, 1998.

Anthony J. Meyer,

Coordinator, Trade Adjustment and Technical Assistance.

[FR Doc. 98–22859 Filed 8–25–98; 8:45 am]

BILLING CODE 3510–24–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcement of an Opportunity To Join a Cooperative Research and Development Consortium for Single-Crystal Reference Materials

AGENCY: National Institute of Standards and Technology.

ACTION: Notice of public meeting.

SUMMARY: The National Institute of Standards and Technology invites interested parties to attend a meeting on September 15, 1998, in the Santa Clara, CA area or on September 29, 1998 in the Gaithersburg, MD area to discuss setting up a cooperative research consortium. The goal of the consortium is to achieve commercially available reference standards to support CD-metrology below 0.25 microns. Parties participating in the consortium will be loaned a pre-measured prototype sample for evaluation.

The program will be within the scope and confines of The Federal Technology Transfer Act of 1986 (Pub. L. 99–502, 15 U.S.C. 3710a), which provides federal laboratories including NIST with the authority to enter into cooperative research agreements with qualified parties. Under this law, NIST may contribute personnel, equipment, and facilities—but no funds—to the cooperative research program.

Members will be expected to make a contribution to the consortium's efforts in the form of personnel and funds to cover operating expenses. This is not a grant program. Interested parties should contact NIST at least one week prior to the meeting to confirm their interest at the address, telephone number, or FAX number shown below.

DATES: The meeting will take place on September 15, 1998, in the Santa Clara, CA area or on September 29, 1998 in the Gaithersburg, MD area. Interested parties should contact NIST to confirm their interest at the address, telephone number or FAX number shown below.

ADDRESSES: The meeting in the Santa Clara area on September 15, 1998, will be held at the Hotel Sofitel, San Francisco Bay, 223 Twin Dolphin Drive, Redwood City, California 94065–1514. The meeting in Gaithersburg on September 29, 1998, will be held at the National Institute of Standards and Technology (NIST), Technology Building (225) Room A–362, Gaithersburg, MD, 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Michael W. Cresswell, Building 225, Room B360, National Institute of Standards and Technology, Gaithersburg, MD 20899–0001, Telephone: 301–975–2052, FAX: 301–948–4081, Email: consortium@pipers.eeel.nist.gov.

SUPPLEMENTARY INFORMATION: NIST and Sandia National Laboratories, with assistance from SEMATECH, have successfully fabricated and tested prototypes of a new class of reference materials to support CD-metrology below 0.25 microns with eventual application to 0.10 microns. This work has the long-term goal of the commercial availability of certified physical standards traceable to NIST. As a result of the multiple requests for sample prototypes for evaluative purposes that they have received, NIST and Sandia management have proposed a consortium to maximize the benefits of exchanging measurement results made independently by a diverse group of participants, each of whom will be loaned a pre-measured prototype sample for evaluation. This consortium is an extension of a previously organized consortium in which test samples fabricated by a Separation by the Implantation of Oxygen (SIMOX) technique were evaluated. The proposed consortium will utilize test samples fabricated by the Bond and Etch-back Silicon-On-Insulator (BESOI) technique which are expected to yield superior results. The purpose of the above meeting is to describe the chip layout and reference-feature construction, to review the CD-measurement results already extracted from previous test chips by NIST and Sandia, and to explain the CRADA (Cooperative Research and Development Agreement) rules which will apply to the consortium. Each participating organization will be requested to make an illustrated presentation of its CD-measurement results at a closed meeting to be held at an agreed-upon meeting location and time.

Organizations will be asked to contribute a nominal fee in order to participate.

Dated: August 20, 1998.

Robert E. Hebner,

Acting Deputy Director.

[FR Doc. 98–22881 Filed 8–25–98; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF DEFENSE

Department of the Navy

Record of Decision for the Disposal and Reuse of Naval Medical Center Oakland, CA

Summary: The Department of the Navy (Navy), pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C), and the regulations of the Council on Environmental Quality that implement NEPA procedures, 40 CFR Parts 1500–1508, hereby announces its decision to dispose of Naval Medical Center (NMC) Oakland, California.

Navy and the City of Oakland analyzed the impacts of disposal and reuse of the NMC Oakland property in a Joint Environmental Impact Statement/Environmental Impact Report (EIS/EIR), as required by NEPA and the California Environmental Quality Act (CEQA), Cal. Pub. Res. Code, section 21000, *et seq.*, as amended. The City of Oakland is responsible for compliance with CEQA. In the EIS/EIR process, Navy analyzed four reuse alternatives and identified the Maximum Capacity Alternative as the Preferred Alternative.

Navy intends to dispose of the property in a manner that is consistent with the Preferred Alternative. The Preferred Alternative proposed a mix of land uses composed of residential structures, community meeting facilities, retail businesses, active recreational areas with a nine-hole golf course and driving range, athletic fields, and open space.

The Oakland Base Reuse Authority (OBRA) is the Local Redevelopment Authority (LRA) for NMC Oakland and was responsible for planning reuse of the Naval facilities. During its development of alternatives, OBRA asked Navy and the City of Oakland to evaluate the Maximum Capacity Alternative. This alternative proposed a more intensive reuse of the NMC Oakland property than OBRA ultimately adopted in its Final Reuse Plan that was published in August 1996.

In deciding to dispose of NMC Oakland in a manner consistent with the Preferred Alternative, Navy has determined that a mixed land use will meet the local economic redevelopment goals of providing housing and recreational resources while also limiting adverse environmental impacts and ensuring land uses that are compatible with adjacent property. This Record of Decision does not mandate a specific mix of land uses. Rather, it leaves selection of the particular means to achieve the proposed redevelopment to the acquiring entity and the local zoning authority.

Background: Naval Medical Center Oakland, known as Oak Knoll Naval Hospital, is located in the City of Oakland, California, about 17 miles east of the City of San Francisco and about nine miles southeast of Oakland's central business district. This 183-acre property has about 135 acres of developed land on which the main hospital building, five concrete buildings, 20 wood buildings, 25 miscellaneous structures, and 38 family housing structures are situated. There are about 48 acres of undeveloped open space. Much of the NMC property consists of hilly terrain, and about 70 percent of the site contains slopes steeper than 15 percent.

Under the authority of the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, 10 U.S.C. 2687 note, the 1993 Defense Base Closure and Realignment Commission recommended closure of the Naval Hospital at Oakland, California. This recommendation was approved by President Clinton and accepted by the One Hundred Third Congress in 1993. Navy closed NMC Oakland on September 30, 1996.

During the Federal screening process for NMC Oakland, two Federal agencies within the United States Department of Justice, the Federal Bureau of Prisons and the Immigration and Naturalization Service, expressed interest in base closure property at NMC Oakland but subsequently withdrew their requests. Navy declared the NMC Oakland property surplus to the needs of the Federal Government on March 13, 1995.

Navy published a Notice of Intent in the **Federal Register** on September 12, 1995, announcing that Navy and the City of Oakland would prepare a Joint EIS/EIR to analyze the impacts of disposal and reuse of the land, buildings, and infrastructure at NMC Oakland. A public scoping meeting was held at NMC Oakland on September 27, 1995, and the scoping process concluded on October 12, 1995.

On October 11, 1996, Navy and the City of Oakland distributed a Draft EIS/EIR to Federal, State, and local agencies, interested parties, and the general public. On November 13, 1996, Navy and the City of Oakland held a public hearing concerning the Draft EIS/EIR at Oakland City Hall. During the 45-day review period following publication of the Draft EIS/EIR, Federal, State, and local agencies, community groups and associations, and the general public submitted oral and written comments concerning the Draft EIS/EIR. These comments and Navy's responses were incorporated in the Final EIS/EIR that was distributed to the public on May 1, 1998, for a 30-day review period that concluded on June 1, 1998. Navy received three letters concerning the Final EIS/EIR.

Alternatives: NEPA requires Navy to evaluate a reasonable range of alternatives for the disposal and reuse of this surplus Federal property. In the NEPA process, Navy analyzed the environmental impacts of four ''action'' alternatives. Navy also evaluated a ''No action'' alternative that would leave the property in a caretaker status with Navy maintaining the physical condition of the property, providing a security force, and making repairs essential to safety.

In November 1993, the Oakland City Council established the Oakland Base Closure/Conversion Task Force. On March 21, 1995, the City of Oakland, the Redevelopment Agency of the City of Oakland, and the County of Alameda entered into a Joint Powers Agreement that established the Oakland Base Reuse Authority to plan reuse of the Naval Hospital, and OBRA was designated as the Local Redevelopment Authority for NMC Oakland. The City of Oakland is the zoning authority for the property.

In August 1995, OBRA submitted the Oak Knoll Reuse Plan Preliminary Alternatives report that proposed four alternatives: the Mixed Use Village Alternative, the Single Use Campus Alternative, the Residential Alternative and the Seniors/Community Alternative which OBRA later eliminated. By way of a letter dated December 18, 1995, OBRA informed Navy that it had added another alternative designated as the Maximum Capacity Alternative. The LRA identified the Maximum Capacity Alternative as the preliminary Preferred Alternative and asked Navy to evaluate this alternative in the EIS/EIR.

In August 1996, the Oakland Base Reuse Authority published the Final Reuse Plan for the Naval Medical Center, Oakland. The Final Reuse Plan proposed the same mix of land uses as the Maximum Capacity Alternative, but decreased the amount of housing and commercial development on the NMC property. Navy and the City of Oakland analyzed the Maximum Capacity Alternative, the Mixed Use Village Alternative, the Single Use Campus Alternative, and the Residential Alternative in the EIS/EIR process.

The first ''action'' alternative, the Maximum Capacity Alternative, was designated in the Final EIS/EIR as the Preferred Alternative and proposed more housing and commercial development than OBRA ultimately adopted in the Final Reuse Plan. The Preferred Alternative proposed a mix of land uses including residential structures, community meeting facilities, retail businesses, active recreational areas with a nine-hole golf course and driving range, athletic fields, and open space.

The western part of the property covers about 40 acres. In the Maximum Capacity Alternative, residential structures, retail businesses, and corporate offices would occupy 25 acres. Three hundred apartment units would be built on 15 of those 25 acres. Educational and cultural facilities would be situated on the remaining 15 acres in the western section of NMC Oakland.

The center of the property, separated from the western part by Rifle Range Creek, covers about 86 acres and would contain houses and the nine-hole golf course. Two hundred and fifty houses, consisting of single family houses and townhouses, would be built on 32 of the 86 acres. A public nine-hole golf course would be built on the remaining 54 acres.

While OBRA's December 1995 Maximum Capacity Alternative proposed to build sixteen single family homes on about five acres in the northeastern part of the property along the ridgeline at Keller Avenue, OBRA removed this proposal from the Final Reuse Plan and replaced it with open space. Nevertheless, Navy evaluated this potential residential use in the EIS/EIR to assess its impact on the environment.

The southern end of the NMC Oakland property, covering about 20 acres, would contain active recreational resources and houses. The former Club Knoll dining and meeting facility, a swimming pool, tennis courts, baseball and soccer fields, a picnic area, a driving range, and a clubhouse would occupy 15 acres at the site. Eighteen single family houses would be built on the remaining five acres in the southeastern part of the property.

Open space uses such as recreational trails, woodlands, wildlife habitat, and parkland would be distributed along the boundaries of the property and would cover 32 acres of land under the Maximum Capacity Alternative. Largely because of the terrain, it would not be possible to build structures on about 39 acres of NMC property under this alternative.

The second ''action'' alternative, described in the Final EIS/EIR as the Mixed Use Village Alternative, proposed a different mix of residential, community, commercial, active recreational, and open space areas from that advanced in the Preferred Alternative.

The Mixed Use Village Alternative would provide 23 acres for use as a mixed use redevelopment composed of townhouses, other housing units, a health and social services facility, and professional offices. About 12 acres would be used for research and development offices, laboratories, and meeting areas. Five acres would be used for a cultural or meeting facility such as a library, museum, or conference center. Five acres would be used for neighborhood commercial activities such as a supermarket, restaurants, and small shops. About 86 acres would be used for open space, and about eight acres would be used for active recreational activities. Largely because of the terrain, it would not be possible to build structures on 44 acres of NMC property in this alternative.

The third ''action'' alternative, the Single Use Campus Alternative, proposed that a single large organization would occupy most of the developed areas of the NMC Oakland property. The Single Use Campus Alternative would provide 35 acres for use as an educational campus, conference facility or research headquarters. One acre would be used for neighborhood commercial activities such as restaurants and small shops. Active recreational areas would occupy 12 acres, and 101 acres would be reserved as open space. Largely because of the terrain, it would not be possible to build structures on 34 acres of NMC property in this alternative.

The fourth ''action'' alternative, the Residential Alternative, proposed to build single family houses similar to those in the surrounding residential neighborhood and to use the remaining property for retail businesses, active recreational areas, and open space. This alternative contained two options. Option 1, the low density option, proposed to construct 357 single family houses on 82 acres. Option 2, the high density option, proposed to construct 600 single family houses on 82 acres. Neighborhood commercial activities such as restaurants and small shops would occupy about two acres. About 14 acres would be used for active recreational activities, and 46 acres would be reserved as open space. Largely because of the terrain, it would not be possible to build structures on 39 acres of NMC property in this alternative.

Environmental Impacts: Navy analyzed the direct, indirect, and cumulative impacts from disposal of this Federal property on land use, socioeconomics, public services, cultural resources, aesthetics and scenic resources, biological resources, water resources, geology and soils, traffic and circulation, air quality, noise, utilities, and hazardous materials and waste.

The direct environmental impacts are those associated with Navy's proposed disposal of the NMC Oakland property and with the ''No action'' alternative. The indirect impacts are those associated with reuse of the NMC property. The cumulative impacts are those associated with other projects on other property in the immediate area. No significant direct impacts will result from Navy's proposed disposal of NMC Oakland. This Record of Decision focuses on the impacts that would likely result from implementing the Preferred Alternative.

The preferred Alternative would not cause any significant impact on land use. The proposed uses would not disturb existing land uses and would not introduce uses that are incompatible with either the NMC property or the surrounding area.

The Preferred Alternative would have an impact on Oakland Unified School District schools because it would generate an enrollment increase of about eight percent in the three public schools that serve the NMC Oakland area. This is a significant impact, because most schools in the District are presently operating at or near capacity.

The Preferred Alternative would have beneficial socioeconomic impacts. It would enhance the area's housing resources and provide additional recreational facilities and areas for the public such as the golf course, swimming pool, tennis courts, athletic fields and parkland as well as generate some additional jobs.

The Preferred Alternative would not require additional police facilities or increase emergency response times. It would, however, increase the demand for police services and create the need for additional police. This is a significant impact.

The Preferred Alternative would not have any impact on cultural resources listed on or eligible for listing on the National Register of Historic Places, because there are no historic properties at NMC Oakland. In letters dated May 31, 1994 and January 10, 1996, the California State Historic Preservation Officer concurred with Navy's determination that implementation of the Preferred Alternative would not have an effect on cultural resources. Additionally, as a result of the extensive grading and development that has taken place at NMC Oakland over the last 75 years, it is unlikely that subsurface cultural resources will be discovered during redevelopment.

The Preferred Alternative would have a significant impact on aesthetic and scenic resources. The construction of houses and associated grading on the ridgeline in the northeastern part of the property with the resultant loss of trees would have had a significant impact on existing views of this area. However, as discussed earlier, OBRA removed this housing from the August 1996 Final Reuse Plan and left the area as open space, eliminating this impact.

The Preferred Alternative would have a significant impact on biological resources. In order to build the nine-hole golf course, it would be necessary to remove some native vegetation such as oaks and other trees, shrubs, and ground cover along Rifle Range Creek.

There are no threatened or endangered species present at NMC Oakland. Thus, the Preferred Alternative would not have any impact on such species.

The Preferred Alternative would not have any significant impact on water resources. It would not cause substantial flooding, erosion, or other adverse effects on water quality.

The Preferred Alternative could have a significant impact on geology and soils. It is possible that redevelopment of the NMC Oakland property could result in slope failures. Limiting the redevelopment of existing slopes to 20 percent or flatter and requiring the use of geotechnical measures during design and construction would reduce the risk of slope failure to an insignificant level.

The Preferred Alternative would have significant impacts on traffic and circulation. The proposed reuse of this property would generate about 13,090 average daily trips, compared with the 4,804 average daily trips that were associated with Navy's use of the NMC Oakland property. This increased traffic would generate a substantial increase in congestion at five local intersections during the morning and evening periods of peak traffic volume. These impacts can be mitigated by installing additional traffic signals and modifying traffic lanes.

The Preferred Alternative would not have any significant adverse impact on Federal air quality standards in the San Francisco Bay Area. However, the Preferred Alternative would have significant and unmitigable traffic-related emission impacts on regional Bay Area Air Quality Management District (BAAQMD) standards, because the air pollutant emissions would exceed BAAQMD standards. The proposed redevelopment of this property would generate more motor vehicle traffic than when Navy operated NMC Oakland. As a result, vehicle emissions associated with this traffic would exceed the BAAQMD significance thresholds for both ozone precursor emissions (reactive organic compounds and nitrogen oxides) and inhalable particulate matter (PM10).

Demolition, renovation, and construction activities on the property would generate dust that would also have an impact on air quality. Implementing standard dust control measures during demolition, renovation, and construction would reduce this impact to an insignificant level.

Section 176 of the Clean Air Act, 42 U.S.C. 7506, as amended, requires Federal agencies to review their activities to ensure that they do not hamper local efforts to control air pollution. This statute prevents Federal agencies from conducting activities that do not conform to an approved implementation plan, but recognizes certain categorically exempt activities. The Conveyance of real property, regardless of the method, is such a categorically exempt activity. Accordingly, disposal of the NMC Oakland property does not require Navy to conduct a conformity analysis.

The Preferred Alternative would have significant but mitigable temporary noise impacts on adjacent property arising out of demolition, renovation, and construction activities at the NMC Oakland site. The acquiring entity will reduce these potential noise impacts to an insignificant level by limiting demolition and construction to normal daytime hours.

The existing traffic on Interstate Highway 580 adjacent to the western side of NMC Oakland produces high noise levels. Under the Preferred Alternative, residents of this area would be exposed to 24-hour average noise levels that would exceed the 65-decibel average level generally considered compatible with residential development. This is a significant impact.

With the exception of the potable water supply, the Preferred Alternative would not have a significant impact on utilities. This alternative would, however, increase the demand for water by 112 percent as a result of the increased number of people residing on the property and golf course maintenance requirements. The acquiring entity will mitigate this impact to an insignificant level by coordinating with water suppliers in the conservation and consumption of water.

No significant impacts would be caused by the hazardous materials and hazardous waste that may be used and generated in the Preferred Alternative. These materials will be regulated under the Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. 6901, *et seq.*

Navy also analyzed the impacts on low-income and minority populations pursuant to Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, reprinted in 42 U.S.C. 4321 note. There would be no disproportionately high and adverse human health or environmental effects on minority and low-income populations. Indeed, the Preferred Alternative would increase the amount of housing available in the City, provide additional recreational facilities and areas for local residents, and generate some additional jobs.

Mitigation: Implementation of the decision to dispose of NMC Oakland does not require Navy to perform any mitigation measures. The Final EIS/EIR identified and discussed those actions that will be necessary to mitigate impacts associated with the reuse of NMC Oakland. The acquiring entity, under the direction of Federal, State, and local agencies with regulatory authority over protected resources, will be responsible for implementing all necessary mitigation measures.

Comments Received on the FEIS: Navy received comments on the Final EIS/EIR from the United States Environmental Protection Agency, the Alameda County Congestion Management Agency, and the Oakland Unified School District. All of the substantive comments concerned issues already discussed in the Final EIS/EIR. Those comments that require clarification are addressed below.

The Alameda County Congestion Management Agency commented that the standard it applies to ascertain significant environmental impacts from traffic congestion permits longer traffic delays than the stricter standard applied by the City of Oakland and used by Navy in its traffic analysis. Navy's use of the more restrictive standard ensured that both standards would be met or exceeded. the EIS/EIR discussed mitigation measures such as additional traffic signals and lane modifications that would reduce these environmental impacts to an insignificant level even applying the stricter City of Oakland traffic congestion standard.

The Alameda County Congestion Management Agency also asked Navy to analyze traffic congestion on freeways for the years 2000 and 2010 and to identify measures that would reduce traffic congestion, irrespective of whether such congestion was significant. Navy analyzed traffic congestion on freeways for both years and concluded that any traffic congestion would be insignificant. Consequently, there was no need further to discuss mitigation measures.

The Oakland Unified School District reiterated its comment on the Draft EIS/EIR that since the reuse of NMC Oakland would increase school enrollment, any redevelopment plan should also provide funding for building additional school facilities. As explained in response to the School District's comments on the Draft EIS/EIR, Navy's disposal of the NMC Oakland property would not cause any environmental impacts that would require Navy to fund the construction of

new school facilities. The Final EIS/EIR discussed mitigation measures that would reduce school overcrowding to an insignificant level. The acquiring entity and the Oakland Unified School District will be responsible for implementing appropriate mitigation measures.

Regulations Governing the Disposal Decision: Since the proposed action contemplates disposal under the Defense Base Closure and Realignment Act of 1990 (DBCRA), Public Law 101–510, 10 U.S.C. 2687 note, Navy's decision was based upon the environmental analysis in the Final EIS/EIR and application of the standards set forth in DBCRA, the Federal Property Management Regulations (FPMR), 41 CFR Part 101–47, and the Department of Defense Rule on Revitalizing Base Closure Communities and Community Assistance (DoD Rule), 32 CFR Parts 174 and 175.

Section 101–47.303–1 of the FPMR requires that the disposal of Federal property benefit the Federal government and constitute the ''highest and best use'' of the property. Section 101–47.4909 of the FPMR defines the ''highest and best use'' as that use to which a property can be put that produces the highest monetary return from the property, promotes its maximum value, or serves a public or institutional purpose. The ''highest and best use'' determination must be based upon the property's economic potential, qualitative values inherent in the property, and utilization factors affecting land use such as zoning, physical characteristics, other private and public uses in the vicinity, neighboring improvements, utility services, access, roads, location, and environmental and historical considerations.

After Federal property has been conveyed to non-Federal entities, the property is subject to local land use regulations, including zoning and subdivision regulations and building codes. Unless expressly authorized by statute, the disposing Federal agency cannot restrict the future use of surplus Government property. As a result, the local community exercises substantial control over future use of the property. For this reason, local land use plans and zoning affect determination of the highest and best use of surplus Government property.

The DBCRA directed the Administrator of the General Services Administration (GSA) to delegate to the Secretary of Defense authority to transfer and dispose of base closure property. Section 2905(b) of DBCRA directs the Secretary of Defense to exercise this authority in accordance with GSA's property disposal regulations, set forth at Sections 101–47.1 through 101–47.8 of the FPMR. By letter dated December 20, 1991, the Secretary of Defense delegated the authority to transfer and dispose of base closure property closed under DBCRA to the Secretaries of the Military Departments. Under this delegation of authority, the Secretary of the Navy must follow FPMR procedures for screening and disposing of real property when implementing base closures. Only where Congress has expressly provided additional authority for disposing of base closure property, *e.g.*, the economic development conveyance authority established in 1993 by Section 2905(b)(4) of DBCRA, may Navy apply disposal procedures other than the FPMR's prescriptions.

In Section 2901 of the National Defense Authorization Act for Fiscal Year 1994, Public Law 103–160, Congress recognized the economic hardship occasioned by base closures, the Federal interest in facilitating economic recovery of base closure communities, and the need to identify and implement reuse and redevelopment of property at closing installations. In Section 2903(c) of Public Law 103–160, Congress directed the Military Departments to consider each base closure community's economic needs and priorities in the property disposal process. Under Section 2905(b)(2)(E) of DBCRA, Navy must consult with local communities before it disposes of base closure property and must consider local plans developed for reuse and redevelopment of the surplus Federal property.

The Department of Defense's goal, as set forth in Section 174.4 of the DoD Rule, is to help base closure communities achieve rapid economic recovery through expeditious reuse and redevelopment of the assets at closing bases, taking into consideration local market conditions and locally developed reuse plans. Thus, the Department has adopted a consultative approach with each community to ensure that property disposal decisions consider the Local Redevelopment Authority's reuse plan and encourage job creation. As a part of this cooperative approach, the base closure community's interests, *e.g.*, reflected in its zoning for the area, play a significant role in determining the range of alternatives considered in the environmental analysis for property disposal. Furthermore, Section 175.7(d)(3) of the DoD Rule provides that the Local Redevelopment Authority's plan generally will be used as the basis for the proposed disposal action.

The Federal Property and Administrative Services Act of 1949, 40 U.S.C. 484, as implemented by the FPMR, identifies several mechanisms for disposing of surplus base closure property: by public benefit conveyance (FPMR Sec. 104–47.303–2); by negotiated sale (FPMR Sec. 101–47.304–9); and by competitive sale (FPMR 101–47.304–7). Additionally, in Section 2905(b)(4), the DBCRA established economic development conveyances as a means of disposing of surplus base closure property.

The selection of any particular method of conveyance merely implements the Federal agency's decision to dispose of the property. Decisions concerning whether to undertake a public benefit conveyance or an economic development conveyance, or to sell property by negotiation or by competitive bid are committed by law to agency discretion. Selecting a method of disposal implicates a broad range of factors and rests solely within the Secretary of the Navy's discretion.

Conclusion: The Oakland Base Reuse Authority's proposed reuse of the NMC Oakland property, reflected in the August 1996 Final Reuse Plan for the Naval Medical Center, Oakland and substantially embodied in the Preferred Alternative, is consistent with the prescriptions of the FPMR and Section 174.4 of the DoD Rule. The Reuse Authority has determined in its Maximum Capacity Alternative that the property should be used for several purposes, including residential, community, commercial, recreational, and open space. The property's location, physical characteristics and existing infrastructure as well as the current uses of adjacent property make it appropriate for the proposed uses.

Although the ''No action'' alternative has less potential for causing adverse environmental impacts, this alternative would not take advantage of the property's location, physical characteristics and infrastructure or the current uses of adjacent property. Additionally, it would not foster local redevelopment of the NMC Oakland property.

Accordingly, Navy will dispose of Naval Medical Center Oakland in a manner that is consistent with the Oakland Base Reuse Authority's Final Reuse Plan for the property.

Dated: August 17, 1998.

William J. Cassidy, Jr.,

Deputy Assistant Secretary of the Navy (Conversion and Redevelopment).

[FR Doc. 98–22938 Filed 8–25–98; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Public Scoping Meeting for the Marine Corps Heritage Center

AGENCY: Department of the Navy, DOD.

ACTION: Notice of meeting.

SUMMARY: The Department of the Navy announces that it will hold a public scoping meeting to solicit comments on its preparation of an environmental impact statement for the Marine Corps Heritage Center at or adjacent to Marine Corps Base Quantico, Virginia. Agencies and the public are invited to provide written comments.

DATES: The public scoping meeting will be on September 17, 1998, from 7:00 pm to 9:00 pm. All written comments must be received no later than October 5, 1998.

ADDRESSES: The meeting will be held at the Ramada Inn, Grill Room, 16304 Route 1, Triangle, Virginia. Written comments, statements and/or questions regarding scoping issues should be addressed to: Commanding General, Marine Corps Base, (B 046), 3040 McCawley Avenue, Suite 2, Quantico, Virginia, 22134–5053 (Attention: Mr. Jeff Shrum).

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Shrum (703) 784–5383 ext 225, fax (703) 784–5809, email shrumj@quantico.usmc.mil.

SUPPLEMENTARY INFORMATION: Pursuant to the National Environmental Policy Act as implemented by the Council on Environmental Quality regulations (40 CFR Parts 1500–1508), the U.S. Marine Corps published a notice of intent to prepare an Environmental Impact Statement (EIS) in the **Federal Register** on July 7, 1998, to evaluate the environmental effects of constructing and operating a Heritage Center complex at or adjacent to Marine Corps Base (MCB) Quantico for Marine Corps personnel, their families and the general public. This Center would consolidate existing interpretive and curatorial functions that are located at MCB Quantico, VA, and the Washington Navy Yard, Washington, DC.

The Marine Corps Air Ground Museum, located at MCB Quantico, holds many of the items in the Marine Corps collections and also provides items to other DOD museums, the Smithsonian Museum, and other civilian museums. The proposed Heritage Center would facilitate and enhance the presentation of Marine Corps artifacts and history, promote professional military educational opportunities and accommodate unique military events and conferences. Currently, the dispersed locations used to protect the heritage of the Marine Corps do not have adequate facilities for preservation of artifacts or adequate space for displays and historic interpretation presentations.

Locations that meet requirements for siting the Heritage Center will be evaluated in the EIS. The siting criteria includes sufficient size and suitability in order to accommodate facilities (e.g., buildings, parking, roads), and provide visual and noise buffers; proximity to Interstate 95 and/or U.S. Route 1 in order to facilitate traffic to/from the site; and proximity to MCB Quantico in order to support educational requirements of the Base and obtain educational and facility support from the Base.

Environmental issues to be addressed in the EIS include: geological resources, biological resources, water resources, noise, air quality, land use compatibility, cultural resources, socioeconomics, environmental justice, public health and safety, transportation/circulation, aesthetics, utilities, hazardous materials, and solid waste.

Dated: August 21, 1998.

Ralph W. Corey,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 98–22884 Filed 8–25–98; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 25, 1998.

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

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

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The 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.

Dated: August 20, 1998.

Hazel Fiers,

Acting Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Management

Type of Review: Revision.

Title: Waiver Guidance for Waivers Available Under Goals 2000, Elementary and Secondary Education Act and School-to-Work.

Frequency: One time.

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

Reporting and Recordingkeeping Hour Burden:

Responses: 100.

Burden Hours: 2,000.

Abstract: The information collection is necessary to provide guidance to schools, local educational agencies, and state educational agencies, on submission of requests for waivers of statutory and regulatory requirements.

[FR Doc. 98–22847 Filed 8–25–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA NO: 84.031]

Reopening of Closing Date for Receipt of Applications for Designation as an Eligible Institution for Fiscal Year (FY) 1998, Eligibility for the Part A Strengthening Institutions and Hispanic-Serving Institutions Program

SUMMARY: On November 13, 1997, a notice was published in the **Federal Register** (62 FR 60988–60989) that established a closing date for transmittal of applications for the FY 1998 designation of eligible institutions for the Part A Strengthening Institutions and Hispanic-Serving Institutions Programs. The purpose of this notice is to reopen the closing date for the transmittal of applications and to allow applicants additional time to establish eligibility for purposes of receiving a waiver of certain non-Federal share requirement under the Federal Work Study (FWS) or Federal Supplemental Education Opportunity Grant (FSEOG) programs authorized under Title IV of the Higher Education Act of 1965, as amended (HEA).

Some institutions were unable to meet the established deadline date for submitting eligibility applications to obtain FWS or FSEOG program waivers. Under the reopened eligibility process, these institutions may apply for designation as an eligible institution under Title III, Part A of the HEA. *Eligibility designation will only be for the purpose of qualifying for a waiver of the non-Federal share requirements of FWS and FSEOG programs.*

Institutions will be notified of the outcome of the reopening of the closing date by *November 30, 1998.*

Deadline for Transmittal of Applications: October 16, 1998.

Applications Available: August 14, 1998.

For Applications or Information Contact: Strengthening Institutions Program, Institutional Development and Undergraduate Education Service, U.S. Department of Education, 600 Independence Avenue, S.W., (Suite CY–80, Portals Building), Washington, DC 20202–5335. Telephones: (202) 708–8816, 708–8839 or 708–8866.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FRS) at 1–800–877–8339 between 8 a.m. and 5 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the office listed in the preceding paragraph. Individuals with disabilities may obtain a copy of the application in an alternate format, also, by contacting that office. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Electronic Access to this Document: Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm

http://www.ed.gov/news/html

To use the pdf you must have the Abode Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have any questions about using the pdf, call the U.S. Government Printing Office at (202) 512–1530 or, toll free, at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins, and Press Releases.

Note: The official version of a document is the document published in the **Federal Register**.

(Program Authority: 20 U.S.C. 1057, 1059c and 1065a).

Dated: August 21, 1998.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 98–22922 Filed 8–25–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Chicago Operations Office; Office of Utility Technologies (OUT); Notice of Solicitation for Financial Assistance Applications for Financial Assistance for Joint Implementation, and Other Supporting Mechanisms and Measures for Greenhouse Gas Emissions Mitigation

AGENCY: Department of Energy.

ACTION: Notice of solicitation availability.

SUMMARY: This Department of Energy (DOE) solicitation is for financial assistance applications to provide technical expertise and assistance in areas related to the development of institutional and human capacity for implementing provisions in the United Nations Framework Convention on Climate Change (UNFCCC), regarding Joint Implementation (JI), and complementary policies and measures for reducing greenhouse gas (ghg) emissions or enhancing the uptake of such emissions. This financial assistance effort will support the U.S. Initiative on Joint Implementation (USIJI). This activity will provide technical assistance to key, Annex I and non-Annex I countries. Its purpose is to (a) advance joint implementation projects and (b) complete sector specific analyses to enable developing countries to take steps towards meaningful participation for greenhouse gas reduction.

DATES: The complete solicitation document will be available on or about August 17, 1998, on the Internet by accessing the DOE Chicago Operations Office Acquisition and Assistance Group Home Page at http://www.ch.doe.gov/business/ACQ.htm under the heading ''Current Solicitations'', Solicitation No. DE–SC02–98EE10949. Applications are due on or about August 31, 1998. Awards are anticipated by September 30, 1998.

ADDRESSES: Completed applications referencing Solicitation No. DE–SC02–98EE10949 must be submitted to: U.S. Department of Energy, Chicago Operations Office, Attn: Roberta D. Schroeder, Bldg. 201, Room 3E–15, 9800 South Cass Avenue, Argonne, IL 60439–4899.

FOR FURTHER INFORMATION CONTACT: Roberta Schroeder at (630) 252–2708, U.S. Department of Energy, 9800 South Cass Avenue, Argonne, IL 60439–4899; by facsimile at (630) 252–5045; or by electronic mail at roberta.schroeder@ch.doe.gov.

SUPPLEMENTARY INFORMATION: As a result of this solicitation, DOE anticipates

providing a total of $716,265 dollars in FY 98 for the award of up to 3 cooperative agreements with a period of performance of approximately 3 years. DOE anticipates funding projects in the amount of $1,000,000.00 in each of the out years, however, DOE funding for the out years is yet to be determined. For multi-year projects, there will be an evaluation of the project's progress near the end of each year to determine whether to continue, redirect, or discontinue funding the project.

Any non-profit or for-profit organization, university, or other institution of higher education, or non-federal agency or entity is eligible to apply. DOE National Laboratory participation as a subcontractor is limited to 50% of the total project costs for each budget period. A minimum non-federal cost-sharing commitment of 10% of the total project cost for each budget period is required.

Issued in Argonne, Illinois on August 18, 1998.

John D. Greenwood,

Acquisition and Assistance Group Manager.

[FR Doc. 98–22911 Filed 8–25–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[FERC–718 IC98–718–000]

Proposed Information Collection and Request for Comments

August 24, 1998.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Request for Office of Management and Budget Emergency Processing of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of Section 3507(j)(1)of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13), and 5 CFR 1320.13 of the Office of Management and Budget (OMB) regulations, the Federal Energy Regulatory (Commission) is providing notice of its request to OMB for emergency processing of a proposed collection of information and soliciting public comment on the specific aspects of the information collection described below.

DATES: The Commission requests that responses to this proposed information collection be filed with the Commission by early September 1998. Comments on the proposed information collection request will be due by August 26, 1998. FERC–718 responses should be filed with the Office of the Secretary and should refer to Docket No. [IC98–718–000].

Because the Commission has requested OMB to process the proposed collection of information in Docket No. IC98–718–000 on an emergency basis, comments on this collection of information should be filed with OMB, attention FERC Desk Officer, as soon as possible.

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

FOR FURTHER INFORMATION CONTACT:

William A. Meroney, Office of Economic Policy, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, (202) 208–1069.

G. Patrick Rooney, Office of Electric Power Regulation, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, (202) 501–5546.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, N.E., Room 2A, Washington, D.C. 20426.

The Commission Issuance Posting System (CIPS) provides access to the texts of formal documents issued by the Commission. CIPS can be accessed via Internet through FERC's Homepage (http://www.ferc.fed.us) using the CIPS Link or the Energy Information Online icon. The full text of this document will be available on CIPS in ASCII and WordPerfect 6.1 format. User assistance is available at 202–208–2474 or by E-mail to CipsMaster@FERC.fed.us. CIPS is also available through the Commission's electronic bulletin board service at no charge to the user and may be accessed using a personal computer with a modem by dialing 202–208–1397, if dialing locally, or 1–800–856–3920, if dialing long distance. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, or 1200 bps, full duplex, no parity, 8 data bits and 1 stop bit. User assistance is available at 202–208–2474.

This document is also available through the Commission's Records and Information Management System (RIMS), an electronic storage and retrieval system of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed. RIMS is available in the Public Reference Room or remotely via Internet through FERC's Homepage using the RIMS link or the Energy Information Online icon. User assistance is available at 202–208–2222, or by E-mail to RimsMaster@FERC.fed.us.

Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, La Dorn Systems Corporation. La Dorn Systems Corporation is located in the Public Reference Room at 888 First Street, N.E., Washington, D.C. 20426.

Background

During the week of June 22, 1998, unprecedented electric price increases occurred in the Midwest. As a result of these ''price spikes'', petitions for emergency relief were filed with the Commission under Docket No. EL98–53–000. The information collected under the requests of FERC–718 ''Sales and Purchase Information during Midwest Price Spike'' (OMB Control No. to be assigned) is in response to those petitions and will be used by the Commission to determine how the wholesale electric markets were affected by price increases. The information obtained from this information collection request will be used as part of the Commission's efforts to monitor and facilitate the electric industry's transition from a regulated to a competitive market. The hourly data reflected in the proposed request will identify the sellers and buyers, the actual price and amount of energy purchased and sold and whether there were any attempts on the part of some market participants to manipulate the market during late June.

The Commission's role is to lead the electric power industry through the revolutionary transition to greater competitiveness and fewer regulatory guarantees, which will also entail a change from one style of regulation based on accounting costs to one which relies on a flourishing competitive market to discipline wholesale generation prices. It is critical that the Commission ensure a fair and orderly transition from regulation to competition. The Commission is authorized to implement the statutory provisions of the Federal Power Act, (16 U.S.C. 791a–825r). Under the FPA, the Commission oversees wholesale electric rates and service standards, as well as transmission of electricity in interstate commerce. The Commission uses its ratemaking authority to ensure that wholesale power rates and transmission rates are just and reasonable and not

unduly discriminatory or preferential. Section 311 of the Act authorizes the Commission to conduct investigations regarding the generation, transmission, distribution and sale of electric energy however produced, throughout the United States in order to collect information that will serve as a basis for recommending legislation. The information collected by the Commission will be the basis of a report to be used in part at Congressional hearings scheduled for late September 1998.

Information Collection Statement

The Paperwork Reduction Act of 1995, 44 U.S.C. 3507, and Office of Management and Budget (OMB) implementing regulations at 5 CFR 1320.10 require OMB to approve certain reporting and recordkeeping requirements (collections of information) imposed by a federal agency. Upon approval of a collection of information, OMB will assign an OMB control number and an expiration date.

The proposed information collection request will be done under a temporary data collection, FERC–718, ''Sales and Purchase Information during Midwest Price Spike'' (OMB Control No. To be assigned). The respondents will be public utilities, power marketers and members of a nonprofit utility organization. Responses to the information collection request will be voluntary.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)x(2)x(3)
80	1	16	1,280

Estimated cost burdens to respondents: The Commission estimates that it will cost each respondent $800.00 to respond to this information collection request for a total of $64,000 (80×$800).

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professionals and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology.

Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology *e.g.* permitting electronic submission of responses. The proposed collection of information is being submitted to OMB for review. Because the Commission needs to present its finding before Congressional hearings, the Commission has requested responses to this proposed information collection request by early September 1998. Accordingly, the Commission has requested OMB to provide for emergency processing of this proposed information collection by August 26, 1998. Comments on the collection of information, therefore should be filed with OMB as soon as possible to provide OMB with sufficient time for its review. For copies of the OMB submission, contact Michael Miller at (202) 208–1415. Interested persons may send comments regarding the burden estimates or any other aspect on the proposed information collection, including suggestions for reductions of burden, to the Desk Officer FERC, Office of Management and Budget, Room 10202 NEOB, Washington, DC 20503, phone (202) 395–3087 or via the Internet at Erik__K.__Godwin@omb.eop.gov. A copy of any comments filed with OMB should also be sent to Michael Miller, Office of the Chief Information Officer, CI–1, 888 First Street N.E., Washington, D.C. 20426. Michael Miller may also be reached by fax at (202) 273–0873, and by e-mail at michael.miller@ferc.fed.us.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–22982 Filed 8–25–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–717–000]

El Paso Natural Gas Company; Notice of Application

August 20, 1998.

Take notice that on August 10, 1998, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas, 79978, filed an application with the Federal Energy Regulatory Commission (Commission) at Docket No. CP98–717–000, under Section 7(b) of the Natural Gas Act and Section 157.5, *et seq.*, of the Commission's Regulations, for permission and approval to abandon from jurisdictional interstate transmission service approximately 49.16 miles of the 12¾″ O.D. El Paso-Douglas Loop Line, with appurtenances, (Line No. 1005) located in Dona Ana and Luna Counties, New Mexico and the related natural gas service, all as more fully described in the application on file with the Commission and open to public inspection.

El Paso states that changing circumstances have eliminated the continued operational need in interstate transmission service of certain segments

of Line No. 1005. With the installation by El Paso of the larger diameter, high pressure pipelines for interstate mainline transmission service, lines like Line No. 1005, have been relegated to gas services that operationally support service on the mainline. More specifically, lines such as Line No. 1005 are utilized by El Paso to move gas at lesser volumes to either more optimally load the mainline or to provide gas as fuel for the operation of the mainline system. Such is the case for Line No. 1005.

El Paso states that based upon the age and condition of certain segments of Line No. 1005 and the reduced need and operational necessity for some segments of Line No. 1005, El Paso has determined that three segments of Line No. 1005 are no longer required in the operation of El Paso's interstate transmission pipeline system. El Paso proposes to abandon the three segments by removal, to the extent practicable.

Accordingly, El Paso proposes to abandon three segments of Line No. 1005 totaling 49.16 miles of pipeline, with appurtenances, and the related natural gas service rendered through such segments. El Paso indicates that eight sections of Segment 2 totaling 536.16 feet already have been removed. These sections were located in Dona Ana County.

El Paso further states there will be no adverse environmental effects from the proposed abandonment. Based upon El Paso's environmental review, there have been and will be no adverse environmental impacts from cutting and capping the pipeline segments and the proposed abandonment by removal, to the extent practicable. Abandonment by removal will be accomplished within existing previously disturbed right-of-way by trenching, cutting the pipe, removing the pipe, and filling the trench. The disturbed areas are returned to their natural state.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 10, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's Rules require that protestors provide copies of their protests to the party or parties against whom the protests are directed. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filings it makes with the Commission to every other intervenor in the proceeding, as well as an original and 14 copies with the Commission.

A person does not have to intervene, however, in order to have environmental comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that the requested abandonment is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for El Paso to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–22846 Filed 8–25–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–349–001]

Midwestern Gas Transmission Company; Notice of Compliance Filing

August 18, 1998.

Take notice that on August 12, 1998, Midwestern Gas Transmission Company (Midwestern), P.O. Box 2511, Houston, Texas 77252, filed Sub Fourth Revised Sheet No. 110A for inclusion in Midwestern's FERC Gas Tariff, Second Revised Volume No. 1. Midwestern requests that this revised tariff sheet be deemed effective August 1, 1998.

Midwestern states that Sub Fourth Revised Sheet No. 110A is filed in compliance with the Commission's July 28, 1998 Letter Order issued in the above-referenced docket and incorporates by reference the Gas Industry Standards Board Dataset 2.4.6 into Midwestern's tariff.

Any person desiring to be heard or to protest this 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 18 CFR 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–22844 Filed 8–25–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–722–000]

Texas Gas Transmission Corporation; Notice of Request Under Blanket Authorization

August 20, 1998.

Take notice that on August 13, 1998, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP98–722–000 a request pursuant to Sections 157.205, 157.212, and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212, 157.216) for authorization to replace a delivery meter station, located in Henderson County, Kentucky, through which it renders natural gas service to the City of Morganfield, Kentucky (Morganfield), under Texas Gas' blanket certificate issued in Docket No. CP82–407–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Texas Gas proposes to replace the existing dual 4-inch meter runs with a single 3-inch meter run at its Morganfield Delivery Meter Station, located within the confines of Texas Gas' Dixie Compressor Station in Henderson County, Kentucky, in order to provide more effective measurement efficiency and operating pressures to be delivered to Morganfield at this point.

Texas Gas states that the cost of replacing the current facilities is estimated to be $56,000. Texas Gas declares that the facilities to be retired by replacement include the existing measuring and regulating structures and equipment, at an estimated cost of $4,000.

Texas Gas states that no increase or decrease in contract quantity has been requested by Morganfield in conjunction with this project, nor will the new facilities allow for any increase or decrease in the current delivery capacity of the facilities being replaced. Texas Gas asserts that the above proposal will have no significant effect on Texas Gas' peak day and annual deliveries, and service to Morganfield through this point can be accomplished without detriment to Texas Gas' other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–22845 Filed 8–25–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–4083–000, et al.]

PacifiCorp, et al.; Electric Rate and Corporate Regulation Filings

August 18, 1998.

Take notice that the following filings have been made with the Commission:

1. PacifiCorp

[Docket No. ER98–4083–000]

Take notice that on August 3, 1998, PacifiCorp tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, Service agreements with the California Independent System Operator (California ISO) and the California Power Exchange (California PX) acting on behalf of its Participants (Participants) under PacifiCorp's FERC Electric Tariff, First Revised Volume No. 12.

Copies of this filing were supplied to the Public Utility Commission of Oregon and the Washington Utilities and Transportation Commission.

Comment date: September 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Niagara Mohawk Power Corp.

[Docket No. ER98–4195–000]

Take notice that on August 18, 1998, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission, an executed Firm Point-to-Point Transmission Service Agreement between NMPC and Allegheny Electric Cooperative, Inc. (Allegheny). This Transmission Service Agreement specifies that Allegheny has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000.

NMPC requests an effective date of December 1, 1998.

NMPC has served copies of the filing upon the New York State Public Service Commission, the New York Power Authority and Allegheny.

Comment date: September 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Cleco Corp.

[Docket No. ER98–4204–000]

Take notice that on August 13, 1998, Cleco Corporation, (Cleco), tendered for filing an amended service schedule, a revised rate schedule and an executed market based sales service agreement which will enable Cleco to make market based power sales with the City of Alexandria, LA under an existing interconnection agreement.

Cleco proposes an effective date of July 15, 1998 for the revisions submitted herewith.

Cleco states that a copy of the filing has been served on the City of Alexandria, LA and the Louisiana Public Service Commission.

Comment date: September 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. PECO Energy Co.

[Docket No. ER98–4205–000]

Take notice that on August 12, 1998, PECO Energy Company (PECO), filed under Section 205 of the Federal Power Act, 16 U.S.C. 792 *et seq.*, an Agreement dated May 6, 1998 with NP Energy Inc. (NP Energy), under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff).

PECO requests an effective date of August 1, 1998, for the Agreement.

PECO states that copies of this filing have been supplied to NP Energy and to the Pennsylvania Public Utility Commission.

Comment date: September 1, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Tampa Electric Co.

[Docket No. ER98–4208–000]

Take notice that on August 13, 1998, Tampa Electric Company (Tampa Electric), tendered for filing a letter of commitment providing for the sale of capacity and energy to the Reedy Creek Improvement District (RCID), under Service Schedule J of the Contract for Interchange Service between them.

Tampa Electric requests that the letter of commitment be made effective on

October 1, 1998, and therefore requests waiver of the Commission's notice requirement.

Copies of the filing have been served on RCID and the Florida Public Service Commission.

Comment date: September 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Florida Power Corp.

[Docket No. ER98–4209–000]

Take notice that on August 13, 1998, Florida Power Corporation (Florida Power), filed a revised Electric Tariff No. 3 (T–3), to permit Florida Power to engage in transactions for power and energy at variable rates at or below the fully allocated costs of the units providing the power and energy but not less than Florida Power's incremental energy costs. The tariff provides for sales of unit power, system power and purchased power. Florida Power requests that the revised T–3 be effective thirty days from the date of filing.

Comment date: September 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. South Carolina Electric & Gas Co.

[Docket No. ER98–4210–000]

Take notice that on August 13, 1998, South Carolina Electric & Gas Company (SCE&G), submitted a service agreement establishing Carolina Power & Light Company (CP&L), 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 CP&L and the South Carolina Public Service Commission.

Comment date: September 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Sierra Pacific Power Co.

[Docket No. ER98–4211–000]

Take notice that on August 13, 1998, Sierra Pacific Power Company (Sierra), tendered for filing, Service Agreements (Service Agreements), with Merchant Energy Group of the Americas, Inc., for both Short-Term Firm and Non-Firm Point-to-Point Transmission Service under Sierra's Open Access Transmission Tariff (Tariff).

Sierra filed the executed Service Agreements with the Commission in compliance with Sections 13.4 and 14.4 of the Tariff and applicable Commission regulations. Sierra also submitted revised Sheet No. 148 (Attachment E) to the Tariff, which is an updated list of all current subscribers.

Sierra requests waiver of the Commission's notice requirements to permit and effective date of August 17, 1998 for Attachment E, and to allow the Service Agreements to become effective according to their terms.

Copies of this filing were served upon the Public Service Commission of Nevada, the Public Utilities Commission of California and all interested parties.

Comment date: September 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Nevada Power Co.

[Docket No. ER98–4214–000]

Take notice that on August 13, 1998, Nevada Power Company (Nevada Power), tendered for filing, a Service Agreement with IGI Resources, Inc. (IGI), pursuant to Nevada Power's Coordination Sales Tariff. Nevada Power requests an effective date of October 2, 1998.

Comment date: September 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. CinCap V, L.L.C.

[Docket No. ER98–4216–000]

Take notice that on August 13, 1998, pursuant to 18 CFR 35.15(a), CinCap V, L.L.C., filed a Notice of Cancellation of the Amended and Restated Power Purchase Agreement (PPA), between Northeast Empire Limited Partnership #1 (NELP #1) and Central Maine Power Company. On August 10, 1998, NELP #1 filed with the Commission an application pursuant to Section 203 of the Federal Power Act asking the Commission to approve the transfer of the PPA from NELP #1 to CinCap V. CinCap V requests the cancellation be made effective upon the date the PPA is transferred to CinCap V.

Comment date: September 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Virginia Electric and Power Co.

[Docket No. ER98–4217–000]

Take notice that on August 13, 1998, Virginia Electric and Power Company (Virginia Power), tendered for filing the Service Agreement between Virginia Electric and Power Company and e prime, 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 e prime, inc., under the rates, terms and conditions of the applicable Service Schedules included in the Tariff. Virginia Power requests an effective date of August 13, 1998, for the Service Agreement.

Copies of the filing were served upon e prime, inc., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: September 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Northeast Utilities Service Co.

[Docket No. ER98–4218–000]

Take notice that on August 13, 1998, Northeast Utilities Service Company (NUSCO), tendered for filing a Service Agreement with City of Holyoke Gas and Electric Department (HGE), under the NU System Companies' System Power Sales/Exchange Tariff No. 6.

NUSCO states that a copy of this filing has been mailed to HGE.

NUSCO requests that the Service Agreement become effective September 1, 1998.

Comment date: September 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Duke Electric Transmission, a division of Duke Energy Corp.

[Docket No. ER98–4219–000]

Take notice that on August 13, 1998, Duke Electric Transmission, a division of Duke Energy Corporation (Duke), tendered for filing a Transmission Service Agreement between Duke and SCANA Energy Marketing, Inc. (SCANA), dated as of July 14, 1998.

Comment date: September 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. American Electric Power Service Corp.

[Docket No. ER98–4220–000]

Take notice that on August 13, 1998, the American Electric Power Service Corporation (AEPSC), as agent for AEP Companies tendered for filing blanket service agreements with CMS Marketing, Services & Trading, East Kentucky Power Cooperative, Inc., Koch Power Services, Inc., Public Service Company of New Mexico and Scana Energy Marketing, Inc., under the Wholesale Market Tariff of the AEP Operating Companies (Power Sales Tariff). The Power Sales Tariff was accepted for filing effective October 10, 1997 and has been designated AEP Operating Companies' FERC Electric Tariff Original Volume No. 5.

AEPSC respectfully requests waiver of notice requirements to permit the

service agreements to be made effective July 1, 1998, for the CMS Marketing, Services & Trading Service Agreement, June 2, 1998, for the East Kentucky Power Cooperative, Inc., Service Agreement, June 21, 1998, for the Koch Power Services, Inc., Service Agreement, June 21, 1998, for the Public Service Company of New Mexico Service Agreement, and June 12, 1998, for the Scana Energy Marketing, Inc., Service Agreement.

Comment date: September 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. PacifiCorp

[Docket No. ER98–4221–000]

Take notice that on August 13, 1998, PacifiCorp, tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, Umbrella Service Agreements for Short-Term Firm and Non-Firm Transmission Service with Northern/AES Energy, L.L.C. (Northern/AES Service), PG&E Energy Trading-Power, L.P.(PG&E Trading), and Tractebel Energy Marketing, Inc. (Tractebel), under Sixteenth Revised Sheet No. 151 of PacifiCorp's FERC Electric Tariff, First Revised Volume No. 11.

PacifiCorp requests waiver of the Commission's notice requirements and requests that the Service Agreements become effective July 21, 1998, for the Northern/AES Service Agreement, July 15, 1998 for the PG&E Energy Trading Service Agreement and July 23, 1998, for the Tractebel Service Agreement.

Comment date: September 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Florida Power & Light Co.

[Docket No. ER98–4244–000]

Take notice that on August 13, 1998, Florida Power & Light Company (FPL), filing unexecuted Service Agreements with Duke Power Company and Noram Energy Services, Inc., for service pursuant to Tariff No. 1, for Sales of Power and Energy by Florida Power & Light Company and for service pursuant to FPL's Market Based Rates Tariff.

FPL requests that the Service Agreements be made effective on July 17, 1998.

Comment date: September 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. PacifiCorp

[Docket No. ER98–4245–000]

Take notice that on August 13, 1998, PacifiCorp tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, Amendatory Agreement No. 2, to the AC Intertie Agreement between PacifiCorp and Bonneville Power Administration (Bonneville).

Copies of this filing were supplied to Bonneville, the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: September 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–22883 Filed 8–25–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Southwestern Power Administration

Sam Rayburn Dam Project Power Rate

AGENCY: Southwestern Power Administration, DOE.

ACTION: Notice of an extension

SUMMARY: The Deputy Secretary acting under Amendment No. 3 to Delegation Order No. 0204–108, effective November 10, 1993, and the authorities as implemented in 10 CFR 903.22(h) and 903.23(a)(3), has approved and placed into effect on an interim basis Rate Order No. SWPA–38.

SUPPLEMENTARY INFORMATION:

Background

Southwestern Power Administration (Southwestern) currently has marketing responsibility for 2.2 million kilowatts of power from 24 multiple-purpose reservoir projects, with power facilities constructed and operated by the U.S. Army Corps of Engineers, generally in all or portions of the states of Arkansas, Kansas, Louisiana, Missouri, Oklahoma and Texas. The Integrated System, comprised of 22 of the projects, is interconnected through a transmission system presently consisting of 138- and 161-kV high-voltage transmission lines, 69-kV transmission lines, and numerous bulk power substations and switching stations. In addition, contractual transmission arrangements provide for integration of other projects into the system.

The remaining two projects, Sam Rayburn Dam and Robert Douglas Willis, are isolated hydraulically and electrically from the Southwestern transmission system, and their power is marketed under separate contracts through which the customer purchases the entire power output of the project at the dam. A separate Power Repayment Study (PRS) is prepared for each isolated project.

The existing rate schedule for the Sam Rayburn Dam Project was confirmed and approved on a final basis by the Federal Energy Regulatory Commission (FERC) on December 7, 1994 for the period October 1, 1994 through September 30, 1998. The FY 1998 Sam Rayburn Dam Project PRS indicates the need for a rate adjustment of $3,732 annually, or 0.2 percent.

Pursuant to implementing authority in 10 CFR 903(h) and 903.23(a)(3), the Deputy Secretary of Energy may extend a FERC-approved rate on an interim basis. The Administrator, Southwestern, published notice in the **Federal Register** on June 10, 1998, 63 FR 31767, announcing a 30-day period for public review and comment concerning the proposed interim rate extension. Written comments were accepted through July 10, 1998. In a letter dated June 11, 1998, a Sam Rayburn Dam Electric Cooperative (SRDEC) official stated that SRDEC has no objection to the proposed rate extension. No other comments were received.

Discussion

The existing Sam Rayburn Dam Project rate is based on the FY 1994 PRS. PRSs have been completed on the Sam Rayburn Dam Project each year since approval of the existing rates. Rate changes identified by the PRSs since that period have indicated the need for minimal rate increases or decreases. Since the revenue changes reflected by the PRSs were within the plus-or-minus two percent Rate Adjustment Threshold established by Southwestern's Administrator on June 23, 1987, these rate adjustments were deferred in the best interest of the government and provided for the next year's PRS to determine the appropriate level of

revenues needed for the next rate period.

The FY 1998 PRS indicates the need for an annual revenue decrease of 0.2 percent. As has been the case since the existing rates were approved, the FY 1998 rate adjustment needed falls within Southwestern's plus-or-minus two percent Rate Adjustment Threshold and would normally be deferred. However, the existing rates expire on September 30, 1998. Consequently, Southwestern proposes to extend the existing rates for a one-year period ending September 30, 1999, on an interim basis under the implementation authorities noted in 10 CFR 903.22(h) and 903.23(a)(3). Southwestern continues to make significant progress toward repayment of the Federal investment in the Sam Rayburn Dam Project. Through FY 1997, status of repayment for the Sam Rayburn Dam Project was $12,156,954, which represents approximately 47 percent of the $25,676,015 Federal investment. The status has increased almost 31.7 percent since the existing rates were placed in effect.

Information regarding this rate extension, including studies and other supporting material, is available for public review and comment in the offices of Southwestern Power Administration, Suite 1400, One West Third Street, Tulsa, Oklahoma 74103.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby extend on an interim basis, for the period of one year, effective October 1, 1998, the current FERC-approved Sam Rayburn Dam Project Rate for the sale of power and energy.

Dated: August 14, 1998.

Elizabeth A. Moler,

Deputy Secretary.

[FR Doc. 98–22912 Filed 8–25–98; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00248; FRL–6025–5]

National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: A meeting of the National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances (NAC/AEGL Committee) will be held on September 14–16, 1998, in Oak Ridge, Tennessee. At this meeting, the NAC/AEGL Committee will address, as time permits, the various aspects of the acute toxicity and the development of Acute Exposure Guideline Levels (AEGLs) for the following chemicals: carbon tetrachloride, ethylene oxide, furan, hydrogen sulfide, iron pentacarbonyl, isobutyronitrile, methacrylonitrile, nitrogen oxides, piperidine, proprionitrile, propylene oxide, and propyleneimine.

DATES: A meeting of the NAC/AEGL Committee will be held from 10 a.m. to 5 p.m. on Monday, September 14; from 8 a.m. to 4:45 p.m. on Tuesday, September 15; and from 8 a.m. to 12:30 p.m. on Wednesday, September 16, 1998.

ADDRESSES: The meeting will be held in the Auditorium of Oak Ridge National Laboratory, 1060 Commerce Park, Oak Ridge, TN.

FOR FURTHER INFORMATION CONTACT: Paul S. Tobin, Designated Federal Officer (DFO), Office of Prevention, Pesticides and Toxic Substances (7406), 401 M St., SW., Washington, DC 20460, (202) 260–1736, e–mail: tobin.paul@epa.gov.

For directions to the meeting, contact: Po–Yung Lu, (423) 574–7803 or e-mail: lpy@ornl.gov.

SUPPLEMENTARY INFORMATION: For further information on the scheduled meeting, the agenda of the NAC/AEGL Committee, or the submission of information on chemicals to be discussed at the meeting, contact the DFO.

The meeting of the NAC/AEGL Committee will be open to the public. Oral presentations or statements by interested parties will be limited to 10 minutes. Interested parties are encouraged to contact the DFO to schedule presentations before the NAC/AEGL Committee. Since seating for outside observers may be limited, those wishing to attend the meeting as observers are also encouraged to contact the DFO, at the earliest possible date to ensure adequate seating arrangements. Inquiries regarding oral presentations and the submission of written statements or chemical specific information should be directed to the DFO.

Another meeting of the NAC/AEGL Committee is expected to be held in Washington, DC on December 7–9, 1998. It is anticipated that chemicals to be addressed at this meeting will include, but not necessarily be limited to the following: cyclohexylamine, ethylenediamine, HFC 134a, HCFC 141b, jet fuel (JP–4, 5, 7, and 8), methyl isocyanate, oleum, sulfur dioxide, sulfur tetrafluoride, sulfur trioxide, and sulfuric acid. Inquiries regarding the submission of data, written statements, or chemical-specific information on these chemicals should be directed to the DFO at the earliest date possible to allow for consideration of this information in the preparation of NAC/AEGL Committee materials.

List of Subjects

Environmental protection, Chemicals, Hazardous substances.

Dated: August 19, 1998.

Joseph S. Carra,

Acting Director, Office of Pollution Prevention and Toxics.

[FR Doc. 98–22898 Filed 8–25–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6152–7]

Science Advisory Board; Notification of Public Advisory Committee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Science Advisory Board's (SAB's) Radiation Advisory Committee (RAC) and its Federal Guidance Report Review Subcommittee (FGRRS) will conduct a public teleconference meeting on Friday, September 11, 1998 from 11 am to 1 pm eastern time. The teleconference will be hosted from the SAB Conference Room—Room 3709, Waterside Mall, U.S. EPA Headquarters, 401 M Street, SW, Washington, DC 20460. Documents that are the subject of SAB reviews are normally available from the originating U.S. Environmental Protection Agency (EPA) office and are *not* available from the SAB Office. Public drafts of SAB reports are available to the Agency and the public from the SAB office. Details on availability are noted below.

The Radiation Advisory Committee (and its FGRRS) will review a public draft of the FGRRS report from its review of the Agency's draft document entitled Interim Version of Federal Guidance Report (FGR) Number 13, Part I, Health Risks From Low-Level Environmental Exposure to Radionuclides, EPA 402–R–97–014, dated January 1998. Information concerning previous meetings of the

RAC or the FGRRS on this issue and availability of related background materials can be found in 63 FR 17000, April 7, 1998, and in 63 FR 36677, July 7, 1998.

At this meeting, the RAC may also discuss the status, current schedule and an update of issues being resolved in development of a draft report being prepared by its Uncertainty in Radiogenic (Cancer) Risk Subcommittee (URRS). The URRS is continuing its review of the Agency's draft ''Uncertainty Analysis for Estimating Radiogenic Cancer Risks,'' dated October 1997. Information concerning previous meetings of the RAC or the URRS on this issue and availability of related background materials can be found in 62 FR 55249, October 23, 1997, 63 FR 6927, February 11, 1998, and 63 FR 36677, July 7, 1998.

For Further Information—Any member of the public wishing further information concerning the meeting, including a draft meeting agenda, the availability of current public draft SAB reports on these topics, and to reserve intentions to log onto the teleconference, or attend the meeting should contact Mrs. Diana L. Pozun, Management Assistant, at (202) 260–8432; FAX (202) 260–7118, or via E-Mail at: pozun.diana@epa.gov. Members of the public who wish to make a brief oral presentation to the Committee during the meeting must contact Dr. K. Jack Kooyoomjian *in writing* (Dr. Kooyoomjian, Designated Federal Officer, Radiation Advisory Committee, Science Advisory Board (1400), U.S. EPA, Washington, DC 20460, phone (202)–260–2560; fax (202)–260–7118; or via E-Mail at: kooyoomjian.jack@epa.gov) no later than noon, Wednesday, September 9, 1998 in order to be included on the Agenda.

For questions pertaining to the review of the Interim Version Federal Guidance Report (FGR) Number 13, Part I or the review of the Uncertainty Analysis for Estimating Radiogenic Cancer Risks or to obtain copies of the relevant draft documents, please contact Mr. Brian Littleton, Office of Radiation and Indoor Air (ORIA) (6601J), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, (202) 564–9216; FAX (202) 565–2043; or via E-Mail at: littleton.brian@epa.gov.

Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, for teleconference meetings, opportunities for oral comment by members of the public will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. For meetings, opportunities for oral comment by members of the public will usually be limited to no more than five minutes per speaker and no more than thirty minutes total. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date (usually one week before the meeting), may be mailed to the relevant SAB committee or subcommittee; comments received too close to the meeting date will normally be provided to the relevant SAB committee or subcommittee at its meeting, or in the case of teleconferences, will be provided immediately following the teleconference meeting. Written comments may be provided to the relevant committee or subcommittee up until the time of the meeting. Public comments (written or oral) should focus on scientific or technical aspects of the matters before the Committee at its meeting.

Individuals requiring special accommodation at SAB meetings, including wheelchair access, should contact the appropriate DFO at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: August 18, 1998.

Donald G. Barnes, PhD,

Staff Director, Science Advisory Board.

[FR Doc. 98–22894 Filed 8–25–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34129; FRL 6020–3]

Notice of Receipt of Requests for Amendments to Delete Uses in 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 request for amendment by registrants to delete uses in certain pesticide registrations.

DATES: Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on February 22, 1998.

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 No. 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 FIFRA, provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

II. Intent to Delete Uses

This notice announces receipt by the Agency of applications from registrants to delete uses in the 31 pesticide registrations listed in the following Table 1. These registrations are listed by registration number, product names, active ingredients and the specific uses deleted. Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before February 22, 1998 to discuss withdrawal of the applications for amendment. This 180–day period will also permit interested members of the public to intercede with registrants prior to the Agency approval of the deletion. *Note: Registration number(s) preceded by ** indicate a 30–day comment period.*

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Reg No.	Product Name	Active Ingredient	Delete From Label
000400–00399	Terraclor 75% Wettable Powder	PCNB	Foliar use on peanuts
000400–00402	Terraclor 10% Granular	PCNB	Foliar use on peanuts

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

EPA Reg No.	Product Name	Active Ingredient	Delete From Label
000400–00453	Terraclor Flowable Fungicide	PCNB	Foliar use on peanuts
000435–00454	SBP–1382 Insecticide Aqueous Pressurized Spray 0.35%	Resmethrin	Use on dogs and cats
000432–00482	SBP-1382/Bioallethrin Aqueous Pressurized Spray	*d-Trans*-Allethrin; Resmethrin	Use on dogs and cats
000432–00492	SBP–1382 Aqueous Pressurized Spray	Resmethrin	Use on dogs and cats
000432–00507	SBP–1382/Bioallethrin 0.20% to 0.125% Aqueous Pressurized Spray	*d-Trans*-Allethrin; Resmethrin	Use on dogs and cats
000432–00536	SBP–1382/Bioallethrin Aqueous Pressurized Spray	*d-Trans*-Allethrin; Resmethrin	Use on dogs and cats
000432–00543	SBP–1382 Insecticide Transparent Emulsion Spray 0.35%	Resmethrin	Use on dogs and cats
000432–00548	SBP–1382 Insecticide Transparent Emulsion Spray 0.25%	Resmethrin	Use on dogs and cats
000432–00593	SBP–1382/Bioallethrin 0.2 + 0.4 II	*d-Trans*-Allethrin; Resmethrin	Use on dogs and cats
000432–00626	SBP–1382/Esbiothrin/PBO Insecticide Aqueous Pressurized Spray 0.20% + 0.10% + 0.40%	*d-Trans*-Allethrin; Piperonyl; Resmethrin	Use on dogs and cats
000432–00627	SBP–1382/Esbiothrin/PBO Insecticide Aqueous Pressurized Spray 0.2% + 0.4% + 1.6%	*S*-Bioallethrin; Piperonyl; Resmethrin	Use on dogs and cats
000432–00631	SBP–1382/Esbiothrin/Piperonyl Butoxide Insecticide Aqueoous Pressurized Spray 0.20% + 0.20% + 0.80%	*d-Trans*-Allethrin; Piperonyl butoxide; Resmethrin	Use on dogs and cats
000432–00685	Ultra TEC Insecticide with Pyrethrins/PBO	Piperonyl butoxide; Pyrethrins	Use on dogs
000432–00688	Pyrethrins/Piperonyl Butoxide Transparent Emulsion Spray 0.1% + 1.0%	Piperonyl butoxide; Pyrethrins	Use on dogs
000432–00690	Pyrethrins/Piperonyl Butoxide Transparent Emulsion Spray 0.15% + 1.5%	Piperonyl; Pyrethrins	Use on dogs
000432–00722	SBP–1382/Bioallethrin/Piperonyl Butoxide Insecticide Aqueous Pressurized Spray	*d-Trans*-Allethrin; Piperonyl butoxide; Resmethrin	Use on dogs and cats
002217–00145	Garden Protector 1%	Rotenone; Cube Resins	Terrestrial food crops
004816–00353	Drione Insecticide	Piperonyl Butoxide; Pyrethrins; Silica gel	Use on dogs and cats
004816–00442	Multi-Purpose Pyrenone Insecticide Concentrate	Piperonyl; Pyrethrins	Use on dogs
004816–00468	Pyrenone Plus Repellent	Butoxypolypropylene Glycol; Pipernoyl; Pyrethrins	Use on dogs and cats
004816–00514	Pyrenone 25–5 M.A.G.C.	Piperonyl butoxide; Pyrethrins	Use on dogs
004816–00558	M.A.G. 3–6–10	*N*-Octyl bicyclohep tene dicarboximide; Piperonyl butoxide; Pyrethrins	Use on dogs
004816–00567	Pyrenone M.A.G.C. 5–1	Piperonyl butoxide; Pyrethrins	Use on dogs
004816–00706	Pyrenone 25–2.5 WP	Piperonyl; Pyrethrins	Use on dogs
004816–00708	123 M.A.G.	*N*-Octyl bicycloheptene dicarboximide; Piperonyl; Pyrethrins	Use on dogs

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

EPA Reg No.	Product Name	Active Ingredient	Delete From Label
**040083–00001	Lindane Technical	Lindane	Almonds, alfalfa, apples, apricots, asparagus, beans (all types), beets, cantaloupe, carrots, cherries, clover, cotton, cucumbers, cucurbits (all types), eggplant, flax, grapes, guave, lentils, mangoes, melons, mint, mushrooms, nectarines, okra, onions, peaches, peas (all types), pecans, pears, peppers, pine apples, plums, prunes, pumpkins, quinces, rape, safflower, soybeans, squash, (all types), strawberries, sudan grass, sugar beets, summer squash, sunflower, tobacco, tomatoes, watermelon; livestock, including cattle, goats, horses, sheep, mules, hogs, cats; ornamentals, trees and shrubs; turf, lawns, golf courses; uncultivated areas, fallow or agricultural areas; commercial transportation facilities; processing handling/storage areas/ plants; grain/cereal/ flour bins and storage areas; farm or agricultural structures, including barns; wood- protection treatment of buildings
062719–00013	MCP Amine	MCPA, dimethylamine salt	Use on rice
062719–00060	MCPA Acid Technical	MCPA	Use on rice
067760–00029	Cheminova Methyl Parathion 4EC	Methyl Parathion	Apricots, Beans (succulent), beets (garden), clover, garlic, cucumber, gooseberry, kohlrabi, pumpkin, rape greens, rutabagas, safflower, squash (winter & summer), strawberries, sweet potatoes, tobacco, vetch (crown/hairy)

Note: Registration number(s) preceded by ** indicate a 30–day comment 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 AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Company No.	Company Name and Address
000400	Uniroyal Chemical Co., Inc., 74 Amity Rd., Bethany, CT 06524.
000432	AgrEvo Environmental Health, 95 Chestnut Ridge Rd., Montvale, NJ 07645.
002217	PBI/Gordon Corp., P.O. Box 014090, Kansas City, MO 64101.
004787	Cheminova Agro A/S, 1700 Route 23, Suite 210, Wayne, NY 07470.
004816	AgroEvo Environmental Health, 95 Chestnut Ridge Rd., Montvale, NJ 07645.
040083	INQUINOSA, c/o McKenna & Cuneo, L.L.P., 1900 K St., N.W., Washington, DC 20006.
062719	Dow Agrosciences L.L.C., 9330 Zionsville Rd., 308/3E, Indianapolis, IN 46268.

III. Existing Stocks Provisions

The Agency has authorized registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: August 6, 1998.

Linda A. Travers,

Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 98–22358 Filed 8–25–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–811; FRL–5791–1]

Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain

pesticide chemicals in or on various agricultural commodities.

DATES: Comments, identified by the docket control number PF–811, must be received on or before September 25, 1998.

ADDRESSES: By mail submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Divison (7502C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Following the instructions under ''SUPPLEMENTARY INFORMATION.'' No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 119 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Richard Gebken, Registration Division, (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 200A, Arlington, VA. 22202, (703) 305–6701; e-mail: gebken.richard@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various raw agricultural commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice, as well as the public version, has been established for this notice of filing under docket control number PF–811 (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number PF–811 and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

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

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 10, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Below summaries of the pesticide petitions are printed. The summaries of the petitions were prepared by the petitioners. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

AgrEvo USA Company

PP 7F4923

EPA has received a pesticide petition (PP 7F4923) from AgrEvo USA Company, Little Falls Centre One, 2711 Centerville Road, Wilmington, DE 19808, proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of buprofezin in or on the raw agricultural commodities head lettuce at 5 parts per million (ppm), leaf lettuce at 13 ppm, and the cucurbits crop group at 0.5 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. The metabolic profile of buprofezin has been elucidated in a wide range of crops, including tomatoes, lettuce, and cotton, and citrus. The nature of the residue in all plant species is well defined and comparable from crop to crop.

Buprofezin was the only significant residue in tomatoes, lettuce and cotton. Trace levels (1–6%) of two metabolites were also identified. These metabolites correspond to the oxidative loss of *N-t*-butyl (BF9), followed by opening of the heterocyclic ring with concomitant loss of CH2-S-C=O (BF12). No other single metabolite exceeded 7.5% of the total residue. Some of the minor components were, however, shown to be polar conjugates of BF4 (buprofezin hydroxylated in the t-butyl group) based on work in citrus. In the tomato study, which was run prior to the citrus, cotton and lettuce metabolism studies, these metabolites were not specifically looked for due to the high percentage of the residue accounted for by the parent.

2. *Analytical method*. Background Metabolism studies on lettuce and tomatoes have shown that the only significant residue in these crops is buprofezin. Development of the analytical method took place in parallel with the metabolism studies and the method was designed to quantify two metabolites (BF9 and BF12) in addition to the parent compound. This method was used for analysis of samples from the field trials on lettuce and cucurbits, but for tolerance enforcement only the parent compound is considered.

i. *Data collection method*. Samples are extracted with acetone. The extracts are filtered and the acetone removed by rotary evaporation. The remaining aqueous extract is acidified with hydrochloric acid and partitioned with hexane. The hexane is applied to a Florisil column and the residues are then eluted from the column with ether/

hexane (50/50). The acidic aqueous phase is adjusted to pH 7 and partitioned into ethyl acetate/hexane (50/50). This organic extract is combined with the eluate from the Florisil column, evaporated to dryness, taken up in toluene and analyzed by GC with NP detection. The limit of quantitation of this method is 0.01ppm in the sample.

ii. *Tolerance enforcement method.* The metabolism work and the field sample analyses showed that the only significant residue in treated crops was buprofezin. Accordingly, the method proposed for tolerance enforcement quantifies only buprofezin. The method is identical to the data collection method except the acid partition step was omitted. The method was validated by an independent laboratory using lettuce, tomato and cucumber as the test matrices.

iii. *Multiresidue methods.* Buprofezin was tested through protocols D and F using tomatoes (a representative non-fatty food) and cottonseed (a representative fatty food). Recoveries were satisfactory such that the multiresidue methods could be used for tolerance enforcement or as confirmatory methods.

3. *Magnitude of residues.* —i. *Residues in lettuce.* Head and leaf lettuce were treated with buprofezin in a 40SC formulation at sixteen locations throughout the USA in 1994. APPLAUD 40 SC was applied at the maximum application rate, minimum application interval and minimum preharvest interval. The residues detected in lettuce consisted entirely of buprofezin with no observed residues of metabolites greater than the limit of quantitation. Residues on leaf lettuce ranged between 1.29 ppm and 12.60 ppm. Residues on head lettuce were lower than those detected on leaf lettuce (removal of wrapper leaves on head lettuce resulted in a further reduction in observed residues). With the wrapper leaves in place, residues were between 0.29 ppm and 4.79 ppm. (With wrapper leaves removed, the residues ranged from 0.03 ppm to 1.44 ppm.) Tolerances are therefore proposed for residues of buprofezin in or on head lettuce at 5 ppm, and leaf lettuce at 13 ppm.

ii. *Residues in representative cucurbits crops.* APPLAUD 40 SC Insect Growth Regulator was applied to cucumbers, melons, and summer squash at various geographic locations throughout the United States. The product was applied four times at the maximum application rate, minimum application interval, and minimum preharvest interval. The residue consisted entirely of buprofezin with only a few traces of metabolites, all below the limit of quantitation (LOQ). Residues on cucumbers ranged between <0.01 ppm (the LOQ) and 0.30 ppm. Residues on melons were between 0.15 ppm and 0.41 ppm. Residues on summer squash were between 0.02 ppm and 0.11 ppm. Therefore, a tolerance of 0.5 ppm is proposed for residues on buprofezin in or on the cucurbits crop group.

B. Toxicological Profile

An extensive battery of toxicology studies has been conducted with buprofezin. These studies have been reviewed and summarized by the Joint Meeting of the FAO Panel of Experts on Pesticide Residues in Food and the Environment and the WHO Expert Group on Pesticide Residues (JMPR, 1991 and 1995). They have also been reviewed by the USEPA as part of the submission for an Experimental Use Permit. Supplemental information on several studies (acute dermal, acute inhalation, chronic dog, rat reproduction, and rat chronic toxicity/oncogenicity study) was submitted with this petition. These studies indicate that buprofezin has a relatively low degree of toxicity, is neither genotoxic nor oncogenic, and does not cause any significant reproductive or developmental effects. Thus, the use of buprofezin on lettuce and cucurbits (as well as on cotton Arizona and California and citrus California under the current section 18 emergency exemptions) will not pose a significant risk to human health.

1. *Acute toxicity.* The acute rat oral LD_{50} for buprofezin was 1,635 mg/kg in males and 2,015 mg/kg in females. The acute rat dermal LD_{50} was ≥ 5,000 mg/kg in both sexes. The 4–hour rat inhalation LC_{50} was > 4.57 mg/L. Buprofezin was slightly irritating to rabbit eyes and skin and did not induce dermal sensitization in guinea pigs.

2. *Genotoxicty.* No evidence of genotoxicity was noted in a battery of *in vitro* and *in vivo* studies. Studies included Ames Salmonella and mouse lymphoma gene mutation assays, a mouse micronucleus assay, an *in vitro* human lymphocyte cytogenetics assay and an *in vitro* rat hepatocyte UDS assay.

3. *Reproductive and developmental toxicity.* A developmental toxicity study was conducted in rats at dose levels of 0, 50, 200 or 800 mg/kg/day. The (systemic) maternal NOEL for this study was 200 mg/kg/day based on weight loss, decreased food consumption, clinical signs, increased resorption rate, increased loss of entire litters and one maternal death at 800 mg/kg/day. The developmental (fetal) NOEL was also 200 mg/kg/day based on reduced fetal body weights and increased incidence of delayed ossification at 800 mg/kg/day. Slightly reduced ossification was also noted at 200 mg/kg/day but this was within historical control range and thus not considered to be significant.

A developmental toxicity study was conducted in rabbits at dose levels of 0, 10, 50 or 250 mg/kg/day. The maternal (systemic) NOEL was 50 mg/kg/day based on decreased weight gain, decreased food consumption and the complete resorption of 2 litters at 250 mg/kg/day. No evidence of developmental toxicity was noted; therefore the developmental (fetal) NOEL was 250 mg/kg/day, the highest dose tested (HDT).

Two rat reproduction studies have been conducted at dietary concentrations of 0, 10, 100 or 1,000 ppm. One was a two-generation study that included a teratological evaluation. The other was a one-generation reproduction study conducted to further evaluate some possible changes noted in the first study. Based on the results from both studies, the parental NOEL was 1,000 ppm (HDT). There were no effects on any reproductive parameters but pup weights were decreased at 1,000 ppm. Thus, the reproductive NOEL was 100 ppm.

4. *Subchronic toxicity.* A 90–day feeding study was conducted in rats at dietary concentrations of 0, 40, 200, 1,000 or 5,000 ppm. Effects noted at 1,000 and/or 5,000 ppm included decreased weight gain, clinical pathology changes, increased liver and thyroid weights, and gross and/or microscopic evidence of liver, thyroid and kidney lesions. Only marginal effects, consisting of slightly reduced feed intake and slightly decreased glucose levels, were noted at 200 ppm. Although the report conservatively concluded the NOEL to be 40 ppm, the NOEL was considered by the EPA to be 200 ppm (15 mg/kg/day).

A 90–day study was conducted in which beagle dogs were administered buprofezin via capsule at dose levels of 0, 2, 10, 50 or 300 mg/kg/day. Effects noted at 50 and/or 300 mg/kg/day included various clinical signs of toxicity, substantially decreased weight gain, clinical pathology changes, increased liver, kidney and thyroid weights, and microscopic liver lesions. The NOEL was 10 mg/kg/day.

5. *Chronic toxicity.* A 2–year study was conducted in which beagle dogs were administered buprofezin via capsule at dose levels of 0, 2, 20 or 200 mg/kg/day. Effects noted at 20 and/or 200 mg/kg/day included decreased

weight gain, clinical pathology changes, increased liver and thyroid weights, decreased liver function (measured by BSP clearance) and microscopic liver lesions. Although the report concluded that the NOEL for this study was 2 mg/kg/day, marginal effects in females at 2 mg/kg/day were considered to be a possible effect by the EPA reviewer pending receipt of additional historical control data. These data were submitted with this petition and will establish that the dose of 2 mg/kg/day is a NOEL for this study.

A 2–year rat feeding study was conducted at dietary concentrations of 0, 5, 20, 200 or 2,000 ppm. No evidence of oncogenicity was noted at any dose level. Effects noted at 2,000 ppm included decreased weight gain, increased liver and thyroid weights, and an increased incidence of non-neoplastic liver and thyroid lesions. A possible increase in thyroid lesions was also noted at 200 ppm. According to the EPA reviewer, the NOEL for this study was 200 ppm (10 mg/kg/day). However, the conclusions of the original report and a subsequent histopathological reevaluation, not yet reviewed by the Agency, indicate that the NOEL should be considered to be 20 ppm (1 mg/kg/day).

A 2–year mouse feeding study was conducted at dietary concentrations of 0, 20, 200, 2,000 and 5,000 ppm. Effects observed at 2,000 and/or 5,000 ppm included decreased weight gain, minor clinical pathology changes, increased liver weights and an increased incidence of non-neoplastic liver lesions. Increased liver weights were also noted at 200 ppm. Thus, the NOEL was considered to be 20 ppm (1.8 mg/kg/day). There were slightly increased incidences of liver tumors in females at 5,000 ppm and of lung tumors in males at 200 and 5,000 ppm. The increased incidences of these common tumors were not considered to be treatment-related by either the study director or EPA reviewer but the study was referred to the EPA Carcinogenicity Peer Review Group for further evaluation.

6. *Animal metabolism*. The metabolism and pharmacokinetics of buprofezin have been evaluated in rats following single oral doses of 10 and 100 mg/kg. These studies indicate that buprofezin is rapidly absorbed and excreted following oral administration, with >90% excreted within 48 hours. Metabolism occurred primarily via hydroxylation of the phenyl ring followed by conjugation and oxidation of the sulfur and cleavage of the thiadiazinone ring.

7. *Endocrine disruption*. No special studies have been conducted to investigate the potential of buprofezin to induce estrogenic or other endocrine effects. The standard battery of required toxicity studies has been completed. These studies include an evaluation of the potential effects on reproduction and development and an evaluation of the pathology of the endocrine organs following repeated or long-term exposure. These studies are generally considered to be sufficient to detect any endocrine effects. The only effect noted on endocrine organs was an increased incidence of follicular cell hypertrophy and C-cell hyperplasia of the thyroid gland in rats administered buprofezin at dietary concentrations of 2,000 ppm for 24 months. Buprofezin also caused mild to moderate hepatotoxic effects at this dietary concentration. AgrEvo believes that the effect on the thyroid most likely resulted from increased turnover of T3/T4 in the liver with a resultant rise in TSH secretion (due to the hepatotoxicity). The rat is known to be much more susceptible than humans to these effects due to the very rapid turnover of thyroxine in the blood in rats (12 hours vs. about 5 – 9 days in humans). Therefore, the thyroid pathological changes, which have been noted following administration of high doses of buprofezin, are considered to be of minimal relevance to human risk assessment, particularly considering the low levels of buprofezin to which humans are likely to be exposed.

C. Aggregate Exposure

1. *Dietary exposure*. Buprofezin is an insect growth regulator which is approved for use under a section 18 emergency exemption for control of whitefly on cotton in Arizona and California and red scale on citrus in California. Non-crop uses of buprofezin are limited to an Experimental Use Permit for use on ornamentals in greenhouses, thus only dietary exposures are being considered.

2. *Food*. Potential dietary exposures from food commodities under the proposed food tolerances for buprofezin and the approved section 18 temporary tolerances were estimated using the Exposure I software system (TAS, Inc.) and the 1977–78 USDA consumption data. Two scenarios were evaluated.

In the first, worst-case scenario, it was assumed that all lettuce and cucurbits contained residues at the proposed tolerance levels of: leaf lettuce (13 ppm), head lettuce (5 ppm) and the cucurbit crop group (0.5 ppm). In addition, since temporary tolerances have been granted under a section 18 emergency exemption for citrus fruit (2.0 ppm), dried citrus pulp (10.0 ppm), cotton seed (1.0 ppm), cotton gin by-products (20 ppm), milk (0.03 ppm), and cattle, sheep, hogs, goats, and horse meat (0.02 ppm), fat (0.02 ppm), and meat by-products (0.5 ppm), these products were also included in the analysis. The section 18 provides for use on cotton in Arizona and California and on citrus in California. Even though the use is restricted to Arizona and California in these section 18s, the worst-case scenario assumed 100% of the crop treated.

A slightly more realistic assessment was also conducted using estimates of percent crop treated. But again, the unrealistic assumption was made that all residues would be at the tolerance level in all of the crops that were treated. In addition, the section 18 temporary tolerances are somewhat high, especially those for juice and milk; permanent tolerances based upon new processing and feeding studies will be proposed in the near future when application is made for full registration on cotton and citrus.

3. *Drinking water*. Exposure to buprofezin from drinking water is expected to be negligible. The potential for buprofezin to leach into groundwater was assessed in various laboratory studies as well as terrestrial field dissipation studies conducted in two locations and in varying soil types. The degradation of buprofezin occurs rapidly with half-lives in soil ranging from 22 to 59 days. No evidence of leaching of parent or degradation products was observed in aged leaching or terrestrial field dissipation studies. The major routes of degradation result in mineralization to carbon dioxide and the formation of ''bound'' residues. Buprofezin tends to bind to the top layers of soil with low mobility. The Koc for most soils fell in the range 2,100–4,800. The solubility in water is low which will result in minimal field runoff and a low potential for contamination of surface water. Therefore, the contribution of any such residues to the total dietary intake of buprofezin will be negligible.

4. *Non-dietary exposure*. There is a current Experimental Use Permit (EUP) for the use of buprofezin on ornamentals in greenhouses. Exposure to the general population would be minimal in this use and thus was not considered.

D. Cumulative Effects

At the present time, there are insufficient data available to allow AgrEvo to properly evaluate the potential for cumulative effects with other pesticides to which an individual may be exposed. For the purposes of this assessment, therefore, AgrEvo has assumed that buprofezin does not have

a common mechanism of toxicity with any other registered pesticides. Therefore, only exposure from buprofezin is being addressed at this time.

E. Safety Determination

The toxicity and residue databases for buprofezin are considered to be valid, reliable and essentially complete. The standard margin of safety approach is considered appropriate to assess the risk of adverse effects from exposure to buprofezin for both acute and chronic effects. EPA has adopted a temporary RfD for buprofezin at 0.002 mg/kg/day. This RfD was based on the systemic lowest effect level (LEL) of 2.0 mg/kg/day (LDT) from a 2–year dog study and using a 1,000-fold uncertainty factor. An extra factor of 10 was added to the standard 100-fold safety factor since the RfD was based on a LEL (rather than a NOEL) and the database lacked an acceptable reproductive study. Additional data have been submitted to upgrade the reproduction study and to support the lowest dose in the 2–year dog study as a NOAEL. With the upgrading of these studies, the critical study for the establishment of a permanent RfD would be the rat chronic/oncogenicity study. The NOEL for this study is 1 mg/kg/day. Applying a standard safety factor of 100 for this study, to account for interspecies extrapolation and intraspecies variation, would result in a RfD of 0.01 mg/kg/day. It is this proposed RfD which was used to assess risk to the public.

1. *U.S. population*. —i. *Acute risk*. EPA has previously selected, in their approval of the section 18 emergency exemption use, a developmental NOEL of 200 mg/kg/day from a rat developmental study for the acute dietary endpoint. However, it appears that this is an inappropriate acute endpoint since the clinical effects noted at the higher dose (800 mg/kg/day) occurred only after at least 5 days of dosing and the fetal effects (reduced fetal body weight and delayed ossification) are not likely to be due to an acute (1 day) exposure. Based on this assessment, AgrEvo has not evaluated the risk from acute exposure to any subgroup of the population. Previously, EPA has assessed the acute risk from use of buprofezin on citrus and cotton to the population subgroup of females 13+ years of age. Using the developmental NOEL of 200 mg/kg/day, the Margin of Exposure (MOE), according to EPA calculations, was 5,000 for this subgroup.

ii. *Chronic risk*. Chronic dietary exposures for the US population as a whole utilize 65% of the buprofezin RfD in the worst case scenario of 100% of crop treated and all residues at the proposed tolerance level (lettuce, cucurbits) and temporary tolerance level (cotton, citrus, meat/milk commodities from the section 18s). In the more realistic scenario, adjusting for the percent crop treated, the U.S. population chronic dietary exposure utilizes only 1.75% of the RfD. There is generally no concern for exposures below 100% of the RfD since it represents the level at or below which noappreciable risks to human health is posed. Therefore, there is reasonable certainty that no harm would result to the U.S. population from exposure to buprofezin.

2. *Infants and children*. Data from rat and rabbit developmental toxicity studies and rat multigeneration reproduction studies are generally used to assess the potential for increased sensitivity to infants and children. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development. Reproduction studies provide information relating to reproductive and other effects on adults and offspring from prenatal and postnatal exposure to the pesticide.

No indication of increased sensitivity to infants and children was noted in either of the developmental studies. However, in the reproduction studies, the NOEL for pups (100 ppm) was lower than for adults (1,000 ppm). Based on the intake of buprofezin in pups up to 8 weeks of age, the RfD for children, using a 1,000 fold safety factor, would be 0.01 mg/kg/day. This is the same RfD that is calculated for chronic exposure utilizing the rat chronic/oncogenicity study.

Evaluation of the dietary exposure to infants and children was conducted utilizing the same assumptions as for the U.S. population as a whole. Adjustment for the percent crop treated resulted in dietary exposures that were 2.5% and 3.4% of the RfD for non-nursing infants less than 1 year old and children (1–6 years), respectively. This scenario still assumes that all residues in the crops that are treated are at the tolerance level.

There is generally no concern for exposures below 100% of the RfD since it represents the level at or below which no appreciable risks to human health is posed. Thus, there is a reasonable certainty that no harm will result to the most highly exposed population subgroups, non-nursing infants, less than 1 year old, and children between 1 and 6 years of age, from exposure to buprofezin.

F. International Tolerances

Buprofezin was reviewed by the Joint Meeting of the Food and Agriculture Organization Panel of Experts on Pesticide Residues in Food and the Environment and the World Health Organization Expert Group on Pesticide Residues (JMPR) to establish Codex MRLs in 1991, 1995 and 1997. Permanent MRLs were granted for cucumbers and tomatoes, and a temporary MRL was granted for oranges, as described below. Additional residue trial data on oranges will be available for the 1999 JMPR meeting to determine if this MRL should also be made permanent.

Commodity	MRL
Cucumber	0.3 ppm
Tomato	0.5 ppm
Oranges, Sweet, Sour	0.3 ppm (temporary).

[FR Doc. 98–22429 Filed 8–25–98; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–826; FRL–6023–5]

Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by the docket control number PF–826, must be received on or before September 25, 1998.

ADDRESSES: By mail submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under ''SUPPLEMENTARY INFORMATION.'' No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be

claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: The product manager listed in the table below:

Product Manager	Office location/telephone number	Address
Beth Edwards (PM 3)	Rm. 206, CM #2, 703–305–5400, e-mail:edwards.beth@epamail.epa.gov.	1921 Jefferson Davis Hwy, Arlington, VA
Sidney Jackson (PM 22)	Rm. 233, CM #2, 703–305–7610, e-mail: jackson.sidney@epamail.epa.gov.	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–826] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in Wordperfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number (insert docket number) and appropriate petition number. Electronic comments on notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 13, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. AgrEvo USA Company (acting as registered US agent for Hoechst Schering AgrEvo, S.A.)

PP 7F4909

EPA has received a pesticide petition (PP 7F4909) from AgrEvo USA Company (acting as registered U.S. agent for Hoechst Schering AgrEvo, S.A.), 2711 Centerville Road, Wilmington, DE 19808 proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of deltamethrin in or on various food and feed commodities. Tolerances are currently established at 40 CFR 180.435 in or on the following commodities for residues of deltamethrin [(1R, 3R)-3(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylic acid (S)-alpha-cyano-3-phenoxybenzyl ester] and relevant metabolites: cottonseed at 0.04 parts per million (ppm), cottonseed oil at 0.2 ppm, tomatoes at 0.2 ppm, and tomato products (concentrated) at 1.0 ppm.

EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

Based on the fact that tralomethrin, another synthetic pyrethroid insecticide, is rapidly metabolized in plants and animals to deltamethrin, and the toxicological profile of the two compounds is similar, it is appropriate to consider a combined exposure assessment for tralomethrin and deltamethrin.

A. Residue Chemistry

1. *Plant metabolism*. Deltamethrin metabolism studies in tomatoes, corn, apples, and cotton demonstrate the same metabolic pathway. Furthermore, plant metabolism studies have been conducted following application of tralomethrin in cotton, corn, cabbage, and tomatoes. These studies have demonstrated that the metabolism of tralomethrin involves debromination to deltamethrin and its isomers. Thus, a similar metabolic pathway has been shown to occur in a variety of crops following either direct application of deltamethrin (cotton, corn, apples, and tomatoes) or in-plant formation of deltamethrin via debromination of applied tralomethrin (tomatoes, cotton, corn, and cabbage). As a result of this substantial information base, it is concluded that the residues of toxicological concern in/on growing crops following application of tralomethrin or deltamethrin are tralomethrin, cis-deltamethrin, and its isomers, trans-deltamethrin and alpha-R-deltamethrin.

2. *Analytical method*. Analytical methods for determining residues of tralomethrin and deltamethrin in various commodities for which registrations have been approved, or are being sought, have been submitted to the Agency. These methods, based on

gas chromatography (GLC) equipped with an electron capture detector (ECD) and a DB-1 (or equivalent) capillary column, are used for the determination of tralomethrin, cis-deltamethrin, trans-deltamethrin, and alpha-R-deltamethrin in various raw agricultural, animal derived, and processed commodities. These methods were independently validated and are appropriate for the determination of residues of tralomethrin and deltamethrin in various food and feed commodities after application of these ingredients to target growing crops, and after use in food/feed handling establishments.

3. *Magnitude of residues*. Residues of tralomethrin, deltamethrin, and its metabolites are not expected to exceed the proposed tolerance levels as a result of the use of these active ingredients on target crops, or at target sites.

B. Toxicological Profile

1. *Acute toxicity*. The acute oral LD_{50} values for deltamethrin in the rat are 66.7 milligram/kilograms (mg/kg) for males, 86 mg/kg for females, and for tralomethrin 99 mg/kg for males, 157 mg/kg for females when administered in sesame oil. The oral LD_{50} for deltamethrin when administered in aqueous methyl cellulose was greater than 5,000 mg/kg for both sexes. The dermal LD_{50} in rabbits was greater than 2,000 mg/kg for both materials. Inhalation 4-hour LC_{50} values in the rat are 2.2 mg/L for deltamethrin and greater than 0.286 mg/L for tralomethrin.

2. *Genotoxicty*. No indication of genotoxicity was noted in a battery of *in vivo* and *in vitro* studies conducted with either deltamethrin or tralomethrin.

3. *Reproductive and developmental toxicity*—i. *Deltamethrin*. A rat developmental toxicity study conducted with deltamethrin indicated a maternal no observed effect level (NOEL) of 3.3 mg/kg/day based on clinical observations, decreased weight gain and mortality. The developmental NOEL was 11 mg/kg/day higest dose tested (HDT).

In a rabbit developmental toxicity study with deltamethrin, the maternal NOEL was considered to be 10 mg/kg/day based on decreased defecation at 25 and 100 mg/kg/day, and mortality at 100 mg/kg/day. The developmental NOEL was considered to be 25 mg/kg/day based on retarded ossification of the pubic and tail bones at 100 mg/kg HDT.

A 3-generation rat reproduction study and a more recent, 2-generation rat reproduction study with deltamethrin indicated the NOEL for both parents and offspring was 80 ppm (4-12 mg/kg/day for adults and 18-44 mg/kg/day for offspring) based on clinical signs of toxicity, reduced weight gain and mortality at 320 ppm HDT.

ii. *Tralomethrin*. In a rat developmental toxicity study with tralomethrin the NOEL for maternal and developmental toxicity was judged to be greater than or equal to 18 mg/kg/day HDT.

No evidence of developmental toxicity was observed in either of two rabbit developmental toxicity studies conducted with tralomethrin. In one study, the maternal NOEL was 12.5 mg/kg/day based on mortality while the developmental NOEL was judged to be greater than or equal to 25 mg/kg/day HDT. In the second study, the maternal NOEL was 8 mg/kg/day based on body weight effects while the developmental NOEL was 32 mg/kg/day HDT.

In a 2-generation reproduction study with tralomethrin in rats, the parental NOEL was 0.75 mg/kg/day based on body weight deficits while the NOEL for offspring was 3.0 mg/kg/day, also based on body weight deficits.

4. *Subchronic toxicity*— i. *Deltamethrin*. A 90-day rat oral toxicity study was conducted with deltamethrin which was administered by gavage. The NOEL was judged to be 1.0 mg/kg/day based on reduced body weight gain and slight hypersensitivity. In a more recent 90-day rat dietary study with deltamethrin, the NOEL was judged to be 300 ppm (23.9 mg/kg/day for males, 30.5 mg/kg/day for females) based on uncoordinated movement, unsteady gait, tremors, increased sensitivity to sound, shakes and spasmodic convulsions. The difference in the NOEL's between the two studies is attributed to the different routes of exposure (gavage in oil vs. administered in diet).

A 12-week study was conducted with deltamethrin in mice. The NOEL was 300 ppm (61.5 mg/kg/day in males and 77.0 mg/kg/day in females) based on chronic contractions, convulsions, poor condition, decreased weight gain and mortality.

Two 13-week dog studies were conducted with deltamethrin. In the first study, beagle dogs were administered deltamethrin by capsule using PEG 200 as a vehicle. The NOEL for this study was 1 mg/kg/day based on tremors, unsteadiness, jerking movements, salivation, vomiting, liquid feces and/or dilatation of the pupils. In the second study, deltamethrin was administered by capsule without a vehicle to beagle dogs. The NOEL for this study was 10 mg/kg/day based on unsteady gait, tremors, head shaking, vomiting and salivation. The difference in toxicity between the two studies is attributed to the enhanced absorption resulting from the use of PEG 200 as a vehicle in the first study.

A 21-day dermal toxicity study was conducted with deltamethrin in rats. The NOEL for systemic toxicity was determined to be 1,000 mg/kg/day.

In a subchronic inhalation study, rats were exposed to aerosolized deltamethrin for 6 hours per day, 5-days per week, for a total of 14-days over 3 weeks. Based on slightly decreased body weights and neurological effects at higher dose levels, it was concluded that 3 μg/l was the NOEL for systemic effects in this study.

ii. *Tralomethrin*. Tralomethrin was administrated by gavage in corn oil to rats for 13 weeks. Based on mortality, decreased activity and motor control, soft stools, labored breathing and significantly lower absolute and relative mean liver weights, the NOEL was considered to be 1 mg/kg/day.

Tralomethrin was administered by capsule to beagle dogs for 13 weeks. The NOEL for this study was 1.0 mg/kg/day based on refusal of milk supplement, tremors, exaggerated patellar response, unsteadiness and uncoordinated movement.

A 21-day dermal toxicity study was conducted with tralomethrin on rats. No systemic effects were observed, therefore the systemic NOEL for this study was 1,000 mg/kg/day.

5. *Chronic toxicity and oncogenicity*— i. *Deltamethrin*. Deltamethrin was administered in the diet to beagle dogs for 2 years. No treatment-related effects were observed and the NOEL was judged to be 40 ppm (1.1 mg/kg/day). In a more recent study, deltamethrin was administered by capsule (without a vehicle) to beagle dogs for 1 year. The NOEL in this study was considered to be 1 mg/kg/day based on clinical signs, decreased food consumption and changes in several hematology and blood chemistry parameters.

Two rat chronic toxicity/oncogenicity studies were conducted with deltamethrin. In the first study, the test substance was administered via the diet to rats for 2 years. The NOEL for this study was 20 ppm (1 mg/kg/day) based on slightly decreased weight gain. In a more recent study, deltamethrin was administered to rats in the diet for 2 years. The NOEL for this study was considered to be 25 ppm (1.1 and 1.5 mg/kg/day for males and females, respectively), based on neurological signs, weight gain effects and increased incidence and severity of eosinophilic hepatocytes and/or balloon cells. No evidence of carcinogenicity was noted in either study.

Two mouse oncogenicity studies were conducted with deltamethrin. In the first study, deltamethrin was administered in the diet for 2 years. No adverse effects were observed and the NOEL was judged to be 100 ppm (12 and 15 mg/kg/day, respectively, for males and females). In a more recent study, deltamethrin was administered in the diet to mice for 97 weeks. The NOEL was considered to be 1,000 ppm (15.7 and 19.6 mg/kg/day) based on a higher incidence of poor physical condition and a slight transient weight reduction. There was no evidence of oncogenicity in either study.

ii. *Tralomethrin*. Tralomethrin was administered to beagle dogs by capsule for 1 year at initial dosages of 0, 0.75, 3.0 and 10.0 mg/kg/day. Due to trembling, ataxia, prostration and convulsions, the high dosage was lowered to 8 mg/kg/day at study week 4 and lowered again to 6 mg/kg/day on study week 14. On the 14 week of study, the 0.75 mg/kg/day dosage was raised to 1.0 mg/kg/day. Based on body weight changes, convulsions, tremors, ataxia and salivation, the NOEL for this study was considered to be 1 mg/kg/day.

Tralomethrin was administered by gavage to rats for 24 months. The NOEL for this study was 0.75 mg/kg/day based on salivation, uncoordinated movement, inability to support weight on limbs and decreased body weight parameters. No evidence of carcinogenicity was observed.

A 2 year mouse oncogenicity study was conducted with tralomethrin administered by gavage. The NOEL was judged to be 0.75 mg/kg/day based on higher incidences of dermatitis and mortality, salivation, uncoordinated involuntary movements and aggressiveness. No evidence of oncogenicity was observed.

6. *Neurotoxicity*. Acute delayed neurotoxicity studies in hens were conducted for both deltamethrin and tralomethrin. In both cases, the study results were negative indicating that neither material causes delayed neurotoxicity.

In an acute neurotoxicity study with deltamethrin in rats, effects were noted after a single oral administration of a dose of 50 mg/kg. In addition, potential effects (limited to a single male and female) were observed at a dose level of 15 mg/kg. Therefore, the no observed adversed effect level (NOAEL) for neurotoxicity in this study was 5 mg/kg.

In a subchronic neurotoxicity study with deltamethrin in rats, effects were noted after daily dietary administration for 13 consecutive weeks at 800 ppm. The NOAEL for systemic toxicity and neurotoxicity in this study was found to be 200 ppm (14 and 16 mg/kg/day for males and females, respectively).

7. *Animal metabolism*— i. *Deltamethrin*. The absorption of deltamethrin appears to be highly dependent upon the route and vehicle of administration. Once absorbed, deltamethrin is rapidly and extensively metabolized and excreted, primarily within the first 48 hours.

ii. *Tralomethrin*. Tralomethrin is rapidly metabolized to deltamethrin after debromination. The metabolic pattern of the debrominated tralomethrin is exactly the same as that of the metabolic pattern of deltamethrin.

8. *Endocrine effects*. No special studies have been conducted to investigate the potential of deltamethrin or tralomethrin to induce estrogenic or other endocrine effects. However, the standard battery of required toxicity studies has been completed. These studies include an evaluation of the potential effects on reproduction and development, and an evaluation of the pathology of the endocrine organs following repeated or long-term exposure. These studies are generally considered to be sufficient to detect any endocrine effects, yet no such effects were detected. Thus, the potential for deltamethrin or tralomethrin to produce any significant endocrine effects is considered to be minimal.

C. Aggregate Exposure

Based on the fact that tralomethrin is rapidly metabolized in plants and animals to deltamethrin, and the toxicological profile of the two compounds is similar, it is appropriate to consider combined exposure assessments for tralomethrin and deltamethrin.

Deltamethrin and tralomethrin are broad spectrum insecticides used to control pests of crops, ornamental plants and turf, and domestic indoor and outdoor (including dog collars and direct application to livestock), commercial, and industrial food use areas. Thus, aggregate non-occupational exposure would include exposures resulting from non-food use in addition to consumption of potential residues in food and water. Exposure via drinking water is expected to be negligible since deltamethrin binds tightly to soil and rapidly degrades in water.

1. *Dietary exposure—Food*. Food tolerances have been established for residues of tralomethrin and/or deltamethrin and its metabolites in or on a variety of raw agricultural commodities. These tolerances, in support of registrations, currently exist for residues of tralomethrin on broccoli, cottonseed, head lettuce, leaf lettuce, soybeans, sunflower seed, and cottonseed oil. Also, tolerances in support of registrations currently exist for deltamethrin on cottonseed and cottonseed oil. Additionally, tolerances have been established for tralomethrin to support its use in food/feed handling establishments, and for deltamethrin on tomatoes and concentrated tomato products to support the importation of tomato commodities treated with deltamethrin. Further, a food/feed handling establishment use, and associated tolerances, is pending for deltamethrin. Additional tolerances are being proposed for deltamethrin in the subject pesticide tolerance petition. Potential acute exposures from these relevant food commodities were estimated using a Tier 3 acute dietary risk assessment (Monte Carlo Analysis) following EPA guidance. Potential chronic exposures from food commodities under the established food and feed additive tolerances for deltamethrin and tralomethrin, plus the pending tolerances for deltamethrin associated with use in food/feed handling areas, and the tolerances proposed in this petition for deltamethrin, were estimated using NOVIGEN's dietary exposure evaluation mode (DEEM). This chronic risk assessment was conduced using anticipated residues based on field trial or monitoring data, percent crop treated, and percent food handling establishments treated.

2. *Drinking water* . Tralomethrin and deltamethrin are immobile in soil and, therefore, will not leach into groundwater. Additionally, due to the insolubility and lipophilic nature of deltamethrin and tralomethrin, any residues in surface water will rapidly and tightly bind to soil particles and remain with sediment, therefore not contributing to potential dietary exposure from drinking water.

A screening evaluation of leaching potential of a typical pyrethroid was conducted using EPA's pesticide root zone model (PRZM3). Based on this screening assessment, the potential concentrations of a pyrethroid in ground water at depths of 1 and 2 meters are essentially zero <0.001 parts per billion (PPB). Surface water concentrations for pyrethroids were estimated using PRZM3 and Exposure Analysis Modeling System (EXAMS) using Standard EPA cotton runoff and Mississippi pond scenarios. The maximum concentration predicted in the simulated pond was 0.052 ppb. Concentrations in actual drinking water would be much lower than the levels predicted in the hypothetical, small, stagnant farm pond model since

drinking water derived from surface water would normally be treated before consumption. Based on these analyses, the contribution of water to the dietary risk estimate is negligible.

3. *Non-dietary exposure*. As noted above, deltamethrin and tralomethrin are broad spectrum insecticides registered for use on a variety of food and feed commodities. Additionally, registrations are held for non-agricultural applications including turf and lawn care treatments, broadcast carpet treatments (professional use only), indoor fogger, spot, crack and crevice treatments, insect baits, lawn and garden sprays and indoor and outdoor residential, industrial and institutional sites including those for Food/Feed Handling Establishments.

To evaluate non-dietary exposure, the ''flea infestation control''senario was chosen to represent a plausible but worst case non-dietary (indoor and outdoor) non-occupational exposure. This scenario provides a situation where deltamethrin and/or tralomethrin is commonly used and they can be used concurrently for a multitude of uses, e.g., spot and/or broadcast treatment of infested indoor surfaces such as carpets and rugs, treatment of pets and treatment of the lawn. This hypothetical situation provides a very conservative, upper bound estimate of potential non-dietary exposures. Consequently, if health risks are acceptable under these conditions, the potential risks associated with other more likely scenarios would also be acceptable.

Because tralomethrin is rapidly metabolized to deltamethrin, and the toxicology profiles of deltamethrin and tralomethrin are virtually identical, a non-dietary and aggregate (non-dietary + chronic dietary) exposure/risk assessment has been conducted for the combination of both active ingredients. The total exposure to both materials was expressed as ''deltamethrin equivalents'' and these were compared to the toxicology endpoints identified for deltamethrin.

D. Cumulative Effects

When considering a tolerance, the Agency must consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity''. AgrEvo USA Company, acting as registered U.S. agent for Hoechst Schering AgrEvo SA, believes that ''available information'' in this context includes not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments.

Further, AgrEvo does not have, at this time, available data to determine whether tralomethrin and/or deltamethrin have a common mechanism of toxicity with other substances. For the purposes of this tolerance action, therefore, no assumption has been made that tralomethrin and/or deltamethrin have a common mechanism of toxicity with other substances.

E. Safety Determination

1. *U.S. population*. The toxicity and residue data base for deltamethrin and tralomethrin are considered to be valid, reliable and essentially complete according to existing regulatory requirements. No evidence of oncogenicity has been observed for either compound. In accordance with EPA's ''Toxicology Endpoint Selection Process'' Guidance Document for acute exposures, the toxicology endpoint from the deltamethrin rat acute neurotoxicity study, 5.0 mg/kg/day, is used. For chronic exposures to deltamethrin and tralomethrin, the Reference Dose (RfD) of 0.01 mg/kg bodyweight/day established for deltamethrin based on the NOEL from the 2-year rat feeding study and a 100-fold safety factor to account for interspecies extrapolation and intraspecies variation is used.

For the overall U.S. population, acute dietary exposure at the 99.9th percentile results in a margin of exposure (MOE) of 1,406; the MOE for the 99th percentile is 3,500; and at the 95th percentile the MOE is 8,613. For the overall U.S. population, chronic dietary exposure results in a utilization of 1.4% of the reference dose. Using an upper bound estimate of potential non-dietary exposures for a worst case scenario (flea treatment) results in an MOE of 160,000 for adults. Utilizing the scenario of chronic dietary exposure plus an upper bound estimate of potential non-dietary exposure from a worst case scenario (flea treatment), it is shown that for aggregate exposure to deltamethrin and tralomethrin there is an MOE of 31,100 for adults. There is generally no concern for MOE's greater than 100. For chronic exposure, there is generally no concern for exposure below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health.

In conclusion, there is reasonable certainty that no harm will result to the U.S. population, in general, from dietary or aggregate exposure to deltamethrin and/or tralomethrin.

2. *Infants and children*. Data from developmental toxicity studies in rats and rabbits, and multigeneration reproduction studies in rats are generally used to assess the potential for increased sensitivity of infants and children. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development. Reproduction studies provide information relating to reproductive and other effects on adults and offspring from pre-natal and post-natal exposure to the pesticide. None of these studies conducted with deltamethrin or tralomethrin indicated developmental or reproductive effects as a result of exposure to these materials.

FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database. Based on the current toxicological data requirements, the database relative to pre- and post-natal effects in children is complete. Although no indication of increased susceptibility to younger animals was noted in any of the above studies, or in the majority of studies with other pyrethroids, several recent publications have reported that deltamethrin is more toxic to neonate and weanling animals than to adults. However, a joint industry group currently investigating this issue was unable to reproduce these findings. Furthermore, the RfD (0.01 mg/kg/day) that has been established for deltamethrin is already more than 1,000-fold lower than the lowest NOEL from the developmental and reproduction studies. Therefore, the RfD of 0.01 mg/kg/day is appropriate for assessing chronic aggregate risk to infants and children and an additional uncertainty factor is not warranted. Also, the NOEL of 5.0 mg/kg/day from the rat acute neurotoxicity study is appropriate to use in acute dietary, short term non-dietary, and aggregate exposure assessments.

For the population subgroup described as non-nursing infants, less than 1 year old, the MOE for acute dietary exposure at the 99.9th percentile is 666; at the 99th percentile the MOE is 1,491; and at the 95th percentile the MOE is 8,755. For the population subgroup described as children 1-6 years old, the MOE for acute dietary exposure is 871 for the 99.9th percentile; at the 99th percentile the MOE is 1,527; and at the 95th percentile the MOE is 3,167. For non-nursing infants, chronic dietary exposure results in a utilization of 1.9% of the RfD, and

for children 1-6 years old 3.7% of the reference dose is utilized. Using an upper bound estimate of potential non-dietary exposures for a worst case scenario (flea treatment) results in an MOE of 6,100 for infants less than 1 year old, and an MOE of 6,600 for children 1-6 years old. Utilizing the scenario of chronic dietary exposure plus an upper bound estimate of potential non-dietary exposure from a worst case scenario (flea treatment) it is shown that for aggregate exposure to deltamethrin and tralomethrin, there is an MOE of 6,775 for infants less than 1 year old, and an MOE of 5,700 for children 1-6 years old. There is generally no concern for MOE's greater than 100. For chronic exposure, there is generally no concern for exposure below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health.

In summary, there is reasonable certainty that no harm will result to infants and children from aggregate exposure to either deltamethrin or tralomethrin.

F. International Tolerances

Deltamethrin is a broad spectrum insecticide used throughout the world to control pests of livestock, crops, ornamentals plants and turf, and household, commercial, and industrial food use areas. A reevaluation of the maximum residue limits (MRL's) was conducted in 1994, in accordance with the EC Directive (91/414/EEC) Registration Requirements for Plant Protection Products. A comparison of the proposed/current CODEX MRL's and proposed/established tolerances for deltamethrin is presented below:

Commodity	Proposed Tolerance (USEPA) (PPM)	Proposed/Current MRL (CODEX) (PPM)
Barley, grain	0.50	1.0
Broccoli	0.50	0.2
Cattle, fat	0.15	---
Cattle, mbyp	0.05	---
Cattle, meat	0.05	---
Cereal grain dust	65.0	---
Corn, field, grain	1.0	1.0
Corn, pop, grain	0.5	1.0
Corn, sweet, grain	0.5	1.0
Corn, forage (field)	0.7	---
Corn, fodder (field)	7.0	0.5
Cucurbits vegetables	0.05	0.2
Eggs	0.02	---
Goats, fat	0.15	---
Goats, mbyp	0.05	---
Goats, meat	0.05	---
Hogs, fat	0.15	---
Hogs, mbyp	0.05	---
Hogs, meat	0.05	---
Horses, fat	0.15	---
Horses, mbyp	0.05	---
Horses, meat	0.05	---
Lettuce, head	1.0	0.2
Lettuce, leaf	3.0	0.5
Milk, Fat (reflecting 0.07 ppm in whole milk)	0.6	0.01 (milk)
Oats, grain	0.5	1.0
Poultry, fat	0.3	---
Poultry, mbyp	0.02	---
Poultry, meat	0.02	---
Rice, grain	0.5	1.0
Rye, grain	0.5	1.0
Sheep, fat	0.15	---
Sheep, mbyp	0.05	---
Sheep, meat	0.05	---
Sorghum, grain	1.0	1.0
Sorghum, forage	0.5	---
Sorghum, fodder	2.0	0.5
Soybeans	0.05	0.1
Sunflower seed	0.05	0.1
Tomatoes	0.3	0.2
Triticale, grain	0.5	1.0
Wheat, forage	8.0	---
Wheat, grain	1.0	1.0
Wheat, hay	8.0	0.5
Wheat, straw	8.0	0.5
Corn, refined oil	10.0	---
Corn, flour	3.0	---
Corn, meal	2.0	---
Tomato products (concentrated)	1.5	---
Wheat bran	4.0	5.0
Wheat germ	8.0	---
Soybean hulls	0.25	0.5
Cereal bran	2.0	---
Rice hulls	6.0	---

Commodity	Proposed Tolerance (USEPA) (PPM)	Proposed/Current MRL (CODEX) (PPM)
Corn, milled byproducts	3.0	---

As far as can be determined, no CODEX MRL's are established or proposed for tralomethrin.

G. Proposed Tolerances

This pesticide petition proposes to amend 40 CFR 180.435 for the insecticide deltamethrin as it relates to the following raw agricultural, food, or feed commodities:

Commodity	Parts per million
Barley, grain	0.5
Broccoli	0.5
Cattle, fat	0.15
Cattle, mbyp	0.05
Cattle, meat	0.05
Cereal bran	2.0
Cereal grain dust	65.0
Corn, field, grain	1.0
Corn, pop, grain	0.5
Corn, sweet, grain	0.5
Corn, forage (field)	0.7
Corn, fodder (field)	7.0
Corn, refined oil	10.0
Corn, flour	3.0
Corn, meal	2.0
Corn, milled byproducts	3.0
Cottonseed	0.04
Cottonseed oil	0.2
Cucurbits vegetables	0.05
Eggs	0.02
Goats, fat	0.15
Goats, mbyp	0.05
Goats, meat	0.05
Hogs, fat	0.15
Hogs, mbyp	0.05
Hogs, meat	0.05
Horses, fat	0.15
Horses, mbyp	0.05
Horses, meat	0.05
Lettuce, head	1.0
Lettuce, leaf	3.0
Milk, Fat (reflecting 0.07 ppm in whole milk)	0.6
Oats, grain	0.5
Poultry, fat	0.3
Poultry, mbyp	0.02
Poultry, meat	0.02
Rice, grain	0.5
Rice, hulls	6.0
Rye, grain	0.5
Sheep, fat	0.15
Sheep, mbyp	0.05
Sheep, meat	0.05
Sorghum, grain	1.0
Sorghum, forage	0.5
Sorghum, fodder	2.0
Soybeans	0.05
Soybean hulls	0.25
Sunflower seed	0.05
Tomatoes	0.3
Tomato products (concentrated)	1.5
Triticale, grain	0.5
Wheat, bran	4.0
Wheat, forage	8.0
Wheat, germ	8.0
Wheat, grain	1.0
Wheat, hay	8.0
Wheat, straw	8.0

H. Conclusions

The proposed establishment of food and food/feed additive tolerances for deltamethrin resulting from application to growing crops, stored grain, and direct application to livestock would not pose a significant risk to human health, including that of children, and is in compliance with the requirements of the Food Quality Protection Act of 1996. Thus, the tolerances proposed for residues of deltamethrin can be established.

2. Gowan Company

PP 8F4985

EPA has received a pesticide petition (PP 8F4985) from Gowan Company, P.O. Box 5569, Yuma, AZ 85366-5569 proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of the acaricide hexythiazox in or on strawberries, apples, wet apple pomace, cottonseed and cotton gin byproducts. The chemical name of hexythiazox is trans-5-(4-chlorophenyl)-N-cyclohexyl-4-methyl-2-oxothiazolidine-3-carboxamide. Metabolites containing the (4-chlorophenyl)-4-methyl-2-oxo-3-thiazolidine moiety are included in the tolerance expression. Time-limited tolerances for strawberries, cotton seed and cotton gin byproducts are currently in effect. Gowan Company has proposed that the tolerances for cotton seed and cotton gin byproducts be geographically limited to California only. A permanent tolerance exists for apples, but Gowan Company proposes to increase the tolerance level in connection with a proposed change in the use pattern. A tolerance for residues in wet apple pomace has not been proposed previously.

EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition. The proposed analytical method is high performance liquid chromatography with an ultraviolet detector. As required by section 408(d) of the FFDCA, as recently amended by the Food Quality Protection Act (FQPA) Pub. L. 104-170, Gowan Company included in the petition a summary of the petition and authorization for the summary to be published in the **Federal Register** in a notice of receipt of the petition. The summary represents the views of Gowan Company; EPA, as mentioned above, is in the process of evaluating the petition. As required by section 408(d)(3) of the FFDCA, EPA is including the summary as a part of this notice of filing.

A. Residue Chemistry

1. *Plant metabolism*. The metabolism of hexythiazox in apples, pears, grapes, and citrus has been studied. The major portion of the residue is parent compound. The metabolites are hydroxycyclohexyl and ketocyclohexyl analogs of hexythiazox and the amide formed by loss of the cyclohexyl ring.

2. *Animal metabolism*. The metabolism of hexythiazox in goats, hens and rats has been studied. Metabolic pathways in animals are similar to those in plants.

3. *Analytical method*. An adequate analytical method (HPLC with UV detection) is available for enforcement purposes. Parent compound and all of its metabolites are converted to a common moiety before analysis.

4. *Magnitude of residues*—i. *Strawberries*. Seventy samples of treated strawberries were analyzed. The maximum residue observed (MRO) at a preharvest interval of 3-days was 2.06 ppm and the average residue was 0.67 ppm. A tolerance of 3 ppm was proposed.

ii. *Cotton*. Twenty residue studies were conducted in the U.S., Brazil, and Spain. Four additional studies, including a processing study, were conducted in California. The MRO in cotton seed was 0.097 ppm and the average residue was 0.065 ppm. A tolerance of 0.2 ppm was proposed. The maximum residue observed in cotton gin byproducts was 2.29 ppm and the average residue was 1.07 ppm. A tolerance of 3 ppm was proposed. The proposed tolerances are geographically limited to California only. A field crop rotation study indicated that residues would not be present in crops planted 4-months after application of hexythiazox.

iii. *Apples—a total of 20 trials were conducted*. The maximum residue in apples having a preharvest interval of 1-month was 0.38 ppm and the average residue was 0.14 ppm. A tolerance of 0.4 ppm was proposed. Processing studies indicated that hexythiazox residues concentrate by a factor of 1.7 in wet apple pomace, and a tolerance of 0.7 ppm was proposed.

B. Toxicological Profile

1. *Acute toxicity*. The acute oral and dermal LD_{50} of technical hexythiazox is > 5,000 mg/kg, and the 4-hour acute inhalation LC_{50} is > 2 mg/L. It is not a dermal irritant or sensitizer and is a mild eye irritant.

2. *Genotoxicity*. The following genotoxicity tests were all negative: Ames gene mutation, CHO gene mutation, CHO chromosome aberration, mouse micronucleus and rat hepatocyte unscheduled DNA synthesis.

3. *Reproductive and developmental toxicity*. Hexythiazox has not been observed to induce developmental or reproductive effects. The lowest reproductive or developmental no-observed effected level (NOEL) was 200 milligram/kilogram/day (mg/kg/day), the highest dose tested (HDT), in a 2-generation rat reproduction study.

4. *Chronic toxicity*. The Office of Pesticide Programs has established the Reference Dose (RfD) for hexythiazox at 0.025 mg/kg/day. The RfD for hexythiazox is based on a 1-year dog feeding study with a NOEL of 2.5 mg/kg/day and an uncertainty factor of 100. The endpoint effect of concern was hypertrophy of the adrenal cortex in both sexes, decreased red blood cell counts, hemoglobin content and hematocrit in males.

5. *Carcinogenicity*. The Agency has classified hexythiazox as a category C (possible human) carcinogen based on an increased incidence of hepatocellular carcinomas ($p = 0.028$) and combined adenomas/carcinomas ($p = 0.024$) in female mice at the HDT (1,500 ppm) when compared to the controls as well as a significantly increased ($p < 0.001$) incidence of pre-neoplastic hepatic nodules in both males and females at the HDT. The decision supporting a category C classification was based primarily on the fact that only one species was affected and mutagenicity studies were negative. In classifying hexythiazox as a category C carcinogen, the Agency concluded that a quantitative estimate of the carcinogenic potential for humans should be calculated because of the increased incidence of liver tumors in the female mouse. A Q1* of 0.039 (mg/kg/day)-1 in human equivalents was calculated.

C. Aggregate Exposure

Tolerances have been established (40 CFR 180.448) for combined residues of hexythiazox [trans-5-(4-chlorophenyl)-N-cyclohexyl-4-methyl-2-oxothiazolidine-3-carboxamide] and its metabolites containing the (4-chlorophenyl)-4-methyl-2-oxo-3-thiazolidine moiety in or on apples at 0.02 ppm and pears at 0.3 ppm. Use on several other crops had been previously proposed [PP 6F4738], and an aggregate exposure analysis has taken into consideration all current and proposed uses. The nature and metabolism of

hexythiazox in plants and animals is adequately understood.

Hexythiazox is also registered for use on outdoor ornamental plants by commercial applicators only. It is believed that non-occupational exposure from this use is very low. Hexythiazox is not registered for greenhouse, lawn, garden, or residential use. The environmental fate of hexythiazox has been evaluated, and the compound is not expected to contaminate groundwater or surface water to any measurable extent.

1. *Chronic exposure*. A chronic dietary exposure analysis was conducted for the general U.S. population and 26 population subgroups. In this analysis it was assumed that 100% of crops were treated. A chronic exposure of 0.000172 mg/kg/day was calculated for the average U.S. population. Non-nursing infants, the most heavily exposed subgroup, had a calculated exposure of 0.000972 mg/kg/day. Actual exposure would be much lower, however, because far less than 100% of crops would be treated.

The Agency has not conducted a detailed analysis of potential exposure to hexythiazox via drinking water or outdoor ornamental plants. However, it is believed that chronic exposure from these sources is very small.

2. *Acute exposure*. No developmental, reproductive or mutagenic effects have been observed with hexythiazox. Therefore, an analysis of acute exposure has not been conducted.

D. Cumulative Effects

At this time the Agency has not reviewed available information concerning the potentially cumulative effects of hexythiazox and other substances that may have a common mechanism of toxicity. For purposes of this petition only, the Agency is considering only the potential risks of hexythiazox in its aggregate exposure.

E. Safety Determination

1. *U.S. population*—i. *Chronic risk*. Chronic risk was calculated using anticipated residue concentrations from all current and proposed uses of hexythiazox and assuming that 100% of each crop is treated. Dietary exposure of the general U.S. population was equivalent to 0.7% of the RfD. Exposure of the most heavily exposed subgroup, non-nursing infants, was equivalent to 3.9% of the RfD.

ii. *Oncogenic risk*. Oncogenic risk was evaluated using anticipated residue concentrations and taking into account the percent of crop known or expected to be treated. Lifetime oncogenic risk for the U.S. population was calculated to be 4.5 x 10-7.

iii. *Acute risk*. An estimate of acute risk with this compound has not been conducted since no acute reproductive or developmental effects have been observed.

2. *Infants and children*. In assessing the potential for additional sensitivity of infants and children to residues of hexythiazox, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

No developmental or reproductive effects have been observed in any study with hexythiazox. The lowest acute NOEL was 2,400 ppm in the diet (200 mg/kg/day), the HDT, in the 2-generation rat reproduction study. In the rat developmental study, the maternal and fetotoxic NOEL was 240 mg/kg/day and the developmental NOEL was 2,160 mg/kg/day, the HDT. In the rabbit developmental study, the maternal and developmental NOEL was 1,080 mg/kg/day, the HDT.

Taking into account current toxicological data requirements, the database for hexythiazox relative to prenatal and postnatal effects is complete. In the rat developmental study, the NOELs for maternal toxicity and fetotoxicity were the same, which suggests that there is no special prenatal sensitivity in the absence of maternal toxicity. Furthermore, the lowest developmental or reproductive NOEL is two orders of magnitude higher than the chronic NOEL on which the RfD is based. It is concluded that there is a reasonable certainty of no harm to infants and children from aggregate exposure to hexythiazox residues.

F. International Tolerances

Codex MRLs of 0.5 mg/kg for residues of hexythiazox in strawberries and apples have been established. The U.S. tolerance proposals are somewhat at variance with the Codex MRLs because they are based upon different preharvest intervals. Also, it is believed that the U.S. proposed tolerance levels allow for a greater margin of safety than the Codex MRLs. There are no Codex MRLs for the other commodities in this petition. There are no Canadian or Mexican MRLs for hexythiazox. (Beth Edwards).

3. Interregional Research Project

PP 7E4833

EPA has received a pesticide petition (PP 7E4833) from the Interregional Research Project Number 4 (IR-4), proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for residues of the herbicide glyphosate [N-phosphonomethyl)glycine] in or on the raw agricultural commodities (RACs) durian at 0.2 ppm, mangosteen at 0.2 ppm, and rambutan at 0.2 ppm. Durian, mangosteen, and rambutan are tree fruits which are grown commercially in Hawaii and Puerto Rico.

EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition. This notice includes a summary of the petition prepared by Monsanto Agricultural Group (MAG), the registrant.

A. Residue Chemistry

1. *Plant metabolism*. The nature of the residue in plants and animals is adequately understood. The residue to be regulated is the parent glyphosate.

2. *Analytical method*. There is a practical analytical method for detecting and measuring levels of glyphosate in or on food with a limits of detection (0.05 ppm) that allows monitoring of food with residues at or above the levels set in these tolerances. EPA has provided information on this method to FDA.

3. *Magnitude of residues*. The proposed use for glyphosate is for orchard floor treatment. The registrant referenced extensive experience and data with glyphosate in/on tree fruit and nuts crops which show that when orchard floor applications are made, no detectable residues of the herbicide are recovered in the harvested fruit. Based on these data Monsanto expects no detectable residues of glyphosate in durian, mangosteen or rambutan when glyphosate is applied in a similar manner.

Tolerances for the combined residues of glyphosate and its metabolite, aminomethylphosphonic acid (AMPA), have been established at 0.2 ppm on a number of tree fruit and nuts, as well as a variety of tropical fruit: acerola, atemoya, avocado, banana, breadfruit, canistel, carambola, cherimoya cocoa beans, coconuts, dates, figs, genip, jaboticaba, jackfruit, longan, lychee,

mango, mayhaw, passion fruit, persimmon, pomegranate, sapodilla, sapote, soursop, sugar apple and tamarind. Any secondary residues occurring in milk, eggs, meat, fat, liver and kidney of cattle, goats, horses, hogs, poultry and sheep are covered by existing tolerances.

The Agency's Health Effects Division - Metabolism Committee has determined that AMPA should be dropped from the tolerance expression. Tolerances that are the subject of this notice are based solely on residues of glyphosate.

B. Toxicological Profile

1. *Acute toxicity*. Results from an acute oral study in rats show a combined lethal dose $(LD)_{50}$ for glyphosate of >5,000 milligram/kilogram (mg/kg).

An acute dermal study in rabbit resulted in a LD_{50} of > 5,000 mg/kg.

The results of a primary eye irritation study in the rabbit showed severe irritation for glyphosate acid. However, glyphosate is normally formulated as one of several salts and eye irritation studies on the salts showed essentially no irritation.

A primary dermal irritation study showed essentially no irritation.

A primary dermal sensitization study showed no sensitization. Based on these data, Monsanto concludes that the acute toxicity and irritation potential of glyphosate is low.

2. *Genotoxicity*. A number of mutagenicity studies were conducted and were all negative. These studies included: chromosomal aberration *in vitro* (no aberrations in Chinese hamster ovary cells were caused with or without S9 activation); deoxyribonucleic acid(DNA) repair in rat hepatocyte; *in vivo* bone marrow cytogenic test in rats; rec-assay with B. subtilis; reverse mutation test with *S. typhimurium*; Ames test with *S. typhimurium*; and dominant-lethal mutagenicity test in mice.

Negative results were obtained when glyphosate was tested in a dominant-lethal mutation assay. While this assay was designed as a genetic toxicity test, agents that can affect male reproduction function will also cause effects in this assay. More importantly, the multi-generation reproduction study in rodents is a complex study design which measures a broad range of endpoints in the reproductive system and in developing offspring that are sensitive to alterations by chemical agents. Glyphosate has been tested in two separate multi-generation studies and each time the results demonstrated that glyphosate is not a reproductive toxin.

3. *Reproductive and developmental toxicity*. An oral developmental toxicity study with rats given doses of 0, 300, 1,000 and 3,500 milligram/kilogram/day (mg/kg/day) with a maternal no-observed-effect level (NOEL) of 1,000 mg/kg/day based on clinical signs of toxicity, body weight effects and mortality, and a fetal NOEL of 1,000 mg/kg/day based on reduced body weights and delayed sternebrae maturation at the highest dose tested (HDT) of 3,500 mg/kg/day.

An oral developmental toxicity study with rabbits given doses of 0,75, 175 and 350 mg/kg/day with a maternal of NOEL of 175 mg/kg/day based on clinical signs of toxicity and mortality, and a fetal NOEL of 350 mg/kg/day based on no developmental toxicity at any dose tested.

A 3-generation reproduction study with rats fed dosage levels of 0, 3, 10 and 30 mg/kg/day with a NOEL for systemic and reproductive/developmental parameters of 30 mg/kg/day based on no adverse effects noted at any dose level.

A 2-generation reproduction study with rats fed dosage levels of 0, 100, 500 and 1,500 mg/kg/day with a NOEL for systemic and developmental parameters of 500 mg/kg/day based on body weight effects, clinical signs of toxicity in adult animals and decreased pup body weights, and a reproductive NOEL of 1,500 mg/kg/day.

4. *Subchronic toxicity*. A 90-day feeding study in mice fed dosage levels of 0, 5,000, 10,000 and 50,000 with a NOEL of 10,000 ppm based on body weight effects at the high dose.

A 90-day feeding study in rats fed dosage levels of 0, 1,000, 5,000 and 20,000 ppm with a NOEL of 20,000 ppm based on no effects even at the HDT.

A 90-day feeding study in dogs given glyphosate, via capsule, at doses of 0, 200, 600 and 2,000 mg/kg/day with a NOEL of 2,000 mg/kg/day based on no effects even at the HDT.

5. *Chronic toxicity*. The reference dose (RfD) for glyphosate based on maternal effects in a developmental study with rabbits (NOEL of 175 milligram/killogram/body weight day (mg/kg/bwt/day)) and using a hundred-fold safety factor is calculated to be 2.0 mg/kg/bwt/day.

The EPA Carcinogenicity Peer Review Committee has classified glyphosate in Group E (evidence of non-carcinogenicity for humans), based upon lack of convincing carcinogenicity evidence in adequate studies in two animal species. There was no evidence of carcinogenicity in an 18-month feeding study in mice and a 2 year feeding study in rats at the dosage levels tested (DLT). The doses tested were adequate for identifying a cancer risk.

A mouse carcinogenicity study with mice fed dosage levels of 0, 150,750 and 4,500 mg/kg/day with a NOEL of 750 mg/kg/day based on body weight effects and microscopic liver changes at the high dose. There was no carcinogenic effect at the HDT of 4,500 mg/kg/day.

A 12-month oral study in dogs given glyphosate, via capsule, at doses of 0, 20, 100 and 500 mg/kg/day with a NOEL of 500 mg/kg/day based on no adverse effects at any dose level.

A 24-month chronic/feeding carcinogenicity study with rats fed dosage levels of 0, 89, 362 and 940 mg/kg/day (males) and 0, 113, 457 and 1,183 mg/kg/day (females) with a systemic NOEL of 362 mg/kg/day based on body weight effects in the female and eye effects in males. There was no carcinogenic response at any dose level.

A 26-month chronic/feeding carcinogenicity study with rats fed dosage levels of 0, 3, 10 and 31 mg/kg/day (males) and 0, 3, 11 and 34 mg/kg/day (females) with a systemic NOEL of 31 mg/kg/day (males) and 34 mg/kg/day (females) based on no carcinogenic or other adverse effects at any dose level.

Monsanto believes that these data support their conclusion that glyphosate does not produce adverse reproductive effects and is not a developmental toxin, mutagen, carcinogen or a neurotoxin.

6. *Animal metabolism*. Animal metabolism data were not submitted with this petition. However, Monsanto believes that the treated commodities are not fed to animals, therefore, there will be no residues transferred to meat, milk, poultry, or eggs.

C. Aggregate Exposure

1. *Dietary exposure—Food*. For purposes of assessing the potential dietary exposure, Monsanto has estimated aggregate exposure based on the tolerances for glyphosate on jackfruit, sugar apple and lychee, all with established 0.2 ppm tolerances. As the consumption of durian, mangosteen and rambutan is so limited, the theoretical maximum residue contribution (TMRC) calculations were based on similar or related tropical fruit: durian and jackfruit are similar in size, with thick rinds and similar growth habit; mangosteen and sugar apple fruit are also similar in size and growth habit: and rambutan and lychee are from the same botanical family, the Sapindaceae. The fruit are not fed to animals, therefore, there will be no exposure of humans to residues transferred to meat, milk, poultry, or eggs. Other potential sources of exposure of the general population to residues of pesticides are

residues in drinking water and exposure from non-occupational sources.

Based on the available acute toxicity data, Monsanto believes that glyphosate does not pose any acute dietary risks.

2. *Drinking water*. A Maximum Concentration Level (MCL) has been established for residues of glyphosate in drinking water at 0.7 mg/l since glyphosate is approved for direct application to water. The MCL represents the level at which no known or anticipated adverse health effects occur, allowing for an adequate margin of safety (MOE), and is based on the RfD.

Monsanto reports that glyphosate adsorbs strongly to soil and is not expected to move vertically below the 6-inch soil layer; residues are expected to be immobile in soil. Glyphosate is readily degraded by soil microbes to AMPA, which is degraded to carbon dioxide. Monsanto believes that glyphosate and AMPA are not likely to move to ground water due to their strong adsorptive characteristics. However, due to its aquatic use patterns and through erosion, glyphosate does have the potential to enter surface waters, where, according to Monsanto, it will adsorb to sediment and undergo microbial degradation.

3. *Non-dietary exposure*. Exposure (non-occupational) of the general population to glyphosate is expected based on the currently-registered uses; however, due to the low acute toxicity and lack of other toxicological concerns, Monsanto believes that the risk posed by non-occupational exposure (NOE) to glyphosate is minimal.

D. Cumulative Effects

Because the existing data base is insufficient to fully assess cumulative toxic effects that may be caused by glyphosate along with other chemical compound(s) that may share a common mechanism of toxicity, Monsanto believes that any consideration of such an analysis of toxicity is inappropriate at this time.

E. Safety Determination

1. *U.S. population*. The TMRC for existing, published tolerances for glyphosate is 0.021460 mg/kg/bwt/day or 1.0% of the RfD for the overall U.S. population. Even using conservative exposure assumptions and substituting the more widely consumed jackfruit, sugar apple and lychee, there is not enough exposure to calculate a significant contribution to the TMRC. As the exposure from durian, mangosteen and rambutan would be even less, the aggregate exposure of these three fruits will not add to the RfD for the overall U.S. population. EPA generally has no concern for exposures below 100% of the RfD. Therefore, based on the completeness and reliability of the toxicity data and the conservative exposure assessment, Monsanto concludes that there is a reasonable certainty that no harm will result from aggregate exposure to residues of glyphosate, including all anticipated dietary exposure and all other non-occupational exposures.

2. *Infants and children*. In assessing the potential for additional sensitivity of infants and children to residues of glyphosate, data were considered from developmental toxicity studies in the rat and rabbit and multi-generation reproduction studies in rats.

No birth defects were observed in the offspring of rats given glyphosate by gavage at dose levels of 0, 300, 1,000, and 3,500 mg/kg/day on days 6 through 19 of gestation. The NOEL for this study was 1,000 mg/kg/day based on maternal and developmental toxicity observed at the HDT, 3,500 mg/kg/day. The high-dose in this study was 3.5 times higher than the limit dose that is currently required by the guidelines.

No birth defects were observed in the offspring of rabbits given glyphosate by gavage at dose levels of 0, 75, 175, and 350 mg/kg/day on days 6 through 27 of gestation. The NOEL for this study is considered to be 175 mg/kg/day based on maternal toxicity at the high-dose of 350 mg/kg/day. Because no developmental toxicity was observed at any dose level, the developmental NOEL is considered to be 350 mg/kg/day.

Male and female rats were fed glyphosate at dose levels of 0, 3, 10, and 30 mg/kg/day every day throughout the production of three successive generations. No adverse treatment-related effects on reproduction were observed. Because no toxicity was noted even at the HDT, a second reproduction study at higher dose levels (HDLs) was performed and is described below.

Male and female rats were fed glyphosate at dose levels of 0, 100, 500, and 1,500 mg/kg/day every day throughout the production of two successive generations. Reduced body weights and soft stools occurred at 1,500 mg/kg/day (3% of the diet); therefore, the systemic NOEL is considered to be 500 mg/kg/day. Glyphosate did not affect the ability of rats to mate, conceive, carry or deliver normal offspring at any dose level.

3. *Reference dose*. The TMRC for existing, published and pending tolerances (including durian, mangosteen, and rambutan) for glyphosate range from 0.015 for nursing infants to 0.049 for non-nursing infants (0.8 to 2.5% of the RfD). EPA generally has no concern for exposures below 100% of the RfD. Therefore, based on the completeness and reliability of the toxicity data and the conservative exposure assessment, Monsanto concludes that there is a reasonable certainty that no harm will result from aggregate exposure to residues of glyphosate, including all anticipated dietary exposure and all other non-occupational exposures.

4. *Endocrine effects*. No known factors were identified in sub-chronic, chronic or developmental toxicity studies to indicate any endocrine-modulating activity by glyphosate.

F. International Tolerances

Codex maximum residue levels (MRLs) have not been established for residues of glyphosate on durian, mangosteen and rambutan. (Sidney Jackson).

[FR Doc. 98–22430 Filed 8–25–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–825; FRL–6023–4]

Notice of Filing of Pesticide Tolerance Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by the docket control number PF–825, must be received on or before September 25, 1998.

ADDRESSES: By mail submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Divison (7502C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under ''SUPPLEMENTARY INFORMATION.'' No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this document may be

claimed confidential by marking any part or all of that information as CBI. CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 119 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: The product manager listed in the table below:

Product Manager	Office location/telephone number	Address
Mark Dow	Rm. 214, CM #2, 703–305–5533; e-mail: Dow.mark@epamail.epa.gov.	1921 Jefferson Davis Hwy, Arlington, VA
Mary L. Waller	Rm. 247, CM #2, 703 308–9354; e-mail: waller.mary@epamail.epa.gov.	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment of regulations for residues of certain pesticide chemicals in or on various raw food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports grantinig of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice, as well as the public version, has been established for this notice of filing under docket control number PF–825 (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in ''ADDRESSES''.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number (PF–825) and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

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

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 10, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Below summaries of the pesticide petitions are printed. The summaries of the petitions were prepared by the petitioners. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. Novartis Crop Protection, Inc.

PP 7E4919 and 8F4978

EPA has received two pesticide petitions (7E4919 and 8F4978 from Novartis Crop Protection, Inc., 410 Swing Road, Greensboro, NC 27419 proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for residues of fludioxonil (4–(2,2-difluoro-1,3-benzodioxol-4-yl)-1*H*-pyrrole-3-carbonitrile) in or on the raw agricultural commodities: grapes at 1.00 parts per million (ppm) (7E4919); canola, peanuts, sunflowers, leafy vegetables except brassica (Crop Group 4); brassica leafy vegetables (Crop Group 5); legume vegetables (Crop Group 6); foliage of legume vegetables (Crop Group 7); fruiting vegetables (Crop Group 8); cucurbit vegetables (Crop Group 9); forage, fodder, and straw of cereal grains (Crop Group 16); grass , forage, fodder, and hay (Crop Group 17); and non-grass animal feeds (Crop Group 18) at 0.01 ppm; root and tuber vegetables (Crop Group 1); leaves of root and tuber vegetables (Crop Group 2); bulb vegetables (Crop Group 3); cereal grains (Crop Group 15); and herbs and spices (Crop Group 19) at 0.02 ppm; and cotton at 0.05 ppm (8F4978). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. The metabolism of fludioxonil is adequately understood for the purpose of the proposed tolerances. The residues of regulatory concern is the parent compound only. Metabolism in grapes involves oxidation of the pyrrole ring, primarily at the 2 and 5 positions. Subsequent opening of the oxidized pyrrole ring yields a metabolite with an amide plus a carboxylic acid group. This open-ring metabolite undergoes further oxidation at the bridgehead carbon followed by decarboxylation.

2. *Analytical method*. Novartis has developed and validated analytical methodology for enforcement purposes as part of the original corn, sorghum, and potato registrations. This method (Novartis Crop Protection Method AG-597B) has passed an Agency petition method validation (PMV) and is currently the enforcement method for potatoes. As part of this petition, Novartis has validated the method on the crops, fractions, and crop representatives of each crop grouping associated with this submittal. The method validation study (ABR-97060) contains recovery data on over eighty individual substrates. In most cases, a limit of quantitation of 0.01 ppm of fludioxonil was achieved. For several very difficult substrates, a limit of quantitation of 0.02 ppm and for cotton substrates a limit of 0.05 ppm were achieved.

For the analysis of grapes, grape juice, and wine the analytical Method AG-579B14 is proposed as the regulatory enforcement method. It has been validated by the Agency as an enforcement method for fludioxonil as AG-57912. In Method AG-579B14, whole fruit or wine samples are extracted with acetonitrile/water (90/10). Red and white grapes, as well as red and white wine samples were analyzed by this method. Recoveries (from 0.02 ppm to 1.0 ppm) ranged from 73% to 114% with a mean of 92% (n=15).

3. *Magnitude of residues*. Residue trials were conducted on cotton, wheat, radishes, lettuce, cucumbers and peas in the major crop growing areas of the U.S. in addition to residue trials previously on corn, sorghum, potatoes and grapes. Several trials were conducted on each crop. Rates were 0.5×, 1.0×, 2.5× and 5.0× of the proposed use rate on all crops except cotton where 1.0× and 3.0× were used.

From 6 cotton trials, field trash, gin trash, un-delinted seed and cottonseed fractions (hulls, meal, refined oil) were analyzed for fludioxonil at a method limit of determination of 0.05 ppm. At this level, no quantifiable residues of fludioxonil were found in any RAC or fraction at the proposed or the exaggerated (3×) rate.

Seven trials were completed on wheat. At a method limit of quantification of 0.02 ppm, no quantifiable residues of fludioxonil were observed in any RAC at the proposed treatment rate or at rates up to 5× the proposed treatment rate.

Five trials were completed on radishes which represents the absolute worst case for potential uptake of residues because of its very rapid growth and short growing season (27–55 days in these studies). Both root and top samples from all rates in all 5 trials were analyzed at a method limit of determination of 0.01 ppm. No fludioxonil residue (<0.01 ppm) was found in any root or top sample at the proposed use rate or at rates up to 5× the proposed use rate.

Mature lettuce leaves from all treatment rates of the 6 trials were analyzed for fludioxonil at a method limit of determination of 0.01 ppm. No fludioxonil residue was found in any lettuce sample at the proposed use rate or up to 5× the proposed use rate.

Cucumbers from all treatment rates in all 6 trials were analyzed at a method limit of determination of 0.01 ppm. No fludioxonil residue was found in any cucumber sample at the proposed use rate or up to 5× the proposed use rate.

Peas with pods from 5 trials were analyzed at a method limit of determination of 0.01 ppm. No fludioxonil residue was found in any pea sample at the proposed use rate or at rates up to 5× the proposed use rate.

Thirty (30) field trials were conducted under maximum label rates on ten varieties of grapes in the major grape-growing regions of France, Switzerland, and Chile. Grape residue data were generated from fifty (50) samples treated at the maximum use rate. Data on transfer to grape juice were generated from sixteen (16) samples and data concerning transfer to wine were based on twenty-six (26) samples. Raisin data were produced from sixteen (16) samples.

Supplemental data (including fifteen (15) decline curves) were generated using exaggerated rates (due to multiple applications) on 89 additional samples of whole fruit. Supplemental data were also provided on eight additional juice samples and on twelve additional wine samples. Raisin data on eight samples were also provided. These data demonstrate dose response, provide additional decline information, provide additional information on transfer to juice and wine, and show that residue data obtained from other grape-growing countries (Italy and South Africa) fully support the results obtained from France, Switzerland, and Chile. The raisin data also demonstrate no significant concentration of residues.

Analysis of mature grapes at harvest following a single foliar application of fludioxonil at 500 grams a.i./ha at flowering, up to the beginning of bunch closing, resulted in maximum whole fruit residues of 0.77 ppm. Similarly, analysis of grapes at harvest following two foliar applications of fludioxonil at 250 grams a.i./ha/application at flowering and again at stages up to fruit softening resulted in maximum whole fruit residues of 0.33 ppm. These results suggest that the application at flowering does not contribute to the residue in fruit. The data fully support an import tolerance of 1 ppm on grapes imported into the U.S..

The data support a 60–day pre-harvest interval (PHI) as listed on the GEOXE label for France. The data also support Chilean, Slovenian, and Bosnian PHIs of 15–days, 7–days (berries) to 21–days (applications to the vine), and 21–days, respectively for the combination product, Switch . There is no PHI on the Swiss Switch label, but the second application is limited by the label to mid-August, which results in a PHI greater than 21 days.

No significant concentration of residues was observed in grape juice, wine, or raisins. Thus, tolerances are not required for these processing fractions.

B. Toxicological Profile

1. *Acute toxicity*. Fludioxonil and end use formulations have very low toxicity to the mammalian species by the oral, dermal, or inhalation route. The dose needed to kill 50% of animals was calculated to be greater than 5,000 mg/kg (oral), 2,000 mg/kg (dermal), and 2.6 mg/L (inhalation) in these studies. The eye and skin irritations seen in animals upon acute exposure indicate that no more than transient and slight irritation. No sensitizing potential was noted with either the technical material or the formulated product.

2. *Genotoxicity*. Mutagenicity potential of fludioxonil was tested in several studies. In the Chinese hamster ovary cell assay, some clastogenic and polyploidogenic effects were seen at or near the precipitating concentration of the test substance. However, results were negative in the Ames assay, Chinese hamster V79 cell assay, hepatocyte DNA repair assay, rat hepatocyte micronucleus test, mouse bone marrow test, and Chinese hamster bone marrow test. A dominant lethal test conducted in the mouse was also negative.

3. *Reproductive and developmental toxicity*. Fludioxonil is not a teratogen and does not affect reproduction or fertility. No fetal toxicity was observed even at the highest dose tested in both the rabbit (300 mg/kg) and the rat (1,000 mg/kg) teratogenicity studies. In a two–generation rat reproduction study, a reduction of pup body weight was seen at the highest feeding level of 3,000 ppm in the presence of maternal toxicity. The NOEL was 300 ppm for both maternal and fetal toxicity in this study.

4. *Subchronic toxicity*. In a 90–day dietary toxicity study the kidney and liver have been identified as target organs. In a subchronic study in rats, the NOEL was 10 ppm based on liver toxicity. In a subchronic study in mice, the NOEL was 100 ppm based on blue urine (a metabolite); the maximum tolerated dose was 7,000 ppm. In a subchronic study in dogs, the NOEL was 200 ppm based on clinical observations; the maximum tolerated dose was 8,000 ppm.

5. *Chronic toxicity*. In an 1–year chronic toxicity study in dogs, the NOEL was 100 ppm based on body weight effects; the maximum tolerated dose was 8,000 ppm.

Two 18-month dietary oncogenicity studies were performed in mice. While a NOEL of 1,000 ppm was clearly established in the first study, its highest feeding level (3,000 ppm) did not meet the criteria for a maximum tolerated dose. In the second 18-month study, the

maximum tolerated dose was determined to be 5,000 ppm based on kidney effects. There were no treatment-related increases in neoplasia at any dose level tested in either study.In a combined chronic toxicity/oncogenicity study in rats, the incidence of liver tumors in top-dose females (3,000 ppm) was marginally higher than the concurrent controls but within historical control range. The NOEL for chronic toxicity was 1,000 ppm in both sexes.

6. *Animal metabolism*. The metabolism of fludioxonil in rats is adequately understood. The compound is rapidly absorbed and excreted. In rats, excretion in the feces is greater than excretion via the urine. Metabolism involves primarily oxidation at the 2 position of the pyrrole ring, with minor amounts of oxidation at the 5 position of the pyrrole ring and the 4 position of the phenyl ring. All of these oxidized metabolites are conjugated with glucuronic acid and sulfuric acid and then rapidly eliminated.

7. *Metabolite toxicology*. The residues of concern for tolerance setting purposes is the parent compound. Consequently, there is no additional concern for toxicity of metabolites. In grapes, fludioxonil is metabolized only to a limited extent. The metabolites thus formed have also been found in the rat. The major metabolites are those that result from the oxidation of the pyrrole ring and they are rapidly excreted upon conjugation. Consequently, there is no additional concern for toxicity of any metabolites in grapes.

8. *Endocrine disruption*. Fludioxonil does not belong to a class of chemicals known for having adverse effects on the endocrine system. No estrogenic effects have been observed in the various short and long term studies conducted with various mammalian species.

C. Aggregate Exposure

1. *Dietary exposure* —i. *Food*. For purposes of assessing the potential dietary exposure under the proposed tolerance, Novartis has estimated aggregate exposure based on the theoretical maximum residue concentration (TMRC) from the tolerance level of 1.0 ppm in or on grapes and from the established or proposed tolerance levels. The TMRC is a worse case estimate of dietary exposure since it is assumed that 100% of all crops for which tolerances are proposed or established are treated and that pesticide residues are present at the tolerance levels.

Fludioxonil's current registered use for seed treatment on corn and sorghum seeds does not contribute to dietary exposure because there are no detectable residues. EPA has ruled that these uses are food uses not requiring tolerances. For potato seed treatment, a tolerance of 0.02 ppm has been set. In conducting this exposure assessment, very conservative assumptions have been used (i.e., 100% of potatoes and grapes will contain fludioxonil residues at tolerance levels), resulting in an overestimate of human exposure.

ii. *Drinking water*. Exposure of the general population to residues of fludioxonil from drinking water is considered unlikely for two reasons: (1) the import tolerance for grapes would not lead to the exposure of the general population to residues of pesticides in drinking water; and (2) the movement of fludioxonil into groundwater is highly unlikely due to its chemistry. In addition, the EPA has not established a Maximum Contaminant Level for residues of fludioxonil in drinking water.

2. *Non-dietary exposure*. Non-occupational exposure for fludioxonil has not been calculated since the current registration for fludioxonil is limited to commercial crop production. Since the chemical is not used in or around the home, Novartis considers the potential for non-occupational exposure to the general population to be non-existent.

D. Cumulative Effects

Consideration of a common mechanism of toxicity is not appropriate at this time since Novartis is unaware of any reliable information that indicates that toxic effects produced by fludioxonil would be cumulative with those of any other chemical compounds. Consequently, Novartis is considering the potential risks of only fludioxonil in its aggregate exposure assessment.

E. Safety Determination

1. *U.S. population*. Based on the available chronic toxicity data, EPA has set the Reference Dose (RfD) for fludioxonil at 0.03 mg/kg/day. This RfD is based on a 1-year feeding study in dogs with a No Observed Effect-Level (NOEL) of 3.3 mg/kg/day (100 ppm) and an uncertainty factor of 100. No additional uncertainty factor was judged to be necessary as body weight was the most sensitive indicator of toxicity in that study.

2. *Infants and children*. Using GENEEC water and aggregate exposures (water plus diet) 5.65% and 5.75% of the RfD were obtained for the most sensitive sub-populations, non-nursing infants and children (1–6 years), respectively. Aggregate exposure (water plus diet) utilizing the summed SCI-GROW estimated water concentrations (turf and seed treatment uses) resulted in an overall exposure of 1.72% of the RfD for the U.S. population. Aggregated exposure (water plus dietary) to non-nursing infants and children (1–6 years) was 3.49% and 4.69% of the RfD, respectively, using the combined turf and seed treatment water estimates. It should be noted that the aggregate exposure assessment greatly overestimates exposure since both GENEEC and SCI-GROW models generate extremely conservative and unrealistic water concentrations. In addition, all non-detected residues were assumed to be at the limit of quantitation and no market share adjustment was made. Therefore, a more than reasonable certainty exists that no harm will result from exposure to fludioxonil residues through food and water consumption if the proposed uses are registered.

F. International Tolerances

There are no Codex maximum residue levels established for residues of fludioxonil. (Mary L. Waller)

2. Rohm and Haas Company

PP 8F4994

EPA has received a pesticide petition (PP 8F4994) from Rohm and Haas Company, 100 Independence Mall West, Philadelphia, PA 19106-2399 proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of Triazamate (Acetic acid, [[1-[(dimethylamino)carbonyl]-3–(1,1-dimethylethyl)-1*H*–1,2,4-triazol-5-yl]-,ethyl ester) in or on the raw agricultural commodity leafy green vegetables (crop subgroup 4A) at 2.5 parts per million (ppm); leaf petioles (crop subgroup 4B) at 0.6 ppm; head and stem Brassica (crop subgroup 5A) at 12.5 ppm and leafy Brassica (crop subgrop 5B) at 5.75 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. The metabolism of triazamate in plants (apples, potatoes, sugar beets) is adequately understood for the purpose of these tolerances. None of these crops are fed to animals and livestock metabolism studies are

not required. The metabolism of triazamate involves oxidative demethylation of the carbamoyl group. Parent compound is rapidly metabolized and is either not found or found at trace levels in plants. The majority of the total dosage is present as other non-cholinesterase inhibiting metabolites whose structures do not contain the dimethylcarbamoyl moiety. Tolerances for residues of triazamate should be expressed as the total residue from triazamate and its only cholinesterase-inhibiting metabolite RH-0422.

2. *Analytical method*. An analytical method employing liquid chromatography followed by two-stage mass spectroscopy detection has been developed and validated for residues of triazamate and RH-0422 in leafy and cole crop vegetables. The method involves extraction by blending with solvents and purification of the extracts by solid phase extraction chromatography. The limit of quantitation of the method is 0.01 ppm for both analytes.

3. *Magnitude of residues*. A total of 58 field residue trials in geographically representative regions of the U.S. was conducted with a 50% wettable powder formulation in the representative crops for the leafy and cole crop vegetable crop groups. Three or four applications were made at 0.25 lb. a.i./acre. Samples were harvested at 7 days after the last application. The highest detected value (sum of the residues of triazamate and RH-0422) in an individual sample was 0.63 ppm in head lettuce, 1.62 ppm in leaf lettuce, 2.23 ppm in spinach, 0.54 ppm in celery, 11.5 ppm in broccoli, 4.86 in cabbage and 5.54 ppm in mustard greens.

B. Toxicological Profile

1. *Acute toxicity*. Triazamate is a moderately toxic cholinesterase inhibitor belonging to the carbamate class. Triazamate Technical was moderately toxic to rats following a single oral dose (LD_{50} = 50–200 mg/kg), and after a 4–hr inhalation exposure (LC_{50} value of > 0.47 mg/L); and was minimally to slightly toxic to rats following a single dermal dose (LD_{50} >5,000 mg/kg). In a guideline acute neurotoxicity study with triazamate in the rat, the NOEL for clinical signs was 5 mg/kg based on the observation of cholinergic signs in 1 of 10 male rats at 25 mg/kg. Triazamate was practically non-irritating to the skin, moderately irritating to eyes in rabbits and did not produce delayed contact hypersensitivity in the guinea pig.

2. *Genotoxicty*. Triazamate is not mutagenic or genotoxic. Triazamate Technical was negative (non-mutagenic) in an Ames assay with and without hepatic enzyme activation. Triazamate Technical was negative in a hypoxanthine guanine phophoribosyl transferase (HGPRT) gene mutation assay using Chinese hamster ovary (CHO) cells in culture when tested with and without hepatic enzyme activation. In isolated rat hepatocytes, triazamate did not induce unscheduled DNA synthesis (UDS) or repair when tested up to the maximum soluble concentration in culture medium. Triazamate did not produce chromosome aberrations in an in vitro assay using Chinese hamster ovary cells (CHO) or an in vivo mouse micronucleus assay.

3. *Reproductive and developmental toxicity*. In a developmental toxicity study in rats with Triazamate Technical, the no-observed-effect-level (NOEL) for developmental toxicity was 64 mg/kg (highest dose tested) (HDT). The NOEL for maternal toxicity was 16 mg/kg based on clinical signs of cholinergic toxicity at 64 mg/kg.

In a developmental toxicity study in rabbits with Triazamate Technical, the NOEL for developmental toxicity was 10 mg/kg (HDT). The NOEL for maternal toxicity was 0.5 mg/kg based on clinical signs and decreased body weight at 10 mg/kg.

In a two-generation reproduction study in rats with Triazamate Technical, the NOEL for reproductive effects was 1,500 ppm (101 and 132 milligrams/kilograms/day (mg/kg/day) for males and females, respectively; HDT). The NOEL for parental toxicity was 10 ppm (0.7 and 0.9 mg/kg/day for males and females, respectively) based on decreased plasma and RBC cholinesterase activities at 250 ppm (17 and 21 mg/kg/day for males and females, respectively).

The acceptable developmental studies (prenatal developmental toxicity studies in rats and rabbits and two-generation reproduction study in rats) provided no indication of increased sensitivity of rats or rabbits to in utero and or post-natal exposure to triazamate. Triazamate Technical is not a developmental or reproductive toxicant.

4. *Subchronic toxicity*. In subacute and subchronic dietary toxicity studies, Triazamate Technical produced no evidence of adverse effects other than those associated with cholinesterase inhibition:

i. In a 90–day dietary toxicity study with Triazamate Technical in the rat, the NOEL for blood cholinesterase inhibition was 50 ppm (3.2 and 3.9 mg/kg/day for males and females, respectively), based on decreases in plasma and RBC cholinesterase activities at 500 ppm (32 and 39 mg/kg/day for males and females, respectively). The NOEL for brain cholinesterase inhibition and/or clinical signs was 500 ppm (32 and 39 mg/kg/day for males and females respectively) based on decreased brain cholinesterase activity and decreased body weight gain and feed consumption at 1,500 ppm (93 and 117 mg/kg/day for males and females, respectively).

ii. In a guideline subchronic neurotoxicity study (90–day dietary feeding) with Triazamate Technical in the rat, the NOEL for blood cholinesterase inhibition was 10 ppm (0.6 and 0.7 mg/kg/day for males and females, respectively), based on reductions in plasma and RBC cholinesterase activities at 250 ppm (14.3 and 17.1 mg/kg/day for males and females, respectively). The NOEL for brain cholinesterase inhibition and/or clinical signs was 250 ppm (14.3 and 17.1 mg/kg/day for males and females respectively) based on decreases in brain cholinesterase activity and cholinergic signs at 1,500 ppm (87 and 104 mg/kg/day for males and females, respectively).

iii. In a 90–day dietary toxicity study with Triazamate Technical in the mouse, the NOEL for blood cholinesterase inhibition was 2 ppm (0.4 and 0.5 mg/kg/day for males and females, respectively) based on decreases in plasma cholinesterase activity at 25 ppm (4 and 6 mg/kg/day for males and females, respectively). The NOEL for brain cholinesterase and/or clinical signs was 250 ppm (46 and 67 mg/kg/day for males and females, respectively) based on decreases in brain cholinesterase and decreases in body weight and feed consumption at 1,000 ppm (164 and 222 mg/kg/day for males and females, respectively).

iv. In a 90–day dietary toxicity study with Triazamate Technical in the dog, the NOEL for blood cholinesterase inhibition was 1 ppm for males only (0.03 mg/kg/day) based on decreases in plasma cholinesterase at 10 ppm (0.3 mg/kg/day). The dose of 1 ppm was a lowest-observed-effect level (LOEL) for females based on the presence of decreased plasma cholinesterase activity (24%). The NOEL for clinical signs was 10 ppm (0.3 mg/kg/day for males and females) based on a few clinical signs at 100 ppm (3.1 mg/kg/day for males and females).

v. In a 21–day dermal toxicity study with Triazamate Technical, the NOEL blood and brain cholinesterase inhibition was 10 mg/kg based on decreases in plasma, RBC and brain cholinesterase activities at 100 mg/kg.

5. *Chronic toxicity* — i. *Rat, mouse and dog studies.* In chronic dietary toxicity studies, Triazamate Technical produced no evidence of adverse effects other than those associated with cholinesterase inhibition and was not oncogenic in the rat and mouse.

In a combined chronic dietary toxicity/oncogenicity study (24 months) in rats with Triazamate Technical, no evidence of oncogenicity was observed at doses up to 1,250 ppm (62.5 mg/kg/day for males and females; HDT). The NOEL for blood cholinesterase inhibition was 10 ppm (0.5 and 0.6 mg/kg/day for males and females respectively) based on decreases in plasma and RBC cholinesterase activity at 250 ppm (11.5 and 14.5 mg/kg/day in males and females, respectively). The NOEL for brain cholinesterase inhibition and/or clinical signs was 250 ppm (11.5 and 14.5 mg/kg/day in males and females, respectively) based on clinical signs and decreases in brain cholinesterase inhibition at 1,250 ppm (62.5 mg/kg/day for males and females).

In a combined chronic dietary toxicity study (18 months) in mice with Triazamate Technical, no evidence of oncogenicity was observed at doses up to 1,000–1,500 ppm (130–195 mg/kg/day for males and females; HDT). The NOEL for blood cholinesterase inhibition was 1 ppm (0.1 and 0.2 mg/kg/day for males and females, respectively) based on decreased plasma cholinesterase activity at 50 ppm (6.7 and 8.4 mg/kg/day for males and females, respectively). The NOEL for brain cholinesterase inhibition and/or clinical signs was 50 ppm (6.7 and 8.4 mg/kg/day for males and females, respectively) based on decreased brain cholinesterase activity and other evidence of systemic toxicity at 1,000–1,500 ppm (130–195 mg/kg/day for males and females).

In a chronic dietary toxicity study (12 months) in dogs with Triazamate Technical, the NOEL for blood cholinesterase inhibition was 0.9 ppm (0.023 and 0.025 mg/kg/day for males and females, respectively) based on decreased plasma cholinesterase activity at 15.0 ppm (0.42 mg/kg/day for both males and females). The NOEL for brain cholinesterase inhibition was 15.0 ppm (0.42 mg/kg/day for both males and females) based on decreased brain cholinesterase activity at 150 ppm (4.4 and 4.7 mg/kg/day for males and females, respectively).

ii. *Human Studies.* A randomized double-blind, ascending dose study was conducted in human male volunteers to determine the safety and tolerability of Triazamate Technical and to establish a NOEL for adverse clinical toxicity. Single doses of Triazamate Technical, when administered orally by capsule to healthy male subjects, were tolerated up to and including a dose of 1.0 mg/kg. The 3.0 mg/kg dose of triazamate was not clinically tolerated well. Clinically, the NOEL was 0.3 mg/kg of triazamate based on minimal clinical signs at 1.0 mg/kg that were considered possibly related to treatment. Transient decreases in plasma and RBC cholinesterase occurred at doses lower than the dose that elicited adverse clinical signs.

Using its Guidelines for Carcinogen Risk Assessment published September 24, 1986 (51 FR 33992), Rohm and Haas Company considers triazamate to be classified as a Group ''E,'' not a likely human carcinogen.

A Reference dose (RfD) of 0.01 mg/kg/day is proposed for humans, based on the clinical NOEL in the human study (0.3 mg/kg) and applying an Uncertainty Factor (UF) of 30. The dose of 0.3 mg/kg was the highest dose in humans that did not produce toxicologically significant adverse effects (i.e., signs of cholinergic toxicity) and is 10 times lower than a dose that produced unequivocal signs of cholinergic toxicity in man. In addition, the clinical NOEL in humans is comparable to the no-observable-adverse-effect level (NOAEL) of 0.42 mg/kg/day following chronic dosing in the dog, the most sensitive laboratory animal species. An Uncertainty Factor of 10 is applied to the clinical NOEL in humans to account for potential variability within humans with respect to sensitivity towards triazamate. An additional Uncertainty Factor of 3 is included, since at 0.03 mg/kg (i.e., 1/10th the dose that was a clinical NOEL) there was a transient but measurable depression in plasma cholinesterase in humans. Although a change in the plasma pseudo-cholinesterase (i.e., butyl-cholinesterase) is not toxicologically significant since this enzyme is not molecularly similar to acetyl-cholinesterase, the additional uncertainty factor of 3 establishes a reference dose at a level where a measurable response of any kind, irrespective of the toxicological significance of the finding, will not plausibly occur.

6. *Animal metabolism.* The absorption, distribution, excretion and metabolism of triazamate in rats, dogs and goats was investigated. Triazamate is rapidly absorbed when given orally (capsule or gavage) but slower following dietary intake. Peak blood levels following dietary administration were 10-fold lower than after gavage administration of an equivalent mg/kg/dose. Elimination is predominately by urinary excretion and triazamate does not accumulate in tissues. The metabolism of triazamate proceeds via ester hydrolysis and then a rapid stepwise cleavage of the carbamoyl group. The free acid, (RH-0422) is the only toxicologically significant metabolite, given that it contains the carbamoyl group. Other metabolites of triazamate, which are seen in other animal and plant metabolism studies, do not contain the carbamoyl group and do not produce cholinesterase inhibition.

7. *Metabolite toxicology.* Common metabolic pathways for triazamate have been identified in both plants (apple, potato, sugar beet) and animals (rat, goat, hen). The metabolic pathway common to both plants and animals involves oxidative demethylation of the carbamoyl group. Extensive degradation and elimination of polar metabolites occurs in animals such that residues are unlikely to accumulate in humans or animals exposed to these residues through the diet.

8. *Endocrine disruption.* The toxicology profile of triazamate shows no evidence of physiological effects characteristic of the disruption of mammalian hormones. In developmental and reproductive studies there was no evidence of developmental or reproductive toxicity. In addition, the molecular structure of triazamate does not suggest that this compound would disrupt the mammalian hormone system. Overall, the weight of evidence provides no indication that triazamate has endocrine activity in vertebrates.

C. Aggregate Exposure

1. *Dietary exposure.* A RfD of 0.01 mg/kg/day is proposed for humans, based on the clinical NOEL in the human study (0.3 mg/kg) and applying an Uncertainty Factor of 30.

2. *Food* — i. *Acute risk.* An acute dietary risk assessment (Dietary Exposure Evaluation Model , Novigen Sciences Inc., 1997) was conducted for triazamate using a Tier 3 Monte Carlo simulations approach using the distribution of residues for apples, pears, head and leaf lettuce, spinach, celery, broccoli, cabbage and mustard greens, the entire distribution of daily food consumption data for pome fruit and leafy and cole crop vegetables and adjustments for percent crop treated. The Margins of Exposure (MOEs) for the 95th percentile exposures were 270 for the U.S. population and 388 for the most sensitive sub-population, Children 1–6 years old. This indicates that acute dietary risk is acceptable because the MOE is greater than 30, and 30 is the appropriate Uncertainty Factor when

the assessment is based on a human clinical study.

ii. *Chronic risk*. Chronic dietary risk assessments (Dietary Exposure Evaluation Model , Novigen Sciences Inc., 1997) were conducted for triazamate using two approaches: (1) using a tolerance levels and assuming 100% of crop is treated, and (2) using anticipated residue concentration levels adjusted for projected market share or percentage of crop treated. The Theoretical Maximum Residue Contribution (TMRC) and Anticipated Residue Contribution (ARC) from these two scenarios represents 35.0% and 3.6%, respectively, of the RfD for the U.S. populution as a whole. The subgroup with the greatest chronic exposure is Children 1–6 years old for which the TMRC and ARC estimates represents 59.4% and 7.0%, respectively, of the RfD. The chronic dietary risks from these uses do not exceed EPA's level of concern.

3. *Drinking water*. Both triazamate and its cholinesterase-inhibiting metabolite RH-0422 are degraded rapidly in soil This rapid degradation has been observed in both laboratory and field studies and makes it highly unlikely that measurable residues of either compound would be found in ground or surface water when triazamate is applied according to the proposed label use directions.

4. *Non-dietary exposure*. Triazamate is not registered for either indoor or outdoor residential uses. Non-occupational exposure to the general population is therefore not expected and not considered in aggregate exposure estimates.

D. Cumulative Effects

The potential for cumulative effects of triazamate with other substances that have a common mechanism of toxicity was considered. It is recognized the triazamate, although structurally a pseudo-carbamate, exhibits toxicity similar to the carbamate class of insecticides, and that these compounds produce a reversible inhibition of the enzyme cholinesterase. However, Rohm and Haas Company concludes that consideration of a common mechanism of toxicity is not appropriate at this time since EPA does not have the methodology to resolve this complex scientific issue concerning common mechanisms of toxicity. Based on these points, Rohm and Haas Company has considered only the potential risks of triazamate and RH-0422 in its cumulative exposure assessment.

E. Safety Determination

1. *U.S. population*. The acute and chronic dietary exposures to triazamate and its metabolite from the proposed use on leafy and cole crop vegetables were evaluated. Exposure to triazamate and its toxicologically significant metabolite in or on pome fruit or leafy and cole crop vegetables does not pose an unreasonable health risk to consumers including the sensitive subgroup non-nursing infants. In Tier 3 acute analyses for the 95th percentile exposures, MOEs were 270 for the general U.S. population. Using the TMRC and assuming 100% of crop treated, the most conservative chronic approach, chronic dietary exposures represents 35.0% of the RfD for the U.S. population. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health.

Using the two conservative exposure assessments described above and taking into account the completeness and reliability of the toxicity data, Rohm and Haas Company concludes that there is a reasonable certainty that no harm will result from aggregate exposure to residues of triazamate and its toxicologically significant metabolite to the U.S. population.

2. *Infants and children*. In assessing the potential for additional sensitivity of infants and children to residues of triazamate, data from developmental toxicity studies in the rat and rabbit and two two–generation reproduction studies in the rat are considered. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA may apply an additional Uncertainty Factor for infants and children in the case of threshold effects to account for pre-and post- natal effects and the completeness of the toxicity database. Based on current toxicological data requirements, the toxicology database for triazamate relative to pre- and post-natal effects is complete. For triazamate, developmental toxicity was not observed in developmental studies using rats and rabbits. The NOEL for developmental effects in rats was 64 mg/kg/day and rabbits was 10 mg/kg/day. In the two–generation reproductive toxicity study in the rat, the reproductive/developmental toxicity NOEL was 101–132 mg/kg/day. These NOELs are 10–fold or higher than those observed for systemic toxicity, i.e., cholinesterase inhibition.

In Tier 3 acute dietary analyses for the 95th percentile exposures, MOEs were 388 for Children 1–6 years old. Using the TMRC and assuming 100% of crop treated, the most conservative chronic approach, chronic dietary exposures represents 59.4% of the RfD for Children 1–6 years old. Using the ARC and adjusted for an anticipated market share or percentage of crop treated, the chronic dietary exposure to this subgroup represents 7.0% of the RfD. Therefore Rohm and Haas Company concludes that there is a reasonable certainty that no harm will result from aggregate exposure to residues of triazamate and its toxicologically significant metabolite to infants and children.

F. International Tolerances

There are no approved CODEX maximum residue levels (MRLs) established for residues of triazamate. MRLs have been established for vegetables at 0.05 ppm in Italy, for sugar beets at 0.05 ppm in the Czech Republic and 0.15 ppm in the U.K., for potatoes at 0.02 ppm in France, for cabbage at 0.1 ppm in Hungary, and for peas at 0.05 ppm in the Czech Republic and 0.02 ppm in Hungary and for green peas at 0.05 ppm in Hungary. (Mark Dow)

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BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6152–3]

Settlement Under Section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA); In the Matter of Agate Lake Scrap Yard, Nisswa, Minnesota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Settlement of CERCLA section 107 Cost Recovery Matter.

SUMMARY: EPA is proposing to settle a cost recovery claim with two potentially responsible parties (PRPs) with regard to past costs at the Agate Lake Scrap Yard site (the Site) in Nisswa, Minnesota. The EPA is authorized under section 122(h) of the CERCLA to enter into this administrative settlement.

Response costs totaling $264,423 were incurred by EPA in connection with the remedial action at the Site. On July 25,

1997, EPA sent the two PRPs a demand for reimbursement of the EPA's past costs. The Settling Parties have agreed to pay $180,000 to settle EPA's claim for reimbursement of response costs related to the Site. The EPA is proposing to approve this administrative settlement because it reimburses EPA, in part, for costs incurred during its response activities at this Site.

DATES: Comments on this administrative settlement must be received by no later than September 25, 1998.

ADDRESSES: Written comments relating to this settlement, Docket Number V–W–98–C–476, should be sent to Brad J. Beeson, Associate Regional Counsel, U.S. Environmental Protection Agency, Region 5, Mail Code: C–14J, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

FOR FURTHER INFORMATION CONTACT: Copies of the Agreement and the Administrative Record for this Site are available at U.S. Environmental Protection Agency, Region 5, Superfund Division, Emergency Response Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590. It is strongly recommended that you telephone Mr. Jon Peterson at (312) 353–1264 before visiting the Region 5 Office.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601 et seq.

Dated: August 13, 1998.

William E. Muno,

Director, Superfund Division, Region 5.

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BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6152–2]

Section 319 Federal Consistency Guidance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability and request for comment.

SUMMARY: The Environmental Protection Agency (EPA) requests public comment on proposed guidance on implementation of the Federal consistency provisions established by sections 319(b)(2)(F) and (k) of the Clean Water Act (CWA) (33 U.S.C. 1329(b)(2)(F) and (k)). These Federal consistency provisions authorize each State to review Federal activities for consistency with the State nonpoint source management program. If the State determines that an application or project is not consistent with the goals and objectives of its nonpoint source management program and makes its concerns known to the responsible Federal agency, the Federal agency must make efforts to accommodate the State's concerns or explain its decision not to in accordance with Executive Order 12372.

The proposed Federal consistency guidance describes (a) the States' role in identifying Federal programs for consistency review, (b) the Federal obligation to accommodate the concerns of the States in accordance with Executive Order 12372, (c) the criteria and methods for reviewing Federal assistance programs and development projects for consistency with a State's nonpoint source management program, and (d) EPA's role in assisting States and Federal agencies with resolution of any conflicts which may arise. EPA has developed the draft guidance in close consultation with State and Federal agencies.

The Federal consistency provision provides a tool to promote communication and cooperation between State and Federal agencies for achievement of shared water quality goals. The purpose of the guidance is to support closer coordination among State and Federal agencies to improve implementation of nonpoint source management programs and more effectively protect water quality.

DATES: Written comment should be addressed to the person listed directly below by November 24, 1998.

ADDRESSES: Comments should be sent to Robert Goo, Assessment and Watershed Protection Division (4503F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, telephone (202) 260–7025 or by E-mail to goo.robert@epamail.epa.gov.

This document is available on the Internet at www.epa.gov/owow/NPS or contact Robert Goo at (202) 260–7025 to request a copy.

FOR FURTHER INFORMATION CONTACT: Robert Goo at (202) 260–7025.

SUPPLEMENTARY INFORMATION:

I. Background

Nonpoint source pollution is water pollution caused by rainfall or snowmelt moving over and through the ground and carrying natural and human-made pollutants into lakes, rivers, streams, wetlands, estuaries, coastal waters, and ground water. Atmospheric deposition and hydrologic modification are also sources of nonpoint pollution.

Across the United States, States have reported that nonpoint source pollution is the most pervasive cause of water quality problems. See the *National Water Quality Inventory: 1996 Report to Congress,* available from EPA, at NCEPI, 11029 Kenwood Road, Bldg. 5, Cincinnati, OH, 45242. For further information, visit EPA's Office of Water 305(b) website at http://www.epa.gov/305b. Other information corroborates this finding. See the *Index of Watershed Indicators,* available online at http://www.epa.gov/surf. EPA and the States are accelerating their efforts to prevent and reduce nonpoint source pollution. See the *Clean Water Action Plan* at http://www.epa.gov/cleanwater.

Congress enacted section 319 of the Clean Water Act in 1987, establishing a national program to control nonpoint sources of water pollution. Under section 319, States address nonpoint pollution by developing nonpoint source assessment reports that identify nonpoint source pollution problems and the nonpoint sources responsible for the water quality problems. States then develop management programs to control nonpoint source pollution. All States now have EPA-approved nonpoint source assessment reports and management programs and are implementing their management programs.

Federal agencies have key roles to play in helping to control nonpoint source pollution. In recognition of this, Congress included in section 319 a provision to promote the consistency of Federal assistance programs and development projects with State nonpoint source management programs. Section 319 provides for State review of Federal assistance applications and development projects to determine their consistency with the requirements, goals, policies and other provisions of the State's nonpoint source management program. Use of the Federal consistency provision will provide States and Federal agencies the opportunity to improve nonpoint source programs through mutual cooperation and coordination of activities.

The guidance that EPA is now proposing to publish on implementation of the Federal consistency provisions is intended to help States and EPA follow through on mutual commitments made between States and EPA to take steps to strengthen the linkage between State nonpoint source programs and Federal programs and activities through section 319. EPA intends to work with States and Federal agencies to support implementation of the section 319 Federal consistency provision. EPA will conduct educational and liaison activities, provide technical assistance to State and Federal agencies, and, if

requested, facilitate State-Federal negotiations and assist with mediation and conflict resolution. EPA will also work with Federal agencies to support their pollution abatement and environmental protection efforts and their efforts to ensure that their programs and policies are compatible with the Clean Water Act, the States' water quality standards and program implementation goals.

II. Scope of the Proposed Guidance

The proposed guidance will cover the following topics:

(1) *Statutory Authority:* Authority for the States' nonpoint source Federal consistency review is found in two provisions in section 319 of the Clean Water Act. Section 319(b)(2)(F) directs States to list Federal assistance applications and development projects which they would like to review for consistency in their State management program. Section 319(k) directs Federal Agencies to ''accommodate'' the concerns of the State according to EO 12372.

(2) *Executive Order 12372:* Executive Order 12372 specifies that: (a) Federal agencies must provide opportunities for State and local consultation on proposed Federal financial assistance and development; (b) Federal agencies communicate with the States according to their State processes and to do so as early as is ''reasonably feasible.''; (c) States may develop their own processes to review and coordinate proposed Federal financial assistance and development; and (d) Federal agencies must ''make efforts to accommodate State and local elected officials' concerns.''

(3) *Federal Assistance Programs and Development Projects:* Federal assistance applications and development projects covered by the consistency provision include all programs which are listed in the *Catalogue of Federal Domestic Assistance* and may have an effect on the purposes and objectives of the State's nonpoint source program, regardless of whether or not they are subject to Executive Order 12372.

(4) *State Nonpoint Source Management Programs:* For States that did not include Federal consistency provisions in their original nonpoint source management programs, EPA recommends inclusion of Federal consistency in subsequent nonpoint source management program upgrades. A modified or upgraded nonpoint source management program defines Federal consistency review guidelines and identifies assistance programs and development projects that are or may be inconsistent with the State's nonpoint source management program.

(5) *How to Review for Consistency:* States review Federal assistance programs and development projects for consistency by referring to the specific goals, objectives, programs, and authorities contained in the State's nonpoint source management program. States should outline their Federal consistency review process criteria and guidelines as clearly as possible in their Management Program. These criteria and guidelines may be provided to the State Single Point of Contact, all State and local agencies with nonpoint source responsibilities or interest, all relevant Federal agencies, and others, as appropriate.

(6) *Use of Existing Review Mechanisms:* EPA provides information on other existing review processes that may also prove useful for ensuring Federal consistency with State nonpoint source management programs.

Dated: August 10, 1998.

J. Charles Fox,

Acting Assistant Administrator, Office of Water.

[FR Doc. 98–22895 Filed 8–25–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Request for Additional Information

Agreement No.: 203–011279–012.
Title: The Latin America Agreement.
Parties:

Central America Discussion Agreement
Hispaniola Discussion Agreement
U.S./Jamaica Discussion Agreement
Venezuela American Maritime Association
Caribbean Shipowners Association
Aruba Bonaire Curacao Liner Association
Inter-American Freight Conference
Venezuelan Discussion Agreement
Puerto Rico/Caribbean Discussion Agreement
The West Coast of South America Agreement
The Colombia Discussion Agreement
The ABC Discussion Agreement
Montemar S.A.
The West Coast of South America Discussion Agreement

Synopsis: The Federal Maritime Commission hereby gives notice, pursuant to section 6(d) of the Shipping Act of 1984, 46 U.S.C. app. § § 1701 *et seq.*, that it has requested the agreement parties to submit additional information regarding their agreement. Further information is necessary so that the Commission can determine the impact of the proposed modification. This action prevents the agreement from becoming effective as originally scheduled.

Dated: August 21, 1998.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 98–22885 Filed 8–25–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 10, 1998.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Frank J. Brunner, Jr., Marked Tree, Arkansas; to acquire additional voting shares of Marked Tree Bancshares, Inc., Marked Tree, Arkansas, and thereby indirectly acquire additional voting shares of Marked Tree Bank, Marked Tree, Arkansas.

Board of Governors of the Federal Reserve System, August 21, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–22910 Filed 8–25–98; 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 September 19, 1998.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Mutual Bancorp of the Berkshires, and United Financial Group, Inc., both of Pittsfield, Massachusetts; to acquire Lenox Financial Services Corp., Lenox, Massachusetts, and thereby indirectly acquire Lenox Savings Bank, Lenox, Massachusetts, and City Savings Bank, Pittsfield, Massachusetts. United Financial Group, Inc., also has applied to become bank holding companies.

B. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. Republic First Bancorp, Inc., Philadelphia, Pennsylvania; to acquire 100 percent of the voting shares of Republic First Bank Delaware, Brandywine, Delaware.

C. Federal Reserve Bank of Cleveland (Jeffrey Hirsch, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Ohio Valley Banc Corp., Gallipolis, Ohio; to acquire 100 percent of the voting shares of Jackson Savings Bank, Jackson, Ohio.

D. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia, 30303-2713:

1. Bonifay Holdings, L.L.C., Bonifay, Florida; to become a bank holding company by acquiring 1 percent general partnership interest in The George Family Partnership, Bonifay, Florida, and thereby indirectly acquire Bonifay Holding Company, Inc., Bonifay, Florida, and The Bank of Bonifay, Bonifay, Florida.

E. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Morrill Bancshares, Inc., Sabetha, Kansas; to acquire 12.86 percent, for a pro forma total of 47.69 percent, of the voting shares of Morrill and Janes Bancshares, Inc., Hiawatha, Kansas, and thereby indirectly acquire Morrill and Janes Bank and Trust Company, Hiawatha, Kansas.

Board of Governors of the Federal Reserve System, August 20, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–22827 Filed 8–25–98; 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 September 21, 1998.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. The Banc Corporation, Panama City Beach, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Emerald Coast Bancorp, Panama City Beach, Florida, and thereby indirectly acquire Emerald Coast Bank, Panama City Beach, Florida.

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Baylake Corp., Sturgeon Bay, Wisconsin; to acquire 100 percent of the voting shares of Evergreen Bank, National Association, Poy Sippi, Wisconsin. Comments regarding this application must be received not later than September 10, 1998.

C. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Town & County Bancshares, Inc., Guthrie, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of Oklahoma State Bank, Guthrie, Oklahoma.

Board of Governors of the Federal Reserve System, August 21, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–22909 Filed 8–25–98; 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 September 9, 1998.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia, 30303-2713:

1. Financial Investors of the South, Inc., Birmingham, Alabama; to engage *de novo* through its subsidiary, Alabama Lenders Institute, LLC, Decatur, Alabama (in organization), in providing management consulting advice, pursuant to § 225.28(b)(9) of Regulation Y.

Board of Governors of the Federal Reserve System, August 20, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–22826 Filed 8–25–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval under Delegated Authority and Submission to OMB

SUMMARY

Background. Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83-Is and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Chief, Financial Reports Section—Mary M. McLaughlin—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3829) OMB Desk Officer—Alexander T. Hunt—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-7860)

Final approval under OMB delegated authority of the extension for three years, with revision, of the following report:

1. Report title: Bank Holding Company Report of Changes in Investments and Activities

Agency form number: FR Y-6A

OMB Control number: 7100-0124

Effective date: November 1, 1998

Frequency: on occasion

Reporters: bank holding companies

Annual reporting hours : 9,233

Estimated average hours per response: 0.85

Number of respondents: 2,263

Small businesses are not affected.

General description of report: This information collection is mandatory (12 U.S.C. 1844(b) and (c)) and is not routinely given confidential treatment. However, confidential treatment for the report information can be requested, in whole or part, in accordance with the instructions to the form.

Abstract: The Bank Holding Company Report of Changes in Investments and Activities is an event-generated report filed by top-tier bank holding companies to report changes in regulated investments and activities made pursuant to the Bank Holding Company Act and Regulation Y. The report collects information relating to acquisitions, divestitures, changes in activities, and legal authority. The number of FR Y-6As submitted varies depending on the reportable activity engaged in by each bank holding company.

The Federal Reserve has approved the following revisions to the FR Y-6A:

(1) Simplification of the method in which investments are reported to provide only one legal code for the forty-six exempt nonbank activities permissible under Section 4(c)8 of the Bank Holding Company Act, eliminating forty-five codes;

(2) Removal of the regulatory provision field from the Investments/Activities Schedule and the addition of a new field to this schedule to capture the accounting method used (''Pooling of Interest'' or ''Purchase or Assumption'') for mergers when the survivor is a bank;

(3) Minor formatting changes to the cover page and the Investments/Activities Schedule; and

(4) Clarification of the instructions for reporting general partnerships, limited partnerships, and non-voting equity investments.

Final approval under OMB delegated authority of the extension for three years, without revision, of the following reports:

1. Report title: Report of Foreign (Non-U.S.) Currency Deposits

Agency form number: FR 2915

OMB Control number: 7100-0237

Frequency: quarterly

Reporters: depository institutions

Annual reporting hours: 390

Estimated average hours per response: 0.5

Number of respondents: 195

Small businesses are affected.

General description of report: This information collection is mandatory (12 U.S.C. 248(a)(2) and 3105(b)(2)) and is given confidential treatment (5 U.S.C. 552(b)(4)).

Abstract: The FR 2915 collects weekly averages of the amounts outstanding for foreign (non-U.S.) currency deposits held at U.S. offices of depository institutions, converted to U.S. dollars and included in the FR 2900 (OMB No. 7100-0087), the principal deposits report that is used for the calculation of required reserves and for the construction of the monetary aggregates. Foreign currency deposits are subject to reserve requirements and, therefore, are included in the FR 2900. However, foreign currency deposits are not included in the monetary aggregates. The FR 2915 data are used to back foreign currency deposits out of the FR 2900 data for construction and interpretation of the monetary aggregates. The FR 2915 data also are used to monitor the volume of foreign currency deposits.

2. Report title: Written Security Program for State Member Banks

Agency form number: FR 4004

OMB Control number: 7100-0112

Frequency: on occasion

Reporters: state member banks

Annual reporting hours: 47

Estimated average hours per response: 0.5

Number of respondents: 94

Small businesses are affected.

General description of report: This recordkeeping requirement is mandatory (12 U.S.C. 1882, 248(a)(1), and 325). Because written security programs are maintained at state member banks, no issue of confidentiality under the Freedom of Information Act arises.

Abstract: The FR 4004 information collection is a recordkeeping requirement contained in the Board's Regulation P (12 CFR 216), which

implements the Bank Protection Act of 1968. (Note that the final rule revising Regulation H adopted by the Board on July 7, 1998, incorporates the provisions of Regulation P into Regulation H and rescinds Regulation P effective October 1, 1998 (63 **FR** 37629).) Each state member bank must develop and implement a written security program and maintain it in the bank's records. There is no formal reporting form and the information is not submitted to the Federal Reserve.

3. Report title: Annual Report on Status of Disposition of Assets Acquired in Satisfaction of Debts Previously Contracted

Agency form number: FR 4006

OMB Control number: 7100-0129

Frequency: annual

Reporters: bank holding companies

Annual reporting hours: 3,000

Estimated average hours per response: 5

Number of respondents: 600

Small businesses are affected.

General description of report: This information collection is mandatory (12 U.S.C. 1842(a), 1843(c)(2), and 1844(c)) and may be given confidential treatment upon request (5 U.S.C. 552(b)(4)).

Abstract: Bank holding companies that have acquired assets or shares through foreclosure in the ordinary course of collecting a debt previously contracted are required to submit the report for assets or shares that have been held beyond two years from the acquisition date. The report does not have a required format; bank holding companies submit the information in a letter. The letter contains information on the progress made to dispose of such assets or shares and allows the bank holding company to request an extension of time for holding such assets or shares.

4. Report title: Notice of Branch Closure

Agency form number: FR 4031

OMB Control number: 7100-0264

Frequency: on occasion

Reporters: state member banks

Annual reporting hours: 783

Estimated average hours per response: reporting: 2; disclosure: 1; recordkeeping: 8

Number of respondents: reporting and disclosure: 226; recordkeeping: 13

Small businesses are affected.

General description of report: This information collection is mandatory (12 U.S.C. 1831r-1) and may be given confidential treatment upon request (5 U.S.C. 552(b)(4)).

Abstract: These reporting, recordkeeping, and disclosure requirements regarding the closing of any branch of an insured depository institution are imposed by section 228 of the Federal Deposit Insurance Corporation Improvement Act of 1991. There is no reporting form associated with the reporting portion of this information collection; state member banks notify the Federal Reserve by letter prior to closing a branch. The Federal Reserve uses the information to fulfill its statutory obligation to supervise state member banks.

5. Report title: Survey to Obtain Information on the Relevant Market in Individual Merger Cases

Agency form number: FR 2060

OMB Control number: 7100-0232

Frequency: on occasion

Reporters: small businesses and consumers

Annual reporting hours: 55

Estimated average hours per response: 10 minutes for small businesses, 6 minutes for consumers

Number of respondents: 25 small businesses and 50 consumers per survey

Small businesses are affected.

General description of report: This information collection is voluntary (12 U.S.C. 1817(j), 1828(c), and 1841 *et seq.*) and is given confidential treatment (5 U.S.C. 552(b)(4) and (b)(6)).

Abstract: This telephone survey is designed to determine from what sources small businesses and consumers obtain financial services. The information is needed for specific merger and acquisition applications to determine relevant banking markets in the analysis of local market competition.

Final approval under OMB delegated authority of the implementation of the following report:

1. Report title: Selected Balance Sheet Items for Discount Window Borrowers

Agency form number: FR 2046

OMB Control number: 7100-0289

Frequency: on occasion

Reporters: depository institutions

Annual reporting hours: 3,091

Estimated average hours per response: .75 hours for adjustment or extended credit borrowers; .25 hours for seasonal credit borrowers

Number of respondents: 424 adjustment credit borrowers and 316 seasonal credit borrowers, based on 1996 borrowing. There was no extended credit borrowing during 1996, which was representative of most recent years.

Small businesses are affected.

General description of report: This information collection is mandatory (12 U.S.C. §§ 347b and 248(a)(2) and (i)) and is given confidential treatment (5 § U.S.C. 552(b)(4)).

Abstract: The Federal Reserve's Regulation A, ''Extensions of Credit by Federal Reserve Banks,'' (12 CFR 201) requires that Reserve Banks review balance sheet data in order to guard against inappropriate discount window borrowing situations. Currently, borrowers are requested to report certain balance sheet data for a period that encompasses the dates of borrowing. There is considerable variation across Districts in the specific data elements collected, in the time periods for which data are requested, and in the formats in which data are reported. The FR 2046 report standardizes these aspects of data collection across Reserve Banks.

The Federal Reserve received two comments on the FR 2046 proposal. Two Reserve Banks submitted letters in support of the proposal.

Board of Governors of the Federal Reserve System, August 20, 1998.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 98–22873 Filed 8–25–98; 8:45AM]

Billing Code 6210–01–F

FEDERAL TRADE COMMISSION

[File No. 971–0007]

Exxon Corporation, et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before October 26, 1998.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: William Baer or Joseph Krauss, FTC/H–374, Washington, DC 20580. (202) 326–2932 or 326–2713.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment

describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for August 20, 1998), on the World Wide Web, at ''http://www.ftc.gov/os/actions97.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an Agreement Containing Consent Order (''Agreement'') from Exxon Corporation (''Exxon''), and from The Shell Petroleum Company Limited and Shell Oil Company (collectively ''Shell'').

The proposed Consent Order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the Agreement and the comments received and will decide whether it should withdraw from the Agreement or make final the Agreement's proposed Order.

Both Exxon and Shell develop, manufacture, market and sell additives used in the production of fuels and lubricants, including viscosity index improvers used in lubricants for crankcase applications (''motor oil'' and ''engine oil''.) Viscosity index improvers (''VII'') (also known as ''viscosity modifiers'') are added to motor oil to improve the ability of the motor oil to flow properly. The viscosity of a fluid is its internal resistance to flow; the higher the viscosity, the more resistance to flow. The viscosity of lubricating oil is affected by temperature, higher temperatures lowering the viscosity. Motor oil must have sufficient viscosity to adhere to the internal surfaces of the engine even after the engine temperature rises and reduces the oil's viscosity. Motor oil must also have low enough viscosity to flow through the engine when the engine is cold, particularly in winter weather. Viscosity index improvers give motor oil the ability to have the appropriate high viscosity at high temperatures and the appropriate low viscosity at low temperatures.

The market for the viscosity index improvers in North America is highly concentrated. Exxon and Shell collectively account for over one-half of the sales of VII for use in motor oil in North America.

On July 10, 1996, Exxon and Shell announced an intention to form a joint venture to own and operate their businesses engaged in the development, manufacture, marketing and sale of additives used in the production of fuels and lubricants (the ''Joint Venture''). Among other products, the Joint Venture proposed to include the portions of the businesses of Exxon and Shell that are in the viscosity index improver business.

The Proposed Complaint

The proposed complaint alleges that the proposed acquisition may substantially lessen competition in the development, manufacture, marketing and sale of viscosity index improvers. The proposed complaint also alleges that North America is the relevant geographic market for evaluating the Joint Venture's effect on the viscosity index improver market.

The proposed complaint alleges that Exxon and Shell account for over one-half of the sales of VII in the relevant market. The complaint further alleges that the proposed transaction would increase the likelihood of or facilitate collusion or coordinated interaction between the Joint Venture and the remaining competitors in viscosity index improvers.

The proposed complaint alleges that entry into the alleged market would not be timely, likely, and sufficient to deter or offset the adverse effects of the Joint Venture on competition in these markets. Entry into the market for viscosity index improvers requires developing a viscosity index improver that meets industry standards. This is difficult and time consuming and takes over two years. Entry into the market for viscosity index improvers also requires that the entrant either build a plant to manufacture synthetic rubber or find an operating plant that will supply the new entrant synthetic rubber that can be used for viscosity index improver for motor oil. The proposed complaint alleges that building a new manufacturing facility for the production of synthetic rubber of the type that can be used in the production of VII would take over two years and that there are few, if any, producers of synthetic rubber of the types that can be used for VII that could supply a new entrant.

The Proposed Order

The proposed Order would remedy the alleged violation by preserving the competition that would otherwise be lost as a result of the formation of the Joint Venture, by requiring the sale of Exxon's viscosity index improver business to a Commission-approved buyer prior to consummation of the Joint Venture or within 6 months of signing the Agreement. Exxon has come forward with a prospective purchaser, Chevron Chemical Company LLC (''Chevron''), a subsidiary of Chevron Oil Company. The Oronite division of Chevron already develops, manufactures, markets and sells lubricant additives. Exxon and Chevron have negotiated an agreement of sale. Under the proposed order, Exxon may either proceed to sell its viscosity index improver business to Oronite, including in the sale those assets that Oronite and Exxon have negotiated, or sell to another buyer that the Commission approves. If Exxon sells to another buyer, it must include in the sale the assets enumerated in the proposed Order. Another buyer that, unlike Chevron, does not have a division already producing additives for lubricants may need assets that are part of Exxon's viscosity index improver business that Chevron did not need.

Under the proposed Order, Exxon may complete the proposed divestiture to Chevron and then consummate the Joint Venture with Shell once the Commission has accepted the Agreement. If Exxon completes the sale to Chevron before the proposed Order is made final, the proposed Order requires that Exxon rescind the sale to Oronite if the Commission determines after the public comment period that the proposed sale to Oronite is not appropriate relief. In such a situation, if Exxon and Shell have consummated the Joint Venture, the proposed Order requires that the assets then be held under a hold separate agreement until they can be divested. If the divestiture is not completed within six months of the date the parties signed the Agreement, then the Commission may appoint a trustee to effect the sale of the assets.

The proposed Order does not require the sale of a plant to manufacture synthetic rubber to make viscosity index improvers. It does require that if Exxon sells to a party other than Oronite, it provides the purchaser a supply of synthetic rubber. Moreover, if Exxon completes the proposed sale to Chevron, Exxon may not sell its synthetic rubber for viscosity index improver applications to parties other than

Chevron, except to the extent that Exxon's proposed sales agreement with Chevron would permit such sales. Finally, the proposed Order contains a firewall provision prohibiting the transfer of competitively sensitive information from Chevron, through Exxon, to the Joint Venture or to Shell.

The purpose of this analysis is to facilitate public comment on the proposed Order. This analysis is not intended to constitute an official interpretation of the Agreement or the proposed Order or in any way to modify the terms of the Agreement or the proposed Order.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 98–22893 Filed 8–25–98; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Statement of Organization, Functions and Delegations of Authority

This Notice amends Part K of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (DHHS), Administration for Children and Families (ACF) as follows: Chapter KT, Office of Legislative Affairs and Budget (OLAB), (63 FR 83), as last amended, January 2, 1998. This restructuring of the Office of Legislative Affairs and Budget establishes three divisions within the Office to improve its efficiency and effectiveness.

This Chapter is amended as follows:

Delete Chapter KT, ''The Office of Legislative Affairs and Budget,'' in its entirety and replace with the following:

Office of Legislative Affairs and Budget (OLAB)

KT.00 Mission
KT.10 Organization
KT.20 Functions

KT.00 Mission. The Office of Legislative Affairs and Budget (OLAB) provides leadership in the development of legislation, budget, and policy, ensuring consistency in these areas among ACF program and staff offices, and with ACF and the Department's vision and goals. It advises the Assistant Secretary for Children and Families on all policy and programmatic matters which substantially impact the agency's legislative program, budget development, budget execution and regulatory agenda. The Office serves as the primary contact for the Department, the Executive Branch, and the Congress on all legislative, budget development, and regulatory activities.

KT.10 Organization. The Office of Legislative Affairs and Budget is headed by a Director, who reports to the Assistant Secretary for Children and Families. The Office is organized as follows:

- Office of the Director (KTA).
- Division of Legislative and Regulatory Affairs (KTB).
- Division of Budget Formulation and Policy (KTC).
- Division of Budget Execution and Forecasting (KTD).

KT.20 Functions. A. The Office of the Director provides direction and executive leadership to the Office of Legislative Affairs and Budget in administering its responsibilities. It serves as the principal advisor to the Assistant Secretary for Children and Families on all policy and programmatic matters which substantially impact on legislative affairs, budget development, budget execution and the regulatory agenda. It represents the Assistant Secretary on budget, policy and legislative matters and serves as the primary ACF contact for the Department, the Executive Branch and Congress on these activities.

B. The Division of Legislative and Regulatory Affairs serves as the focal point for congressional liaison in ACF; provides guidance to the Assistant Secretary for Children and Families and senior ACF staff on congressional activities and relations; manages the preparation of testimony and briefings; negotiates clearance of testimony; monitors hearings and other congressional activities which affect ACF programs; and responds to congressional inquiries.

The Division manages the ACF legislative planning cycle and the development of Reports to Congress; reviews and analyzes a wide range of congressional policy documents including: legislative proposals, pending legislation, and bill reports; solicits and synthesizes internal ACF comments on such documents; negotiates legislative policy positions with the Department and the Executive Branch; and reviews other policy significant documents to ensure consistency with statutory and congressional intent and the agency legislative agenda.

The Division manages the ACF regulatory development process; negotiates regulatory policy positions with the Department and the Executive Branch; and provides guidance to ACF program and staff components on policy and programmatic matters related to the regulatory development process.

C. The Division of Budget Formulation and Policy manages the development and presentation of ACF's budget; provides guidance to ACF program and staff components in preparing material in support of budget development; provides guidance to the Assistant Secretary for Children and Families and senior program staff on policy and programmatic matters which substantially impact the budget development process; and negotiates budget issues with the Department and the Executive Branch.

The Division manages the preparation of testimony and briefings for budget related hearings; negotiates clearance of testimony; monitors budget-related hearings and other congressional activities which affect the ACF budget; and responds to congressional inquiries on the budget.

The Division reviews and analyzes other policy significant documents to ensure consistency with ACF's budget, vision and goals.

D. The Division of Budget Execution and Forecasting manages the preparation of a comprehensive administrative (salaries and expenses) budget for ACF; provides guidance to the Assistant Secretary for Children and Families and senior ACF staff on all aspects of the agency's administrative budget; provides guidance to ACF program and staff components in preparing material in support of the administrative budget and tracking and reconciling expenditures throughout the fiscal year to ensure appropriate fiscal accountability and prudent spending patterns.

The Division designs and develops budget estimating modes and procedures to project future program costs in order to influence decision-making regarding ACF program budgets and policy; evaluates on a continuing basis complex national budget issues to assess overall impact on immediate, foreseeable, and long-range program direction; provides guidance to the Assistant Secretary for Children and Families and senior ACF staff on budget forecasts for all major ACF programs; negotiates budget forecasting issues with the Department and the Executive Branch; and responds to Congressional Budget Office, Congressional Research Service and general congressional inquiries regarding ACF budget projections.

Dated: August 20, 1998.

Madeline Mocko,

Director, Office of Legislative Affairs and Budget.

[FR Doc. 98–22902 Filed 8–25–98; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Bioresearch Monitoring: Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

The Food and Drug Administration (FDA) Office of Regulatory Affairs, Nashville District Office is announcing the following public workshop: Bioresearch Monitoring: Public Workshop. The workshop is being co-sponsored by Vanderbilt University Medical Center and Meharry Medical College, both of Nashville, TN. Topics to be discussed are FDA regulatory requirements for the conduct of investigational product research and practical issues, such as, how to prepare for a data audit, what to expect during an inspection, and how to get current information from FDA.

Date and Time: The workshop will be held on Thursday and Friday, September 17 and 18, 1998, from 8:30 a.m. to 5 p.m. each day.

Location: The workshop will be held at Vanderbilt University Medical Center, Light Hall, Nashville, TN 37232. Maps and further information may be obtained from the contact person or the registrar (listed below).

Contact: Sandra S. Baxter, Public Affairs Specialist, Nashville District Office, Food and Drug Administration, 297 Plus Park Blvd., Nashville, TN 37217, at 615–781–5385 ext. 122., FAX 615–781–5383.

Registration: Send registration information (including name, title, firm name, address, telephone, and fax number), to the Institutional Review Board at 615–322–2918 or FAX 615–343–2648 or e-mail to ''IRB@mcmail.vanderbilt.edu'' by September 10, 1998. Attendance will be limited to the first 300 applicants, therefore, interested parties are encouraged to register early.

A $25.00 registration fee is being charged by Vanderbilt University Medical Center to cover cost of materials, box lunches, and beverages for breaks.

If you need special accommodations due to a disability, please contact Sandra S. Baxter (fax number above) at least 7 days in advance.

SUPPLEMENTARY INFORMATION: FDA's survey of the bioresearch industry shows that many of these firms are either unaware of applicable regulations and guidelines or not in compliance with applicable requirements. The workshop is designed to assist the industry in complying with regulations for clinical investigators, institutional review boards and sponsor-monitors; and to promote and encourage open dialogue between FDA and professionals involved in investigational product research: Physicians, researchers, research coordinators, nurses, allied health professionals, and other interested parties. In addition, break out sessions will be available on new and emerging issues.

Dated: August 20, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–22927 Filed 8–25–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–001719

Applicant: Wildlife Conservation Society, Bronx, NY.

The applicant requests a permit to import samples taken from wild and captive radiated tortoise (*Geochelone radiata*) in Madagascar for the purpose of scientific research.

PRT–839108

Applicant: Dr. Russell Jacobs, California Institute of Technology, Pasadena, CA.

The applicant requests a modification to his permit to import live Lesser Mouse Lemurs (*Microcebus murinus*) for the purpose of scientific research. The modification would replace two of the animals on his permit and add two more animals.

PRT–001542

Applicant: International Center for Gibbon Studies, Santa Clarita, CA.

The applicant requests a permit to import one, female captive-born pileated gibbon (*Hylobates pileatus*) for the purpose of captive propagation and scientific (behavioral) research.

PRT–001454

Applicant: Kenneth L. Barr, Kelseyville, CA.

The applicant requests a permit to import the personal sport-hunted trophy of one male Karaganda argali (*Ovis ammon colium*) from Kazakhstan for the purpose of enhancement of the survival of the species.

PRT—001435

Applicant: Edwin W. Obrecht, Owings Mill, MD.

The applicant requests a permit to import the personal sport-hunted trophy of one male Karaganda argali (*Ovis ammon colium*) from Kazakhstan for the purpose of enhancement of the survival of the species.

PRT–001904

Applicant: U.S. Fish and Wildlife Service, Mexican Wolf Reintroduction Project, Region 2, Albuquerque, NM.

The applicant requests a permit to import, export and reexport live Mexican or lobo wolves (*Canis lupus baileyi*) for breeding and reintroduction and to import biological samples for genetic studies for the enhancement of the propagation or survival of the species. This notification covers activities by this applicant over a period of five years.

PRT—001761

Applicant: David Terk, Sycamore Creek Ranch, Del Rio, TX.

The applicant requests a permit to authorize interstate and foreign commerce, export and cull of excess male barasingha (*Cervus duvauceli*) from his captive herd for the purpose of enhancement of survival of the species. This notice shall cover a period of three years. Permittee must apply for renewal annually.

PRT–001778

Applicant: U.S. Fish and Wildlife Service, International Sea Turtle Coordinator, Atlanta, GA.

The applicant requests a permit to authorize the import of up to 200 biological samples per year from all endangered and/or threatened species of sea turtle for the purpose of scientific research for the enhancement of survival of the species. This notification covers activities by this applicant over a period of five years.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 et seq.) and the regulations governing marine mammals (50 CFR 18).

PRT–001631

Applicant: Kurt Von Besser, Orangeburg, SC.

The applicant requests a permit to import a sport-hunted polar bear (*Ursus maritimus*) trophy taken from the Viscount Melville polar bear population, Northwest Territories, Canada prior to April 30, 1994 for personal use.

PRT–001978

Applicant: Joseph E. Crawley, Ballwin, MO.

The applicant requests a permit to import a sport-hunted polar bear (*Ursus maritimus*) trophy taken from the Lancaster Sound polar bear population, Northwest Territories, Canada prior to April 30, 1994 for personal use.

Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Rm 700, Arlington, Virginia 22203, phone (703) 358–2104 or Fax (703) 358–2281.

Dated: August 21, 1998.

MaryEllen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 98–22935 Filed 8–25–98; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Sport Fishing and Boating Partnership Council

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: As provided in Section 10(a)(2) of the Federal Advisory Committee Act, the Service announces a meeting designed to foster partnerships to enhance recreational fishing and boating in the United States. This meeting, sponsored by the Sport Fishing and Boating Partnership Council (Council), is open to the public and interested persons may make oral statements to the Council or may file written statements for consideration.

DATES: September 15, 1998, 8:30 a.m. to 12:30 p.m.

ADDRESSES: The meeting will be held at the Hyatt Regency Savannah, Two West Bay Street, Savannah, Georgia 31401, Telephone (912) 238–1234, FAX (912) 944–3678.

Summary minutes of the conference will be maintained by the Coordinator for the Council at 1033 North Fairfax Street, Suite 200, Arlington, VA 22314, and will be available for public inspection during regular business hours within 30 days following the meeting. Personal copies may be purchased for the cost of duplication.

FOR FURTHER INFORMATION CONTACT: Doug Alcorn, Council Coordinator, at 703/836–1392.

SUPPLEMENTARY INFORMATION: The Sport Fishing and Boating Partnership Council (Council) will convene to discuss: (1) The ongoing effort to monitor and evaluate Federal agency activities pursuant to Executive Order 12962 for Recreational Fisheries and (2) the status of the strategic plan for the National Outreach and Communications Program. Under Executive Order 12962, the Council is required to monitor and annually report its findings on various Federal agencies' actions and policies for protecting, restoring, and enhancing recreational fishery resources. The Council will hear a report from its Technical Working Group on the annual assessment of agency accomplishments under Executive Order 12962. The Council is also charged by the U.S. Fish and Wildlife Service to recommend a strategic plan for the National Outreach and Communications Program, pursuant to the Sportfishing and Boating Safety Act of 1998. This meeting will be to discuss the final draft of the strategic plan and to approve a final recommendation to be forwarded to the Secretary of the Interior. Public comment will be sought at the conclusion of the agenda.

Dated: August 19, 1998.

Cathleen Short,

Acting Director.

[FR Doc. 98–22837 Filed 8–25–98; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–08–1320–01; WYW136458]

Notice of Competitive Coal Lease Sale; Thundercloud Tract; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that certain coal resources in the Thundercloud Tract, described below, in Campbell County, Wyoming, will be offered for competitive lease by sealed bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 *et seq.*).

DATES: The lease sale will be held at 10 a.m., on Thursday, October 1, 1998. Sealed bids must be submitted on or before 4 p.m., on Wednesday, September 30, 1998.

ADDRESSES: The lease sale will be held in the First Floor Conference Room (Room 107) of the Wyoming State Office, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming 82003. Sealed bids must be submitted to the Cashier, Wyoming State Office, at the address given above.

FOR FURTHER INFORMATION CONTACT: Mavis Love, Land Law Examiner, Or Melvin Schlagel, Coal Coordinator, at 307–775–6258 and 307–775–6257, respectively.

SUPPLEMENTARY INFORMATION: This coal lease sale is being held in response to a lease by application (LBA) filed by Kerr-McGee Coal Corporation (Kerr-McGee Coal Corporation has changed its name to Jacobs Ranch Coal Company and is now a subsidiary of Kennecott Energy and Coal Company). The coal resources to be offered consist of all reserves recoverable by surface mining methods in the following-described lands located in southeastern Campbell County approximately 40 miles south-southeast of Gillette, Wyoming, and about 7 miles east of State Highway 59 along state Highway 450, the access road to the Black Thunder and Jacobs Ranch mines:

T. 43 N., R. 70 W., 6th P.M., Wyoming
Sec. 4: Lots 8, 9, 15 thru 18;
Sec. 5: Lots 5 thru 20;
Sec. 6: Lots 8 thru 23;
Sec. 7: Lots 5 thru 7, 8 (N2), 9 thru 12, 13 (N2 & SE), 19 (NE);
Sec. 8: Lots 1 thru 16;
Sec. 9: Lots 3 thru 6, 11 thru 14;
T. 43 N., R. 71 W., 6th P.M., Wyoming
Sec. 1: Lots 5 thru 15, 16 (N2), 17 thru 19, SENE;
Sec. 12, Lots 1, 2 (NE).

Containing 3545.503 acres, more or less.

The tract is adjacent to the Black Thunder and Jacobs Ranch mines. It contains surface minable coal reserves in two seams currently being recovered in the adjacent, existing mines. The Wyodak seam averages about 72 feet thick and is the primary recoverable coal seam on the tract. A rider seam separates from the top of the Wyodak in portions of the tract averaging about 10

feet thick. There are no coal outcrops on the tract.

The overburden above the main seam ranges from about 100–300 feet thick on the LBA. The total in-place stripping ratio (BCY/Ton) of the coal is 2.57:1.

The tract contains an estimated 412 million tons of minable coal. This estimate of minable reserves includes the rider seam mentioned above but does not include any tonnage from localized seams or splits containing less than 5 feet of coal. In addition, the southern boundary of the tract follows the railroad spur and State highway serving the adjacent mines. Coal recovery in this area depends on the economic feasibility of relocating the spur and roadway.

The Thundercloud Tract coal is ranked a subbituminous C. The overall average quality on an as-received basis is 8810 BTU/lb, 27.93% moisture, 4.48% ash, 0.34% sulfur, and 1.45% sodium in ash. These quality averages place the coal reserves near the high end of the range of coal quality currently being mined in the southern Powder River Basin south of Wright, Wyoming.

There are several oil and gas wells from the Hilight Field on the tract. The estimate of the bonus value of the coal lease will include consideration of the future oil and gas production from these wells. An economic analysis of this future income stream will determine whether a well is bought out and plugged prior to mining or re-established after mining is completed. Other costs considered will include moving or removing roads, pipelines, and surface facilities.

The tract will be leased to the qualified bidder of the highest cash amount provided that the high bid equals the fair market value of the tract. The minimum bid for the tract is $100 per acre or fraction thereof. No bid that is less than $100 per acre, or fraction thereof, will be considered. The bids should be sent by certified mail, return receipt requested, or be hand delivered. The Cashier will issue a receipt for each hand-delivered bid. Bids received after 4 p.m., on Wednesday, September 30, 1998, will not be considered. The minimum bid is not intended to represent fair market value. The fair market value of the tract will be determined by the Authorized Officer after the sale.

If identical high bids are received, the tying high bidders will be requested to submit follow-up sealed bids until a high bid is received. All tie-breaking sealed bids must be submitted within 15 minutes following the Sale Official's announcement at the sale that identical high bids have been received.

The lease issued as a result of this offering will provide for payment of an annual rental of $3.00 per acre, or fraction thereof, and a royalty payment to the United States of 12.5 percent of the value of coal produced by strip or augur mining methods and 8 percent of the value of the coal produced by underground mining methods. The value of the coal will be determined in accordance with 30 CFR 206.250.

Bidding instructions for the tract offered and the terms and conditions of the proposed coal lease are available from the Wyoming State Office at the addresses above. Case file documents, WYW136458, are available for inspection at the Wyoming State Office.

Dated: August 7, 1998.

Robert A. Bennett,

Deputy State Director, Minerals and Lands Authorizations.

[FR Doc. 98–21993 Filed 8–25–98; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Museum of Anthropology, University of Missouri-Columbia, Columbia, MO

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Museum of Anthropology, University of Missouri-Columbia, Columbia, MO.

A detailed assessment of the human remains was made by Museum of Anthropology professional staff in consultation with representatives of the Iowa Tribe of Oklahoma, the Otoe-Missouria Tribe of Indians, the Sac and Fox Nation of Oklahoma, the Sac and Fox Tribe of Missouri, and the Sac and Fox Nation of the Mississippi in Iowa.

In 1964, human remains representing two individuals were recovered along the Chariton River, Adair County, MO following their disturbance during farming activity by Richard Marshall and Marvin Kay, staff members of the American Archaeology Division, Department of Anthropology, University of Missouri-Columbia. No known individuals were identified. The 23 associated funerary objects include prismatic gun flints, trade silver earrings, brooches and bracelets, textiles, a hand-blown green glass bottle, white porcelain beads, brown glass seed beads, pewter buttons, and brass buttons.

Based on manner of interment and associated funerary objects, these individuals have been determined to be Native American. The associated funerary objects date these burials to the late eighteenth and early nineteenth centuries (1785-1809 A.D.). The age, location, and manner of interment are all consistent with Sac and Fox (Mesquaki) cultures present in this area at the close of the eighteenth century.

Based on the above mentioned information, officials of the Museum of Anthropology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of two individuals of Native American ancestry. Officials of the Museum of Anthropology have also determined that, pursuant to 43 CFR 10.2 (d)(2), the 23 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Museum of Anthropology have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Sac and Fox Nation of Oklahoma, the Sac and Fox Tribe of Missouri, and the Sac and Fox Nation of the Mississippi in Iowa.

This notice has been sent to officials of the Iowa Tribe of Oklahoma, the Otoe-Missouria Tribe of Indians, the Sac and Fox Nation of Oklahoma, the Sac and Fox Tribe of Missouri, and the Sac and Fox Nation of the Mississippi in Iowa. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Dr. Michael J. O'Brien, Director, Museum of Anthropology, 317 Lowry Hall, University of Missouri, Columbia, MO 65211; telephone: (573) 882-4421, before September 25, 1998. Repatriation of the human remains and associated funerary objects to the Sac and Fox Nation of Oklahoma, the Sac and Fox Tribe of Missouri, and the Sac and Fox Nation of the Mississippi in

Iowa may begin after that date if no additional claimants come forward.

Dated: August 21, 1998.

Veletta Canouts,

Acting Departmental Consulting Archeologist,

Deputy Manager, Archeology and Ethnography Program.

[FR Doc. 98–22888 Filed 8–25–98; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects from Wisconsin in the Possession of the State Historical Society of Wisconsin, Madison, WI

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the State Historical Society of Wisconsin, Madison, WI.

A detailed assessment of the human remains was made by State Historical Society of Wisconsin professional staff in consultation with representatives of the Iowa Tribe of Oklahoma, Iowa Tribe of Kansas, Otoe/Missouria Tribe of Oklahoma, Ho-Chunk Nation of Wisconsin, and Winnebago Tribe of Nebraska.

During 1989-1991, human remains representing a minimum of 139 individuals were recovered from the Tremaine site (47-Lc-0095) by field crews of the Museum Archaeology Program, State Historical Society of Wisconsin under a cooperative agreement with the Wisconsin Department of Transportation as part of the USH 53 Expressway Project. No known individuals were identified. The 139 associated funerary objects include ceramics, sherds, projectile point, scrapers, and flakes, shell, copper fragments, galena fragments, stone pipe bowls, catlinite fragments, bison scapula hoes, river cobbles, mammal bone, and wood fragments.

Based on radiocarbon data and ceramic typology, the Tremaine site has been identified as an Oneota occupation dating between 1300-1600 A.D. The Oneota tradition in western Wisconsin has generally been documented by native oral traditions, European explorers' accounts, historians, and anthorpologists as ancesteral to the present-day Iowa Tribe, the Ho-Chunk Nation of Wisconsin, and the Winnebago Tribe of Nebraska.

In 1989, humam remains representing a minimum of one individual were recovered from the Filler site (47-Lc-0149) by field crews of the Museum Archaeology Program, State Historical Society of Wisconsin under a cooperative agreement with the Wisconsin Department of Transportation as part of the USH 53 Expressway Project. No known individuals were identified. No associated funerary objects were present.

Based on radiocarbon dates and ceramic typology, the Filler site has been identified as an Oneota Valley View Phase occupation dating between 1500-1650 A.D. The Oneota tradition in western Wisconsin has generally been documented by native oral traditions, European explorers' accounts, historians, and anthorpologists as ancesteral to the present-day Iowa Tribe, the Ho-Chunk Nation of Wisconsin, and the Winnebago Tribe of Nebraska.

In 1986 and 1989, human remains representing a minimum of one indivdiual were recovered from the OT site (47-Lc-0262) by field crews of the Museum Archaeology Program, State Historical Society of Wisconsin under a cooperative agreement with the Wisconsin Department of Transportation as part of the USH 53 Expressway Project. No known individuals were identified. The 26 associated funerary objects include ceramics, ceramic sherds, lithics (including projectile points, scrapers, & flakes), shell, shell beads, a copper disc, copper beads, stone pipe bowls, and wood fragments.

Based on radiocarbon dates and ceramic typology, the OT site has been identified as an Oneota Valley View phase occupation dating between 1450-1650 A.D. The Oneota tradition in western Wisconsin has generally been documented by native oral traditions, European explorers' accounts, historians, and anthorpologists as ancesteral to the present-day Iowa Tribe, the Ho-Chunk Nation of Wisconsin, and the Winnebago Tribe of Nebraska.

Based on the above mentioned information, officials of the State Historical Society of Wisconsin have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of a minimum of 141 individuals of Native American ancestry. Officials of the State Historical Society of Wisconsin have also determined that, pursuant to 43 CFR 10.2 (d)(2), the 165 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the State Historical Society of Wisconsin have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Iowa Tribe of Okalhoma.

This notice has been sent to officials of the Iowa Tribe of Oklahoma, Iowa Tribe of Kansas, Otoe/Missouria Tribe of Oklahoma, Ho-Chunk Nation of Wisconsin, and Winnebago Tribe of Nebraska. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact David Wooley, Curator of Anthropology, State Historical Society of Wisconsin, 816 State Street, Madison, WI 53706–1488; telephone: (608) 264-6574, before September 25, 1998. Repatriation of the human remains and associated funerary objects to the Iowa Tribe of Oklahoma may begin after that date if no additional claimants come forward.

Dated: August 18, 1998.

Daniel Haas,

Acting Departmental Consulting Archeologist,

Archeology and Ethnography Program.

[FR Doc. 98–22887 Filed 8–25–98; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Proposed Exchange of Lands Within North Cascades National Park Service Complex, Chelan County, Washington

ACTION: Notice of realty action on proposed land exchange.

SUMMARY: The National Park Service (NPS) is considering a land exchange pursuant to the Act of July 15, 1968 (16 U.S.C. 460l–22(b)) and the Act of October 2, 1968 (16 U.S.C. 90) as amended, which established North Cascades National Park (NP) and Lake Chelan National Recreation Area (NRA). Acquired Federal lands situated within the boundary of Lake Chelan NRA would be conveyed to Mr. Clifford Courtney, a private party. In exchange, the United States (U.S.) would acquire lands owned by Mr. Courtney within the boundaries of North Cascades NP. This exchange is being considered to consolidate future private development to a suitable location but subject to land

use conditions in deed covenants and restrictions to assure compatibility with the scenic and natural resource values of the NRA. The lands to be acquired by the U.S. in this exchange will be afforded NPS natural and cultural resource protection within the Stephen Mather Wilderness. Resource, interpretive, scenic and administrative benefits will be realized by the North Cascades National Park Service Complex, which includes North Cascades NP and Lake Chelan NRA, as a result of the exchange.

SUPPLEMENTARY INFORMATION: The 1995 Lake Chelan NRA General Management Plan (GMP) and accompanying Environmental Impact Statement (EIS) identified the selected Federal lands as being suitable for exchange purposes. The proposed action is in compliance with the GMP and EIS, along with the Record of Decision, and the subsequent Land Protection Plan for the area. Subsequently, NPS prepared an Environmental Assessment to evaluate potential environmental consequences specifically associated with this proposed exchange, resulting in a Finding of No Significant Impact.

The surface interests, including sand, rock and gravel, of the following described Federal lands are being considered for exchange by the United States:

All that certain parcel of land situated in Section 7, Township 33 North, Range 17 East, Willamette Meridian, Chelan County, Washington, being further located within the boundary of that certain Homestead Entry Survey Number 150, tract ''B,'' said parcel being more particularly described as follows:

Commencing at the Southwest corner of said Homestead Entry Survey No. 150, tract ''B,'' said point being identified also as H.E.S. corner no. 16; thence

South 89°15′00″ East, a distance of 1154.34 feet to a point, said point being identified as H.E.S. corner no. 17; thence

South 50°00′00″ East, a distance of 623.04 feet to a point on the North Right-of-Way line of the Stehekin Valley Road, said point being identified as H.E.S. corner no. 18; thence

South 80°15′00″ East, a distance of 267.34 feet to a point, said point being the POINT OF BEGINNING of the parcel herein described; thence

North 24°30′25″ East, a distance of 1095.94 feet to a point on the North line of Homestead Entry Survey no. 150, Tract ''B;'' thence

South 00°29′55″ West, a distance of 1073.76 feet to a point on the North Right-of-Way line of the Stehekin Valley Road; thence

North 80°15′00″ West, a distance of 451.78 feet along the North Right-of-Way line of the Stehekin Valley Road to the Point of Beginning and there ending.

Containing 5.50 acres, more or less.

In Exchange, the U.S. would acquire all surface and mineral interests in the following described private lands:

Golden Gate Lode Mining Claim, designated by the Surveyor General as Lot 408, located in Section 31 and 32, Township 35 North, Range 14 East, Willamette Meridian, Chelan County, Washington, more particularly described as follows:

Beginning at Corner No. 1 a granite stone 30x20x10 inches, marked +1–408, bears North 40°10′16″ West, 1462.4 feet distant; thence first course South 41°52′ West, 1500 feet to Corner No. 2, a granite stone 24 x 12 x 12 inches, marked +2–408, with mound of stone; thence second course, South 47°49′ East, 600 feet to Corner No. 3, a granite stone 38 x 18 x 16 inches, marked +3–408, with mound of stone; thence third course, North 41°52′ East, 1500 feet to Corner No. 4, a granite stone 26 x 12 x 10 inches, marked +4–408, with mound of stone; thence fourth course, North 47°49′ West, 600 feet to Corner No. 1, the Place of Beginning.

Containing 20.66 acres, more or less.

The above Federal lands were identified in the GMP and EIS and were determined to be suitable for ranching/agricultural, residential and seasonal guest services in conjunction with the adjacent private land ownership and operations. In addition to the U.S. reserving the mineral estate, certain land use covenants, conditions and restrictions will be imposed in the deed for assuring that future uses of the Federal lands being considered for disposal will be compatible with the legislated purposes of the NRA. There are no leases or permits to third parties affecting the Federal lands. These lands have been surveyed for cultural resources and threatened/endangered species and found suitable for disposal.

Approved independent fair market value appraisals have been performed to determine the fair market value of both properties to be exchanged. The value difference shall be equalized by cash payment as a part of the escrow and closing procedures for the exchange transaction.

FOR FURTHER INFORMATION AND COMMENTS: More detailed information on this proposed action may be obtained from the Superintendent, North Cascades National Park Service Complex, 2105 Highway 20, Sedro Woolley, Washington 98284. Public comments will be accepted for a period of 45 calendar days from the publication date of this notice. Comments should be sent to the above address.

This realty action to proceed with the exchange will become the final determination of the Department of the Interior, in the absence of any subsequent action to modify or vacate the proposed exchange.

Dated: May 21, 1998.

William C. Walters,

Deputy Regional Director, Pacific West Region.

[FR Doc. 98–22850 Filed 8–25–98; 8:45 am]

BILLING CODE 4310–70–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting of the newly appointed Advisory Committee on Voluntary Foreign Aid (ACVFA).

Date: September 17, 1998 (9 a.m. to 5 p.m.).

Location: Hotel Washington, Washington Room, 15th & Pennsylvania Avenue, NW., Washington, DC.

This meeting will focus on USAID–PVO partnership issues related to USAID's implementation of managing for results under the Government Performance and Results Act (GPRA). The ACVFA will also discuss USAID's programming in non-presence countries and issues related to country graduation.

The meeting is free and open to the public. However, Notification by September 15, 1998 through the Advisory Committee Headquarters is Required. Persons wishing to attend the meeting must fax their name, organization and phone number to Lisa J. Douglas-Harrison on (703) 741–0567.

Dated: August 14, 1998.

Noreen O'Meara,

Advisory Committee on Voluntary Foreign Aid (ACVFA).

[FR Doc. 98–22836 Filed 8–25–98; 8:45 am]

BILLING CODE 6116–01–M

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International TradeCommission.

TIME AND DATE: September 1, 1998 at 11:00 a.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: None.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 701–TA–373 and 731–TA–769–775 (Final) (Stainless Steel Wire Rod from Germany, Italy, Japan,

Korea, Spain, Sweden, and Taiwan)—briefing and vote.

5. Outstanding action jackets:

1. Document No. EC–98–011: Response to letter concerning Inv. No. 332–325 (The Economic Effects of Significant U.S. Import Restraints)(Action Request 98–14).

This meeting was originally scheduled for August 25, 1998. The Commission has determined to postpone the briefing and vote on Stainless Steel Wire Rod until September 1, 1998, and hereby announces that earlier announcement of same was not possible. In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: August 21, 1998.

By order of the Commission:

Donna R. Koehnke,

Secretary.

[FR Doc. 98–22976 Filed 8–24–98; 11:25 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services (COPS); Agency Information Collection Activities: Extension of a Currently Approved Collection; Comment Request

ACTION: Notice of information collection under review; assessment of Indian country law enforcement.

The Department of Justice, Office of Community Oriented Policing Services (COPS) has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on April 2, 1998, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until September 25, 1998. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Deputy Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC 20530.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information:

(1) *Type of information collection:* Extension of previously approved collection.

(2) *The title of the form/collection:* Assessment of Indian Country Law Enforcement Agencies.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. Office of Community Oriented Policing Services, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Indian Country Law Enforcement Agencies.

Other: None.

The information collected will be used by the U.S. Department of Justice and the Department of Interior (The Departments) to develop a comprehensive plan to improve and expand law enforcement services in Indian Country. Before a plan can be developed, some basic information describing law enforcement activities in Indian Country must be obtained. The information collected will assist with the identification of the immediate staffing, equipment and training needs of all law enforcement agencies in Indian Country so that the limited funds available may be targeted to those programs with the greatest need. The information will also assist the Departments describe the challenges faced by Indian Country law enforcement agencies in general.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* 300 respondents at 1 hour per response. The information will be collected once from each respondent.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 300 annual burden hours.

Other: None.

Public comment on this proposed information collection is strongly encouraged. If additional information is required contact: Ms. Brenda E. Dyer, Deputy 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: August 20, 1998.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 98–22852 Filed 8–25–98; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Extension of Existing Collection; Comment Request

ACTION: Notice of information collection under review; Fax request form from benefit agency to INS for confirmation of status of I–130 and fax request form from benefit agency to EOIR for confirmation of status.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until October 26, 1998.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) 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;

(2) Evaluate the accuracy of the agencies 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 clarityof the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Fax Request Form from Benefit Agency to INS for Confirmation of Status of I–130 and Fax Request Form from Benefit Agency to EOIR for Confirmation of Status.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* No Agency Form Number. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local or Tribal Governments. The data collected on these fax request sheets will be used by the INS and EOIR to determine eligibility for immigration benefits. The fax request sheets permit the INS and EOIR to share information with state and federal benefit granting agencies, making determinations relating to battered aliens for whom an I–130 petition has been filed, or who have made a prima facie case for status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 12,000 responses at 20 minutes (.333) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 3,996 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

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: August 20, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–22853 Filed 8–25–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Extension of Existing Collection; Comment Request

ACTION: Notice of information collection under review; guidelines on producing master exhibits for asylum applications.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until October 26, 1998.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) 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;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Guidelines on Producing Master Exhibits for Asylum Applications.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* No Agency Form Number. Asylum Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Not-for-profit institutions. Master Exhibits are a means by which credible information on country conditions related to asylum applications are made available to Asylum and Immigration Officers for use in adjudicating cases.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 20 responses at 80 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,600 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

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: August 20, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–22854 Filed 8–25–98; 8:45 am]

BILLING CODE 4410–10–M

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO

United States Section Notice of Intent To Prepare an Environmental Impact Statement for the Lower Rio Grande Flood Control Project, Hidalgo, Cameron, and Willacy Counties, TX

AGENCY: United States Section, International Boundary and Water Commission, United States and Mexico.

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

SUMMARY: This notice advises the public that pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, as amended, the United States Section, International Boundary and Water Commission (USIBWC) proposes to gather information necessary for the preparation of an environmental impact statement (EIS) which will address the impacts of maintenance activities by the USIBWC of the existing Lower Rio Grande Flood Control Project (LRGFCP). The project is located in Hidalgo, Cameron, and Willacy counties, Texas. A public scoping meeting regarding this proposal will also be held. This notice is being provided as required by the Council on Environmental Quality Regulations (40 CFR 1501.7) and the USIBWC's Operational Procedures for Implementing Section 102 of the National Environmental Policy Act of 1969, published in the **Federal Register** September 2, 1981 (46 FR 44083–44094) to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS.

DATES: The USIBWC will conduct a public scoping meeting at the Weslaco Public Library Auditorium, 525 South Kansas, Weslaco, Texas on September 10, 1998, from 6:00 p.m. to 9:00 p.m. CDT. Full public participation by interested federal, state, and local agencies as well as other interested organizations and the general public is encouraged during the scoping process which will end 60 days from the date of this notice. Public comments on the scope of the EIS, reasonable alternatives that should be considered, anticipated environmental problems, and actions that might be taken to address them are requested.

ADDRESSES: Comments will be accepted for 60-days following the date of this notice by Mr. Douglas Echlin, Environmental Protection Specialist, Environmental Management Division, USIBWC, 4171 North Mesa Street, C–310, El Paso, Texas 79902. Telephone: 915/832–4150, extension 2, Facsimile: 915/832–4190. E-mail: dougechlin@ibwc.state.gov.

SUPPLEMENTARY INFORMATION: The USIBWC proposes to gather information necessary for the preparation of an EIS to be used to determine specific options to the maintenance of the existing Lower Rio Grande Flood Control Project (LRGFCP) that could be implemented to minimize, consistent with the law and international agreements, the impact of the maintenance of the flood control project on ecological and environmental resources in the ''Lower Rio Grande Valley of South Texas.''

The EIS will discuss separately, among other laws and regulations, the requirements of international agreements with Mexico regarding the operations and maintenance of the project, the Endangered Species Act, and the United States Fish and Wildlife Service's Land Protection Plan. It will also present an analysis of the impacts of various alternative maintenance practices, including existing ones, as affected by changes in land use practices in the Lower Rio Grande Valley.

The Governments of the United States and Mexico pursuant to an agreement reached in 1932, developed through the Commission a coordinated plan for an international project for protection of the Lower Rio Grande Valley in both countries against flooding of the river.

The United States portion of the project is operated to divert and convey excess floodwaters from the Rio Grande to the Gulf of Mexico through the river and interior floodways. Two diversion dams, Anzalduas and Retamal, are operated jointly by the United States and Mexico for flood control, with Anzalduas Dam also operated to divert water as required by the Treaty of February 3, 1944, ''Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande'' (TS 994; 59 Stat. 1219). Flood operations of the project also involve very close coordination of the United States and Mexican sections of the Commission in the operation of two upstream reservoirs (Amistad and Falcon) to control flood waters reaching the project area. The two Sections work closely on the division of excess flood waters diverted into each country. Normal operations of the project include the daily operation of Anzalduas Dam for division of waters between the two countries and inspection of the entire project to ensure flood readiness. Operations of the LRGFCP fall within the realm of the international agreements governing the project and are therefore not a subject of the EIS. The USIBWC does not have unilateral control of flood operations of the LRGFCP and thus cannot make commitments regarding such operations, which are international and controlled by the IBWC.

Maintenance activities are divided into the following general categories: levees, interior floodways, river channel, and diversion dams. The United States portion of the project includes the following features for protection of the Lower Rio Grande Valley of Texas: (a) Rio Grande Floodway from Penitas to the Gulf of Mexico; (b) Anzalduas Diversion Dam on the Rio Grande south of Mission; (c) Retamal Diversion Dam on the Rio Grande south of Donna; (d) interior floodways, including Banker, Main, North, and Arroyo Colorado; (e) an earth weir in the North Floodway; (f) 270 miles of river and interior floodway levees; (g) 64 miles of pilot channels within the interior floodways; (h) approximately 600 drain and irrigation structures crossing the levees; and (i) 16 bridges including seven multiple box structures crossing the pilot channel in the off-river floodway system.

Activities by the United States Fish and Wildlife Service to preserve and protect what has come to be known as ''The Wildlife Corridor,'' and joint IBWC studies of hydraulic capabilities of the flood control project have necessitated a reevaluation of USIBWC maintenance practices.

The EIS will consider a range of alternatives based on the issues and concerns associated with the project and as expressed by federal, state and local agencies, organizations, and individuals during the public scoping process. These alternatives include, continuing the maintenance under IBWC Minutes No. 212 and No. 238 (the No Action Alternative). Other alternatives may consist of modifications or changes in the various elements of current maintenance practices such as: (a) Modification of certain maintenance practices where hydraulic studies have shown project facilities are adequate to allow for establishment of wildlife corridor vegetation along the river and in the interior floodways; (b) raising of levees where needed to protect areas from flooding yet allow for establishment of wildlife corridor vegetation; and (c) relocation of levees in designated areas along the Rio Grande.

The EIS will identify, describe, and evaluate the existing environmental, cultural, sociological and economical, and recreational resources; explain the flood protection project; describe current practice toward establishment of wildlife corridors throughout the valley

to connect key wildlife areas with the river and other wildlife areas; and evaluate the impacts associated with the alternatives under consideration. Significant issues which have been identified to be addressed in the EIS include but are not limited to affects on: (a) Fish and wildlife; (b) terrestrial habitat; (c) endangered species; (d) aquatic habitats; (e) cultural resources; and (f) water quality.

Coordination has been ongoing and will continue with the United States Fish and Wildlife Service to insure compliance with section 7 of the Endangered Species Act of 1973, as amended. Cultural resources reconnaissance for the project area will be coordinated with the Texas State Historic Preservation Officer.

The environmental review of this project will be conducted in accordance with the requirements of NEPA, CEQ Regulations (40 CFR Parts 1500–1508), other appropriate federal regulations, and the USIBWC procedures for compliance with those regulations. Copies of the EIS will be transmitted to federal and state agencies and other interested parties for comments and will be filed with the Environmental Protection Agency in accordance with 40 CFR parts 1500–1508 and USIBWC procedures.

The USIBWC anticipates the Draft EIS will be made available to the public by November, 1999.

Dated: August 20, 1998.

William A. Wilcox, Jr.,

Legal Advisor.

[FR Doc. 98–22863 Filed 8–25–98; 8:45 am]

BILLING CODE 4710–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (98–110)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Chancepts, LTD., L.L.C., of Charlotte, NC, has applied for a partially exclusive license to practice the invention described and claimed in U.S. Patent No. 5,423,400, entitled, ''Mechanical Energy Absorber,'' which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Johnson Space Center.

DATE: Responses to this notice must be received by October 26, 1998.

FOR FURTHER INFORMATION CONTACT: James M. Cate, Patent Attorney, Johnson Space Center, Mail Code HA, Houston, TX 77058–3696; telephone (281) 483–1001.

Dated: August 19, 1998.

Edward A. Frankle,

General Counsel.

[FR Doc. 98–22828 Filed 8–25–98; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (98–112)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Modern School Supplies, Inc. of Bloomfield, Connecticut, has applied for an exclusive license to practice the invention disclosed in NASA Case No. ARC 15007–1LE, entitled ''Mars VE The Virtual Exploration Mission CD-ROM,'' for which a U.S. Provisional Patent Application was filed and assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to NASA Ames Research Center.

DATE: Responses to this notice must be received by October 26, 1998.

FOR FURTHER INFORMATION CONTACT: Kathleen Dal Bon, Patent Counsel, NASA Ames Research Center, Mail Stop 202A–3, Moffett Field, CA 94035–1000, telephone (650) 604–5104.

Dated: August 19, 1998.

Edward A. Frankle,

General Counsel.

[FR Doc. 98–22830 Filed 8–25–98; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (98–111)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice the SOFTKAT, Incorporated, of Petaluma, California, has applied for an exclusive license to practice the invention disclosed in NASA Case No. ARC 15007–1LE, entitled ''Mars VE The Virtual Exploration Mission CD-ROM,'' for which a U.S. Provisional Patent Application was filed and assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to NASA Ames Research Center.

DATE: Responses to this notice must be received by October 26, 1998.

FOR FURTHER INFORMATION CONTACT: Kathleen Dal Bon, Patent Counsel, NASA Ames Research Center, Mail Stop 202A–3, Moffett Field, CA 94035–1000, telephone (650) 604–5104.

Dated: August 19, 1998.

Edward A. Frankle,

General Counsel.

[FR Doc. 98–22829 Filed 8–25–98; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL COUNCIL ON DISABILITY

International Watch; Technology Watch; Notice of Meeting

TYPE: Advisory Committee Conference Calls.

AGENCY: National Council on Disability (NCD).

SUMMARY: This notice sets forth the schedule of forthcoming conference calls for NCD's advisory committees—International Watch and Technology Watch. Notice of this meeting is required under Section 10(a)(1)(2) of the Federal Advisory Committee Act (Pub. L. 92–463).

INTERNATIONAL WATCH: The purpose of NCD's International Watch is to share information on international disability issues and to advise NCD's International Committee on developing policy proposals that will advocate for a foreign policy that is consistent with the values and goals of the Americans with Disabilities Act.

DATES: September 16, 1998, 12:00 noon–1:00 p.m. EDT.

FOR INTERNATIONAL WATCH INFORMATION, CONTACT: Mark S. Quigley, Public Affairs Specialist; National Council on Disability, 1331 F Street, NW, Suite 1050, Washington, D.C. 20004–1107; 202–272–2008 (Voice), 202–272–2074 (TTY), 202–272–2022 (Fax), mquigleyncd.gov (e-mail).

TECHNOLOGY WATCH: NCD's Technology Watch (Tech Watch) is community-

based, cross-disability consumer task force on technology. Tech Watch provides information to NCD on issues relating to emerging legislation on technology and helps monitor compliance with civil rights legislation, such as Section 508 of the Rehabilitation Act of 1973, as amended.

DATES: September 18, 1998, 1:15 p.m.–3:15 p.m.

FOR TECHNOLOGY WATCH INFORMATION, CONTACT: Jamal Mazrui, Program Specialist, National Council on Disability, 1331 F Street NW, Suite 1050, Washington, DC 20004–1107; 202–272–2114 (Voice), 202–272–2074 (TTY), 202–272–2022 (Fax), jmazruincd.gov (e-mail).

AGENCY MISSION: The National Council on Disability is an independent federal agency composed of 15 members appointed by the President of the United States and confirmed by the U.S. Senate. Its overall purpose is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all people with disabilities, regardless of the nature of severity of the disability; and to empower people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

These committees are necessary to provide advice and recommendations to NCD on international disability issues and technology accessibility for people with disabilities.

We currently have balanced membership representing a variety of disabling conditions from across the United States.

OPEN CONFERENCE CALLS: These advisory committee conference calls of the National Council on Disability will be open to the public. However, due to fiscal constraints and staff limitations, a limited number of additional lines will be available. Individuals can also participate in the conference calls at the NCD office. Those interested in joining these conference calls should contact the appropriate staff member listed above.

Records will be kept of all International Watch and Tech Watch conference calls and will be available after each conference call for public inspection at the National Council on Disability.

Signed in Washington, DC, on August 21, 1998.

Ethel D. Briggs,

Executive Director.

[FR Doc. 98–22928 Filed 8–25–98; 8:45 am]

BILLING CODE 6820–MA–M

NATIONAL GAMBLING IMPACT STUDY COMMISSION

Meeting

AGENCY: National Gambling Impact Study Commission.

ACTION: Notice of public meeting.

SUMMARY: At its fifth on-site meeting the National Gambling Impact Study Commission, established under Public Law 104–169, dated August 3, 1996, will hear presentations from invited panels of speakers, receive public comment, and conduct its normal meeting business.

DATE: Thursday, September 10, 1998, 8:00 a.m. to 5:00 p.m.

ADDRESS: The meeting site will be: Mississippi Coast Coliseum & Convention Center, 2350 Beach Blvd., Biloxi, MS 39531.

DATE: Friday, September 11, 1998, 8:30 a.m. to 5:00 p.m.

ADDRESS: The meeting site will be: Radisson Hotel New Orleans, 1500 Canal Street, New Orleans, LA 70112.

Written comments can be sent to the Commission at 800 North Capitol Street, N.W., Suite 450, Washington, D.C. 20002.

STATUS: The meeting will be open to the public both days. However, the Commission will enter executive session during its lunch period from 12:15 p.m. to 2:00 p.m. on Friday, September 11.

CONTACT PERSONS: For further information contact Craig Stevens at (202) 523–8217 or write to 800 North Capitol St., N.W., Suite 450, Washington, D.C. 20002.

SUPPLEMENTARY INFORMATION: The meeting will take place over a two-day period in two separate locations, Biloxi, Mississippi on September 10, and New Orleans, Louisiana on September 11. The meeting agenda will include presentations from State and Local Officials; staff briefings on Gambling Economics, Regulations, Treatment, and Crime; testimony from invited panels of speakers on Gambling and the National Economy, Gambling and Community Development, State Regulation, Pathological Gambling, and Gambling and Crime; normal meeting business; executive session; and an open forum period for public comment at both venues. An open forum for public participation will be held both days on issues relevant to the Commission's work. On September 10 in Biloxi, it will be held from 4:15 p.m. to 5:00 p.m. On September 11 in New Orleans, it will be held from 4:15 p.m. to 5:00 p.m. Anyone wishing to make an oral presentation at either location must contact Mr. Tim Bidwill by telephone only at (202) 523–8217 no later than 5:00 p.m., September 4, 1998. No requests will be accepted before 9:00 a.m. (EST), the day this notice appears in the **Federal Register**.

Callers must specify which day they wish to speak. Callers will then be asked to provide name, organization (if applicable), address, and daytime telephone number. Call-backs from staff may be required. No requests will be accepted via mail, facsimile, e-mail, or voice mail. A waiting list will be compiled once the allotted number of slots becomes filled. Oral presentations will be limited to three (3) minutes per speaker. If this is not enough time to complete comments, please restrict to three minutes a summary of your comments and bring a typed copy of full comments to file with the Commission. Persons speaking at a forum are requested, but not required, to supply twenty (20) copies of their written statements to the registration desk prior to the public comment period. Members of the public, on the waiting list or otherwise, are always invited to send written comments to the Commission at any time. However, if individuals wish to have their written comments placed into the official record of the meeting, the Commission must receive them by October 1, 1998. Each speaker is kindly asked to be prepared prior to their presentation; to refrain from any use of profanity, vulgar language, or obscene signage; to refrain from making any comments or disrupting sounds during the presentation of another speaker; and to remain seated. If visual aids are necessary during the course of a speaker's presentation, each speaker is responsible for providing the equipment to run the visual aid. A complete list of guidelines is available on the Commission's web site: *www.ngisc.gov*.

Tim Bidwill,

Special Assistant to the Chairman.

[FR Doc. 98–22882 Filed 8–25–98; 8:45 am]

BILLING CODE 6802–ET–P

NUCLEAR REGULATORY COMMISSION

Public Workshop To Develop Improvements to the Performance Assessment and Regulatory Oversight Processes

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The Nuclear Regulatory Commission (NRC) will hold a public workshop to develop improvements to

the performance assessment and regulatory oversight processes. These meetings are open to the public and all interested parties may attend and participate.

DATES: The workshop will be held from September 28 through October 1, 1998. The workshop will be held from 8:00 a.m. to 5:00 p.m. on September 28 through September 30, 1998. On October 1, 1998, the workshop will again start at 8:00 a.m., and is scheduled to conclude at 2:00 p.m.

ADDRESSES: The workshop will be held at the Bethesda Marriott, 5151 Pooks Hill Road, Bethesda MD 20814.

FOR FURTHER INFORMATION CONTACT: Timothy J. Frye at 301–415–1287 or David L. Gamberoni at 301–415–1144, Mail Stop: O–5H4, Inspection Program Branch, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Background

In September 1997, the NRC began an integrated review of the assessment processes (IRAP) used for commercial nuclear power plant licensees. A cross-disciplinary team of NRC staff members was assembled to identify and evaluate potential improvements to the process used by the NRC to assess licensee performance. A process re-engineering approach was taken by the team to identify the desired objectives of a new assessment process, the attributes it should possess, and criteria to measure improvement over the existing assessment processes.

The team developed a conceptual design for a new integrated assessment process and presented it to the NRC Commissioners in Commission paper SECY–98–045, dated March 9, 1998. On April 2, 1998, the staff briefed the Commission on the concepts as discussed in the paper. On June 30, 1998, the Commission issued a staff requirements memorandum (SRM) in response to SECY–98–045, approving the staff's request to solicit public comment on the concepts presented in the Commission paper.

The NRC issued (1) background material on the concept developed for a new integrated assessment process and (2) other assessment tools such as trending methodology, financial indicators, and risk-informed assessment guidance in the report ''Concepts Developed by the Integrated Review of Assessment Process for Commercial Nuclear Power Plants,'' dated July 29, 1998. On August 7, 1998, the NRC issued a **Federal Register** Notice announcing a 60-day public comment period to solicit public comment on possible changes to the NRC's assessment and regulatory oversight processes.

In parallel with staff work on the IRAP and the development of other assessment tools, the industry has independently developed a proposal for a new assessment and regulatory oversight process. This proposal would take a risk-informed, performance-based approach to the inspection, assessment, and enforcement of licensee activities based on the results of a set of performance indicators. This proposal, which is being developed by the Nuclear Energy Institute, is further described in ''Minutes of the July 28, 1998, Meeting With the Nuclear Energy Institute to Discuss Performance Indicators and Performance Assessment,'' dated July 30, 1998.

Scope of the Public Workshops

The NRC will hold a four day workshop to develop improvements to the licensee performance assessment and regulatory oversight processes. As background information, concepts previously developed by the NRC and the industry for improving the performance assessment and regulatory oversight processes will be discussed. At the workshop, the NRC will present a framework that links various regulatory oversight activities, such as inspection and assessment, to the overall objective of the agency and the industry, which is to ensure the adequate protection of public health and safety.

Several fundamental issues will then be discussed in order to develop the attributes that a new process must meet. These fundamental issues will be discussed in focused breakout sessions and grouped by the following topics: (1) general policy issues involving safety performance expectations and regulatory oversight; (2) the use of risk insights in the assessment process; (3) the use of performance indicators and their integration with inspection results; and (4) the role of enforcement in regulatory oversight/range of NRC actions/communication of assessment results.

The attributes that result from the discussion of these fundamental issues will then be used by the workshop participants to develop the specific details for improvements to the performance assessment and regulatory oversight processes. This development activity will again occur in focused breakout sessions, with each group focused on the development of one aspect of the new process.

Workshop Pre-Registration

Attendees at the workshop are requested to pre-register with the NRC approximately three weeks before the workshop. In order to pre-register, please give your utility or group affiliation, list the names of the people planning to attend, and indicate which of the fundamental issue breakout sessions that members of your group are interested in participating. Attendees may pre-register in any of the following ways:

(1) Contact via e-Mail either Timothy J. Frye at TJF@NRC.GOV, or David L. Gamberoni at DLG2@NRC.GOV, or

(2) Submit the pre-registration information to either Timothy J. Frye or David L. Gamberoni via fax at 301–415–3707, or

(3) Send written pre-registration data to: U.S. Nuclear Regulatory Commission, Attn: Timothy J. Frye, Office of Nuclear Reactor Regulation, Mail Stop O–5H4, Washington, DC 20555–0001.

A block of hotel rooms has been reserved at the Bethesda Marriott for the use of the workshop participants. These rooms will be available until September 9, 1998, and should be reserved by contacting the hotel at 301–897–9400 and requesting a room in the ''NRC'' block. After September 9, 1998, reservations will be accepted on a space available basis.

Dated at Rockville, Maryland, this 20th day of August 1998.

For the Nuclear Regulatory Commission.

Frank P. Gillespie,

Director, Division of Inspection & Support Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 98–22906 Filed 8–25–98; 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. Public Law 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 August 3, 1998, through August 14, 1998. The last biweekly notice was published on August 12, 1998 (63 FR 43200).

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 September 25, 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.

Baltimore Gas and Electric Company, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendments request: July 20, 1998.

Description of amendments request: The amendment incorporates the changes described below into the Technical Specifications (TS) for Calvert Cliffs Unit 2. Currently, Calvert Cliffs has four emergency diesel generators (EDGs), two per Unit, to provide the onsite emergency power supply for both Units. The Unit 2 EDGs rely on the Service Water (SRW) System to provide their cooling water. During the Unit 2 1999 Refueling Outage, Baltimore Gas and Electric Company will replace the SRW heat exchangers on Unit 2. During the period of the replacement, no SRW cooling will be available for Unit 2. Therefore, both Unit 2 EDGs would be inoperable during the replacement work. Unit 1 will continue at full power operation during the Unit 2 refueling outage.

The loss of both EDGs on Unit 2 presents several challenges. First, a number of outage activities require an EDG to be operable. BGE proposes to provide an alternate cooling water supply to maintain the EDGs operable to fulfill the TS requirements. One EDG will be provided with cooling water from the Unit 1 SRW System. The other EDG will be provided with cooling water from an independent external cooling system. Second, Unit 1 is scheduled to be in Mode 1 operation during this time. The No. 12 Control Room Emergency Ventilation System, No. 12 Control Room Emergency Temperature System, and a Hydrogen Analyzer are affected by this work because they obtain their emergency power from a Unit 2 EDG. These components support Unit 1 continued operation. Therefore, the loss of both Unit 2 EDGs would impact operations on both units.

There are several issues associated with this change that create an Unreviewed Safety Question (USQ) as defined by 10 CFR 50.59. There is an increase in the probability of a malfunction due to the use of an independent cooling system that is non-safety-related and unprotected from seismic or tornado events. The reliance of a Unit 2 EDG on Unit 1 SRW results in the increase of the probability of a malfunction, also. Additionally, these SRW lineups affect the probability of a malfunction for other equipment that relies on SRW during an outage. The approval of these USQs, will permit a TS Bases change to the description of an operable EDG while Unit 2 is in Modes 5 and 6.

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. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The EDGs are used to mitigate the consequences of an accident. They are designed to start and load safety-related loads within a specified time period. There are two EDGs for Unit 2. Only one is required during the refueling outage, since a single failure criterion does not apply during this time. However, it is desirable for defense-in-depth and shutdown safety reasons to keep both EDGs operable. Additionally, one of the EDGs supports operable equipment on Unit 1 that remains at power. We are proposing an amendment that would allow the EDGs to continue to be operable with an alternate cooling water supply. Other than the change in cooling water supply, we are not affecting or modifying the operation of the EDGs. The EDGs are not an accident initiator for any previously evaluated accident. Therefore, the proposed change does not involve an increase in the probability of an accident previously evaluated.

The EDGs are designed to mitigate the consequences of an accident. They will continue to perform that function while being supplied with an alternate source of cooling water. The consequences of a design basis accident during the period when the alternate cooling water is being supplied is not increased because the operation of the EDGs has not been adversely affected. Any additional electrical loads (such as cooling tower pumps and fans) or additional cooling loads (such as additional SRW flow to the No. 2A EDG) have been evaluated and found to be acceptable under conditions postulated to exist during the outage. Therefore, the proposed change does not significantly increase the consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different type of accident from any accident previously evaluated.

The EDGs are not being modified by this proposed change nor will any unusual operator actions be required. The EDGs will continue to operate in the same manner as before. However, the cooling water supplies have been altered and were evaluated under the provisions of 10 CFR 50.59 and determined to result in a USQ. These USQs are evaluated below.

The first identified USQ is due to the realignment of a Unit 1 SRW subsystem to also support a Unit 2 EDG (2A). This alignment will rely on two control valves (one to each EDG) to function properly in order to provide adequate SRW flow to both EDGs. If one of the valves should fail open, it may result in insufficient SRW flow or increased SRW temperatures, as the EDGs share the same cooling supply. This is an increase in the probability of a malfunction because the operability of a EDG relies on both control valves performing properly. We believe that this is an acceptable condition because the control valves and their air supply are safety-related and will be performing their design function. The control valves are not being modified by the temporary configuration nor will any operator action be required. The control valves will continue to operate in the same manner. Therefore, because the malfunction is the same as previously identified for these valves and only the probability has increased, a new or different type of accident has not been created.

The next USQ identifies a condition where a Unit 2 EDG is dependent on a Unit 1 EDG for cooling water. The Unit 1 EDG powers the pump for the cooling water system that will now provide cooling to both EDGs. Although the consequences of a loss of cooling water is the same (i.e., the EDG fails), the probability of a malfunction for the Unit 2 EDG has increased because it now depends on the Unit 1 EDG to maintain its operability. We believe that this is an acceptable condition because the Unit 1 EDG is safety-related and is proven reliable through testing.

Additionally, the EDG will not be operated in a manner different than it is currently. It is not being modified by the proposed change nor will any additional operator actions be required. A failure analysis shows that failure of the No. 1B EDG will not result in the total loss of any safety function for either unit. Therefore, the possibility of a new or different type of accident has not been created.

A USQ has been identified related to the use of a temporary cooling system to provide cooling to an EDG. The cooling system what is proposed is not safety-related and is not protected from natural phenomenon. This leads to an increase in the probability of a malfunction because the cooling system is more likely to fail than a safety-related, protected system. We believe that this is an acceptable condition for the limited time we propose to use the cooling system. The consequences of a cooling system failure are no different than those of a failure of the SRW System. The events most likely to cause the cooling system to fail are seismic events and severe weather. Severe weather is not highly probable during this time of year. Significant seismic events are not probable on this part of the east cost. The cooling tower has been used before at Calvert Cliffs to support testing of the EDGs during outages. The cooling tower will have enhanced design features that will improve its reliability, such as two pumps. The piping provided to and from the cooling system will be steel and will be provided with flexible joints making it rugged and flexible. Additionally, the cooling tower will be placed close to the Auxiliary Building and the makeup water piping will be run underground for part of its length. These measures help to protect the cooling tower and its piping from severe weather events. The EDG is not being altered by this temporary configuration. It will continue to operate as before. No additional operator action is required for the cooling tower to perform its function. Therefore, the possibility of a new or different type of accident has not been created.

This USQ exists because the piping from the cooling tower to the EDG is not safety-related and could break, causing a flood in the EDG room. This creates an increase in the probability of a malfunction because of the increased probability of flooding in the room. We believe that this increase is acceptable because the piping is constructed from rugged materials and is flexibly connected to the EDG. This reduces the chance that flooding will occur. If flooding were to occur and the contents of the cooling system were spilled into the room, it would not impact safety-related components in the room because the water would not be deep enough. Therefore, the possibility of a new or different accident has not been created.

Therefore, the possibility of a new or different type of accident from any accident previously evaluated has not been created.

3. Would not involve a significant reduction in a margin of safety. The operability of the EDGs in Modes 5 and 6 ensures that emergency power is available to mitigate the consequences of a fuel handling accident and a boron dilution accident. Additionally, it provides emergency power for shutdown cooling and spent fuel pool cooling. One of the Unit 2 EDGs provides power to the shared Control Room Emergency Ventilation System, Control Room Emergency Temperature System, and the Hydrogen Analyzer needed to Support Unit 1 power operation. The proposed changes do not affect the function of the EDGs. Because of the increased probability of a malfunction of equipment important to safety (SRW support for the EDGs), the margin of safety is reduced. However, the reduction is not significant. As described above, each USQ has been evaluated and determined to not have a significant impact on safety.

To provide additional assurance that all reasonable steps have been taken to ensure the operability of the Unit 2 EDGs while in the temporary configuration, the following actions will be taken in addition to the installation of the temporary modifications as described above:

To prevent the loss of the normal power supply to the Control Room Emergency Ventilation System and Control Room Emergency Temperature System, we will restrict maintenance activities on three of the four offsite transmission lines until the Unit 2 EDGs are returned to normal configuration.

To monitor risk, Unit 1 and 2 equipment taken out-of-service during this period will be evaluated in the Unit 1 weekly quarterly system schedule evaluations.

To ensure that weather-related events cannot cause a loss of all emergency power on Unit 2 during periods of reduced inventory, the No. 2A EDG will remain operable during reduced inventory periods.

To ensure that backup power is available to any of the safety-related buses, the No. 0C Diesel Generator will not be taken out-of service for planned maintenance and will remain available to be connected to any of the safety-related buses.

We believe that the reduction in the margin of safety represented by this temporary license amendment is not significant based on our evaluation and management of plant risk, the reliability of the EDGs, the availability of redundant EDGs, the availability of the Station Blackout Diesel Generator and the mitigating features described above. Therefore, the proposed 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 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: Calvert County Library, Prince Frederick, Maryland 20678.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: S. Singh Bajwa, Director.

Duke Energy Corporation (DEC or licensee), 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, as supplemented by letters dated March 9, March 20, April 20, June 3, June 24, July 7, July 21, and July 22, 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 15, 1997 (62 FR 37940) 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 15, 1997, notice. The following description and no significant hazard analysis covers a beyond-scope change.

The licensee 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 proposed change would impose a requirement to perform a precision water balance of the reactor coolant system every 24 hours during this period. The proposed change would also reduce the number of monitors required operable provided compensatory measures are performed or diverse instruments continue to be available.

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? The proposed change 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 change 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 difference kind of accident from any accident previously evaluated?

The proposed change would not lead to any hardware or operating procedure change. Therefore, 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 change 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 change. 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.

GPU Nuclear, Inc. et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: July 21, 1998.

Description of amendment request: The proposed change to the Technical Specifications would: (1) modify Specification 6.2.2.2(a) to provide some flexibility to accommodate unexpected absence of on-duty shift crew members, (2) eliminate reference to the Manager, Plant Operations in Specification 6.2.2.2(j) as the position has been eliminated, (3) reduce the maximum time in which to forward audit reports to the responsible manager from 60 days to 30 days, (4) replace the term ''Vice President'' with the term ''Corporate Officer'' in several places in Section 6, and (5) correct several typographical errors.

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. State the basis for the determination that the proposed activity will or will not increase the probability of occurrence or consequences of an accident.

The activity does not alter the design, function or manner of operation of any structures, systems or components. Therefore, this activity does not increase the probability or consequences of an accident.

2. State the basis for the determination that the activity does or does not create the possibility of an accident or malfunction of a different type than any previously identified in the SAR.

The activity does not alter the design, function, or manner of operation of any structures, systems or components. Therefore, this activity does not create the possibility of an accident or malfunction of a different type than any previously identified in the SAR.

3. State the basis for the determination that the margin of safety is not reduced.

The activity does not alter the design, function or manner of operation of any structures, systems or components. In addition, a decrease in staff for a short period of time on limited occasions is not safety significant and permitted by 10 CFR 50.54 (m). Therefore, this activity will not reduce 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: Ocean County Library, Reference Department, 101 Washington Street, Toms River, NJ 08753.

Attorney for licensee: Ernest L. Blake, Jr., Esquire. Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Cecil O. Thomas.

GPU Nuclear, Inc. et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: July 23, 1998.

Description of amendment request: Amend facility license to establish that the existing Safety Limit Minimum Critical Power Ratio (SLMCPR) contained in Technical Specification 2.1.A is applicable for the next operating cycle (Cycle 17).

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 TS change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The derivation of the Cycle 17 SLMCPR for Oyster Creek for incorporation into the TS, and its use to determine cycle-specific thermal limits, has been performed using NRC-approved methods. Additionally, interim implementing procedures, which incorporate cycle-specific parameters, have been used. Based on the use of these calculations, the Cycle 17 SLMCPR of 1.09 will not increase the probability or consequences of an accident.

The basis of the MCPR Safety Limit calculation is to ensure that greater than 99.9% of all fuel rods in the core avoid transition boiling if the limit is not violated. A SLMCPR of 1.09 preserves adequate margin to transition boiling and fuel damage in the event of a postulated accident. The probability of fuel damage is not increased.

Therefore, the proposed TS change does not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The MCPR Safety Limit is a Technical Specification numerical value designed to ensure that fuel damage from transition boiling does not occur as a result of the limiting postulated accident. The limit cannot create the possibility of any new type of accident. The Cycle 17 SLMCPR has been calculated using NRC-approved methods. Additionally, interim procedures, which incorporate cycle-specific parameters, have been used. Therefore, the proposed TS change does not create the possibiliy of a new or different kind of accident, from any accident previously evaluated.

3. The proposed TS change does not involve a significant reduction in a margin of safety.

The margin of safety as defined in the TS Bases will remain the same. The Cycle 17 SLMCPR is calculated using NRC-approved methods, which are in accordance with the current fuel design and licensing criteria. Additionally, interim implementing procedures, which incorporate cycle-specific parameters, have been used. The MCPR Safety Limit remains high enough to ensure that greater than 99.9% of all fuel rods in the core will avoid transition boiling if the limit is not violated, thereby preserving fuel cladding integrity. Therefore, the proposed TS change does 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 amendment request involves no significant hazards consideration.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, NJ 08753.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Cecil O. Thomas.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: August 6, 1998.

Description of amendment request: The proposed amendment would allow changes to the Updated Safety Analysis Report (USAR) to reflect the as-built configuration of the reactor building isolation dampers. These changes would clarify the USAR discussion of secondary containment isolation and revise the calculated offsite dose consequences resulting from a postulated refueling accident. No changes to the Technical Specifications (TS) are required; the TS Bases, § 3.6.4.2, will be revised under the licensee's Bases control program to reflect the changes in the USAR 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 enclosed proposed license amendment for the as-built design of the Secondary Containment (Reactor Building) isolation dampers is judged to involve no significant hazards based on the following:

1. Does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The existing plant design does not involve a significant increase in the probability of an accident previously evaluated in the Updated Safety Analysis Report (USAR). The current configuration does not affect the performance and reliability of the Secondary Containment and the Reactor Building Isolation and Control System or any system interface in a way that could lead to an accident occurring. The current configuration and analysis do not affect any accident precursors or initiators, and therefore, does not increase the probability of an accident.

The present plant configuration also does not involve a significant increase in the consequences of an accident previously evaluated in the USAR. The current design will require a clarification to the Secondary Containment safety design basis as described in the USAR to reflect the as-built configuration and analysis of the plant by stating that the Reactor Building Isolation and Control System is designed to limit the release of fission products through the normal ventilation discharge path during a postulated Refueling Accident.

The original analysis determined that the consequences of the Refueling Accident were significantly less than 1 Rem to the thyroid and whole body (maximum off-site dose). When this analysis was revised to account for the 90 second motor-operated damper closure time, the calculated whole body off-site dose increased, but was still less than 1 Rem; the calculated off-site dose to the thyroid, however, increased to 2.7 Rem. While this change in the analysis represents an order of magnitude increase in consequences (thyroid dose increase from 17 milliRem to 2.7 Rem), the actual increase is minimal because this increase in consequences is still less than 1 percent (1%) of the limits specified in 10 CFR 100. Thus the consequences still remain well within the regulatory threshold specified in 10 CFR 100 and thus pose no undue hazard to the health and safety of the public. This proposed amendment does not alter the Control Room dose from that which was submitted to the NRC in support of Amendment 167.

2. Does not create the possibility of a new or different kind of accident from any accident previously evaluated.

This proposed license amendment is administrative in nature in that it reflects the effects of a revised analysis for the Refueling Accident, which is an accident previously analyzed as a Design Basis Accident (DBA) in the SAR, based on the present configuration of the plant. The current configuration does not create the possibility of a new or different kind of accident from any accident previously evaluated in the USAR. The proposed license amendment does not introduce any new equipment or hardware changes, nor does it require existing equipment or systems to perform a different type of function than they are presently designed to perform. The as-built configuration does not introduce any new mode of plant operation, thus there are no new accident failure paths created.

The as-built configuration does not affect any accident precursors or initiators and does not create the possibility of a new or different kind of accident.

3. Does not create a significant reduction in the margin of safety.

The present plant configuration does not involve a significant reduction in a margin of safety. Technical Specification Bases section 3.2.D.2, Reactor Building Isolation and Standby Gas Treatment (SGT) Initiation, states that the trip settings for the Reactor Building exhaust plenum radiation monitors are based on initiating normal ventilation system isolation and SGT System operation so that none of the activity released during the refueling accident leaves the Reactor Building via the normal ventilation path, but rather all the activity is processed by the SGT System. This basis statement remains true unless there is a single failure of the air-operated Secondary Containment isolation damper. Under single failure conditions there would be the potential for a limited release through the normal ventilation system prior to complete isolation of the secondary containment and initiation of the SGT System.

The significance of this change is minimal, as Technical Specification requirements to isolate Secondary Containment are still met. The overall function of the Secondary Containment and Reactor Building Isolation and Control System, in conjunction with other accident mitigation systems, is to limit fission product release during and following postulated DBAs. High radiation in the Secondary Containment exhaust is an indication of possible gross failure of the fuel cladding, possibly due to a Refueling Accident. The trip settings for the Reactor Building (Secondary Containment) radiation monitors are such that initiation of secondary containment isolation and SGT would still occur in sufficient time (within 90 seconds of detection) to maintain postulated off-site releases well within the limits of 10 CFR 100. As stated previously, the effects of the 90 second motor-operated damper closure time on Control Room dose have already been taken into consideration in the District's submittals supporting Amendment 167.

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.

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: August 4, 1998.

Description of amendment request: The proposed amendment would change the Technical Specifications (TS) relating to the Condensate Storage Tank (CST) and also add a new TS section that would establish requirements for the atmospheric steam dump valves (ASDVs) to assure their operability. The applicable TS Bases section for the CST would also be changed to reflect the proposed changes and a new TS Bases section would be added to discuss the new TS section for the ASDVs.

Specifically, the proposed changes would modify TS 3.7.1.3, ''Plant

Systems—Condensate Storage Tank,'' by increasing the minimum required CST level from 150,000 gallons to 165,000 gallons to account for the discharge nozzle pipe elevation above the tank bottom and vortex formation in the CST at the auxiliary feedwater supply piping entrance. TS 3.7.1.7, ''Plant Systems—Atmospheric Steam Dump Valves,'' would be added to provide the requirements necessary to assure that the ASDVs will be available to either maintain the unit in hot standby or cool down the unit to shutdown cooling entry conditions if the condenser steam dump valves are not available. As previously noted, the TS Bases would be modified to 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 increase the minimum required Condensate Storage Tank (CST) level of Technical Specification 3.7.1.3 will ensure sufficient water is available for the Auxiliary Feedwater (AFW) System to function as designed to mitigate design basis accidents. There will be no adverse effect on 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 change to add a Technical Specification for the Atmospheric Steam Dump Valves (ASDVs) will provide additional assurance that the ASDVs will be available to either maintain the unit in hot standby, or cool down the unit to Shutdown Cooling (SDC) entry conditions if the condenser steam dump valves are not available. The proposed change does not alter the way any structure, system, or component functions. There will be no adverse 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 have no adverse effect on any of the design basis accidents previously evaluated. 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 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 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 change to increase the minimum required CST level will ensure the AFW System will function as designed to mitigate design basis accidents. The proposed change to add a Technical Specification for the ASDVs will provide additional assurance that the ASDVs will be available, if needed. There will be no adverse effect on equipment important to safety. Therefore, there will be no significant reduction of margin of safety as defined in the Bases for 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: William M. Dean.

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: March 18, 1998.

Description of amendment request: The proposed amendment would revise the Bases for Technical Specification (TS) 3/4.6.2.1, ''Containment Spray System,'' of the combined technical specifications for the Diablo Canyon Power Plant, Unit Nos. 1 and 2, to clarify that containment spray is not required to be actuated during recirculation, but may be actuated at the discretion of the Technical Support Center. Additionally, the Bases would be clarified to state that the ability to spray containment using the residual heat removal (RHR) system is demonstrated by opening the RHR Spray Ring Cross Connect Valve 9003 A or B. The Bases will also be clarified to state that flow to the spray headers can be established with only one operable RHR pump by closing the cold leg discharge valve 8809 A or 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. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Containment spray (CS) in the recirculation mode of post-loss-of-coolant accident (LOCA) safety injection (SI) is used only after the accident has already occurred. Its availability or unavailability is unrelated to, and is not a precursor for, an accident that has already been initiated. The availability or unavailability of CS recirculation spray does not involve any physical change in plant systems, structures, or components, and there is no change in preaccident operating procedures, so there is no change to the probability of an accident occurring as a result of any such changes. The recirculation mode of emergency core cooling is only used following a LOCA; therefore, an evaluation of the effects of the use or absence of CS in the recirculation mode applies only to a LOCA and not to any other type of accident analyzed in the Final Safety Analysis Report (FSAR).

The peak post-LOCA containment pressure and temperature conditions occur prior to the recirculation phase of SI, and are not affected by CS operation during the recirculation mode of SI. The long term pressure and temperature profiles are slightly increased if recirculation spray is unavailable but are still within the dose analysis and equipment qualification requirements. There is no effect on the offsite dose analysis or on equipment operability.

If CS is not operated in the recirculation mode, there is no reduction in the amount of emergency core cooling system (ECCS) water pumped into the reactor vessel. Since the flow to the reactor is not reduced, core cooling is not adversely affected if recirculation spray is not used. If recirculation spray is used under Technical Support Center (TSC) direction with only one train of residual heat removal (RHR) in operation, ECCS flow to the reactor will be reduced, but analysis has shown that the flow to the reactor in this situation is still in excess of that needed to supply the required core cooling. Therefore, although it is not required, it would still be possible to establish CS in the recirculation mode with only one train of RHR in operation, if considered desirable by the TSC.

From the above discussion, it can be seen that the consequences of an accident analyzed in the FSAR are not increased because the absence of recirculation spray has no effect on the dose analyses and the effect on other accident parameters is within limits.

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 possibility of a malfunction of a different type than previously evaluated is not created for the following reasons:

Data provided in the FSAR can be used to determine that the iodine removal function for the CS system is completed in approximately 26 minutes, and prior to completing switchover to the recirculation mode after a LOCA. The statements in previous revisions of the FSAR that recirculation spray will continue for 2 hours to remove iodine are considered to be descriptive in nature, explaining an additional capability of the CS system, but not relied upon or evaluated in the FSAR.

The post-LOCA containment environmental conditions without recirculation spray remain bounded by those for which safety-related equipment inside containment is qualified; therefore, there is no resulting increase in the probability that it will malfunction. There is no other new mechanism created by the unavailability of recirculation spray that would lead to any greater probability of malfunction of safety-related equipment.

The peak post-LOCA containment pressure and temperature conditions occur prior to the recirculation phase of SI, and are not affected by CS operation during the recirculation mode of SI. Also, the Diablo Canyon Power Plant (DCPP) design bases and accident analyses do not assume any contribution to post-accident containment hydrogen mixing from recirculation spray. The DCPP design basis has always assumed that hydrogen mixing is achieved by containment fan cooler unit operation alone.

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.

Technical Specification (TS) 3/4.6.2.1, ''Containment Spray System,'' requires the operability of two trains of CS with each train capable of taking suction from the refueling water storage tank (RWST) and transferring spray function to an RHR train taking suction from the containment sump. With the proposed changes, the capability to perform the required alignment remains unaffected. However, the ability to actually provide CS in the recirculation mode of SI is limited by procedure in the event of failure of a train of auxiliary saltwater, component cooling water, or RHR. This does not affect the margin of safety as defined in the TS Bases. The Bases for CS operability are to ensure pressure reduction, cooling capability, and iodine removal from the containment atmosphere consistent with the assumptions used in the safety analyses.

All pressure reduction, cooling, and iodine removal parameters assumed in the accident analyses continue to bound those resulting in the event that recirculation spray is not used. The accident analyses require that the peak post-accident pressure does not exceed 47 psig, and that post-accident pressure be reduced to less than half the peak within 24 hours. These requirements are still met, but the long term pressure is slightly higher. Since these requirements are based on minimizing leakage rates and on environmental qualification concerns, and since the leakage rate in the offsite dose analysis and pressures for which safety-related equipment inside containment is qualified still bound the analysis results, a slightly higher long term pressure has no effect on safety margins. Although the long term temperature profile increases slightly with no recirculation spray, the equipment is still environmentally qualified for these temperatures, so again margin is maintained. The use of recirculation spray is not credited in the offsite or control room dose analyses since the containment atmospheric iodine decontamination factor reaches 1000 prior to the time recirculation spray is placed in service, so there is no loss of margin in the offsite and control room dose analyses. None of the accident analysis limits are exceeded in the absence of recirculation spray.

The function of CS to inject NaOH into the containment atmosphere and sump is not affected by the proposed changes. The same amount of RWST water will be pumped into the containment via the CS system for a given size LOCA with or without recirculation spray, so the same amount of NaOH is injected into the containment, and hence there is no effect on sump pH, iodine retention, or the dose analysis.

In the event that recirculation spray is established under TSC direction with only one train of RHR in operation, there is no reduction in the margin of safety from the resulting reduced flow to the core since analysis has demonstrated that even with no RHR flow to the RCS, the resulting flow to the core will still be greater than that required to maintain adequate core cooling and maintain peak clad temperatures within limits.

The functions specified for the CS system in the TS Bases are to ensure post-accident pressure reduction, cooling capability, and iodine removal from the containment atmosphere consistent with the assumptions used in the safety analyses. Since these functions are maintained within the limits of the safety analyses even in the absence of recirculation spray, the operability of the CS system as required by TS 3.6.2.1 is maintained.

Therefore, the proposed 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 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.

Pennsylvania Power and Light Company, Docket No. 50–388, Susquehanna Steam Electric Station, Unit 2, Luzerne County, Pennsylvania

Date of amendment request: August 5, 1998.

Description of amendment request: The amendment to Unit 2 Technical Specifications (TS) involves the addition of a new section entitled ''Oscillation Power Range Monitoring (OPRM) Instrumentation'' and revisions to Section 3.4.1 ''Recirculation Loops Operating'' to remove the specifications related to thermal power stability which will not be required after the installation of the OPRM instrumentation. Unit 2 is currently operating under Interim Corrective Actions (ICAs) defined in TS 3.4.1 that specify restrictions on plant operation and actions by operators in response to instability events. The OPRM system provides an automatic long-term solution to the instability issue and eases the burden on the operator.

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.

This proposal does not involve an increase in the probability or consequences of an accident previously evaluated.

The OPRM most directly affects the [Average Power Range Monitor] APRM and [Local Power Range Monitor] LPRM portions of the Power Range Neutron Monitoring system. Its installation does not affect the operation of these sub-systems. None of the accidents or equipment malfunctions affected by these sub-systems are affected by the presence or operation of the OPRM.

The APRM channels provide the primary indication of neutron flux within the core and respond almost instantaneously to neutron flux changes. The APRM Fixed Neutron Flux-High function is capable of generating a trip signal to prevent fuel damage or excessive reactor pressure. For the [American Society of Mechanical Engineers] ASME overpressurization protection analysis in [Final Safety Analysis Report] FSAR Chapter 5, the APRM Fixed Neutron Flux-High function is assumed to terminate the main steam isolation valve closure event. The high flux trip, along with the safety/relief valves, limit the peak reactor pressure vessel

pressure to less than the ASME Code limits. The control rod drop accident (CRDA) analysis in Chapter 15 takes credit for the APRM Fixed Neutron Flux-High function to terminate the CRDA. The Recirculation Flow Controller Failure event (pump runup) is also terminated by the high neutron flux trip. The APRM Fixed Neutron Flux-High function is required to be OPERABLE in MODE 1 where the potential consequences of the analyzed transients could result in the Safety Limits (e.g., [Minimum Critical Power Ratio] MCPR and Reactor pressure) being exceeded.

The installation of the OPRM equipment does not increase the consequences of a malfunction of equipment important to safety. The APRM and [Reactor Protection System] RPS systems are designed to fail in a tripped (fail safe) condition; the OPRM will have no affect on the consequence of the failure of either system. An inoperative trip signal is received by the RPS any time an APRM mode switch is moved to any position other than Operate, an APRM module is unplugged, the electronic operating voltage is low, or the APRM has too few LPRM inputs. These functions are not specifically credited in the accident analysis, but are retained for the RPS as required by the NRC approved licensing basis.

The OPRM allows operation under current operating conditions presently restricted by the current Technical Specifications by providing automatic suppression functions in the area of concern in the event an instability occurs. The consequences of any accident or equipment malfunction are not increased by operating under those conditions. Although protected by the OPRM from thermal-hydraulic core instabilities above 30% core power, operation under natural core recirculation conditions is not allowed. No accidents or transients of a type not analyzed in the FSAR are created by operating under these conditions with the protection of the OPRM system.

This change does not increase the probability of an accident as previously evaluated. The OPRM is designed and installed to not degrade the existing APRM, LPRM, and RPS systems. These systems will still perform all of their intended functions. The new equipment is tested and installed to the same or more restrictive environmental and seismic envelopes as the existing systems.

The new equipment has been designed and tested to the electromagnetic interference (EMI) requirements of Reference 2, which assures correct operation of the existing equipment. The new system has been designed to single failure criteria and is electrically isolated from equipment of different electrical divisions and from non-1E equipment. The electrical loading is within the capability of the existing power sources and the heat loads are within the capability of existing cooling systems. The OPRM allows operation under operating conditions presently forbidden or restricted by the current Technical Specifications. No other transient or accident analysis assumes these operating restrictions.

Based upon the analysis presented above, PP&L concludes that the proposed action does not involve an 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.

This proposal does not create the probability of a new or different type of accident from any accident previously evaluated. The OPRM system is a monitoring and accident mitigation system that cannot create the possibility for an accident.

The OPRM will allow operation in conditions currently restricted by the current Technical Specifications. Although protected by the OPRM from thermal-hydraulic core instabilities above 30% core power, operation under natural circulation conditions is not allowed. No accidents or transients of a type not analyzed in the FSAR are created by operating under these conditions with the protection of the OPRM system. No new failure modes of either the new OPRM equipment or of the existing APRM equipment have been introduced. Quality software design, testing, implementation and module self-health testing provides assurance that no new equipment malfunctions due to software errors are created. The possibility of an accident of a new or different type than any evaluated previously is not created.

The new OPRM equipment is designed and installed to the same system requirements as the existing APRM equipment and is designed and tested to have no impact on the existing functions of the APRM system. Appropriate isolation is provided where new interconnections between redundant separation groups are formed. The OPRM modules have been designed and tested to assure that no new failure modes have been introduced.

Therefore, the proposed change does 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 the margin of safety.

There has been no reduction in the margin of safety as defined in the basis for the Technical Specifications. The OPRM system does not negatively impact the existing APRM system. As a result, the margins in the Technical Specifications for the APRM system are not impacted by this addition.

Current operation under the ICAs provides an acceptable margin of safety in the event of an instability event as the result of preventive actions and Technical Specification controlled response by the control room operators. The OPRM system provides an increase in the reliability of the protection of the margin of safety by providing automatic protection of the MCPR safety limit, while the protection burden is significantly reduced for the control room operators. This protection is demonstrated as described above, and in the NRC reviewed and approved Topical Reports NEDO–32465–A and CENPD–400–P–A.

Replacement of the ICA operating restrictions from Technical Specifications with the OPRM system does not affect the margin of safety associated with any other system or fuel design parameter.

Therefore, the 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 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: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, PA 18701.

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037.

NRC Project Director: Robert A. Capra.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of amendments request: July 22, 1998.

Description of amendments request: The proposed amendments would change Technical Specification Tables 3.3.6.1–1 and 3.3.6.2–1 by increasing the Allowable Values for the high radiation trip for the exhaust monitors for the reactor building and the refueling floor.

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. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

The Unit 1 and Unit 2 reactor building and refueling floor ventilation exhaust radiation monitors perform no function in preventing, or decreasing the probability of, a previously evaluated accident. The monitors are designed to monitor ventilation exhaust for indications of a release of radioactive material resulting from a design basis accident and initiate appropriate protective actions. Because the proposed changes affect only the ventilation exhaust radiation monitors, the probability of an accident previously evaluated remains the same.

The function of the reactor building and the refueling floor ventilation exhaust radiation monitors, in combination with other accident mitigation systems, is to limit fission product release during and following postulated design basis accidents. The proposed new Allowable Values for the high radiation trip will continue to ensure the offsite doses resulting from a design basis accident do not exceed the NRC-approved

licensing basis and FSAR [Final Safety Analysis Report] limits. Therefore, the proposed changes do not involve a significant increase in the consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes increase the radiation level at which the ventilation exhaust monitors actuate; however, the manner in which their actuation logic functions and the systems that isolate or actuate as a result are unaffected by the proposed changes. Furthermore, the ventilation exhaust monitors will continue to perform their design function of limiting offsite doses to NRC-approved licensing basis and FSAR limits at the higher Allowable Values. Therefore, the proposed changes cannot create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

The Bases for Unit 1 and Unit 2 Technical Specification Tables 3.3.6.1–1 and 3.3.6.2–1 state that the Allowable Values for the reactor building and refueling floor ventilation exhaust radiation monitors ''are chosen to ensure radioactive releases do not exceed offsite dose limits.'' The proposed Allowable Values ensure the radiation monitors actuate at a radiation level sufficient to ensure offsite doses are within the NRC-approved licensing basis and FSAR limits. The proposed Allowable Values comply with the margin of safety defined in the Technical Specifications Bases for the ventilation exhaust radiation monitors; therefore, the proposed changes do not reduce 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: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC.

NRC Project Director: Herbert N. Berkow.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: July 7, 1998.

Description of amendment request: The proposed amendment would revise the spent fuel pool criticality analysis and rack utilization schemes by allowing credit for spent fuel pool soluble boron.

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 presence of soluble boron in the spent fuel pool water for criticality control does not increase the probability of a fuel assembly drop accident in the spent fuel pool. The handling of the fuel assemblies in the spent fuel pool has always been performed in borated water.

The criticality analysis shows the consequences of a fuel assembly drop accident in the spent fuel pool are not affected when considering the presence of soluble boron. The rack K_{eff} [K effective] remains less than or equal to 0.95.

There is no increase in the probability of an accident. The proposed change does allow a greater number of fuel storage configurations in the spent fuel pool. While this could increase the probability of a fuel misloading, the presence of sufficient soluble boron in the spent fuel pool precludes criticality as a result of the misloading. Fuel assembly placement will continue to be controlled pursuant to approved fuel handling procedures and will be in accordance with the Technical Specification spent fuel rack storage configuration limitations.

There is no increase in the consequences of the accidental misloading of spent fuel assemblies into the spent fuel pool racks. The criticality analyses demonstrate that the pool K_{eff} will remain less than or equal to 0.95 following an accidental misloading due to the boron concentration of the pool. The proposed Technical Specification limitation will ensure that an adequate spent fuel pool boron concentration is maintained.

There is no increase in the probability of the loss of normal cooling to the spent fuel pool water when considering the presence of soluble boron in the pool water for subcriticality control since a high concentration of soluble boron has always been maintained in the spent fuel pool water.

Reactivity changes due to spent fuel pool temperature changes have been evaluated. The basic case criticality analysis covers a ''normal'' spent fuel pool temperature range of 50 degrees F to 160 degrees F. Spent fuel pool temperature accidents are considered outside the normal temperature range extending from 32 degrees F to 240 degrees F. In all spent fuel pool temperature accident cases, sufficient reactivity margin is available to the 0.95 K_{eff} limit without requiring additional soluble boron above the base case level. Because adequate soluble boron will be maintained in the spent fuel pool water to maintain K_{eff} less than or equal to 0.95, the consequences of a loss of normal cooling to the spent fuel pool will not be increased.

Therefore, based on the conclusions of the above analysis, 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.

Spent fuel handling accidents are not new or different types of accidents, they have been analyzed in Section 15.7.4 of the Updated Final Safety Analysis Report.

Criticality accidents in the spent fuel pool are not new or different types of accidents, they have been analyzed in the Updated Final Safety Analysis Report and in Criticality Analysis reports associated with specific licensing amendments for fuel enrichments up to and exceeding the nominal 4.95 weight percent U^{235} [Uranium-235] that is assumed for the proposed change.

Current Technical Specifications contain limitations on the spent fuel pool boron concentration. The actual boron concentration in the spent fuel pool has been maintained at a higher value. The proposed changes to the Technical Specifications establish new boron concentration requirements for the spent fuel pool water consistent with the results of the new criticality analysis (Attachment 2).

Since soluble boron has always been maintained in the spent fuel pool water, and is currently required by Technical Specifications, the implementation of this new requirement will have little effect on normal pool operations and maintenance. A dilution of the spent fuel pool soluble boron has always been a possibility; however, it was shown in the spent fuel pool dilution evaluation (Attachment 3) that there are no credible dilution events for which the spent fuel pool K_{eff} could increase to greater than 0.95. Therefore, the implementation of new limitations on the spent fuel pool boron concentration will not result in the possibility of a new kind of accident.

The proposed changes to Technical Specifications 3.9.13, 4.9.13, and 5.6 continue to specify the requirements for the spent fuel rack storage configurations. Since the proposed spent fuel pool storage configuration limitations will be similar to the current ones, the new limitations will not have any significant effect on normal spent fuel pool operations and maintenance and will not create any possibility of a new or different kind of accident. Verifications will continue to be performed to ensure that the spent fuel pool loading configuration meets specified requirements.

The misloading of a fuel assembly in the required storage configuration has been evaluated. In all cases, the rack K_{eff} remains less than or equal to 0.95. Removal of an [sic] Rod Control Cluster Assembly from a checkboard storage configuration has been analyzed and found to be bounded by the misloading of a fuel assembly.

As discussed above, the proposed changes will not create the possibility of a new or different kind of accident. There is no significant change in plant configuration, equipment design or equipment.

Under the proposed amendment, no changes are being made to the racks themselves, any other systems, or to the physical structures of the Fuel Handling

Building itself. Therefore, the proposed change does 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 Technical Specification changes proposed by this License Amendment Request and the resulting spent fuel storage operation limits will provide adequate safety margin to ensure that the stored fuel assembly array will always remain subcritical. Those limits are based on a plant specific criticality analysis (Attachment 2) performed in accordance with Westinghouse spent fuel rack criticality analysis methodology.

While the criticality analysis utilized credit for soluble boron, storage configurations have been defined using 95/95 K_{eff} calculations to ensure that the spent fuel rack K_{eff} will be less than 1.0 with no soluble boron. Soluble boron credit is used to offset uncertainties, tolerances, and off-normal conditions and to provide subcritical margin such that the spent fuel pool K_{eff} is maintained less than or equal to 0.95.

The loss of substantial amounts of soluble boron from the spent fuel pool which could lead to K_{eff} exceeding 0.95 has been evaluated (Attachment 3) and shown to be not credible. A safety evaluation has been performed which shows that dilution of the spent fuel pool boron concentration from 2500 ppm to 700 ppm is not credible. Also, the spent fuel rack K_{eff} will remain less than 1.0 (with a 95/95 confidence level) with the spent fuel pool flooded with unborated water. These safety analyses demonstrate a level of safety comparable to the conservative criticality analysis methodology required by Westinghouse WCAP–14416.

Based on the above evaluation, the South Texas Project concludes that the proposed changes to the Technical Specifications involve no significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, TX 77488.

Attorney for licensee: Jack R. Newman, Esq., Morgan, Lewis & Bockius, 1800 M Street, N.W., Washington, DC 20036–5869.

NRC Project Director: John N. Hannon.

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.

Duke Energy Corporation, Docket No. 50–287, Oconee Nuclear Station, Unit No. 3, Oconee County, South Carolina

Date of amendment request: July 20, 1998.

Description of amendment request: The proposed amendment would extend, on a one-time basis, Technical Specification Surveillance 4.18.3 for hydraulic and mechanical snubber testing. The tests are required to be performed at a frequency of 18 months, with a maximum allowed frequency of 22 months, 15 days. The amendment would extend this to a maximum of 25 months.

Date of publication of individual notice in **Federal Register**: July 27, 1998 (63 FR 40137).

Expiration date of individual notice: August 26, 1998.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina.

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 Chapter 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.

CBS Corporation, Docket No. 50–22, Westinghouse Test Reactor, Waltz Mill, Pennsylvania

Date of application for amendment: December 22, 1997 supplemented on June 15, 1998.

Brief description of amendment: This amendment changes the legal name of the licensee for the Westinghouse Test Reactor from Westinghouse Electric Corporation to CBS Corporation.

Date of issuance: July 31, 1998.

Effective Date: July 31, 1998.

Amendment No: 7.

Facility Operating License No. TR–2: This amendment changes the legal name of the licensee for the Westinghouse Test Reactor from Westinghouse Electric Corporation to CBS Corporation.

Date of initial notice in **Federal Register**: July 15, 1998 (63 FR 38207).

The Commission has issued a Safety Evaluation for this amendment dated July 31, 1998.

No significant hazards consideration comments received: No.

Local Public Document: N/A.

Commonwealth Edison Company, Docket No. 50–249, Dresden Nuclear Power Station, Unit 3, Grundy County, Illinois

Date of application for amendment: May 6, 1998.

Brief description of amendment: The proposed amendment would amend Technical Specification (TS) 4.6.E to allow a one-time extension of the 40-month surveillance interval requirement to set pressure test or replace all Main Steam Safety Valves (MSSVs) to a maximum interval of 60 months as currently allowed by the American Society of Mechanical Engineers

(ASME) Boiler and Pressure Vessel Code (Code).

Date of issuance: August 7, 1998.

Effective date: Immediately, to be implemented within 30 days.

Amendment No.: 163.

Facility Operating License No. DPR–25: The amendment revised the TSs.

Date of initial notice in **Federal Register**: June 3, 1998 (63 FR 30263).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 7, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Morris Area Public Library District, 604 Liberty Street, Morris, Illinois 60450.

Consolidated Edison Company of New York, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: November 2, 1994, as supplemented January 4, 1995, February 19, 1998, April 28, 1998, and June 5, 1998.

Brief description of amendment: The amendment revises the Technical Specifications that have become unnecessary due to previous approved amendments, make editorial changes, change managerial titles, update references and reporting requirements.

Date of issuance: August 12, 1998.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 198.

Facility Operating License No. DPR–26: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: November 8, 1995 (60 FR 56365).

The January 4, 1995, February 19, 1998, April 28, 1998, and June 5, 1998, letters 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 August 12, 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.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of application for amendment: January 28, 1998 (NRC–98–0011) as supplemented March 12 and June 9, 1998.

Brief description of amendment: The amendment revises Technical Specification 3.4.2.1, ''Safety/Relief Valves,'' changing the safety relief valve (SRV) setpoint tolerance from plus or minus 1 percent to plus or minus 3 percent. An associated footnote is revised to indicate that, although the as-found setpoint tolerance is now plus or minus 3 percent, the as-left settings of the SRVs shall be within plus or minus 1 percent of the specified setpoints prior to installation of the SRVs after testing. Bases section 3/4.4.2 is also revised.

Date of issuance: July 31, 1998.

Effective date: July 31, 1998, with full implementation prior to restart from the sixth refueling outage.

Amendment No.: 123.

Facility Operating License No. NPF–43: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register**: February 25, 1998 (63 FR 9600). The March 12 and June 9, 1998, letters provided clarifying information that was within the scope of the original **Federal Register** notice and did not change the staff's initial proposed no significant hazards considerations determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 31, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, Ellis Reference and Information Center, 3700 South Custer Road, Monroe, Michigan 48161.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of application for amendment: June 26, 1998 (NRC–98–0040) as supplemented July 16, 1998 (NRC–98–0096), and July 23, 1998 (NRC–98–0117).

Brief description of amendment: The amendment provides a one-time extension of the interval for a number of technical specification (TS) surveillance requirements that will be performed during the sixth refueling outage. TS 4.0.2 and Index page xxii are revised and TS tables 4.0.2–1 and 4.0.2–2 are replaced to reflect the extensions.

NRC has also granted the request of Detroit Edison Company to withdraw a portion of its June 26, 1998, application. By letter dated July 16, 1998, the licensee made some editorial changes and withdrew the portion of the submittal related to TS 4.0.5 for the inservice testing of two valves. A change to the schedule for these valves will be handled within the Inservice Testing Program and a TS change is not necessary. For further details with respect to this action, see the application for amendment dated June 26, 1998, and the licensee's letter dated July 16, 1998, which withdrew this portion of the application for the license amendment, and the staff's safety evaluation enclosed with the amendment. By letter dated July 23, 1998, the licensee added an additional surveillance requirement for two instruments to the amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room listed below.

Date of issuance: August 4, 1998.

Effective date: August 4, 1998, with full implementation within 30 days.

Amendment No.: 124.

Facility Operating License No. NPF–43: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register**: July 2, 1998 (63 FR 36273). The July 16 and July 23, 1998, letters provided clarifying information and updated TS pages that were within the scope of the original **Federal Register** notice and did not change the staff's initial proposed no significant hazards considerations determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 4, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, Ellis Reference and Information Center, 3700 South Custer Road, Monroe, Michigan 48161.

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: July 8, 1998.

Brief description of amendments: The amendments revise TS 4.5.4.1.b.1 for testing the Penetration Room Ventilation System air flow by adding a reference to the following statement that has been added to the bottom of the TS page: ''A temporary noncompliance with this surveillance requirement is allowed until August 30, 1998, to complete necessary modifications to enable flow testing in accordance with ANSI N510–1975.'' This action supersedes the Notice of Enforcement Discretion that was issued by the staff on July 8, 1998.

Date of Issuance: August 7, 1998.

Effective date: As of the date of issuance.

Amendment Nos.: Unit 1—231; Unit 2—231; Unit 3—228.

Facility Operating License Nos. DPR–38, DPR–47, and DPR–55: The amendments revise the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes. (63 FR 38433 dated July 16, 1998). The 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 August 17, 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 amendments.

The Commission's related evaluation of the amendments, finding of exigent circumstances, and a final no significant hazards consideration determination are contained in a Safety Evaluation dated August 7, 1998.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: May 19, 1995, as supplemented by letters dated February 27 and September 30, 1996.

Brief description of amendment: The amendment modifies the technical specifications (TSs) to extend the allowed outage times (AOTs) for a single inoperable Safety Injection Tank (SIT) from one hour to 24 hours, and for a single inoperable SIT specifically due to malfunctioning SIT water level or nitrogen cover pressure instrumentation inoperability from one hour to 72 hours.

Date of issuance: August 7, 1998.

Effective date: August 7, 1998.

Amendment No.: 192.

Facility Operating License No. NPF–6: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: August 2, 1995 (60 FR 39439).

The February 27 and September 30, 1996, submittals provided clarifying information that did not change the initial proposed NSHC determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 7, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, AR 72801.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: June 18, 1998, and supplemented June 30, 1998.

Brief description of amendment: The amendment proposed to revise the Improved Technical Specifications to allow operation with a number of indications previously identified as tube end anolmalies and multiple tube end anolmalies in the Crystal River Unit 3 Once Through Steam Generator tubes.

Date of issuance: July 30, 1998.

Effective date: July 30, 1998.

Amendment No.: 169.

Facility Operating License No. DPR–72: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: June 30, 1998 (63 FR 35615). The June 30, 1998 supplement included clarifying information which did not change the original no significant hazards determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 30, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 34428.

Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of application for amendments: May 27, 1998.

Brief description of amendments: The amendments revise the Administrative Controls, Unit Staff Section 6.2.2.f of TS to authorize the use of various controlled shift structures and durations during a nominal (36 to 48 hours) work week. This includes the use of up to 12-hour shifts without heavy use of overtime.

Date of Issuance: July 30, 1998.

Effective Date: July 30, 1998.

Amendment Nos.: 155 and 93.

Facility Operating License Nos. DPR–67 and NPF–16: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: July 1, 1998 (63 FR 35989).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 30, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954–9003.

GPU Nuclear, Inc. et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: October 31, 1996.

Brief description of amendment: The amendment deletes Table 3.5.2 which lists automatic primary containment isolation valves. In addition, the amendment clarifies the applicability of an action statement that applies to several limiting conditions for operation in Section 3.5, and deletes closure time requirements for several automatic isolation valves in Section 4.5.F.

Date of Issuance: August 13, 1998.

Effective date: August 13, 1998, to be implemented within 60 days.

Amendment No.: 196.

Facility Operating License No. DPR–16: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 18, 1996 (61 FR 66707).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated August 13, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, NJ 08753.

Illinois Power Company, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of application for amendment: October 22, 1995.

Brief description of amendment: The amendment changes Technical Specification 5.2.2.e, ''Unit Staff,'' by revising the requirements for controls on the working hours of unit staff who perform safety related functions.

Date of issuance: August 13, 1998.

Effective date: August 13, 1998.

Amendment No.: 115.

Facility Operating License No. NPF–62: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 20, 1995 (60 FR 65681).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 13, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Vespasian Warner Public

Library, 120 West Johnson Street, Clinton, IL 61727.

Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: January 22, 1998, as supplemented July 17, 1998.

Brief description of amendment: The amendment revises the Millstone Unit 3 licensing basis to accept the existing use of epoxy coatings on safety related components. The revised licensing basis will be incorporated into Chapter 9 of the Final Safety Analysis Report.

Date of issuance: August 7, 1998.

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment No.: 162.

Facility Operating License No. NPF–49: Amendment revised the Final Safety Analysis Report and the Facility Operating License.

Date of initial notice in **Federal Register:** February 25, 1998 (63 FR 9606).

The July 17, 1998, letter provided clarifying information that did not change the scope of the January 22, 1998, application, and the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 7, 1998.

No significant hazards consideration comments received: No.

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.

Northern States Power Company, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

Date of application for amendments: September 24, 1996, as supplemented October 17, 1996, January 3, January 20, and November 10, 1997, and January 9, June 8, and July 20, 1998.

Brief description of amendments: The amendments revise the Technical Specifications (TSs) for the Prairie Island Nuclear Generating Plant Units 1 and 2 to allow use of an alternate steam generator tube repair criteria (elevated F-star or EF*) in the tubesheet region when used with the repair method of additional roll expansion. The amendments incorporate revised acceptance criteria for tubes with degradation in the tubesheet region and enable the licensee to avoid unnecessary plugging and sleeving of steam generator tubes.

Date of issuance: August 13, 1998.

Effective date: August 13, 1998, with full implementation within 30 days.

Amendment Nos.: 137 and 128.

Facility Operating License Nos. DPR–42 and DPR–60. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 4, 1996 (61 FR 64388).

The licensee's submittals dated January 3, January 20, and November 10, 1997, and January 9, June 8, and July 20, 1998, provided additional clarifying information within the scope of the original **Federal Register** notice and did not affect the staff's initial no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 13, 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.

Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: February 6, 1998.

Brief description of amendment: The amendment revises the Reactor Protection System Normal Supply Electrical Protection Assembly Undervoltage Trip Setpoint.

Date of issuance: July 29, 1998.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 245.

Facility Operating License No. DPR–59: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 22, 1998 (63 FR 19976).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 29, 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.

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 application for amendments: November 14, 1997.

Brief description of amendments: The amendments add technical specification (TS) surveillance requirements for the service water accumulator vessels. Specifically, surveillance requirements are provided for vessel level, pressure and temperature, and discharge valve response time. The surveillance requirements are included in TS 3/4.6.1.1 and 3/4.6.2.3, and the applicable Bases sections are expanded to provide supporting information.

Date of issuance: August 6, 1998.

Effective date: August 6, 1998.

Amendment Nos.: 213 and 193.

Facility Operating License Nos. DPR–70 and DPR–75: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 28, 1998 (63 FR 4432).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 6, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, NJ 08079.

Tennessee Valley Authority, Docket No. 50–390 Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of application for amendment: May 6, 1998.

Brief description of amendment: The requested changes would replace the two percent penalty addressed in Surveillance Requirement 3.2.1.2(a) with a burnup-dependent factor to be specified in the WBN Core Operating Limits Report and makes associated changes to the administrative controls in Technical Specification 5.9.5 and the BASES.

Date of issuance: August 10, 1998.

Effective date: August 10, 1998.

Amendment No.: 11.

Facility Operating License No. NPF–90: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** June 17, 1998 (63 FR 33109).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 10, 1998.

No significant hazards consideration comments received: None

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, TN 37402.

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 5, 1997.

Brief description of amendments: The amendments revise the Technical Specifications (TS) Sections 3.9.7, 4.9.7.1, 4.9.7.2, and 3/4.9.7 for Unit 1, and 3.9.7, 4.9.7.1, 4.9.7.2, and 3/4 .9.7 for Unit 2, allowing the movement of the spent fuel pit gate over the irradiated fuel.

Date of issuance: August 3, 1998.

Effective date: August 3, 1998.

Amendment Nos.: 213 and 194.

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 August 3, 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.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903–2498.

Dated at Rockville, Maryland, this 19th day of August 1998.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Acting Director, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–22766 Filed 8–25–98; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Information Based Indicia Program (IBIP) Performance Criteria for Information Based Indicia and Security Architecture for IBI Postage Metering Systems (PCIBISAIBIPMS)

AGENCY: Postal Service.

ACTION: Notice of USPS response to public comments and availability of Performance Criteria with request for comments.

SUMMARY: The Postal Service has published a set of draft specifications for the Information-Based Indicia Program (IBIP). In an effort to comply with comments received regarding those specifications we have compiled a set of functional Performance Criteria as defined in this release. The following published specifications are hereby superseded by this Performance Criteria release:

IBIP Open System Indicia Specification dtd July 23, 1997

IBIP Open System PSD Specification dtd July 23, 1997

IBIP Open System Host Specification dtd October 9, 1996

IBIP Key Management Plan dtd April 25, 1997

The Postal Service also seeks comments on intellectual property issues raised by IBIP Performance Criteria, policy, and procedures if adopted in present form. If an intellectual property issue includes patents or patent applications covering any implementations of the Performance Criteria, the comment should include a listing of such patents and applications and the license terms available for such patents and applications.

ADDRESSES: Copies of the Performance Criteria noted above may be obtained from Edmund Zelickman, United States Postal Service, 475 L'Enfant Plaza SW, Room 1P–801, Washington DC 20260–2444. Copies of all written comments may be inspected, by appointment, between 9 a.m. and 4 p.m., Monday through Friday, at the above address.

DATES: All written comments must be received on or before October 26, 1998.

FOR FURTHER INFORMATION CONTACT: Edmund Zelickman at (202) 268–3940.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 98–22923 Filed 8–25–98; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Rule 17 Ad–6, SEC File No. 270–151, OMB Control No. 3235–0291

Rule 17 Ad–7, SEC File No. 270–152, OMB Control No. 3235–0136

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget requests for extension of previously approved collections of information discussed below:

• Rule 17Ad–6 Recordkeeping Requirements for Transfer Agents

Rule 17 Ad–6 under the Securities Exchange Act of 1934 (15 U.S.C. § 78b *et seq.*) requires every registered transfer agent to make and keep current records about a variety of information, such as: (1) specific operational data regarding the time taken to perform transfer agent activities (to ensure compliance with the minimum performance standards in Rule 17Ad–2 (17 CFR 240.17Ad–2)); (2) written inquiries and requests by shareholders and broker-dealers and response time thereto; (3) resolutions, contracts or other supporting documents concerning the appointment or termination of the transfer agent; (4) stop orders or notices of adverse claims to the securities; and (5) all canceled registered securities certificates.

These recordkeeping requirements ensure that all registered transfer agents are maintaining the records necessary to monitor and keep adequate control over their own performance and to examine registered transfer agents on an historical basis for compliance with applicable rules.

It is estimated that approximately 1,248 registered transfer agents will spend a total of 599,040 hours per year complying with Rule 17Ad–6. Based on average cost per hour of $50, the total cost of compliance with Rule 17Ad–6 is $29,952,000.

The retention period for the recordkeeping requirement under Rule 17Ad–6 is six months to one year. In addition, such records must be retained for a total of two to six years or for one year after termination of the transfer agency, depending on the particular record or document. The recordkeeping requirement under Rule 17Ad–6 is mandatory to assist the Commission and other regulatory agencies with monitoring transfer agents and ensuring compliance with the rule. This rule does not involve the collection of confidential information.

• Rule 17Ad–7 Recordkeeping Requirements for Transfer Agents

Rule 17Ad–7 under the Securities Exchange Act of 1934 (15 U.S.C. § 78b *et seq.*) requires each registered transfer agent to retain, in an easily accessible place for a period of six months to one year, all the records required to be made and kept current under the Commission's rules regarding registered transfer agents. Rule 17Ad–7 also requires such records to be retained for a total of two to six years or for one year after termination of the transfer agency, depending on the particular record or document.

These recordkeeping requirements ensure that all registered transfer agents are maintaining the records necessary to monitor and keep adequate control over their own performance and to examine registered transfer agents on an historical basis for compliance with applicable rules.

It is estimated that approximately 1,248 registered transfer agents will spend a total of 142,272 hours per year complying with Rule 17Ad–7. Based on average cost per hour or $50, the total cost of compliance with Rule 17Ad–7 is $7,113,600.

The retention period for the recordkeeping requirement under Rule 17Ad–7 is six months to one year. In addition, such records must be retained for a total of two to six years or for one year after termination of the transfer agency, depending on the particular record or document. The recordkeeping requirement under Rule 17Ad–7 is mandatory to assist the Commission and other regulatory agencies with monitoring transfer agents and ensuring compliance with the rule. This rule does not involve the collection of confidential information.

Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General Comments regarding the estimated burden hours should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, D.C. 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, N.W. Washington, D.C. 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: August 11, 1998.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–22838 Filed 8–25–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings, Information and Consumer Services, 450 Fifth Street, N.W., Washington, DC 20549

Extension:

Rule 53, SEC File No. 270–376, OMB Control No. 3235–0426
Rule 54, SEC File No. 270–376, OMB Control No. 3235–0427
Rule 55, SEC File No. 270–376, OMB Control No. 3235–0430
Rule 57(a) and Form U–57, SEC File No. 270–376, OMB Control No. 3235–0428
Rule 57(b) and Form U–33–S, SEC File No. 270–376, OMB Control No. 3235–0429
Rule 1(c) and Form U5S, SEC File No. 270–168, OMB Control No. 3235–0164
Rule 2 and Form U–3A–2, SEC File No. 270–83, OMB Control No. 3235–0161

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

Sections 32 and 33 of the Public Utility Holding Company Act of 1935, as amended (''Act''), and rules 53, 54, 55 and 57 thereunder, permit holding companies registered under the Act to make direct or indirect investments in exempt wholesale generators (''EWGs'') and foreign utility companies (''FUCOs''), as defined in sections 32 and 33 of the Act, respectively, without the prior approval of the Commission, if certain conditions are met. Rules 53, 54 and 55 do not create a reporting burden for respondents. These rules, do, however, contain a recordkeeping and retention requirement. The purpose of requiring the availability of books and records identifying investments in and earning from any subsidiary EWG or FUCO is to allow the Commission to monitor the extent and the effect of registered holding companies' investments in these new entities. This criterion was specifically cited by Congress as an appropriate item for inclusion in the Commission's rulemaking. The Commission estimates that the total annual reporting and recordkeeping burden of collections under each of rules 53, 54 and 55 is 110 hours per rule (*e.g.,* 11 responses per rule × 10 hours per rule = 110 burden hours per rule).

Rule 57 imposes two reporting requirements, First, and pursuant to rule 57(a), companies seeking FUCO(status must file a notification on Form U–57 on the occasion of each transaction involving the acquisition of a FUCO. In instances where non-utility entities acquire a FUCO, Form U–57 is the Commission's sole source of information regarding such projects. Even when public-utility companies make the acquisition, Form U–57 may provide the only prospective data available to the Commission with respect to such acquisition. The Commission estimates that the total reporting and recordkeeping burden of collections under rule 57(a) is 144 hours (*e.g,* 48 responses × 3 hours = 144 burden hours).

The second reporting requirement of Rule 57 is the filing of Form U–33–S, which imposes an annual reporting requirement on any public-utility company that acquires one or more FUCOs. The information form Form U–33–S allows the Commission to monitor overseas investments by public-utility companies. The Commission estimates that the total reporting and recordkeeping burden of collections under rule 57(b) is 267 hours (*e.g.,* 89 responses × 3 hours = 267 burden hours).

Section 3 of the Act and rule 2 under the Act require the Commission to monitor exempt holding companies to make sure that exemptions are not detrimental to the public interest or the interest of investors or consumers. Form U–3A–2 is the single uniform periodic submission which allows the staff to effectively accomplish this task. The Commission estimates that the total reporting and recordkeeping burden of collections under rule 2 is 319 hours (*e.g.,* 91 responses × 3.5 hours = 319 burden hours).

Section 5 of the Act imposes similar duties on the Commission with respect to registered holding companies. The Form U5S allows the staff to gather an annual ''snapshot'' of each registered system for review and comparison with other systems. Relying on the fragmented information submitted with applications on Form U–1 for Commission approval of certain transactions, or other submissions by registered holding companies or their subsidiaries, would not be an appropriate substitute for the comprehensive and timely information provided on Form U5S. The Commission estimates that the total reporting and recordkeeping burden of collections under Form U5S is 4,142 hours (*e.g.,* 19 responses × 218 hours = 4,142 burden hours).

These estimates of average burden hours are made solely for the purposes

of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

Rules 1(c), 2, 53, 54, 55, 57(a) and 57(b) each impose a mandatory recordkeeping requirement of this information collection. It is mandatory that qualifying companies provide the information required by rules 2, 53, 54, 55, 57(a) and 57(b), and it is mandatory that registered holding companies provide the information required by rule 1(c). There is no requirement to keep the information in the forms confidential because it is public information.

Written comments regrading the above information should be directed to the following persons: (i) Desk officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget (''OMB''), (Project Numbers 3235–0426 [Rule 53], 3235–0427 [Rule 54], 3235–0430 [Rule 55], 3235–0428 [Form U–57], 3235–0429 [Form U–33–S], 3235–0168 [Form U5S], and 3235–0161 [Form U–3A–2], Room 10202, New Executive Office Building, Washington, D.C. 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: August 17, 1998.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–22840 Filed 8–25–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 45, SEC File No. 270–164, OMB Control No. 3235–0154

Rule 52, SEC File No. 270–326, OMB Control No. 3235–0369

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) The Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

Rule 45 under the Public Utility Holding Company Act of 1935 (15 U.S.C. 79A, *et seq.*) (''Act'') imposes a filing requirement on registered holding companies and their subsidiaries under section 12(b) of the Act. Under the requirement, the companies must file a declaration seeking authority to make loans or otherwise extend credit to other companies in the same holding company system. Among others, the rule excepts from the filing requirement the performance of payment obligations under consolidated tax agreements. The purpose of the rule is to ensure that registered holding companies and their subsidiaries do not engage in activities that are a detriment to interests the Act is designed to protect (*i.e.*, cross-subsidization). The Commission estimates that the total annual reporting and recordkeeping burden is 46 hours. (*e.g.*, 14 recordkeepers × approximately 3.3 hours = approximately 46 hours).

It is mandatory that qualifying companies provide the information required by rule 45. There is no requirement to keep the information confidential because it is public information.

Rule 52 permits public utility subsidiary companies of registered holding companies to issue and sell certain securities without filing a declaration if certain conditions are met. The Commission estimates that the total annual reporting and recordkeeping burden of collections under rule 52 is 33 hours (*e.g.*, 33 responses × one hour = 33 burden hours).

There is no recordkeeping requirement of this information collection. It is mandatory that qualifying companies provide the information required by rule 52. There is no requirement to keep the information confidential because it is public information.

The estimates of average burden hours are made for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms. It should be noted that ''an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.''

General comments regarding the above information should be directed to the following persons: (i) Desk officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget (''OMB''), Room 10202, New Executive Office Building, Washington, D.C. 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: August 19, 1998.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–22842 Filed 8–25–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Requests Under Review by Office of Management and Budget

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extensions:

Reg. D, SEC File No. 270–72, OMB Control No. 3235–0076

Reg. A, SEC File No. 270–110, OMB Control No. 3235–0286

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget requests for approval of extension on the following:

Regulations A and D provide exemptions from the registration requirements of the Securities Act of 1933 (''Securities Act''). Regulation A provides a conditional small issues exemption and Regulation D sets forth rules governing the limited offer and sale of securities without Securities Act registration. Those relying on Regulation A must file a Form 1–A and those relying on Regulation D file a Form D. Issuers of securities are the likely respondents. Approximately 186 respondents file Regulation A annually for a total annual burden of 115,506 hours. Approximately 8,605 respondents file Regulation D annually for a total annual burden of 137,680 hours.

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 control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, New Executive Office Building,

Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: August 20, 1998.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–22877 Filed 8–25–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40343; International Series Release No. 1153; File No. SR–Amex–98–27]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange, Inc. Relating to the Settlement of the Eurotop 100 Index

August 19, 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 July 8, 1998, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On July 28, 1998, the Exchange filed an amendment to the proposed rule change (''Amendment No. 1'').[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to revise the Eurotop 100 Index's settlement value methodology.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 made the following clarifications: (i) the London International Financial Futures and Options Exchange (''LIFFE'') will be the new official calculation agent of settlement values; (ii) the current agent is the European Options Exchange (''EOE''); and (iii) reference to the maintenance of the index is deleted from the filing. *See* letter from Scott G. Van Hatten, Legal Counsel, Amex to Sharon Lawson, Senior Special Counsel, Division of Market Regulation, Commission (July 27, 1998).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The Exchange proposes to revise the Eurotop 100 Index's (''Index'') settlement value methodology in response to a change in the official calculation agent from EOE to LIFFE. Since the Index was initially approved for options trading, an official settlement value for the Index has been calculated each month for use in connection with financial products based on the Index.[4] The settlement value has been calculated on the third Friday of the month and based on the average of the Index values calculated at 5 minute intervals between 12:30 p.m. and 1 p.m. Central European Time (C.E.T.) (6:30 a.m. and 7:00 a.m. Eastern Standard Time (E.S.T.)). Accordingly, on each expiration Friday, EOE has calculated and disseminated an Index settlement value by averaging the Index values quoted at 12:30, 12:35, 12:40, 12:45, 12:50, 12:55 and 1:00 p.m., and shortly after 1:00 p.m. (C.E.T.) announced a settlement value. The Exchange has settled its contracts based on this value, reduced by a factor of one-tenth (0.10).

LIFFE is currently calculating and disseminating a settlement value which will use a similar methodology, but instead of every five minutes, the new settlement value will be an average of the Index's values taken every fifteen seconds during the period 12:40 p.m. to 1:00 p.m. C.E.T. The values averaged during the twenty minute period will exclude the twelve highest and twelve lowest values resulting in a settlement value made up of an average of 57 individual index values. This methodology, which yields a value known as the Exchange Delivery Settlement Price (''EDSP''), is currently used by LIFFE for the calculation and dissemination of settlement values for all of its indices. FT–SE Eurotop 100 Index futures contracts traded on the New York Mercantile Exchange will settle using the existing methodology through December, 1998 before converting to the new settlement methodology for subsequent contract months. And in June, 1998, FTSE Eurotop 100 Index futures contracts traded on LIFFE and the Amsterdam Exchange FTSE Eurotop 100 Ecu options contracts began settling using the new value calculated and disseminated by LIFFE.

Because the use of the existing settlement value methodology will be discontinued in December, 1998 and the methodology used to determine the EDSP is or will be used by other options and futures exchanges trading options and futures on the Index, the Exchange believes the use of EDSP for the Index's settlement value is appropriate and should ensure consistency and uniformity with respect to all index settlement values disseminated by the agent and with other marketplaces.

The settlement value using the existing methodology will continue to be disseminated by the Exchange and used to settle contracts expiring through December, 1998. Options expiring after December, 1998 will settle based on the new EDSP settlement methodology.[5] No other changes are being proposed to the Index. The Exchange will inform its members of the change in the settlement methodology through dissemination of an information circular.

(2) Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

[4] Securities Exchange Act Release No. 30463 (March 11, 1992), 57 FR 9284 (March 17, 1992).

[5] Currently, there are no outstanding contracts that expire after December 1998.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written date, views and arguments concerning the foregoing, including whether the proposal 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 in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex.

All submissions should refer to File No. SR–AMEX–98–27 and should be submitted by September 16, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–22878 Filed 8–25–98; 8:45 am]

BILLING CODE 8010–01–M

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40338; File No. SR–Amex–98–25]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange, Inc. Relating to the Listing and Trading of Stock Upside Note Securities on the Lehman Brothers' European Stock Basket

August 19, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notes is hereby given that on July 1, 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, II, and III below, which Items have been prepared by the Amex. On August 3, 1998, the Exchange file with the Commission Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade Stock Upside Note Securities on the Lehman Brothers' European Stock Basket, a new stock basket developed by Lehman Brothers Holdings Inc. containing stocks of European companies.

The test 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 Rule Change

In its filing with the Commission, the Amex 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 Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Claire P. McGrath, Vice President and Special Counsel, Derivatives Legal Counsel, Amex, to Richard Strasser, Associate Director, Division of Market Regulation (''Division''), SEC, dated July 30, 1998 (''Amendment No. 1''). In Amendment No. 1, the Exchange makes several substantive changes to the filing.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Amex proposes to trade Stock Upside Note Securities (''SUNS'') on the Lehman Brothers' European Stock Basket (the ''Basket''), a new basket of stocks developed by Lehman Brothers Holdings, Inc. (''Lehman Brothers'') based entirely on the shares of European companies. SUNS on the Basket are designed to allow investors to combine the protection of a portion of the principal amount of the SUNS with a potential additional payment based upon the performance of a portfolio of highly capitalized European stocks. In particular, the proposed European Stock Basket will provide at least 90% principal protection with the opportunity to participate in any upside appreciation of the Basket, subject to any cap on appreciation that may be include by the issuer.

Criteria Under Section 107A of the Amex Company Guide

Under Section 107A of the *Amex Company Guide,* the Exchange may approve for listing and trading securities that can be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures or warrants.[4] SUNS issues on the Basket will conform to the listing guidelines under Section 107A of the *Amex Company Guide,* which provide, among other things, that the issuer shall satisfy the earnings criteria set forth in Section 101[5] of the *Amex Company Guide* and have assets in excess of $100 million and stockholders' equity of at least $10 million. Where the issuer does not satisfy the earnings criteria set forth in Section 101 of the *Amex Company Guide,* the issuer must have assets in excess of $200 million and stockholders' equity of at least $10 million; or have assets in excess of $100 million and stockholders' equity of at least $20 million. Further, SUNS will have a minimum public distribution of 1,000,000 units with a minimum of 400 public shareholders, except, if traded in thousand dollar denominations, then no minimum number of holders will be required. SUNS will have a principal amount/aggregate market value of not less than $4 million. In addition, Amex will apply the continued listing

[4] *See* Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990).

[5] Section 101 of the *Amex Company Guide* requires issuers to have pre-tax earnings of at least $750,000 in the fiscal year of two of the last three fiscal years.

guidelines for the proposed SUNS as set forth in Sections 1001 through 1003 of the *Amex Company Guide*. In particular, Section 1003(b)(iii)[6] regarding suspensions and delistings with respect to limited distribution and reduced market value will apply to the SUNS.

The SUNS are non-convertible debt securities of Lehman Brothers and will conform to the above listing standards. Although the specific maturity date will be established until immediately prior to the time of the offering, the SUNS will provide for maturity within a period of not less than two years and not more than seven years from the date of issue. The SUNS will provide for a single payment a maturity, and will bear no periodic payments of interest. The European Stock Basket SUNS will be denominated in U.S. dollars and will entitle the owner at maturity to received an amount based on the percentage change between the ''Original Portfolio Value'' and the ''Ending Average Portfolio Value'', provided: (1) The amount payable at maturity will not be less than 90% of the principal amount of the SUNS; and (2) the issuer may place a cap on the amount to be paid on the SUNS at maturity. Thus, holders of the SUNS may not receive the full amount of the appreciation of the Ending Portfolio Value over the Original Portfolio Value. For example, Lehman Brothers may place a cap on the amount to be received at maturity as a stated percentage of the issuance price, *e.g.*, 150% of the issuance price. Alternatively, a cap could be in the form of participation rate whereby a holder of the SUNS would participate in a stated percentage of the total percentage change between the Ending Portfolio Value and the Original Portfolio Value, *e.g.*, 80% of the total appreciation of the European Stock Basket during the term of the SUNS. The Original Portfolio Value is the value of the European Stock Basket on the date on which the issuer prices the SUNS for the initial offering to the public. The Ending Average Portfolio Value is the average of the closing prices of the European Stock Basket securities for a ten-day period beginning on the twelfth trading day prior to maturity of the SUNS.[7] The European Stock Basket SUNS will be cash-settled and will not give holders any right to receive any Basket security or any other ownership right or interest in such security even though the return on the investment is based on the value of the Basket.

The SUNS Basket and Components

The European Stock Basket will consist of not less than ten nor more than thirty stocks of highly capitalized European companies.[8] Each stock included in the Basket will meet the following criteria: (1) A market capitalization in excess of $75 million; alternatively, the lowest weighted securities in the Basket that do not account for more than 10% of the weight of the Basket, may have a market capitalization of $50 million or greater; (2) the trading volume of each component in the Basket will be at least one million shares during each of the six months preceding the listing of the SUNS; alternatively, the lowest weighted securities in the Basket that do not account for more than 10% of the weight of the Basket, may have a volume of at least 500,000 shares during each of the six months preceding the listing of the SUNS; (3) the market price for each component stock used for the calculation of the Basket will be obtained from the stock's primary market; and (4) the market price for each component will be at least $5 for the majority of business days during the three calendar months preceding the listing of the SUNS.[9]

Basket Calculation

The Basket will be calculated using the modified equal-dollar weighting methodology. Thus, prior to the issuance of the SUNS, Lehman Brothers will establish a weighting for each of the securities in the Basket.[10] Specifically, each security included in the Basket will be assigned a multiplier so that the security represents the established percentage of the value of the entire Basket on the date of issuance. The multiplier indicates the number of shares (or fraction of one share) of a security, given its market price, to be included in the calculation of the Basket. The weightings established for each security will assure that: (1) No single stock will represent more than 25% of the weight of the Basket; (2) the five highest weighted stocks will represent no more than 50% of the weight of the Basket; (3) foreign country securities that are not subject to comprehensive surveillance agreements will not in the aggregate represent more than 40% of the weight of the index; (4) stocks for which the primary market is in any one country that is not subject to a comprehensive surveillance agreement do not represent 20% or more of the weight of the index; and (5) stocks for which the primary market is in any two countries that are not subject to the comprehensive surveillance agreements do not represent 33% or more of the weight of the index.

The multiplier of each security of the Basket will generally remain unchanged except for adjustments that may be necessary as a result of stock splits or stock dividends. There will be no adjustments to the multipliers to reflect cash dividends paid with respect to a portfolio security. In addition, no adjustments of any multiplier of a portfolio security will be made unless such adjustment would require a change of at least 1% in the multiplier then in effect. If the issuer of a security included in the Basket no longer exists, whether for reason of a merger, acquisition or similar type of corporate control transaction, Lehman Brothers will assign to that security a value equal to the security's final value for the purposes of calculating portfolio values.

If the issuer of a European Stock Basket security is in the process of liquidation or subject to a bankruptcy proceeding, insolvency, or other similar adjudication, such security will continue to be included in the Basket so long as a market price for such security is available. If such a market price is no longer available for a Basket security due to a liquidation, bankruptcy, insolvency, or any other similar proceeding, the value of the security will be zero in connection with calculating the daily Basket value and the Ending Average Portfolio Value, for so long as no such market price exists for that security. Lehman Brothers will not attempt to find a replacement stock, or to compensate in a manner other than what is set forth above, for the extinction of a security due to a bankruptcy or similar event.

The value of the Basket will be calculated and disseminated every 15 seconds from 9:30 a.m. until 4:00 p.m. each trading day by the Exchange or by an independent calculation agent appointed by Lehman Brothers. The Basket value will be calculated based on real-time prices during the hours the European markets overlap trading hours at the Exchange. The Basket will be calculated using the last sale value for each component security from its primary market place. The Exchange rate for each currency represented in the Basket will be from one of two sources: (i) The WM/Reuter closing value reported in London at about 12:00 (New York time) each trading day or, (ii) the best bid and offer price posted by one or more contributing banks as provided by Bridge/Telesphere. If the market place for any one of the securities

[6] *See* Amendment No. 1, *supra* note 3.

[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] *Id.*

constituting the European Stock Basket has not opened for trading on any given business day, the previous closing value will be used in the calculation. The Basket value, for any day, will equal the sum of the products of the most recently available market prices, expressed in U.S. dollars and the applicable multipliers for the Basket securities. Lehman Brothers will undertake to implement certain surveillance and compliance procedures with respect to the dissemination of the Basket value, requiring that the Basket value be announced only through public dissemination and restricting the access of the Lehman Brothers trading desk to the Basket value determined by the calculation agent until after public dissemination of the value.[11]

Exchange Rules Applicable to SUNS

The Exchange's equity trading rules will apply to the trading of SUNS linked to the European Stock Basket. Those rules include Rule 411, which requires members to use due diligence to learn the essential facts relative to every customer to every order or account accepted; and Rule 462 which requires that application of equity margin rules to the trading of indexed term notes. The Exchange will, prior to trading the proposed SUNS, distribute an Information Circular to the membership: (1) Highlighting the essential features of the SUNS product including, but not limited to, the less than 100% principal protection feature and the fact that the issuer has placed a cap on the amount to be paid on the SUNS at maturity; [12] and (2) providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions of the SUNS and highlighting their special risks and characteristics. The circular will state that before a member, member organization, or employee of such member organization undertakes to recommend a transaction in the security, such member or member organization should make a determination that the security is suitable for such customer and the person making the recommendation should have a reasonable basis for believing at the time of making the recommendation, that the customer has such knowledge and experience in financial matters that they may be capable of evaluating the risks and the special characteristics of the recommended transaction, including those highlighted, and is financially able to bear the risks of the recommended transaction.

2. Statutory Basis

The Basis under the Act for the proposed rule change is the requirement under Section 6(b)(5)[13] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, 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 in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex.

All submissions should refer to File No. SR–Amex–98–25 and should be submitted by September 16, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–22879 Filed 8–25–98; 8:45 am]

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[11] *Id.*

[12] *Id.*

[13] 15 U.S.C. 78f(b)(5).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40345; File No. SR–Amex–98–19]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 to the Proposed Rule Change by the American Stock Exchange, Inc. Relating to Solicitation of Options Transactions

August 19, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on May 18, 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, II, and III below, which Items have been prepared by the Amex. On July 7, 1998, the Amex filed Amendment No. 1 to the proposal.[2] On

[1] 15 U.S.C. 78s(b)(1).

[2] *See* Letter from Claire P. McGrath, Vice President and Special Counsel, Derivative Securities, Amex, to Richard Strasser, Assistant Director, Division of Market Regulation (''Division''), Commission, dated July 6, 1998 (''Amendment No. 1''). Amendment No. 1 revises proposed Commentary .04 to Amex Rule 950(d) to indicate that it may be considered conduct inconsistent with just and equitable principles of trade for any member or associated person who has knowledge of the material terms and conditions of orders being crossed to use that information to buy or sell the underlying security or related securities until either the terms of the order are disclosed to the trading crowd or the trade can no longer reasonably be considered imminent. In addition, Amendment No. 1 revises proposed Commentary .04 to replace a reference to an ''original'' order with a reference to an ''originating'' order and to

Continued

August 18, 1998, the Amex filed Amendment No. 2 to the proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Currently, Amex Rule 950(d), Commentary .03 allows a member representing an order in options (the ''originating order'') to solicit another member, member organization, or non-member broker-dealer outside the trading crowd to participate in the transaction on a proprietary basis provided that the conditions specified in Commentary .03 are satisfied. The Amex proposes to amend Amex Rule 950(d), Commentary .03 to (1) allow a member representing an originating order to solicit a customer (as well as another member, member organization, or non-member broker-dealer) to participate in the transaction; and (2) provide that a ROT, when establishing or increasing a position, may retain priority over an off-floor order (including that of a customer) that is subject to Commentary .03. In addition, the Amex proposes to adopt Commentary .04 to Amex Rule 950(d), which will state that it may be considered conduct inconsistent with just and equitable principles of trade for any member or associated person who has knowledge of all material terms and conditions of (1) an originating order and a solicited order; (2) an order being facilitated; or (3) orders being crossed,[4] the execution of which are imminent, to enter, based on that knowledge, an order to buy or sell an option of the same class as any option that is the subject of the order, an order to buy or sell the security underlying that class, or an order to buy or sell a related instrument until either (1) all the terms of the order and any changes in the terms and conditions of the order of which the member or associated person has knowledge are disclosed to the trading crowd; or (2) the trade can no longer reasonably be considered imminent in view of the passage of time since the order was received. For purposes of Commentary .04, a ''related instrument'' means, in reference to an index option, an order to buy or sell securities comprising 10% or more of the component securities in the index or an order to buy or sell a futures contract on any economically equivalent index.

The proposed rule change is attached as Exhibit A.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex 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

(a) Purpose

In 1989, the Amex adopted the ''solicitation rule'' (Amex Rule 950(d). Commentary .03) to govern the manner in which members may solicit other members and non-member broker-dealers to participate in options transactions. According to the Amex, members generally solicit participation in large size orders and/or orders with more complex terms and conditions, including orders involving both stock and options. Amex Rule 950(d), Commentary .03 permits the solicitation of on-floor and off-floor members and non-member broker-dealers outside of a trading crowd to participate as the contra side of an order only if the trading crowd is given (1) the same information about the options order as is given to the solicited party; and (2) a reasonable opportunity to accept the bid or offer before the solicited party participates in the transaction. The Amex recently has become aware of a growing practice among member firms to solicit not only other members and broker-dealers, but also customers to participate in these large options orders.

Amex Rule 950(d), Commentary .02 describes facilitation orders, in which a member or member organization executes a crossing transaction with an order for a public customer. According to the Amex, the purpose of the facilitation rule is to provide procedures that allow a customer's order to be executed completely. The Amex notes that while the facilitation rule is similar in many ways to the solicitation rule, *i.e.*, it requires disclosure to the trading floor crowd and allows the crowd to supplant the facilitating member, it does not allow the trading floor crowd to supplant the customer. In addition, floor members may also facilitate customer orders using the Amex's crossing rule (Amex Rule 151, '' 'On Order' Transactions''). However, Amex Rule 151 does not protect a customer order from being supplanted by the trading crowd, nor would the current proposed change to the Amex's solicitation rule.

The Exchange policy regarding the use of non-public market information that applies to solicited orders currently does not apply to facilitation orders. Since the adoption of the solicitation rule, the Amex has prohibited the use of non-public information by the solicited party for its own benefit by trading in the underlying stock or in related options. Use of such non-public information by the solicited party or by the trading crowd (regardless of whether that party ultimately completes the options transaction) generally is considered conduct inconsistent with just and equitable principles of trade. The Amex also proposes to codify in Amex Rule 950(d), Commentary .04 the policy regarding the use of non-public information and to apply that newly codified policy to non-public information obtained by a member facilitating a customer order or information obtained by a member crossing customer orders.

The Amex proposes to amend the solicitation rule (Amex rule 950(d), Commentary .03) to apply the rule to the solicitation of customers and to indicate that a ROT, when establishing or increasing a position, may retain priority over an off-floor order that is subject to the solicitation rule. The Amex states that its rules are designed to promote the interaction of orders in options in an open-outcry auction. Such rules impose order exposure requirements on floor brokers seeking to cross buy orders and sell orders. Applying the solicitation rule to customers will preserve the right of members to solicit customer participation in orders in advance of submitting a proposed trade to the trading floor crowd, while at the same time assuring that orders that are the subject of a solicitation are exposed to the auction market in a meaningful way.

Moreover, the proposal seeks to reconcile the practice of soliciting

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replace a reference to paragraph (b) with a reference to Commentary .04.

[3] *See* Letter from Claire P. McGrath, Vice President and Special Counsel, Derivative Securities, Amex, to Richard Strasser, Assistant Director, Division, Commission, dated August 18, 1998 (''Amendment No. 2''). Amendment No. 2 adds Commentary .04 to Amex Rule 950(c). Commentary .04 states that a Registered Option Trader (''ROT''), in establishing or increasing a position, may retain priority over or have parity with an off-floor order that is subject to the solicitation rule set forth in Amex Rule 950(d), Commentary .03. Off-floor orders that are not subject to the solicitation rule will retain priority and parity as set forth in Amex Rules 111 and 950(c).

[4] *See* Amendment No. 1, *supra* note 2.

participation in orders from customers with the rules and practices of the auction market. The Amex believes that the proposal will help in giving fair and equal access to information regarding solicited transactions to participants in trading crowds. In addition, the Amex believes that providing trading crowds with an opportunity to participate in transactions from which they had been excluded will result in more competitive markets and executions for customers at the best available prices.

In addition, the Amex's proposal codifies the policy that it is inconsistent with just and equitable principles of trade for any member or associated person who has knowledge of all material terms and conditions of (1) an originating order and a solicited order; (2) an order being facilitated; or (3) orders being crossed, the execution of which are imminent, to enter, based on such knowledge, an order to buy or sell an option of the same class as any option that is the subject of the order, or an order to buy or sell the security underlying such class, or an order to buy or sell any related instrument prior to the time the order's terms and any changes in those terms are disclosed to the trading floor crowd or the trade can no longer reasonably be considered imminent in view of the passage of time since the order was received. The purpose of this policy is to prevent members and associated persons from using undisclosed information about imminent solicited option transactions to trade the relevant option or any closely-related instrument in advance of persons represented in the trading crowd. Without this prohibition, such trading can threaten the integrity of the auction market or disadvantage other market participants. The Amex believes that applying the same prohibitions on the use of non-public information obtained when facilitating a customer order is necessary and appropriate to prevent similar misuse of such information.

(b) Statutory Basis

The Amex believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and further the objectives of Section 6(b)(5) of the Act, in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex believes that the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will by order approve such proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-98-19 and should be submitted by September 16, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

[5] 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,
Deputy Secretary.

Exhibit A

Additions are italicized; deletions are bracketed.

Rule 950 Rules of General Applicability

(a)–(c) No change.

*** * * Commentary**

.01–.03 No change.

.04 *A Registered Options Trader, in establishing or increasing a position, may retain priority over or have parity with an off-floor order that is subject to the solicitation rule set forth in Rule 950(d), Commentary .03.*

(d) The provisions of Rule 126, with the exception of subparagraphs (a) and (b) thereof, shall apply to Exchange option transactions and the following additional commentary shall also apply:

*** * * Commentary**

.01–.02 No change.

.03 A member or member organization representing an order in options (''originating order'') may solicit another member, member organization, [or] non-member broker dealer *or customer* outside the trading crowd (''solicited party'') to participate in the transaction on a proprietary basis provided the member or member organization, upon entering the trading crowd to execute the transaction announces to the trading crowd the same terms and conditions about the originating order as disclosed to the solicited party and bids at the price he is prepared to buy from the solicited party or offers at the price he is prepared to sell to the solicited party.

After all other market participants are given a reasonable opportunity to accept the bid or offer, the solicited party may accept all or any remaining part of such order or the member may cross all or any remaining part of the originating order with the solicited party at such bid or offer by announcing that the member is crossing the orders stating the quantity and price. Non-solicited market participants and floor brokers holding non-solicited discretionary orders in the trading crowd will have priority over the solicited party or the solicited order to trade with the original order at the best bid or offer price subject to the precedence rules set forth in Rule 155.

A Registered Options Trader, when establishing or increasing a position, may retain priority over an off-floor order that is subject to this solicitation rule.

All orders subject to solicitation pursuant to this Commentary, and all

tickets reflecting orders solicited pursuant to this Commentary, must be marked as specified by the Exchange.

.04 With respect to Commentaries .02 and .03 above, it may be considered conduct inconsistent with just and equitable principles of trade for any member or person associated with a member, who has knowledge of all material terms and conditions of an original order and a solicited order, including a facilitation order, the execution of which are imminent, to enter, based on such knowledge, an order to buy or sell an option of the same class as any option that is the subject of the order, or an order to buy or sell the security underlying such class, or an order to buy or sell any related instrument until either (i) all the terms of the order and any changes in the terms and conditions of the order of which that member or associated person has knowledge are disclosed to the trading crowd or (ii) the solicited trade can no longer reasonably be considered imminent in view of the passage of time since the solicitation. For purposes of this paragraph (b), an order to buy or sell a ''related instrument,'' means, in reference to an index option, an order to buy or sell securities comprising ten percent or more of the component securities in the index or an order to buy or sell a futures contract on any economically equivalent index.

(e)–(o) No change.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40337; File No. SR–MSRB–98–9]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval to Proposed Rule Change Relating to Reports of Sales and Purchases, Pursuant to MSRB Rule G–14

August 19, 1998.

I. Introduction

On June 17, 1998, the Municipal Securities Rulemaking Board (''Board'' or ''MSRB'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder[2] to institute a service (''the Service'') to provide daily reports from the Board's Transaction Reporting Program (''the Program''). The daily reports will summarize information about customer and inter-dealer transactions in municipal securities reported to the Board under MSRB Rule G–14. The Board proposed to establish a fee for an annual subscription to the Service of $15,000. The proposed rule change was published for comment in the **Federal Register** on July 13 1998.[3] No comments were received. This order approves the proposal.

II. Description of the Proposal

Background and Description of the Program

Since 1995, Rule G–14 has required brokers, dealers, and municipal securities dealers (''dealers'') to report to the Board their inter-dealer transactions in municipal securities via the automated comparison system for municipal securities operated by National Securities Clearing Corporation (''NSCC''). The Board has used this information to create a database of transaction information that can be used for market surveillance purposes and for inspection and enforcement by agencies and organizations charged with enforcement of Board rules. The Board also uses the reported transaction information to create the Inter-Dealer Daily Report, which is used by market participants to help gauge the value of municipal securities. The Board currently has eight subscribers to the Inter-Dealer Daily Report. Most of these are information vendors that redistribute the information to their own subscribers and/or use the information in various securities valuation products that they market.[4]

In 1996, the Board filed with the Commission an amendment to Rule G–14 to require dealers to report their customer transactions in municipal securities to the Board in certain prescribed formats and a description of the changes to the Program necessary to add customer transaction information.[5] The Board would use the information to produce a daily public report (the ''Combined Daily Report'') summarizing prices and volumes of trading in the municipal securities market during the previous day. The Commission approved the amendment and changes, and customer trades have been reported by dealers to the Board since March 1, 1998.[6] In March 1998, the Board filed with the Commission its intention to release samples of the Combined Daily Report for public comment and to make the Report available on an operational basis in the third quarter of 1998.[7]

The criteria for including municipal securities information on the proposed Combined Daily Report will be the same as that described in the Board's March 1998 filing to produce sample daily reports. These are essentially the same as the criteria for the current Inter-Dealer Daily Report. If a municipal security (identified by its CUSIP number) is reported, in compliance with Rule G–14, as having been traded four or more times on a given day, then the high, low, and average price and total par value of all the reported trades in that security will be on the Combined Daily Report the next morning. The average price will be calculated as the arithmetic mean of reported transaction prices of those trades between $100,000 and $1,000,000 in par value. This reporting band is meant to exclude odd lots and very large trades from the average price. In applying these criteria, inter-dealer and customer transactions will be considered together. This means that any combination of inter-dealer and customer transactions totaling four or more in one CUSIP will trigger the inclusion of price information in the Combined Daily Report.

The Board expects to make the Combined Daily Report Service available during the third quarter of 1998, and has stated that it will file with the Commission, in advance, an exact date for beginning operation. In addition to the Combined Daily Report Service, the Board also will use the data reported by dealers under Rule G–14 to create a surveillance database available to regulatory agencies and organizations responsible for enforcement of Board rules. The surveillance database will not be available to regulators until early 1999.

Description of the Combined Daily Report

Once all transaction information for a business day has been received, the Board's computerized Transaction Processing System (''TRS'') generates the Combined Daily Report. As noted, both inter-dealer and customer trades are counted to determine whether an

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Exchange Act Release No. 40176 (July 7, 1998) 63 FR 37608 (July 13, 1998).

[4] The current subscribers are Bloomberg Financial Markets, Chapdelaine & Company, Dow Jones Telerate, Interactive Data Corp., J.J. Kenny Co., Inc., Muller Data Corp., Smith Barney, Inc., and TradeHistory, LLC.

[5] Exchange Act Release No. 37859 (Oct. 23, 1996) 61 FR 56072 (Oct. 30, 1996).

[6] Exchange Act Release No. 37998 (Nov. 29, 1996) 61 FR 64782 (Dec. 6, 1996) (approval of amendment to rule G–14); Exchange Act Release No. 39495 (Dec. 29, 1997) 63 FR 585 (Jan. 6, 1998) (Delay of effectiveness to March 1, 1998).

[7] Exchange Act Release No. 39835 (Apr. 7, 1998), 63 FR 18242 (Apr. 14, 1998).

issue (CUSIP number) was traded four or more times. Based upon transaction data reported to the Board in March, April and May 1998, it appears that approximately one thousand issues will be traded four or more times on a typical day.

The Combined Daily Report includes summary information describing the day's market in municipal securities. The summary covers all municipal securities trades, regardless of frequency of trading. The following data elements for each issue would be published in the Combined Daily Report: (1) The CUSIP number that identifies the issue; (2) A short description of the issue that was traded; (3) The total number of trades in the issue (both inter-dealer and customer) that were reported to the MSRB; (4) The total dollar value of all trades in the issue on the trade date; (5) The highest price of all trades in the issue; (6) The lowest price of all trades in the issue; (7) The arithmetic mean of all trades whose par values were between $100,000 and $1,000,000; (8) The number of trades whose par values were between $100,000 and $1,000,000; (9) Whether the issue was traded while in ''when,'' ''as,'' and ''if issued'' status; and (10) Assumed settlement date.[8]

Review Process for Customer Transaction Data Used in Combined Daily Report

Customer transaction records submitted by dealers are reviewed automatically as part of data processing within the TRS. Trade records are excluded from eligibility for the Combined Daily Report if: (i) the trade date reported in the record is for a day other than the day being reported in the Combined Daily Report; (ii) the trade record or the file containing the trade record is not in the required format or otherwise violates stated system input requirements;[9] (iii) the submitter of the file has not filed with the Board the required information to identity itself; (iv) the trade record contains a dealer identifier that is unknown to the Board;[10] (v) the information contained in the trade record is so substantially outside expected parameters that an input error is suspected; (vi) the CUSIP number submitted is not known to be a valid CUSIP number for a municipal securities issues;[11] or (vii) the trade record contains no dollar price and a dollar price cannot be calculated from the reported yield on the transaction using the Board's available data about the security and standard yield-to-price calculation techniques for securities with periodic interest payments and with more than six months to redemption, contained in Board rule G–33(b)(i)(B)(2).[12]

III. Discussion

The Commission finds that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act,[13] which requires, in pertinent part, that the Board's rules ''be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating * * * transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.''[14]

The Commission believes that the Service will increase transparency in the municipal securities market by adding information about transactions between dealers and customers to the information currently disseminated by the Program. This should promote investor confidence in the market and its pricing mechanism.

The Combined Report's format will be the same as that of the Inter-Dealer Report, which should simplify use of the new report. The Board represents that if experience with the Combined Daily Report indicates revisions are needed, it will revise the format to ensure that the Program will continue to provide market transparency to market participants. The Commission notes that the Board does not expect or intend to make a profit from the Service.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change (SR–MSRB–98–9) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–22841 Filed 8–25–98; 8:45 am]

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[8] In some cases, it is necessary to assume a settlement date to calculate price from yield for inclusion of the price in the Combined Daily Report. The assumed settlement date for both inter-dealer and customer trades will be 15 business days after the trade date (T+15). When it has been necessary to assume a settlement date, this date will be shown on the Combined Daily Report.

[9] Format requirements and input procedures are described in ''Board to Proceed with Customer Transaction Reporting Program: Rule G–14'' (MSRB Reports, Vol. 16, No. 3 (September 1996) at 3–16). This document, along with explanatory questions and answers and the latest information on the Program, can be found on the Board's World Wide Web site (www.msrb.org).

[10] To identify dealers, the Board uses symbols assigned to dealers by the NASD. Dealers are required to obtain a valid symbol under Rule G–14(b)(iii). The transaction reporting procedures contained within Rule G–14 also require that each dealer effecting customer transactions provide the Board with certain contact information and testing-related information.

[11] The Board currently receives updated information on municipal securities CUSIP numbers each day from the CUSIP Service Bureau and J.J. Kenny Co., Inc.

[12] The current software used for calculation is provided by TIPs, Inc. The securities information used to calculate price from yield currently is provided by J.J. Kenny Co., Inc.

[13] 15 U.S.C. 78o–4(b)(2)(C).

[14] 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).

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40349; File No. SR–MSRB–98–11]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Reports of Sales and Purchases, Pursuant to Rule G–14

August 20, 1998.

On August 20, 1998, the Municipal Securities Rulemaking Board (''the Board'' or ''MSRB'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change (File No. SR–MSRB–98–11) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder.[2] The proposed rule change is described in Items I, II and III below, which Items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board is filing herewith a proposed rule change to set the effective date to begin operation of a service (''the Service'') to provide daily reports from the Board's Transaction Reporting Program (''the Program'') that will summarize information about customer and interdealer transactions in municipal securities reported to the Board under Rule G–14.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Board 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 texts of these statements may be examined at the places specified in Item IV below. The Board 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.

(a) The purpose of the Service is to increase transparency in the municipal securities market by adding information about transactions between dealers and customers (''customer transactions'') to the information currently disseminated by the Program. Under the proposed rule change, aggregate data about market activity and certain volume and price information about transactions in frequently traded securities will be disseminated to promote investor confidence in the market and its pricing mechanism. The Service will provide a daily public report summarizing prices and volumes of trading in the municipal securities market during the previous day (the ''Combined Daily Report''). The Combined Daily Report's format is a revision of the Board's currently produced Inter-Dealer Daily Report. Like the Inter-Dealer Daily Report, the Combined Daily Report will be made available by approximately 6:00 a.m. each business day, reporting on the previous day's market. Subscribers will transfer the report, in electronic form, from the Board's system to their own computer systems. A printed copy of the report will be available for examination, free of charge, in the Board's Public Access Facility in Alexandria, Virginia. These dissemination methods are the same as for the current Inter-Dealer Daily Report.

Background

In June 1998, the Board filed with the Commission its intention to institute the Service and establish a $15,000 fee for an annual subscription to the Service.[3] The June 1998 filing described the Program and the daily reports that will summarize information about customer and interdealer transactions in municipal securities reported to the Board under Rule G–14. That filing also noted that the fee is structured to defray the Board's cost of disseminating the transaction data and to defray, in part, the cost of collecting and compiling transaction data that will be used in the Program and that the Board does not expect or intend to make a profit from the Service.

The Commission approved the June 1998 filing on August 19, 1998.[4] In the June 1998 filing, the Board stated that it would file with the Commission, in advance, an exact date for beginning operation of the Service. Under the proposed rule change in the present filing, operation will begin August 24, 1998.

(b) The Board has adopted the proposed rule change pursuant to Section 15B(b)(2)(C) of the Act,[5] which requires, in pertinent part, that the Board's rules: ''be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.''

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition in that it applies equally to all dealers in municipal securities.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received from Members, Participants, or Others

No comments were received in response to the Board's June 1998 filing which described the Service and announced the fee. Written comments were neither solicited nor received in regard to the present proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Board has designated this proposed rule change as constituting a stated policy, practice, or interpretation with respect to the administration or enforcement of an existing Board rule under Section 19(b)(3)(A) of the Act,[6] which renders the proposed rule change effective upon receipt of this filing by the Commission. The proposed rule change merely sets the formal effective date for a Board facility, the plan for which previously has been approved by the Commission. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.[7] Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the Submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the Board's principal office. All submissions should refer to File No. SR–MSRB–98–11 and should be submitted by September 16, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret M. McFarland,

Deputy Secretary.

[FR Doc. 98–22876 Filed 8–25–98; 8:45 am]

BILLING CODE 8010–01–M

[3] Securities Exchange Act Release No. 40176 (July 7, 1998), 63 FR 56072 (July 13, 1998).

[4] Securities Exchange Act Release No. 40337 (August 19, 1998). The Combined Daily Report is described in this release.

[5] 15 U.S.C. 78*o*–4(b)(2)(C).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] In reviewing this proposed rule change, the Commission has considered its impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40339; File No. SR–NASD–98–56]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Amendment to Composition of NASD Board To Include Members of New Amex LLC and for Other Purposes

August 19, 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 August 10, 1998, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The proposal was subsequently amended on August 18, 1998.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend the By-Laws of the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') to reserve one NASD Board of Governors (''Board'') position for a person representing a NASD member firm having not more than 150 registered persons; reserve two Board positions for the Chief Executive Officer and one Floor Governor of New Amex LLC; and make other clarifying amendments, including the addition of certain definitions. Clarifying amendments and definitions are also proposed to be added to the By-Laws of NASD Regulation, Inc. (''NASD Regulation'') and The Nasdaq Stock Market, Inc. (''Nasdaq'').

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

[1] 15 U.S.C. 8s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Letter Amendment from T. Grant Callery, Senior Vice President and General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated August 18, 1998 (''Amendment No. 1''). Several additional minor changes were provided by the NASD in a telephone conversation between Phil Rosen, NASD, and Mandy Cohen, Division of Market Regulation, Commission, on August 18, 1998.

Proposed Changes to NASD By-Laws

ARTICLE I

Definitions

(n) ''Industry Director'' means a Director of the NASD Regulation Board or Nasdaq Board (excluding the Presidents) who: (1) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (2) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (3) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (4) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the Director or 20 percent or more of the gross revenues received by the Director's firm or partnership; (5) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20 percent or more of the professional revenues received by the Director or 20 percent or more of the gross revenues received by the Director's firm or partnership; or (6) has a consulting or employment relationship with or provides professional services to the NASD, NASD Regulation, [or] Nasdaq, *or New Annex (and any predecessor),* or has had any relationship of provided any such services at any time within the prior three years;

(o) ''Industry Governor'' or ''Industry committee member'' means a Governor (excluding the Chief Executive Officer and Chief Operating Officer of the NASD, [and] the Presidents of NASD Regulation and Nasdaq, *and the Chief Executive Officer of New Amex*) or committee member who: (1) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (2) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (3) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (4) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the Governor or committee member or 20 percent or more of the gross revenues received by the Governor's or committee member's firm or partnership; (5) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20 percent or more of the professional revenues received by the Governor or committee member or 20 percent or more of the gross revenues received by the Governor's or committee member's firm or partnership; [or] *(6) is a Floor governor; or* [(6) *(7)* has a consulting or employment relationship with or provides professional services to the NASD, NASD Regulation, [or] Nasdaq, *or New Amex (and any predecessor),* or has had any such relationship or provided any such services at any time within the prior three years;

(cc) ''Non-Industry Director'' means a Director of the NASD Regulation Board or Nasdaq Board (excluding the Presidents of NASD Regulation and Nasdaq) who is: (1) a Public Director; (2) an officer or employee of an issuer of securities listed on Nasdaq *or New Amex,* or traded in the over-the-counter market; or (3) any other individual who would not be an Industry Director;

(dd) ''Non-Industry Governor'' or ''Non-Industry committee member'' means a Governor (excluding the Chief Executive Officer and Chief Operating Officer of the NASD, [and] the Presidents of NASD Regulation and Nasdaq, *any Floor Governor, and the Chief Executive Officer of New Amex*) or committee member who is: (1) a Public Governor or committee member; (2) an officer or employee of an issuer of securities listed on Nasdaq or *New Amex, or* traded in the over-the-counter market; or (3) any other individual who would not be an Industry Governor or committee member;

(jj) ''Floor Governor'' or ''New Amex Floor Governor'' means a Floor Governor of New Amex elected pursuant to Article II, Section. 01 (a) of the New Amex By-Laws;

(kk) ''Holdco'' means NASD Market Holding Company;

(ll) ''New Amex'' means New Amex LLC;

(mm) ''New Amex Board'' means the Board of Governors of New Amex;

ARTICLE VII. BOARD OF GOVERNORS

* * * * *

Composition and Qualifications of the Board

Sec. 4.(a) The Board shall consist of the Chief Executive Officer and the Chief Operating Officer of the NASD, the Presidents of NASD Regulation and Nasdaq, the Chair of the National Adjudicatory Council, *the Chief Executive Officer of New Amex, one Floor Governor,* and no fewer than 16 and no more than [22] *28* Governors elected by the members of the NASD. The Governors elected by the members of the NASD shall include a representative of an issuer of investment company shares or an affiliate of such an issuer, a representative of an insurance company, [and] a representative of a Nasdaq issuer, *and a representative of an NASD member having not more than 150 registered persons.* A majority of the Governors shall be Non-Industry Governors. If the Board consists of [21 to] 23 Governors, at least five shall be Public Governors. If the Board consists of 24 to 27 Governors, at least six shall be Public Governors. *If the Board consists of 28 to 31 Governors, at least seven shall be Public Governors. If the Board consists of 32 to 35 Governors, at least eight shall be Public Governors.*

* * * * *

Term of Office of Governors

Sec. 5.(a) The Chief Executive Officer and the Chief Operating Officer of the NASD, [and] the Presidents of NASD Regulation and Nasdaq, *and the Chief Executive Officer of New Amex* shall serve as Governors until a successor is elected, or until death, resignation, or removal.

(b) The Chair of the National Adjudicatory Council shall serve as a Governor for a term of one year, or until a successor is duly elected and qualified, or until death, resignation, disqualification, or removal. A Chair of the National Adjudicatory Council may not serve more than two consecutive *one-year* terms as a Governor, unless a Chair of the National Adjudicatory Council is appointed to fill a term of less than one year for such office. In such case, the Chair of the National Adjudicatory Council may serve [an] *that* initial term as a Governor and up to two consecutive *one-year* terms as a Governor following the expiration of [the] *such* initial term. After serving as a Chair of the National Adjudicatory Council, an individual may serve as a Governor elected by the members of the NASD.

(c) *The New Amex Floor Governor shall serve as a Governor for a term of two years, or until a successor is duly elected and qualified, or until death, resignation, disqualification, or removal. A New Amex Floor Governor may not serve more than three consecutive two-year terms as a Governor, unless such New Amex Floor Governor is appointed to fill a term of less than one year for such office. In such case, the New Amex Floor Governor may serve that initial term as a Governor and up to three consecutive two-year terms as a Governor following the expiration of the initial term.*

(d) The Governors elected by the members of the NASD shall be divided into three classes and hold office for a term of no more than three years, such term to be fixed by the Board at the time of the nomination or certification of such Governor, or until a successor is duly elected and qualified, or until death, resignation, disqualification, or removal. A Governor elected by the members of the NASD may not serve more than two consecutive terms. If a Governor is elected by the Board to fill a term of less than one year, the Governor may serve up to two consecutive terms following the expiration of the Governor's initial term. The term of office of Governors of the first class shall expire at the January 1999 Board meeting, of the second class one year thereafter, and of third class two years thereafter. At each annual election, commencing January 1999, Governors shall be elected for a term of three years to replace those whose terms expire.

Disqualification

Sec. 6. Notwithstanding Section 5, the term of office of a Governor shall terminate immediately upon a determination by the Board, by a majority vote of remaining Governors, that: (a) the Governor no longer satisfies the classification [(Industry, Non-Industry, or Public Governor)] for which the Governor was elected; and (b) the Governor's continued service as such would violate the compositional requirements of the Board set forth in Section 4. If the term of office of a Governor terminates under this Section, and the remaining term of office of such Governor at the time of termination is not more than six months, during the period of vacancy the Board shall not be deemed to be in violation of Section 4 by virtue of such vacancy.

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ARTICLE IX—COMMITTEES

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Executive Committee

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Sec. 4(b) The Executive Committee shall consist of no fewer than [five] *six* and no more than nine Governors. The Executive Committee shall include the Chief Executive Officer of the NASD, at least one Director of NASD Regulation, at least one Director of Nasdaq, *at least one Governor of New Amex,* and at least two Governors who are not *members of either the* NASD Regulation *Board, the* [or] Nasdaq *Board, or the New Amex Board.* The number of Directors of the NASD Regulation Board and the number of Directors of the Nasdaq Board serving on the Executive Committee shall be equal at all times. The Executive Committee shall have a percentage of Non-Industry committee members at least as great as the percentage of Non-Industry Governors on the whole Board and a percentage of Public committee members at least as great as the percentage of Public Governors on the whole Board.

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ARTICLE XV—LIMITATION OF POWERS

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Conflicts of Interest

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Sec. 4.(b) No contract or transaction between the NASD and one or more of its Governors or officers, or between the NASD and any other corporation, partnership, association, or other organization in which one or more of its Governors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason if: (i) the material facts pertaining to such Governor's or officer's relationship or interest and the contract or transaction are disclosed or are known to the Board or the committee, and the Board or committee in good faith authorizes the contract or transaction by the affirmative vote of a majority of the disinterested Governors; or (ii) the material facts are disclosed or become known to the Board or committee after the contract or transaction is entered into, and the Board or committee in good faith ratifies

the contract or transaction by the affirmative vote of a majority of the disinterested Governors. Only disinterested Governors may be counted in determining the presence of a quorum at the portion of a meeting of the Board or of a committee that authorizes the contract or transaction. This subsection shall not apply to any contract or transaction the NASD and: NASD Regulation, *Holdco*, Nasdaq, *or New Amex*.

* * * * *

Proposed Revisions to NASD Regulation, Inc. By-Laws

ARTICLE I

Definitions

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(q) ''Industry Director'' or ''Industry member'' means a Director (excluding the President) or a National Adjudicatory Council or committee member who (1) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (2) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (3) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (4) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the Director or member or 20 percent or more of the gross revenues received by the Director's or member's firm or partnership; (5) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20 percent or more of the professional revenues received by the Director or member or 20 percent or more of the gross revenues received by the Director's or member's firm or partnership; or (6) has a consulting or employment relationship with or provides professional services to the NASD, NASD Regulation, [or] Nasdaq, *or New Amex (and any predecessor)*, or has had any such relationship or provided any such services at any time within the prior three years;

* * * * *

(x) ''Non-Industry Director'' or ''Non-Industry member'' means a Director (excluding the President) or a National Adjudicatory Council or committee member who is (1) a Public Director or Public member; (2) an officer or employee of an issuer of securities listed on Nasdaq or *New Amex*, or traded in the over-the-counter market; or (3) any other individual who would not be an Industry Director or Industry member;

* * * * *

(cc) ''Floor Governor'' or ''New Amex Floor Governor'' means a Floor Governor of New Amex elected pursuant to Article II, Section .01(a) of the New Amex By-Laws;

(dd) ''Holdco'' means NASD Market Holding Company;

(ee) ''New Amex'' means New Amex LLC;

(ff) ''New Amex Board'' means the Board of Governors of New Amex;

* * * * *

ARTICLE IV. BOARD OF DIRECTORS

* * * * *

Disqualification

Sec. 4.7 The term of office of a Director shall terminate immediately upon a determination by the Board, by a majority vote of the remaining Directors, that: (a) the Director no longer satisfies the classification [(Industry, Non-Industry, or Public Director)] for which the Director was elected; and (b) the Director's continued service as such would violate the compositional requirements of the Board set forth in Section 4.3. If the term of office of a Director terminates under this Section, and the remaining term of office of such Director at the time of termination is not more than six months, during the period of vacancy the Board shall not be deemed to be in violation of Section 4.3 by virtue of such vacancy.

* * * * *

Conflicts of Interest; Contracts and Transactions Involving Directors

* * * * *

Sec. 4.14(b) No contract or transaction between NASD Regulation and one or more of its Directors or officers, or between NASD Regulation and any other corporation, partnership, association, or other organization in which one or more of its Directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason if: (i) the material facts pertaining to such Director's or officer's relationship or interest and the contract or transaction are disclosed or are known to the Board or the committee, and the Board or committee in good faith authorizes the contract or transaction by the affirmative vote of a majority of the disinterested Directors; (ii) the material facts are disclosed or become known to the Board or committee after the contract or transaction is entered into, and the Board or committee in good faith ratifies the contract or transaction by the affirmative vote of a majority of the disinterested Directors; or (iii) the material facts pertaining to the Director's or officer's relationship or interest and the contract or transaction are disclosed or are known to the stockholder entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholder. Only disinterested Directors may be counted in determining the presence of a quorum at the portion of a meeting of the Board or of a committee that authorizes the contract or transaction. This subsection shall not apply to a contract or transaction between NASD Regulation and the NASD, [or] Nasdaq, *Holdco, or New Amex*.

Proposed Revisions to The Nasdaq Stock Market, Inc. By-Laws

ARTICLE I.

Definitions

* * * * *

(j) ''Industry Director'' or ''Industry member'' means a Director (excluding the President) or Nasdaq Listing and Hearing Review Council or committee member who (1) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (2) is an officer, director (excluding an outside director) or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (3) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (4) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the Director or

member or 20 percent or more of the gross revenues received by the Director's or member's firm or partnership; (5) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's officer's or employee's professional capacity and constitute 20 percent or more of the professional revenues received by the Director or member or 20 percent or more of the gross revenues received by the Director's or member's firm or partnership; or (6) has a consulting or employment relationship with or provides professional services to the NASD, NASD Regulation, [or] Nasdaq, *or New Amex (and any predecessor),* or has had any such relationship or provided any such services at any time within the prior three years;

* * * * *

(q) ''Non-Industry Director'' or ''Non-Industry member'' means a Director (excluding the President) or Nasdaq Listing and Hearing Review Council or committee member who is (1) a Public Director or Public member; (2) an officer or employee of an issuer of securities listed on Nasdaq *or New Amex,* or traded in the over-the-counter market; or (3) any other individual who would not be an Industry Director or Industry member;

* * * * *

(u) ''Floor Governor'' or ''New Amex Floor Governor'' means a Floor Governor of New Amex elected pursuant to Article II, Section .01(a) of the New Amex By-Laws;

(v) ''Holdco'' means NASD Market Holding Company;

(w) ''New Amex'' means New Amex LLC;

(x) ''New Amex Board'' means the Board of Governors of New Amex;

* * * * *

ARTICLE IV. BOARD OF DIRECTORS

* * * * *

Disqualification

Sec. 4.7 The term of office of a Director shall terminate immediately upon a determination by the Board, by a majority vote of the remaining Directors, that: (a) The Director no longer satisfies the classification [(Industry, Non-Industry, or Public Director)] for which the Director was elected; and (b) the Director's continued service as such would violate the compositional requirements of the Board set forth in Section 4.3. If the term of office of a Director terminates under this Section, and the remaining term of office of such Director at the time of termination is not more than six months, during the period of vacancy the Board shall not be deemed to be in violation of Section 4.3 by virtue of such vacancy.

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Conflicts of Interest; Contracts and Transactions Involving Directors

* * * * *

Sec. 4.14(B) No contract or transaction between Nasdaq and one or more of its Directors or officers, or between Nasdaq and any other corporation, partnership, association, or other organization in which one or more of its Directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason if: (i) the material facts pertaining to such Director's or officers relationship or interest and the contract or transaction are disclosed or are known to the Board or the committee, and the Board or Committee in good faith authorizes the contract or transaction by the affirmative vote of a majority of the disinterested Directors; (ii) the material facts are disclosed or become known to the Board or committee after the contract or transaction is entered into, the Board or committee in good faith ratifies the contract or transaction by the affirmative vote of a majority of the disinterested Directors; or (iii) the material facts pertaining to the Director's or officer's relationship or interest and the contract or transaction are disclosed or are known to the stockholder entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholder. Only disinterested Directors may be counted in determining the presence of a quorum at the portion of a meeting of the Board or of a committee that authorizes the contract or transaction. This subsection shall not apply to a contract or transaction between Nasdaq and the NASD, [or] NASD Regulation, *Holdco, or New Amex.*

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis For, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change has two purposes. First, the proposal reserves a seat on the NASD Board of Governors for a person representing a member firm having not more than 150 registered persons. In 1997, the NASD implemented a comprehensive revision of the Association's corporate structure. Those revisions were intended to streamline the decision making process; to improve communication among Board members and the staff; and to enable the Association to act quickly and decisively when appropriate. While the restructuring has been effective in meeting these goals, the Association has determined that there is a need to ensure the small member firm community (i.e., firms with 150 or fewer registered persons) a more effective voice in matters affecting their business and their customers, and has therefore determined to reserve a position on the Board of Governors for a person representing a firm with not more than 150 registered persons.

Second, the addition to the NASD Board of the Chief Executive Officer and one Floor Governor of New Amex LLC (the successor operating organization to the American Stock Exchange) is required by the Transaction Agreement dated as of May 8, 1998 (''Transaction Agreement''), that will bring the Amex into the NASD family of companies. That agreement was approved by the Regular Members and Options Principal Members of the American Stock Exchange on June 25, 1998, and is also the subject of a proposed rule change to be submitted by the American Stock Exchange.

(a) Summary of Amendments

By-Laws of the NASD

Article I. Definitions

New definitions of ''Floor Governor,'' ''Holdco,'' ''New Amex,'' and ''New Amex Board'' have been added, and the terms ''Non-Industry Governor,'' ''Non-Industry Director,'' ''Non-Industry committee member,'' ''Industry Governor,'' ''Industry Director'' and ''Industry committee member'' have been amended, to incorporate the inclusion of New Amex LLC within the family of companies.

Article VII. Board of Governors

Section 4: Composition and Qualifications of the Board. This section has been amended to provide that the NASD Board include the Chief Executive Officer and one Floor Governor of New Amex LLC and a representative of an NASD member firm having not more than 150 registered persons. In addition, to ensure some flexibility and maintenance of a majority Non-Industry Board, the maximum size of the Board has been increased to 35 Governors.

Section 5: Term of Office of Governors. This section has been amended to provide term lengths for service by the New Amex Chief Executive Officer and Floor Governor on the Board, consistent with the Transaction Agreement and the Constitution of New Amex LLC.

Article IX. Committees

Section 4: Executive Committee. This section has been amended to include a Governor of New Amex LLC on the Executive Committee.

Article XV. Limitation of Powers

Section 4: Conflicts of Interest. This section has been amended to reflect the inclusion of New Amex LLC within the family of companies.

By-Laws of NASD Regulation and of the Nasdaq Stock Market

Article I. Definitions

New definitions of ''Floor Governor,'' ''Holdco,'' ''New Amex,'' and ''New Amex Board'' have been added, and the terms ''Non-Industry Director,'' ''Non-Industry member,'' ''Industry Director'' and ''Industry member'' have been amended, to incorporate the inclusion of New Amex LLC within the NASD family of companies.

Article IV. Board of Directors

Section 4.14: Conflicts of Interest; Contracts and Transaction Involving Directors. This section has been amended to reflect the inclusion of New Amex LLC within the family of companies.

Amendment No. 1

Amendment No. 1 made certain minor corrections in the text of the NASD, NASD Regulation and Nasdaq by-laws and agreed to an extension of the time period for Commission action until September 30, 1998, the scheduled closing date of the NASD/Amex transaction.

(b) Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(4) of the Act, which requires, among other things, that the Association's rules must be designed to assure a fair representation of its members in the administration of its affairs. The NASD believes that the proposed rule change enhances the Association's ability to assure fair representation on the NASD Board of its members, while incorporating the constituency represented by New Amex LLC. In particular, the reservation of a Board seat for a representative of a small firm assures the ongoing participation in the governance of the NASD by this important segment of NASD membership, just as the creation of Board seats for the New Amex representatives assures the representation to the Amex seatholders that was integral to their approval of the Transaction Agreement.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. With respect to that portion of the proposed rule change required by the Transaction Agreement, the implementation of the proposed rule change is part of an effort to promote intermarket competition, insofar as it is a condition precedent to the closing of the transaction pursuant to which a substantial investment will be made in the New Amex equity market. In addition, the transaction will result in the provision of substantial additional resources to enhance New Amex's options market, and to help it to develop system and facilities to compete more effectively with other U.S. and foreign options markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

IV. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–98–56 and should be submitted by September 16, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–22839 Filed 8–25–98; 8:45 am]

BILLING CODE 8010–01–M

[4] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Comments should be submitted on or before October 26, 1998.

FOR FURTHER INFORMATION CONTACT: Curtis B. Rich, Management Analyst, Small Business Administration, 409 3rd Street, SW., Suite 5000, Washington, DC 20416. Phone Number: 202–205–6629.

SUPPLEMENTARY INFORMATION:

Title: ''Application Forms for 8(a) Program.''

Type of Request: Revision of a currently approved collection.

Form No's: 1010A, 1010B Form-Tribal, 1010B–Form LLC, 1010B-Form CDC, 1010B-Form NHO, 1010B-Form ANC, 1010C.

Description of Respondents: 8(A) Companies.

Annual Responses: 33,000.

Annual Burden: 177,000.

Comments: Send all comments regarding this information collection to, Sheryl Swed, Assistant Administrator, Office of Division of Program Certification & Eligibility, Small Business Administration, 409 3rd Street S.W., Suite 8000, Washington, D.C. 20416. Phone No: 202–205–6416.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Dated: August 20, 1998.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 98–22868 Filed 8–25–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before September 25, 1998. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW, 5th Floor, Washington, DC 20416; and OMB Reviewer, Victoria Wassmer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–6629.

SUPPLEMENTARY INFORMATION:

Title: Small Disadvantaged Business Certification Application.

Form No.: 2065.

Frequency: On Occasion.

Description of Respondents: Small Disadvantaged Businesses.

Annual Responses: 30,000.

Annual Burden: 90,000.

Dated: August 20, 1998.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 98–22869 Filed 8–25–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 02/02–0580]

Credit Suisse First Boston Small Business Fund I, L.P.; Notice of Issuance of a Small Business Investment Company License

On October 30, 1997, an application was filed by Credit Suisse First Boston Small Business Fund I, L.P., at 11 Madison Avenue, 26th Floor, New York, New York 10010, with the Small Business Administration (SBA) pursuant to Section 107.300 of the Regulations governing small business investment companies (13 CFR 107.300 (1997)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 02/02–0580 on June 17, 1998, to Credit Suisse First Boston Small Business Fund I, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 10, 1998.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 98–22866 Filed 8–25–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 02/02–0581]

NBT Capital Corporation; Notice of Issuance of a Small Business Investment Company License

On November 25, 1997, an application was filed by NBT Capital Corporation, at The Eaton Center, 19 Eaton Avenue, Norwich, New York 13815, with the Small Business Administration (SBA) pursuant to Section 107.300 of the Regulations governing small business investment companies (13 CFR 107.300 (1997)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 02/02–0581 on June 17, 1998, to NBT Capital Corporation to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 10, 1998.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 98–22867 Filed 8–25–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

New England States Regional Fairness Board Strategy Session

The New England States Regional Fairness Board Strategy Session, to be held on September 14, 1998 starting at 3:00 p.m. at Greater Richmond Chamber of Commerce; 201 East Franklin, Richmond, Virginia 23219. The space is being donated by the Greater Richmond Chamber of Commerce. There will be a strategy and de-briefing session to collect Fairness Board members' input on the hearing held in Augusta, Maine on June 22, 1998, as well as to obtain recommendations for the annual Report to Congress.

For further information, contact Gary P. Peele, telephone (312) 353–0880.

Dated: August 20, 1998.

Shirl Thomas,

Director, Office of External Affairs.

[FR Doc. 98–22871 Filed 8–25–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

South Atlantic States Regional Fairness Board Public Hearing

The South Atlantic States Regional Fairness Board Public Hearing, to be held on September 15, 1998 starting at 10:00 a.m. at Greater Richmond Chamber of Commerce: 201 East Franklin, Richmond, Virginia 23219. The space is being donated by the Greater Richmond Chamber of Commerce and is being co-hosted by the Virginia Chamber of Commerce; to receive comments from small businesses concerning regulatory enforcement or compliance taken by federal agencies members. Transcripts of these proceedings will be posted on the Internet. These transcripts are subject only to limited review by the National Ombudsman.

After the hearing, there will be a strategy/de-briefing session to collect Fairness Board members' input on the proceedings, as well as to obtain recommendations for the annual Report to Congress. This meeting will begin at approximately 2:00 p.m. at the same location.

For further information, contact Gary P. Peele, telephone (312) 353–0880.

Dated: August 20, 1998.

Shirl Thomas,

Director, Office of External Affairs.

[FR Doc. 98–22872 Filed 8–25–98; 8:45 am]

BILLING CODE 8025–01–M

SMALL BUSINESS ADMINISTRATION

Wisconsin State Advisory Council; Public Hearing

The U.S. Small Business Administration Wisconsin State Advisory Council, located in the geographical area of Milwaukee, Wisconsin, will hold a public meeting from 12:00 p.m. to 1:00 p.m. August 25, 1998 at Metro Milwaukee Area Chamber (MMAC) Association of Commerce Building; 756 North Milwaukee Street, Fourth Floor, Milwaukee, Wisconsin to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Yolanda Lassiter, U. S. Small Business Administration, 310 West Wisconsin Avenue Milwaukee, Wisconsin 53203; (414) 297–1092.

Dated: August 20, 1998.

Shirl Thomas,

Director, Office of External Affairs.

[FR Doc. 98–22870 Filed 8–25–98; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 3501, *et seq.*) this notice announces that the Department of Transportation has submitted information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (P.L. 104–113, 44 U.S.C. Chapter 35). The ICR abstracted below describes the nature of the information collection and its burden. This ICR was published in the **Federal Register** March 17, 1998, [63 FR 13090].

DATES: Comments on this notice must be received on or before September 25, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Marshall Schy, Federal Highway Administration (HRE–10); Department of Transportation, 400 Seventh St. SW., Washington, DC 20590 at (202) 366–2035.

SUPPLEMENTARY INFORMATION:

Office of the Secretary

Title: Uniform Relocation Assistance and Real Property Acquisition Regulations for Federal and Federally Assisted Programs.

OMB Control Number: 2105–0508.

Type of Request: Extension of a currently approved collection.

Affected Public: Federal, State, and Local government; individuals, households, businesses, farms, not-for-profit institutions.

Abstract: The regulations implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (49 CFR 24.9), require covered agencies to maintain adequate records of acquisition and relocation activities under the Act. In addition, the Federal Highway Administration requires the 52 state highway agencies carrying out the Federal-aid highway program to report their Uniform Act acquisition and relocation activities once every third year.

Estimated Annual Burden Hours: 29,043 hours.

Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention OST Desk Officer.

Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Issued in Washington. DC, on August 20, 1998.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 98–22924 Filed 8–25–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 3501, *et seq.*) this notice announces that the Department of Transportation has submitted an emergency processing public information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–113, 44 U.S.C. Chapter 35). OMB approval has been requested by August 30, 1998. The ICR abstracted below describes the nature of the information collection and it's burden.

DATES: Comments on this notice must be received on or before September 25, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Clarke, Office of Environment, Energy, and Safety; P–13; Department of Transportation, 400 Seventh St. SW., Washington, DC 20590 at (202) 366–2916.

SUPPLEMENTARY INFORMATION:

Office of the Secretary

Title: Infant Travel Survey.

OMB Control Number: 2105—New.

Affected Public: Individuals, households.

Form(s): N/A.

Abstract: This is an opinion survey of parents flying with small children, intended to determine their views on child safety seat use when flying commercially, as well as their views about paying fares for small children.

Estimated Annual Burden Hours: 249 hours.

Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention OST Desk Officer.

Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Issued in Washington, DC, on August 20, 1998.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 98–22925 Filed 8–25–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending August 14, 1998

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–98–4303.
Date Filed: August 10, 1998.
Parties: Members of the International Air Transport Association.
Subject: PTC COMP 0318 dated August 7, 1998, Expedited Resos 100 (r1) and 100aa (r2), Intended effective date: September 15, 1998.

Docket Number: OST–98–4304.
Date Filed: August 10, 1998.
Parties: Members of the International Air Transport Association.
Subject: PAC/Reso/399 dated July 9, 1998, Mail Vote A098—Reso 810 in Orient Countries, Intended effective date: September 1, 1998.

Docket Number: OST–98–4305.
Date Filed: August 10, 1998.
Parties: Members of the International Air Transport Association.
Subject: PAC/Reso/398 dated July 9, 1998, Mail vote A097—Resolution 898a (ERSPs), Intended effective date: November 1, 1998.

Docket Number: OST–98–4323.
Date Filed: August 12, 1998.
Parties: Members of the International Air Transport Association.
Subject: COMP Telex 024f—Pakistan, Local Currency Fare Changes, Intended effective date: August 16, 1998.

Docket Number: OST–98–4324.
Date Filed: August 12, 1998.
Parties: Members of the International Air Transport Association.
Subject: PTC12 CAN–EUR 0032 dated August 11, 1998, Canada-Europe Expedited Resos r1–6, Intended effective date: November 1, 1998.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 98–22833 Filed 8–25–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending August 14, 1998

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–98–4301.
Date Filed: August 10, 1998.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: August 17, 1998.
Description: Application of Delta Air Lines, Inc. pursuant to 49 U.S.C. Section 41101 and Subpart Q, applies for (1) a new or amended certificate of public convenience and necessity to provide scheduled foreign air transportation between the United States and South Africa; and (2) the designation available for third-country code-share service to South Africa beginning November 1, 1998.

Docket Number: OST–98–4330.
Date Filed: August 13, 1998.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: September 10, 1998.
Description: Application of Air Tahiti Nui pursuant to 49 U.S.C. Section 41302 and Subpart Q, applies for an initial foreign air carrier permit to provide foreign air transportation of persons, property and mail between Papeete, Tahiti, French Polynesia and Los Angeles, California.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 98–22834 Filed 8–25–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; Transport Airplane and Engine Issues—New Task

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of new task assignment for the Aviation Rulemaking Advisory Committee (ARAC).

SUMMARY: Notice is given of a new task assigned to and accepted by the Aviation Rulemaking Advisory Committee (ARAC). This notice informs the public of the activities of ARAC.

FOR FURTHER INFORMATION CONTACT: Stewart R. Miller, Transport Standards Staff (ANM–110), Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA 98055–4056; phone (425) 227–1255; fax (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Background

The FAA has established an Aviation Rulemaking Advisory Committee to provide advice and recommendations to the FAA Administrator, through the Associate Administrator for Regulation and Certification, on the full range of the FAA's rulemaking activities with respect to aviation-related issues. This includes obtaining advice and recommendations on the FAA's commitment to harmonize its Federal Aviation Regulations (FAR) and practices with its trading partners in Europe and Canada.

One area ARAC deals with is Transport Airplane and Engine Issues.

These issues involve the airworthiness standards for transport category airplanes and engines in 14 CFR parts 25, 33, and 35 and parallel provisions in 14 CFR parts 121 and 135.

The Task

This notice is to inform the public that the FAA has asked ARAC to provide advice and recommendation on the following harmonization task:

Flight Control Systems

Review the current §§ 25.671 and 25.672 standards and corresponding JAR 25.671 and 25.672 standards pertaining to flight control systems, taking into account the requirements in §§ 25.1309 and 25.1329. Also review current policy including that established by special conditions issued for fly-by-wire control systems and active flight controls, and any related advisory material. Examine accumulated transport airplane service history to validate assumptions made on the probability of occurrence of system failure and consider any NTSB recommendation. In light of this review, recommend new harmonized standards, and develop related advisory material as necessary. Of particular concern is development of advisory material addressing the following regulatory areas:

A. In FAR 25.671(c), the definition of extremely improbable and probable failures is provided in the rule itself, and this definition differs from the numerical definition which is commonly used in showing compliance with FAR 25.1309, which sometimes leads to confusion. Unlike FAR, JAR 25.671(c)(1) excludes single failures when they are shown to be extremely improbable. JAR definition of probabilities is in line with 25.1309. A uniform means of compliance needs to be developed. It is expected that considerable elaboration would be made as to how the various mechanical, hydraulic and electrical failures should be handled. Consideration should be given to latent failures and the relationship of the flight control failures with the occurrence of engine failures.

B. In light of the rate of control jams experienced in the transport fleet to date, and using the experience as an indicator of types of control system malfunctions that may be safety concerns, provide any necessary regulatory and/or policy provisions to:

1. Define the meaning of the terms ''normal flight envelope'', ''without exceptional piloting skill or strength'', ''minor effects'', and ''control position normally encountered'' as used in § 25.671(c).

2. Determine to what extent basic airmanship skills and reasonable pilot response and action may be used to alleviate the resulting airplane control problems. Determine the applicability of crosswind to the landing situation with a jammed flight control.

3. Identify acceptable methodology by which to judge the controllability/maneuverability of an airplane with a jammed control system (e.g. Handling Qualities Rating System (HQRM)).

4. Review NTSB Recommendation A–96–108 and appropriately respond to the proposed criteria.

5. Consider comments in AIA–GAMA letter dated January 23, 1997 and the input received at the December 3, 1996, public meeting conducted by the FAA.

6. Address structural loading conditions following the jammed failure condition required for continued safe flight and landing.

C. Provide advisory material that addresses the all engine failure condition defined in § 25.671(d).

The FAA expects ARAC to submit its recommendation(s) by March 31, 2001.

The FAA requests that ARAC draft appropriate regulatory documents with supporting economic and other required analyses, and any other related guidance material or collateral documents to support its recommendations. If the resulting recommendation is one or more notices of proposed rulemaking (NPRM) published by the FAA, the FAA may ask ARAC to recommend disposition of any substantive comments the FAA receives.

ARAC Acceptance of Tasks

ARAC has accepted the tasks and has chosen to establish a new Flight Controls Harmonization Working Group. The working group will serve as staff to ARAC to assist ARAC in the analysis of the assigned task. Working group recommendations must be reviewed and approved by ARAC. If ARAC accepts the working group's recommendations, it forwards them to the FAA as ARAC recommendations.

Working Group Activity

The Flight Controls Harmonization Working Group is expected to comply with the procedures adopted by ARAC. As part of the procedures, the working group is expected to:

1. Recommend a work plan for completion of the task, including the rationale supporting such a plan, for consideration at the meeting of ARAC to consider transport airplane and engine issues held following publication of this notice.

2. Give a detailed conceptual presentation of the proposed recommendations, prior to proceeding with the work stated in item 3 below.

3. Draft appropriate regulatory documents with supporting economic and other required analyses, and/or any other related guidance material or collateral documents the working group determines to be appropriate; or, if new or revised requirements or compliance methods are not recommended, a draft report stating the rationale for not making such recommendations. If the resulting recommendation is one or more notices of proposed rulemaking (NPRM) published by the FAA, the FAA may ask ARAC to recommend disposition of any substantive comments the FAA receives.

4. Provide a status report at each meeting of ARAC held to consider transport airplane and engine issues.

Participation in the Working Group

The Flight Controls Harmonization Working Group will be composed of technical experts having an interest in the assigned task. A working group member need not be a representative of a member of the full committee.

An individual who has expertise in the subject matter and wishes to become a member of the working group should write to the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire, describing his or her interest in the tasks, and stating the expertise he or she would bring to the working group. All requests to participate must be received no later than September 25, 1998. The requests will be reviewed by the assistance chair and the assistant executive director, and the individuals will be advised whether or not the request can be accommodated.

Individuals chosen for membership on the working group will be expected to represent their aviation community segment and participate actively in the working group (e.g., attend all meetings, provide written comments when requested to do so, etc.). They also will be expected to devote the resources necessary to ensure the ability of the working group to meet any assigned deadline(s). Members are expected to keep their management chain advised of working group activities and decisions to ensure that the agreed technical solutions do not conflict with their sponsoring organization's position when the subject being negotiated is presented to ARAC for a vote.

Once the working group has begun deliberations, members will not be added or substituted without the approval of the assistant chair, the assistant executive director, and the working group chair.

The Secretary of Transportation has determined that the formation and use of ARAC are necessary and in the public interest in connection with the performance of duties imposed on the FAA by law.

Meetings of ARAC will be open to the public. Meetings of the Flight Controls Harmonization Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on August 20, 1998.

Joseph A. Hawkins,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 98–22918 Filed 8–25–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Joint Special Committee 182/ Eurocae Working Group 48; Minimum Operational Performance Standards (MOPS) For an Avionics Computer Resource

Pursuant to section 10(a)(2) of the Federal Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee (SC)–182/ EUROCAE Working Group (WG)–48 meeting to be held September 9–11, starting at 9:00 a.m. The meeting will be held at the EUROCAE office—17 rue Hamelin, 75783 Paris, CEDEX 16, France.

The agenda will include: (1) Chairman's Introductory Remarks; (2) Review and Approval of the Agenda; (3) Review of Meeting Report: Joint RTCA SC–182/EUROCAE WG–48 Meeting (5/ 12–14/98); (4) Review MOPS Draft 1.2: Inclusion of comments 1, 3–5, 7–9, 11–13, 15–20, 22–24, 37, 39, 40, 42; (5) Discuss and recommend for inclusion in draft 1.3: Comments 2, 6, 14, 21, 35, 36, 41; (6) Portability and DO–178B objectives achieved independent of the platform; (7) Working Group Sessions: a. Complete comment 38; b. Chapter 2 sections; c. Chapter 3 sections; (8) Working Group Reports; (9) Other Business; (10) Date and Place of Next Meeting (12/09–11/98, RTCA, Washington, DC.)

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting.

Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC, 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http:// www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 20, 1998.

Janice L. Peters,

Designated Official.

[FR Doc. 98–22917 Filed 8–25–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Nashville International Airport, Nashville, Tennessee

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 Nashville International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before September 25, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Memphis Airports District Office, 3385 Airways Blvd., Suite 302, Memphis, TN 38116–3841.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to General William G. Moore, Jr., President of the Metropolitan Nashville Airport Authority at the following address: One Terminal Drive, Suite 501, Nashville, TN 37214–4114.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Metropolitan Nashville Airport Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Michael L. Thompson, Program Manager, Memphis Airports District Office, 3385 Airways Blvd., Suite 302, Memphis, TN 38116–3841, telephone number 901–544–3495. 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 to Impose and Use the revenue from a PFC at Nashville International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On August 19, 1998, the FAA determined that the application to Impose and Use the revenue from a PFC submitted by the Metropolitan Nashville Airport Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than December 3, 1998.

The following is a brief overview of PFC Application No. 98–05–C–00–BNA.

Level of the proposed PFC: $3.00.

Proposed charge effective date: May 11, 2001.

Proposed charge expiration date: July 20, 2001.

Total estimated PFC revenue: $2,210,000.

Brief description of proposed project(s):

Construct Emergency Operations Center
Construct Outbound Baggage Conveyor System
Construct Moving Sidewalk
Construct Perimeter Fence

Class or classes or air carriers which the public agency has requested not be required to collect PFCs: Part 135 (Air Taxi) Operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Metropolitan Nashville Airport Authority.

Issued in Memphis, Tennessee on August 19, 1998.

LaVerne F. Reid,

Manager, Memphis Airports District Office, Southern Region.

[FR Doc. 98–22916 Filed 8–25–98; 8:45 am]

BILLING CODE 4910–13–M

federal register

Wednesday
August 26, 1998

Part II

Environmental Protection Agency

40 CFR Part 247

Comprehensive Guideline for Procurement of Products Containing Recovered Materials; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 247

[SWH–FRL–6151–8]

RIN 2050–AE23

Comprehensive Guideline for Procurement of Products Containing Recovered Materials

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) today is proposing an amendment to the May 1, 1995 Comprehensive Procurement Guideline (CPG). EPA is proposing to designate the following 19 new items that are or can be made with recovered materials: nylon carpet with backing containing recovered materials, carpet cushion, flowable fill, railroad grade crossing surfaces, park and recreational furniture, playground equipment, food waste compost, plastic lumber landscaping timbers and posts, solid plastic binders, plastic clipboards, plastic file folders, plastic clip portfolios, plastic presentation folders, absorbents and adsorbents, awards and plaques, industrial drums, mats, signage, and manual-grade strapping.

The CPG implements section 6002 of the Resource Conservation and Recovery Act (RCRA), which requires EPA to designate items that are or can be made with recovered materials and to recommend practices for the procurement of designated items by procuring agencies. Once EPA designates an item, RCRA requires any procuring agency using appropriated Federal funds to procure that item to purchase it with the highest percentage of recovered materials practicable. Today's proposed action will foster markets for materials recovered from solid waste by using government purchasing power to stimulate the use of these materials in the manufacture of new products.

DATES: EPA will accept public comments on this proposed rule until October 26, 1998.

ADDRESSES: To comment on this proposal, please send an original and two copies of comments to: RCRA Information Center (5305W), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Please place the docket number F–98–CP3P–FFFFF on your comments.

If any information is confidential, it should be identified as such. An original and two copies of Confidential Business Information (CBI) must be submitted under separate cover to: Document Control Officer (5305W), Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Documents related to today's proposal are available for viewing at the RCRA Information Center (RIC), located at: U.S. Environmental Protection Agency, 1235 Jefferson Davis Highway, Ground Floor, Crystal Gateway One, Arlington, VA 22202. The RIC is open from 9 a.m. to 4 p.m. Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials. Call (703) 603–9230 for appointments. Copies cost $.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Hotline at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. For technical information on individual item designations, contact Terry Grist at (703) 308–7257.

SUPPLEMENTARY INFORMATION:

Regulated Entities

This action may potentially affect those ''procuring agencies''—a term defined in RCRA section 1004(17)—that purchase the following: nylon carpet, carpet cushion, flowable fill, railroad grade crossing surfaces, park and recreational furniture, playground equipment, food waste compost, landscaping timbers and posts, binders, clipboards, file folders, clip portfolios, presentation folders, absorbents and adsorbents, industrial drums, awards and plaques, mats, signage, and manual-grade strapping. For purposes of RCRA section 6002, procuring agencies include the following: (1) any Federal agency; (2) any State or local agencies using appropriated Federal funds for a procurement; or (3) any contractors with these agencies (with respect to work performed under the contract). The requirements of section 6002 apply to such procuring agencies only when procuring designated items where the price of the item exceeds $10,000 or the quantity of the item purchased in the previous year exceeded $10,000. Potential regulated entities for this rule are shown in Table 1.

TABLE 1.—ENTITIES POTENTIALLY SUBJECT TO SECTION 6002 REQUIREMENTS TRIGGERED BY CPG AMENDMENTS

Category	Examples of regulated entities
Federal Government	Federal departments or agencies that procure $10,000 or more worth of a designated item in a given year.
State Government	A State agency that uses appropriated Federal funds to procure $10,000 or more worth of a designated item in a given year.
Local Government	A local agency that uses appropriated Federal funds to procure $10,000 or more worth of a designated item in a given year.
Contractor	A contractor working on a project funded by appropriated Federal funds that purchases $10,000 or more worth of a designated item in a given year.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists the types of entities of which EPA is now aware that could potentially be subject to regulatory requirements triggered by this action. To determine whether your procurement practices are affected by this action, you should carefully examine the applicability criteria in 40 CFR § 247.2. If you have questions regarding the applicability of this action to a particular entity, consult the individuals listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

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E. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
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G.Executive Order 13084
XII. Supporting Information and Accessing Internet

I. Authority

This guideline is proposed under the authority of sections 2002(a) and 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended; 42 U.S.C. 6912(a) and 6962; and section 502 of Executive Order 12873, ''Federal Acquisition, Recycling, and Waste Prevention'' (58 FR 54911, October 22, 1993).

II. Background

Section 6002(e) of RCRA requires EPA to designate items that are or can be made with recovered materials and to recommend practices to assist procuring agencies in meeting their obligations with respect to designated items under RCRA section 6002. After EPA designates an item, RCRA requires that each procuring agency, when purchasing a designated item, must purchase that item composed of the highest percentage of recovered materials practicable.

Executive Order 12873 (Executive Order) establishes the procedure for EPA to follow in implementing RCRA section 6002(e). Section 502 of the Executive Order directs EPA to issue a Comprehensive Procurement Guideline (CPG) that designates items that are or can be made with recovered materials. Concurrent with the CPG, EPA must publish its recommended procurement practices for purchasing designated items, including recovered materials content levels, in a related Recovered Materials Advisory Notice (RMAN). The Executive Order also directs EPA to update the CPG annually and to issue RMANs periodically to reflect changing market conditions. The first CPG (CPG I) was published on May 1, 1995 (60 FR 21370). It established 8 product categories, designated 19 new items, and consolidated 5 earlier item designations. The first CPG update (CPG II) was published on November 13, 1997 (62 FR 60962), and designated an additional 12 products.

Today, in CPG III, EPA is proposing to designate the following 19 additional items:

Construction Products

Nylon carpet with backing containing recovered materials
Carpet cushion
Flowable fill
Railroad grade crossing surfaces

Park and Recreation Products

Park benches and picnic tables
Playground equipment

Landscaping Products

Food waste compost
Plastic lumber landscaping timbers and posts

Non-Paper Office Products

Solid plastic binders
Plastic clipboards
Plastic file folders
Plastic clip portfolios
Plastic presentation folders

Miscellaneous

Absorbents and adsorbents
Industrial drums
Awards and plaques
Mats
Non-road signs, including sign supports and posts
Manual-grade strapping

A. Criteria for Selecting Items for Designation

While not limiting consideration to these criteria, RCRA section 6002(e) requires EPA to consider the following when determining which items it will designate:

(1) Availability of the item;

(2) Potential impact of the procurement of the item by procuring agencies on the solid waste stream;

(3) Economic and technological feasibility of producing the item; and

(4) Other uses for the recovered materials used to produce the item.

EPA consulted with Federal procurement and requirement officials to identify other criteria to consider when selecting items for designation. Based on these discussions, the Agency concluded that the limitations set forth in RCRA section 6002(c) should also be factored into its selection decisions. This provision requires each procuring agency that procures an item designated by EPA to procure the item composed of the highest percentage of recovered materials practicable, while maintaining a satisfactory level of competition. A procuring agency, however, may decide not to procure an EPA-designated item containing recovered materials if it determines: (1) the item is not reasonably available within a reasonable period of time, (2) the item fails to meet the performance standards set forth in the agency's specification, or (3) the item is available only at an unreasonable price.

EPA recognized that the above criteria limit the conditions under which procuring agencies must purchase EPA-designated items with recovered materials content, and, thereby, could limit the potential impact of an individual item designation. (The limitations of RCRA section 6002(c) also effectively describe the circumstances in which a designated item is ''available'' for purposes of the statute.) For these reasons, EPA is also taking into account the limitations cited in RCRA section 6002(c) in its selection of items for designation in today's proposed CPG III. Thus, the Agency developed the following criteria for use in selecting

items for designation: use of materials found in solid waste, economic and technological feasibility and performance, impact of government procurement, availability and competition, and other uses for recovered materials. These criteria are discussed in detail in Section II of the document entitled, ''Background Document for Proposed CPG III and Draft RMAN III.'' A copy of this document is included in the RCRA public docket for this rule.

EPA has adopted two approaches in its designation of items that are made with recovered materials. For some items, such as paper and paper products, the Agency designates broad categories of items and provides information in the related RMAN as to their appropriate applications or uses. For other items, such as plastic trash bags, EPA designates specific items, and, in some instances, includes in the designation the specific types of recovered materials or applications to which the designation applies. The Agency explained these approaches to designating items in the preamble to CPG I (60 FR 21373, May 1, 1995).

EPA sometimes had information on the availability of a particular item made with a specific recovered material (e.g., plastic), but no information on the availability of the item made from a different recovered material or any indication that it is possible to make the item with a different recovered material. In these instances, EPA concluded that it was appropriate to include the specific material in the item designation in order to provide vital information to procuring agencies as they seek to fulfill their obligations to purchase designated items composed of the highest percentage of recovered materials practicable. This information enables the agencies to focus their efforts on products that are currently available for purchase, reducing their administrative burden. EPA also included information in the proposed CPG, as well as in the draft RMAN that accompanied the proposed CPG, that advised procuring agencies that EPA is not recommending the purchase of an item made from one particular material over a similar item made from another material. For example, EPA included the following statement in the preamble discussion for plastic desktop accessories (59 FR 18879, April 20, 1994): ''This designation does not preclude a procuring agency from purchasing desktop accessories manufactured from another material, such as wood. It simply requires that a procuring agency, when purchasing plastic desktop accessories, purchase these accessories made with recovered materials * * *''

The Agency understands that some procuring agencies may erroneously believe that the designation of a broad category of items in a CPG requires them (1) to procure all items included in such category with recovered materials content and (2) to establish an affirmative procurement program for the entire category of items, even where specific items within the category may not meet current performance standards. This is clearly not required under RCRA as implemented through the CPGs and RMANs. RCRA section 6002 does not require a procuring agency to purchase items with recovered materials content that are not available or that do not meet a procuring agency's specifications or reasonable performance standards for the contemplated use. Further, section 6002 does not require a procuring agency to purchase such items if the item with recovered materials content is only available at an unreasonable price or the purchase of such item is inconsistent with maintaining a reasonable level of competition. However, EPA stresses that, when procuring any product for which a recovered materials alternative is available that meets the procuring agency's performance needs, if all other factors are equal, the procuring agency should seek to purchase the product made with the highest percentage of recovered materials practicable.

The items proposed for designation today have all been evaluated with respect to the EPA's criteria. Details of these evaluations are discussed in Sections V–X of the ''Supporting Analyses'' background document. Sections IV–VIII of this preamble provide a summary of EPA's rationale for designating these items.

B. Request for Comments

EPA requests comments and information throughout this preamble. In general, the Agency is requesting comments on: (1) the items selected for designation and (2) the accuracy of the information presented in the discussions of the basis of the item designations. Requests for specific comments and information are included in the narrative discussions for each of the designated items, which follow in sections IV through VIII.

EPA also is requesting comment on the draft RMAN III published in the notice section of today's **Federal Register**. It recommends recovered materials content levels and procurement methods for each of the items EPA proposes to designate today.

Section 503 of E.O. 12873 directs EPA to issue guidance that recommends principles that Executive agencies should use in making determinations for the preference and purchase of environmentally preferable products (EPP). On September 29, 1995, EPA issued guides on environmentally preferable product purchasing (see 60 FR 50721–50735) and has undertaken a series of case studies on various products to identify multi-faceted environmental performance characteristics and attributes that should be considered when purchasing products that are considered environmentally preferable. The agency is interested in identifying environmental attributes considered important when buying environmentally preferable sorbent materials (i.e., absorbents and adsorbents) and is requesting comments in this regard in today's notice.

Specifically, the Agency is interested in developing an approach for presenting information related to the reusability of sorbents and the disposal options for sorbents. Information on reusability and disposal is relevant to the environmental impact of sorbents and is of interest to many purchasers, but the interpretation of information on these attributes is often complicated by the specific circumstances of the user. The Agency would appreciate ideas on how standard measures or descriptors for reusability and disposal could be coupled with appropriate qualifiers and other explanatory materials to convey useful information to purchasers. Commenters should take note that this request is for information pertaining to the Agency's EPP program and that information obtained through this request is not in any way related to, nor will it be used for the purposes of today's proposed designation of sorbents under the CPG. Information obtained by this request will be used to help the agency evaluate the appropriateness of issuing future guidance on the environmental attributes of sorbents under the Agency's program for EPP.

C. Additional Information

For additional background information, including information on RCRA requirements, Executive Order directives, the criteria and methodology for selecting the proposed designated items, and a list of other items considered for designation, please consult ''Background Document for Proposed CPG III and Draft RMAN III.'' Information on obtaining this background document is provided in Section XII, Supporting Information and Accessing Internet.

III. Definitions

For several items being proposed for designation, EPA recommends two-part content levels in the draft RMAN III—a postconsumer recovered content component and a total recovered

materials component. In these instances, EPA found that both types of materials were being used to manufacture a product. Recommending only postconsumer content levels would fail to acknowledge the contribution to the reduction in solid waste made by the use by one manufacturer of another manufacturers' byproducts as feedstock.

Because the item designations in today's action use the terms ''postconsumer materials'' and ''recovered materials,'' the definitions for these terms are repeated here as a reference for the convenience of the reader. These definitions can be found in 40 CFR 247.3. The Agency is not proposing to change these definitions and will not consider any comments submitted on these terms.

Postconsumer materials means a material or finished product that has served its intended end use and has been diverted or recovered from waste destined for disposal, having completed its life as a consumer item. Postconsumer material is part of the broader category of recovered materials.

Recovered materials means waste materials and byproducts that have been recovered or diverted from solid waste, but such term does not include those materials and byproducts generated from, and commonly reused within an original manufacturing process.

IV. Construction Products

A. Nylon Carpet With Backing Containing Recovered Materials

The information obtained by EPA demonstrates that nylon carpet tiles and broadloom carpet made with backing containing recovered materials are commercially available. Today, in § 247.12(h), EPA proposes to designate nylon carpet (broadloom and tiles) made with backing containing recovered materials as an item whose procurement will carry out the objectives of section 6002 of RCRA.

A final designation would not preclude a procuring agency from purchasing broadloom carpet or carpet tiles made from other materials, such as wool. It simply requires that a procuring agency, when purchasing nylon carpet tiles or nylon broadloom carpet, purchase these items with backing containing recovered materials when they meet applicable specifications and performance requirements. EPA reminds procuring agencies, however, that the Agency had previously designated polyester carpet for use in low- and medium-wear applications. See 60 FR 21370, May 1, 1995.

EPA is not aware of manufacturers of other types of carpet (e.g., wool, polyester) using backing containing recovered materials. For this reason, EPA is limiting the scope of today's proposed designation to nylon carpet. EPA requests information about manufacturers of other types of carpet using recycled-content backing.

1. Background

Carpet backing is a layer of woven or nonwoven material used to hold carpet fibers in place and provide structural support. Broadloom carpet, meaning roll goods in 12-foot widths, for wall-to-wall installation, generally is comprised of face fibers inserted into a primary backing, which is usually made of polypropylene materials. The fibers are then locked or glued into place by a layer of latex adhesive. A secondary backing made of polypropylene or jute fiber then is applied to provide stability. Carpet squares or tiles are manufactured first as broadloom carpet. A sheet made of polypropylene or other material is added for stability, and a secondary backing made of polyvinyl chloride (PVC), polyurethane, or other hardback material is applied. The carpet is then cut into squares, usually 18″ × 18″. The tiles are used in modular flooring systems, such as in office settings, and can offer more flexibility than broadloom carpet because individual tiles can be replaced when they become worn.

When EPA proposed to designate carpet in the 1994 CPG I, the Agency had identified only one manufacturer using recovered materials to make carpet backing, and this company used its own manufacturing scrap. EPA stated that it was not considering carpet backing for designation because only one manufacturer had been identified. See 59 FR 18873, April 20, 1994.

Since then, a carpet manufacturer has developed a process to use material from old carpet to produce new backing for its nylon carpet tiles and broadloom carpet. Both the carpet tiles and broadloom carpet made with backing containing recovered materials are now commercially available and are sold at the same price as conventional nylon carpet tiles and nylon broadloom carpet.

2. Rationale for Designation

EPA believes that nylon carpet tiles and broadloom carpet made with backing containing recovered materials meet the statutory criteria for selecting items for designation.

a. *Use of materials in solid waste.* Carpets and rugs account for 2.2 million tons, or 1.1% of municipal solid waste generated annually. About 2 pounds of recovered materials can be used in the backing for each carpet tile. Thus, for each 1,000 square yards of carpet tiles with recovered-content backing purchased, approximately 2,000 pounds of materials are diverted from the waste stream.

b. *Technically proven uses.* One manufacturer has developed the technology to use recovered carpet to manufacture new PVC carpet backing, and at least two other manufacturers are experimenting with using recovered materials in vinyl backing. According to the manufacturer, recovered-content PVC carpet backing performs as well as virgin backing and meets the company's performance specifications. The manufacturer provides a 15-year warranty with the product and plans to use the recovered-content backing as its standard tile backing.

Nylon broadloom carpet and carpet tiles made with recovered-content backing are available nationally. This item also is available to Federal agencies through the U.S. General Services Administration's (GSA) contract GS–00F–8453–A .

Recovered materials can be used only in PVC backing at this time. Manufacturers of polypropylene primary and secondary backings have found it to be technologically and economically infeasible to manufacture carpet backing with recycled polypropylene at this time. EPA requests current information from manufacturers of polypropylene backings on the technological feasibility of using recovered materials in their backings.

c. *Impact of government procurement.* Although EPA was not able to obtain any quantitative information, virtually all government agencies purchase broadloom carpet and/or carpet tiles. Use of broadloom carpet and carpet tiles made with recovered content backing will create a market for this item and demonstrate its performance.

3. Preference Program

EPA recognizes that the choice of carpet fiber—wool, nylon, polyester—depends on the performance needs for a given application. EPA is not requiring procuring agencies to limit their choices to polyester carpet containing recovered materials or to nylon carpet made with backing containing recovered materials. Rather, the effect of the previous designation of polyester carpet and today's proposed designation of nylon carpet with backing containing recovered materials is to require procuring agencies to determine their performance needs, determine whether carpet products containing recovered materials meet those needs, and to purchase carpet products containing recovered materials to the maximum extent practicable, as required by RCRA section 6002.

B. Carpet Cushion

The information obtained by EPA demonstrates that bonded polyurethane foam carpet cushion, carpet cushion made from jute and synthetic fibers, and rubber carpet cushion containing recovered materials are commercially available. Today, in § 247.12(I), EPA proposes to designate carpet cushion made from bonded polyurethane, jute, synthetic fibers, or rubber containing recovered materials as an item whose procurement will carry out the objectives of section 6002 of RCRA.

A final designation would not preclude a procuring agency from purchasing carpet cushion made from other types of materials, such as prime polyurethane foam. It simply requires that a procuring agency, when purchasing bonded polyurethane, jute, synthetic fiber, or rubber carpet cushion, purchase this item containing recovered materials when it meets applicable specifications and performance requirements.

1. Background

Carpet cushion, also known as carpet underlay, is padding placed beneath carpet. Carpet cushion improves the acoustical and thermal insulation properties of carpet, reduces the impact caused by foot traffic or furniture indentation, enhances comfort, and prolongs appearance. It is available in a variety of thicknesses and is used in both residential and commercial settings. Cushions made from bonded polyurethane, jute, synthetic fiber, and rubber can be made with recovered materials.

When EPA proposed to designate carpet in the 1994 CPG I, the Agency was aware of only one manufacturer using recovered materials to make carpet cushion. EPA stated that it was not considering carpet cushion for designation because only one manufacturer had been identified. See 59 FR 18873, April 20, 1994. EPA has now identified at least 12 manufacturers of carpet cushion containing recovered materials.

2. Rationale for Designation

EPA believes that carpet cushion containing recovered materials meets the statutory criteria for selecting items for designation.

a. *Use of materials in solid waste.* About 70 percent of all bonded polyurethane is made from recovered materials, including postconsumer recovered carpet cushion. Jute carpet cushion can be made from postconsumer burlap. Synthetic fiber cushions are made from 100 percent recovered scrap from the carpet fabrication process or purchased from processors. Rubber carpet cushions contain up to 90 percent postconsumer rubber from old tires. Thus, procurement of carpet cushion containing recovered materials can create markets for postconsumer carpet cushion, burlap, and tire rubber, as well as carpet manufacturing scrap.

b. *Technically proven uses.* At least 12 companies manufacture carpet cushion from recovered materials. According to the manufacturers, their products perform as well as carpet cushions made with virgin materials in terms of cushioning and durability and meet standards set by the Carpet and Rug Institute and the Carpet Cushion Council. These standards include requirements for density, thickness, tensile strength, and elongation.

The manufacturers distribute their products nationwide through distributors. Additionally, GSA offers urethane, jute, synthetic fiber, and rubber carpet cushions through its carpet schedule.

c. *Impact of government procurement.* Although not all government agencies use carpet cushion, GSA informed EPA that Federal agencies spent slightly more than $1 million on carpet cushion between October 1992 and May 1997. Federal agencies purchase carpet cushion either directly or through the GSA schedule. Use of carpet cushion containing recovered materials, particularly postconsumer materials, will expand markets for this item and, thereby, create additional markets for the recovered materials used by the carpet cushion manufacturers.

C. Flowable Fill

The information obtained by EPA demonstrates that flowable fill (or controlled low-strength materials) containing coal fly ash and/or ferrous foundry sands are commercially available. Today, in § 247.12(j), EPA proposes to designate flowable fill containing coal fly ash and/or ferrous foundry sands as an item whose procurement will carry out the objectives of section 6002 of RCRA. A final designation would not preclude a procuring agency from purchasing other types of fill materials, such as conventional concrete or compacted soil. It simply requires that a procuring agency, when purchasing or contracting for the use of flowable fill, purchase this item containing recovered materials when it meets applicable specifications and performance requirements.

EPA is aware of one manufacturer using ground blast furnace slag in flowable fills. Because EPA has only limited information from one company on the use of ground blast furnace slag in flowable fill applications, the Agency is not proposing to designate this item in today's notice. However, EPA requests information on (1) other manufacturers or users of flowable fills containing blast furnace slag and (2) the performance and availability of this item.

1. Background

Flowable fill, or controlled low-strength material, is a wet, flowable slurry that is used as an economical fill or backfill material. Flowable fill flows like a liquid, sets like a solid, is self-leveling, and requires no compaction or vibration to achieve maximum density. It can take the place of concrete, compacted soils, or sand commonly used to fill around pipes and in utility trenches or other void areas. Although it can replace concrete, flowable fill is not considered to be a low strength concrete or a compacted soil-cement. Other names for flowable fill include flowable mortar, controlled low-strength material, lean mix backfill, lean fill, controlled density fill, unshrinkable fill, flowable fly ash, hydraulic cement, low strength slurry backfill, flowable backfill, and flowable grout.

Applications for flowable fill include backfill in sewer and utility trenches, building excavations, bridge abutments, and conduit trenches; and miscellaneous uses such as retaining wall backfill and filling abandoned wells, sewers, manholes, and underground storage tanks.

Because it does not require compaction or vibration, flowable fill can be a cost-effective fill material. According to the American Concrete Institute, advantages of flowable fill include reduced labor and equipment requirements because it is self-leveling; versatility in terms of flowability, strength, and setting times; higher load-carrying capacity than compacted soil or granular fill; reduced excavation costs; and improved worker safety because flowable fill can be placed without workers entering the trench.[1]

2. Rationale for Designation

EPA believes that flowable fill containing recovered materials meets the statutory criteria for selecting items for designation.

a. *Use of materials in solid waste.* The two primary recovered materials used in flowable fill are coal fly ash and spent ferrous foundry sands. Only 25 percent

[1] ACI 229R–94, ''Controlled Low Strength Materials (CLSM),'' American Concrete Institute, December 1994.

of the coal fly ash and 20 percent of the foundry sand generated annually currently are recovered and used. Therefore, EPA believes it is appropriate to develop additional markets for these materials.

Either Class F or Class C coal fly ash can be used in flowable fill. While both ferrous and non-ferrous foundry sands can be used in flowable fill mixtures, typically non-ferrous foundry sands are hazardous waste due to their lead and cadmium content. Accordingly, heavy metal content may preclude their use in flowable fill mixtures. In contrast, ferrous foundry sands are not known to be hazardous waste. For this reason, EPA is limiting today's proposed designation to flowable fill containing ferrous foundry sands.

b. *Technically proven uses.* Substantial information about using coal fly ash has been accumulated by the Federal Highway Administration and state highway and transportation departments. The American Concrete Institute has developed a specification for flowable fill containing coal fly ash. EPA is aware that both the American Society for Testing and Materials (ASTM) and the American Association of State Highway and Transportation Officials (AASHTO) are developing specifications for flowable fill containing coal fly ash. ASTM has developed several test methods for flowable fill containing coal fly ash. In addition, the American Concrete Institute is revising its report on controlled low strength materials (i.e., flowable fill). These test methods are listed in ''Background Document for Proposed CPG III and Draft RMAN III'' and Table C–10c of the draft RMAN III published in the Notice section of today's **Federal Register**. In addition, more than 20 states have specifications for flowable fill containing coal fly ash, including California, Colorado, Delaware, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, New Hampshire, New Mexico, North Carolina, Ohio, Texas, Washington, West Virginia, and Wisconsin.

There currently are no national test methods or specifications for flowable fill mixtures containing ferrous foundry sand. At least one state, Ohio, has a specification for flowable fill containing foundry sand, and several other states and FHWA are developing specifications or guidelines.

c. *Impact of government procurement.* State and local transportation departments are one of the largest markets for flowable fill, and they use federal funds for road repair and construction. Their use of flowable fill containing coal fly ash and/or ferrous foundry sands will create markets for these recovered materials as well as provide additional information about the performance of this product.

Coal fly ash and ferrous foundry sands are not universally available throughout the United States. In addition, in some parts of the U.S., they might not be economically competitive with local fill materials. EPA reminds procuring agencies that, under RCRA section 6002, they are not required to purchase an EPA-designated item containing recovered materials if that item is not reasonably available or only available at an unreasonable price. However, EPA believes that, as procuring agencies learn more about the performance of flowable fill and its positive impact on in-place costs, they will be more willing to use it.

D. Railroad Grade Crossing Surfaces

The information obtained by EPA demonstrates that railroad grade crossing surfaces containing recovered materials are commercially available. Today, in § 247.12(k), EPA proposes to designate railroad grade crossing surfaces containing coal fly ash, recovered rubber, or recovered steel as items whose procurement will carry out the objectives of section 6002 of RCRA.

A final designation would not preclude a procuring agency from purchasing railroad grade crossing surfaces manufactured from another material, such as asphalt or wood. It simply requires that a procuring agency, when purchasing concrete, rubber, or steel railroad grade crossing surfaces, purchase these items made with recovered materials when they meet applicable specifications and performance requirements. In particular, EPA is aware that many states have developed guidelines or criteria for use in selecting a crossing surface. Different crossing grade surfaces may be appropriate for different settings, based on highway traffic and functional classification, types of vehicles using the crossing, railroad traffic and truck classification, condition of the approach surface, engineering judgment, costs, and the expected life of the surface.

The information obtained by EPA indicates that it is not feasible to use reclaimed asphalt in asphalt railroad grade surface crossings because asphalt recycling equipment is designed for operation on highways and roads, not on smaller projects such as railroad crossings. EPA does not believe that crumb rubber modified asphalt can be used in railroad grade crossings because of cost and performance constraints. EPA requests information on the use of either reclaimed asphalt or crumb rubber modified asphalt in railroad grade crossing surfaces.

EPA did not identify any manufacturers using ground granulated blast furnace (GGBF) slag or other recovered materials in concrete railroad grade crossing surfaces. EPA requests information about the feasibility of using GGBF slag or other recovered materials in this application.

Plastic lumber is being used in the manufacture of railroad ties and could be used as a component of grade crossings in the future. Testing of plastic lumber railroad ties at the Association of American Railroads' test track near Pueblo, Colorado currently is underway. Depending on the test results, EPA will consider designating this item in the future.

1. Background

Railroad grade crossings are surfacing materials placed between railroad tracks, and between the track and the road at highway and street railroad crossings, to enhance automobile and pedestrian safety. Railroad grade crossings can be made of wood, asphalt, concrete, rubber, metal, or unconsolidated materials, such as crushed stone. Currently, over half of existing railroad grade crossing surfaces are asphalt, followed by wood (32%), unconsolidated materials (10%), rubber (4%), and concrete (2%). However, the use of concrete and rubber surfaces is increasing.

2. Rationale for Designation

EPA believes that railroad grade crossing surfaces containing recovered materials meet the statutory criteria for selecting items for designation.

a. *Use of materials in solid waste.* Concrete, rubber, and steel railroad grade crossing surfaces can be made with recovered materials. Concrete railroad grade crossing surfaces can contain coal fly ash, which is either used by the manufacturer of the concrete railroad crossing or by the ready mix concrete company supplying the crossing to distributors. While there are other applications for coal fly ash, including concrete used in highway and building construction, only 25% of the coal fly ash generated annually is recovered. Therefore, EPA believes that other markets for coal fly ash should be developed. Each railroad crossing could use as much as 1.5 tons of coal fly ash.

Rubber railroad grade crossing surfaces contain tire buffings from tire retreading operations, crumb rubber from scrap tires, and off-specification virgin rubber. As with coal fly ash, there

are other uses for scrap tires and other applications for crumb tire rubber. However, additional markets for crumb rubber are needed.

All domestic steel contains recovered materials. Depending on the process used to manufacture the steel, the railroad grade crossing surface can contain up to 100 percent recovered steel.

b. *Technically proven uses.* As discussed in ''Background Document for Proposed CPG III and Draft RMAN III,'' concrete, rubber, and steel railroad grade crossing surfaces containing recovered materials are available and in use throughout the United States. At least two companies use coal fly ash in the manufacture of concrete railroad grade crossing surfaces, and EPA believes that many concrete crossing surface distributors may sell products containing coal fly ash because more than half of the concrete suppliers in the U.S. use coal fly ash. There are three manufacturers of rubber railroad grade crossing surfaces that use tire buffings and/or crumb rubber, while a fourth manufacturer uses off-specification virgin rubber. As previously noted, all steel railroad grade crossing surfaces contain recovered steel.

EPA found conflicting information about the performance of concrete and rubber railroad grade crossing surfaces containing recovered materials. Users generally are satisfied with concrete surfaces. The weight of concrete systems can be a problem during track maintenance, however, although equipment exists to remove the concrete slabs. In addition, as the wooden railroad ties under concrete systems deteriorate over time, the concrete can become unstable. It is believed that, if the performance of plastic lumber railroad ties is proven, their use, in conjunction with concrete surfaces, will eliminate this problem.

Proper installation and the use of full-depth rubber crossings appear to be key factors in the successful use of these items. Rubber crossings also seem to be preferable for roads with lighter traffic flow and lighter vehicles.

Both concrete and rubber railroad grade crossing surfaces can cost more initially than traditional wood or asphalt crossing surfaces but generally last longer and can be reused after track maintenance, which reduces their cost over their life cycle.

EPA did not identify any national specifications or standards that either require or preclude the use of recovered materials in railroad crossings. The ASTM and AASHTO specifications for blended hydraulic cement and the ASTM test methods for coal fly ash can be used for concrete railroad grade crossings. There are nine ASTM test methods and a classification system for rubber products that can be used when purchasing rubber railroad grade crossing surfaces. These are listed in ''Background Document for Proposed CPG III and Draft RMAN III'' and in Section D–4 of the draft RMAN III published in the Notice section of today's **Federal Register**.

c. *Impact of government procurement.* All levels of government install or contract for the installation of railroad grade crossing surfaces. Funds for the purchase of railroad grade crossings are available under the Surface Transportation Program of the Intermodal Surface Transportation Efficiency Act of 1991. At least 10 percent of these funds must be set aside for Rail-Highway Crossings and Hazard Elimination programs, which can include improvements to crossing surfaces. By considering the use of concrete, rubber, or steel surfaces containing recovered materials, procuring agencies will increase markets for these items and demonstrate their performance.

3. Preference Program

Based on comments submitted on the proposed CPG I, EPA is aware that procuring agencies will be concerned that the designation of a product such as railroad grade crossing surfaces, instead of a component of that product, would dictate design decisions based solely on recovered materials content and not upon engineering considerations of each individual project. Procuring agencies should keep in mind that neither RCRA section 6002, Executive Order 12873, nor the Federal Acquisition Regulation (FAR)[2] require recovered materials content to supersede engineering considerations. Both RCRA section 6002 and Executive Order 12873 require a procuring agency to purchase EPA-designated items containing recovered materials to the maximum extent practicable, unless the items ''fail to meet the performance standards set forth in the applicable specifications or fail to meet the reasonable performance standards of the procuring agencies.'' RCRA section 6002(c)(1)(B).

Procuring agencies and their engineers and contractors are required, however, to affirmatively consider the use of items containing recovered materials for the specified application. In the case of railroad grade crossing surfaces, this might require reconsideration of the agency's guidelines or criteria used in selecting a crossing surface in order to permit the use of products containing recovered materials where appropriate.

[2] Recent revisions to the FAR provide that procuring agencies must require engineers to specify the ''use of the maximum practicable amount of recovered materials consistent with the performance requirements, availability, price reasonableness, and cost-effectiveness.'' 48 CFR § 36.601–3(a).

V. Park and Recreation Products

A. Park Benches and Picnic Tables

The information obtained by EPA demonstrates that park benches and picnic tables made with recovered materials are commercially available. Today, in § 247.14(c), EPA proposes to designate park benches and picnic tables containing recovered steel, aluminum, plastic, or concrete as items whose procurement will carry out the objectives of section 6002 of RCRA.

A final designation would not preclude a procuring agency from purchasing park benches and picnic tables made from other materials. It simply requires that a procuring agency, when purchasing steel, aluminum, plastic, or concrete park benches and picnic tables, purchase these items containing recovered materials when they meet applicable specifications and performance requirements.

When studying park and recreational furniture, EPA concentrated its research on park benches and picnic tables, but requests comments on any other items in this category that commenters believe are made with recovered materials and that may be purchased in appreciable quantities by procuring agencies.

1. Background

Park benches and picnic tables can be found in parks, outdoor recreational facilities, and the grounds of office buildings and other facilities. Park benches are manufactured from a variety of materials, including concrete, brick, aluminum, steel, wood, or plastic—usually in the form of plastic lumber. Picnic tables are also manufactured from a variety of materials, primarily including wood, aluminum, concrete, or plastic. Some manufacturers also make these products from composite materials such as wood and plastic or wood and fiberglass. Although some manufacturers may make park benches and picnic tables entirely of steel, most steel included in these products is used in the framing.

2. Rationale for Designation

EPA believes that park benches and picnic tables containing recovered materials meet the statutory criteria for selecting items for designation.

a. *Use of materials in solid waste.* Park benches and picnic tables can be made from a variety of recovered materials including aluminum, steel, wood, high density polyethylene (HDPE), low density polyethylene (LDPE), polyethylene, polyethylene terephthalate (PET), polypropylene (PP), and other plastic resins. Although EPA's research did not identify any manufacturers of concrete park benches and picnic tables made from recovered materials, the agency sees no technical or performance reasons why these items could not be made from concrete containing recovered materials. While the agency is aware that some manufacturers may use recovered wood in the manufacture of indoor furniture, EPA's research did not identify any manufacturers making park benches or picnic tables from recovered wood for outdoor use except when used as a composite with plastic. The agency is not aware of any manufacturers that make park benches or picnic tables from recovered wood except in the form of composite materials and requests comment on whether this is indeed the case in the industry. No manufacturers were identified that made these items from bricks containing recovered materials. Except for HDPE, markets for recovered plastics have been weak for the past year. Use of recovered plastic resins in park benches and picnic tables can expand markets for plastics, as well as other materials used in to make these products such as steel, aluminum, wood, and concrete.

b. *Technically proven uses.* EPA identified over 50 manufacturers and/or distributors of park benches and picnic tables containing recovered materials. A vast majority of the manufacturers/distributors identified by EPA use recovered plastic in their park benches and picnic tables. A number of technical and performance issues exist with respect to the different materials used to make park benches and picnic tables. In particular, wood and plastic outdoor and recreational furniture can differ significantly in terms of longevity and durability, the effects of temperature, maintenance requirements, strength, weight and other issues. Different kinds of plastic lumber (plastics vs. composites) also differ with respect to these performance issues. For example, plastic lumber timbers and posts may last longer and require less maintenance than wood timbers and posts, but wood timbers weigh 2 to 3 times less. Wood and plastic lumber also differ in tensile strength, creep, and reaction to temperature fluctuations. To address these issues, ASTM Subcommittee D–20.20.01 developed several test methods for plastic lumber. These test methods are discussed in ''Background Document for Proposed CPG III and Draft RMAN III'' and are listed in Section E–3 of the draft RMAN III published in the Notice section of today's **Federal Register**.

c. *Impact of government procurement.* There are no data on the quantity of steel, aluminum, wood, or plastics used in outdoor and recreational furniture in general or in the park benches and picnic tables purchased by government agencies. GSA reported that in 1996, GSA-tracked purchases of park benches and picnic tables totaled nearly $3.2 million. This figure includes items made from all types of materials. According to a GSA representative, federal spending may be as much as 20 higher than this figure since some large purchasers, such as the Department of Defense (DOD) and the U.S. Postal Service (USPS), often buy these items ''off schedule.'' Park benches and picnic tables are purchased by all levels of government, but the quantities or dollar values are not known. The National Park Service has purchased park benches made of various materials, including plastic lumber for use in parks throughout the United States, as has DOD for use at military installations and naval bases. The States of Georgia, Wisconsin, and Washington also have purchased plastic lumber park benches and picnic tables containing recovered materials. Other potential federal purchasers include the U.S. Forest Service, the U.S. Fish and Wildlife Service, and the Department of Housing and Urban Development (HUD).

B. Playground Equipment

The information obtained by EPA demonstrates that playground equipment made with recovered materials is commercially available. Today, in § 247.14(d), EPA proposes to designate playground equipment containing recovered plastic, steel, or aluminum as an item whose procurement will carry out the objectives of section 6002 of RCRA.

A final designation would not preclude a procuring agency from purchasing playground equipment made from other materials. It simply requires that a procuring agency, when purchasing steel, aluminum, or plastic playground equipment, purchase these items containing recovered materials when they meet applicable specifications and performance requirements.

1. Background

Playground equipment is found in parks, schools, child care facilities, institutions, multiple family dwellings, restaurants, resort and recreational developments, and other public use areas. Major types of playground equipment include slides, swings, climbing equipment, merry-go-rounds, seesaws, and spring rocking equipment. Other playground components include stairways and ladders, rungs and other hand gripping components, handrails, protective barriers, and platforms. Playground equipment is usually designed to be age appropriate and is often divided into equipment for 2 to 5 year olds and 5 to 12 year olds.

Playground equipment can be made with a number of different materials. Many playgrounds have railings and structural support pieces made out of one material, fittings made out of another, and decks and platforms made of a third material. Galvanized steel is often used for railings and structural support, but these items can also be made with aluminum. Fittings, such as the bolts that hold chains to swings, are usually made from stainless steel or aluminum. Decks, platforms, and slides can be made from steel, aluminum, plastic, wood, and plastic lumber.

2. Rationale for Designation

EPA believes that playground equipment containing recovered materials meets the statutory criteria for selecting items for designation.

a. *Use of materials in solid waste.* Playground equipment can be made from a variety of recovered materials including aluminum, steel, wood, HDPE, LDPE, polyethylene, PET, PP, and other plastic resins. Recovered wood used in the manufacture of playground equipment is generally used to make a wood/plastic or a wood/fiberglass composite. The agency is not aware of any manufacturers that make playground equipment from recovered wood except in the form of composite materials and requests comment on whether this is indeed the case in the industry.

There are many different configurations for playground equipment using varying amounts of plastic lumber. One private purchaser of 100 percent HDPE plastic lumber playground equipment notes that the playground set they purchased, which includes three slides, used 86,000 milk jugs. A standard set of playground equipment sold by one manufacturer, including four slides, climbing equipment, and a number of platforms, uses 10,000 pounds of recycled plastic,

1,500 pounds of aluminum, and 2,000 pounds of recycled steel.

b. *Technically proven uses.* EPA identified 18 manufacturers and/or distributors of playground equipment containing recovered materials. A vast majority of the manufacturers/distributors identified use recovered plastic in their equipment.

Playground equipment is subject to Consumer Product Safety Commission (CPSC) guidelines and ASTM standard F–1487–95, ''Safety Performance Specification for Playground Equipment for Public Use.'' Both of these standards note that playground equipment should be ''manufactured and constructed only of materials which have a demonstrated record of durability in the playground or similar outdoor setting.'' The CPSC guidelines do not preclude the use of recovered materials. The ASTM standards note that ''any new materials shall be documented or tested accordingly for durability by the playground equipment manufacturer.''

Both CPSC and ASTM note issues with regard to the metal fittings and structural pieces used in playground equipment. The ASTM specification states that ''metals subject to structural degradation such as rust and corrosion shall be painted, galvanized, or otherwise treated.'' Similarly CPSC notes that ''ferrous metals should be painted, galvanized, or otherwise treated to prevent rust.''

In addition to ASTM and CPSC standards, playground equipment must also meet state and local codes and standards as well as federal child safety laws.

A number of technical and performance issues exist with respect to the different materials used to make playground equipment. In particular, wood and plastic playground equipment can differ significantly in terms of longevity and durability, the effects of temperature, maintenance requirements, strength, weight and other issues. Different kinds of plastic lumber (plastics vs. composites) also differ with respect to these performance issues. For example, plastic lumber equipment may last longer and require less maintenance than wood playground equipment, but wood playground equipment can weigh 2 to 3 times less. Wood and plastic lumber also differ in tensile strength, creep, and reaction to temperature fluctuations. To address these issues, ASTM Subcommittee D–20.20.01 developed several test methods for plastic lumber. These test methods are discussed in ''Background Document for Proposed CPG III and Draft RMAN III'' and are listed in Section E–4 of the draft RMAN III published in the Notice section of today's **Federal Register**.

c. *Impact of government procurement.* There are no data on the quantity of steel, aluminum, wood, or plastics used in playground equipment purchased by government agencies. GSA reported that in 1996, GSA-tracked purchases of playground equipment totaled $4.1 million. This figure includes items made from all types of materials. According to a GSA representative, federal spending may be as much as 20 percent higher than this figure since some large purchasers, such as DOD and USPS, often buy these items ''off schedule.'' Playground equipment is purchased by all levels of government, but aggregate quantities or dollar values are not known.

Purchase of playground equipment by HUD is done by individual housing projects. Purchasers of playground equipment include the U.S. Army and other branches of the Armed Services and the GSA child care facilities. Recent military purchasers include Langley Air Force Base and Fort Smith Naval Base, among other U.S. military purchases.

VI. Landscaping Products

A. Plastic Lumber Landscaping Timbers and Posts

The information obtained by EPA demonstrates that plastic lumber landscaping timbers and posts containing recovered materials are commercially available. Today, in § 247.15(e), EPA proposes to designate plastic lumber landscaping timbers and posts containing recovered materials as an item whose procurement will carry out the objectives of section 6002 of RCRA. A final designation would not preclude a procuring agency from purchasing landscaping timbers and posts manufactured from another material, such as wood.

1. Background

Landscaping timbers and posts are used to enhance the appearance of and control erosion in parks, highways, housing developments, urban plazas, zoos, and the exteriors of office buildings, military facilities, schools, and other public use areas. Timbers and posts are used for such landscaping applications as raised beds, retaining walls, and terracing.

2. Rationale for Designation

EPA believes that plastic lumber landscaping timbers and posts containing recovered materials meets the statutory criteria for selecting items for designation.

a. *Use of materials in solid waste.* Plastic lumber can be made from a variety of recovered materials. The product commonly is made from postconsumer HDPE. It also can be made from mixes of commingled plastics, such as HDPE, LDPE, polyethylene, PP, and linear low-density polyethylene; fiberglass-reinforced polyethylene; and composites of plastic and recovered wood chips and/or sawdust. At least one manufacturer uses composites of plastic and ground tire rubber. Plastic lumber timbers and posts have the potential to use large amounts of recovered materials. For example, it can take up to 45,000 milk jugs to produce 1,000 linear feet of a 4 x 6 timber.

b. *Technically proven uses.* There are 50 manufacturers and/or distributors of plastic lumber, although not all of them sell landscaping timbers and posts. At least 11 companies manufacture either specialized plastic lumber landscaping timbers and posts or plastic lumber that can be used for landscaping applications.

Wood and plastic lumber landscaping timbers and posts differ in terms of longevity and durability, the effects of temperature, maintenance, strength, weight, and other issues. Different kinds of plastic lumber (i.e., plastics vs. composites) also differ with respect to these performance issues. For example, plastic lumber timbers and posts may last longer and require less maintenance than wood timbers and posts, but wood timbers can weigh 2 to 3 times less. Wood and plastic lumber also differ in tensile strength, creep, and reaction to temperature fluctuations. To address these issues, ASTM Subcommittee D–20.20.01 developed several test methods for plastic lumber. These test methods are discussed in ''Background Document for Proposed CPG III and Draft RMAN III'' and are listed in Section F–5 of the draft RMAN III published in the Notice section of today's **Federal Register**.

c. *Impact of government procurement.* There are no data on the volumes of wood used in landscaping applications in general or in government landscaping projects. Landscaping materials are purchased by all levels of government, but the quantities or dollar values are not known. According to the National Park Service, there are currently 14 proposed landscaping projects that plan to use plastic lumber. Other potential federal purchasers include the Forest Service, HUD, and the armed services for use on military installations.

B. Food Waste Compost

The information obtained by EPA demonstrates that food waste compost contains recovered materials (food

waste mixed with other organic materials) and is commercially available. EPA previously designated yard trimmings compost in CPG I in 40 CFR § 247.15(b). Today, EPA is proposing to revise the yard trimmings compost designation to include compost made from food waste or commingled food waste and yard trimmings as an item whose procurement will carry out the objectives of section 6002 of RCRA.

1. Background

Composting is the biological process of converting organic matter under controlled conditions into a product that is rich in humus and provides organic matter and nutrients to the soil. Mature compost (in which the composting process is completed) is composed of small brown particles, resembles soil, and is free of pathogens and weed seeds. Compost has been defined by the Compost Council, the trade association for the composting industry, in its ''Composting Glossary,'' as follows:

> Compost is the stabilized and sanitized product of composting; compost is largely decomposed material and is in the process of humification (curing). Compost has little resemblance in physical form to the original material from which it was made. Compost is a soil amendment, to improve soils. Compost is not a complete fertilizer unless amended, although composts contain fertilizer properties, e.g., nitrogen, phosphorus, and potassium, that must be included in calculations for fertilizer application.

Compost added to soil improves the ability of the soil to support plant growth. The organic matter in compost is particularly beneficial to poor soil infrastructure. Adding compost to clay soil, for example, reduces soil density and compaction, increases aeration, and increases soil porosity and drainage. These soil changes make plants less susceptible to root rot disease. Compost added to sandy soil increases the soil's ability to retain water and nutrients, as well as increasing its resistance to drought and erosion.

Compost can be used in a wide range of applications. It can be used as a substitute for peat moss, potting soil, topsoil, or other organic materials in agriculture, horticulture, silviculture (growing of trees), and in landscaping. In landscaping, compost is used as a soil conditioner, soil amendment, lawn top dressing, potting soil mixture, rooting medium, and mulch for shrubs and trees, and for restoration and maintenance of golf course turf and other sports turf. Tailor-made compost (i.e., compost designed and made for specific uses) also can be used for bioremediation of contaminated soils, treatment of contaminated stormwater runoff, volatile organic compound (VOC) emission reduction, and reclamation of mining sites.

It is difficult to talk about ''food waste compost'' as a completely separate item, since most food waste composting programs add other available organic materials such as wood chips, sawdust, manure, or yard trimmings to their mixes. Different types of compost are better suited to different applications, making information about the composition of the compost feedstocks important to purchasers. Thus, there is no consensus among compost experts about how compost made with a significant amount of food waste should be classified. There is agreement, however, that all types of mature compost have great value due to humus and micro-organism content as a soil amendment and fertilizer.

2. Rationale for Designation

EPA believes that food waste compost containing recovered organic materials meets the statutory criteria for selecting items for designation.

a. *Use of materials in solid waste.* Food waste comprises nearly 7 percent (14 million tons per year) of municipal solid waste. Virtually all of this waste is potentially compostable. Institutions such as prisons, universities, and hospitals are excellent sources of food waste for large-scale or regional composting projects. Commercial establishments, such as grocery stores, restaurants, and cafeterias, also provide materials for use in commercial composting. In addition, a few curbside programs provide food waste to community-based composting programs. Fruit and vegetable trimmings are the most common feedstock composted, followed by kitchen preparation residuals, which can include overcooked pasta, stale rolls, and soups. As previously noted, most food waste compost programs mix other organic materials, such as sawdust, wood chips, yard trimmings, or manure, with food wastes to produce compost. These other added materials vary depending upon what is available to the composting program, and what nutrients or bulking agents are needed to make a high quality compost. Yard trimmings are the most popular amendment to food waste compost, followed by wood chips and sawdust.

b. *Technically proven uses.* The Composting Council is helping to define and develop industry-wide standards for composts made from various combinations of materials, including food wastes. The Composting Council publishes these standards in an operating guide for composting facilities entitled, ''Test Methods for Examination of Composting and Compost.'' The guide also provides standards for the suitability of different types of composts made for different applications, depending on the compost mix. In the U.S. Department of Transportation's (DOT) ''Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects 1996,'' the agency specifies mature compost for use in road construction and does not specifically preclude the use of food waste in its required composition of compost. Many State Departments of Transportation have adopted these standards for highway construction projects.

The nutrient and organic carbon content of compost serves as a food source for microorganisms in soil, thus increasing the availability of the soil's organic and nutrient content to plants and aiding faster recycling of nutrients within the system. In addition to returning organic materials and nutrients to the soil, other advantages of amending soil with compost include:

- Moderates soil temperature, so that plant roots are warmed in winter and, through water retention, cooled in dry, hot conditions.
- Suppresses some plant diseases, such as wilt and root rot, reducing the need for chemical pesticides and fungicides. Compost has been shown to be important in controlling wilt disease in certain flowers commonly grown for indoor use. Specifically, compost prevents fusarium wilt disease on cyclamens, a disease that is not otherwise treatable.
- Replaces part or, in some cases, all of the fumigants and fungicides used on food crops or landscape projects, according to research conducted at Ohio State University and verified by researchers in Florida, Pennsylvania, and Alabama.
- Releases nutrients in organic form, such as nitrogen, into the soil slowly over time. This property of compost allows for a significant reduction in fertilizer use and is compatible with the rate of plant root uptake.
- Reduces nonpoint source runoff by preventing siltation and by degrading pollutants in the run-off.
- Restores contaminated, eroded, or compacted soil.

Compost's organic composition increases the soil's water-holding capacity. Compost also increases water infiltration into the soil. Compost helps to reduce soil compaction and increase soil friability, thus decreasing the erodability of soil. Finally, compost can

prevent the crusting of soil surfaces, which can otherwise inhibit seedling growth.

c. *Impact of government procurement.* Military installations alone contain about 20 million acres of land that needs to be maintained. The potential compost usage (at 40 cubic yards per acre) for even a portion of this acreage would be significant. A Marine Corps base in Camp Lejeune, North Carolina, for example, has been composting food waste for more than two years. The operation mixes food waste from mess halls on the base with shredded paper, cardboard and yard and wood waste. The facility accepts an average of 10 tons of food waste per week, generating more than 2,400 tons of yard trimmings and food waste compost per year for use on the base's more than 150,000 acres. Compost is used on landscaping projects and made available to contractors for use in construction projects.

As part of a one-year demonstration project, the DOD District Depot in New Cumberland, Pennsylvania partnered with a nearby state correctional facility to compost its food waste. The depot mixed the food waste with scrap wood from its pallet reclamation operation in two aerated static piles. The finished product was used onsite for landscaping projects and made available to project partners, including the local townships. Other correctional institutions have had tremendous success with composting. Of the 70 correctional facilities in New York State, 48 compost food waste. In fiscal year 1996, these institutions diverted approximately 8,300 tons of food waste for a savings of more than $1 million, including avoided disposal costs, hauling fees, and equipment maintenance and storage costs.

Whiteman Air Force Base in Missouri generated 42 tons of food waste compost through a pilot program in the fall of 1995. Using an in-vessel system, the base mixed yard trimmings with the food waste generated at a recycling conference in Kansas City. They have used the compost on the base and given at least 40 cubic yards to the local solid waste district for a local land improvement program. By the fall of 1998, the base plans to establish a permanent in-vessel food waste composting operation.

Other federal markets for compost made with food waste could be substantial. As of 1997, the U.S. Forest Service and Park Service maintain 500,000 miles of roadsides and embankments and millions of acres of land. The U.S. Forest Service manages more than 190 million acres of land at 156 national forests, while the U.S. Park Service manages more than 83 million acres and 369 national parks. At John Muir National Historic Site, for example, fruit residuals from the 8 acres of orchards and vineyards are composted with wood chips, yard trimmings and paper waste. The site composts approximately 6 tons per year in three 20 cubic yard containers. In addition, universities, hospitals, and prisons may be using appropriated federal funds for their composting operations and purchases.

To assist in the development of federal markets for compost, President Clinton issued a memorandum entitled, ''Environmentally and Economically Beneficial Practices on Federal Landscaped Ground'' on April 26, 1994. Agencies are encouraged to develop practical and cost-effective landscaping methods that preserve and enhance the local environment. This memorandum requires the use of mulches and compost by federal agencies and in federally funded projects.

VII. Non-Paper Office Products

A. Plastic Binders, Clipboards, File Folders, Clip Portfolios, and Presentation Folders

The information obtained by EPA demonstrates that solid plastic binders, clipboards, file folders, clip portfolios, and presentation folders are available containing recovered plastics. EPA previously designated binders in CPG I. Today, in § 247.16(d), EPA proposes to amend the existing designation of binders to include solid plastic binders containing recovered plastic. In § 247.16(h)–(k), EPA proposes to designate plastic clipboards, plastic file folders, plastic clip portfolios, and plastic presentation folders containing recovered plastic, respectively, as items whose procurement will carry out the objectives of section 6002 of RCRA. A final designation would not preclude a procuring agency from purchasing these items manufactured from another material. It simply requires that a procuring agency, when purchasing plastic binders, clipboards, file folders, clip portfolios, and presentation folders, purchase these items made with recovered plastic when these items meet applicable specifications and performance requirements.

EPA previously designated ''binders'' in CPG I in 40 CFR § 247.16(d). In the background document for the final CPG I, EPA explained that the ''binder'' designation includes plastic-covered binders containing recovered plastic, chipboard and pressboard binders, and the paper component of covered binders. In order to clearly define the scope of the binder designation, EPA is revising § 247.16(d) to list the types of binders within the scope of the designation.

1. Background

Binders, clipboards, file folders, clip portfolios, and presentation folders are commonly used office products made from a variety of materials, such as paper, plastic, paperboard, and wood fiber.

2. Rationale for Designation

EPA believes that solid plastic binders, plastic clipboards, plastic file folders, plastic clip portfolios, and plastic presentation folders meet the statutory criteria for selecting items for designation.

a. *Use of materials in solid waste.* Solid plastic binders, clipboards, file folders, clip portfolios, and presentation folders can be made from HDPE, polyethylene, PET, polystyrene, and various other types of recovered plastics. Except for HDPE, markets for recovered plastics have been weak for the past year, and additional markets for HDPE are needed, as well.

b. *Technically proven uses.* Each of the items is available commercially from several sources. EPA is aware of five distributors of binders, file folders, clipboards, clip portfolios, and presentation folders containing recovered HDPE. HDPE binders, clipboards, and presentation folders currently are available through GSA's New Item Introductory Schedule. EPA also is aware of five manufacturers and distributors of solid plastic binders, clipboards, and file folders containing other types of plastics.

c. *Impact of government procurement.* All government agencies purchase binders, clipboards, file folders, clip portfolios, and presentation folders. EPA was not able to quantify purchases of these items, but EPA believes that they are purchased in substantial quantities that support the proposed designations of these items.

VIII. Miscellaneous Products

A. Sorbents

The information obtained by EPA demonstrates that sorbents (i.e., absorbents and adsorbents) containing recovered materials are commercially available. Today, in § 247.17(b), EPA proposes to designate sorbents containing recovered materials for use in oil and solvent clean-ups and as animal bedding, as items whose procurement will carry out the objectives of section 6002 of RCRA. Based on EPA's research, sorbents can

be made containing recovered paper, rubber, yard trimmings, wood, gypsum, plastics, and textiles. A final designation would not preclude a procuring agency from purchasing sorbents manufactured from other materials, such as clay, perlite, or sand. The agency requests comments on whether sorbents used for oil/solvent clean-ups and/or animal beddings are made containing any other types of recovered materials.

1. Background

Absorbents and adsorbents are used in a diverse number of environmental, industrial, agricultural, medical, and scientific applications to retain liquids and gases. While absorbents and adsorbents are often used in the same applications, they perform fundamentally different functions. *Absorption* is ''the incorporation of a substance throughout the body of the absorbing material,'' whereas *adsorption* is the ''gathering of substances over the surface of the adsorbing material.'' Since absorbent and adsorbent products are often used interchangeably in many applications, EPA has chosen to use the term ''sorbent(s)'' to describe all items in this category.

Sorbents are most often used to clean up industrial and environmental oil and solvent spills. They are also used in wastewater treatment, odor control, food processing, septic system maintenance, resource recovery, dust and erosion control, photography, hazardous waste remediation, precious metal recovery, chemical processing, and leachate control of phosphates and nitrates from fertilizers. In addition, sorbents are used in packaging materials, animal bedding, cat litter, protective clothing, gas masks, and personal hygiene products. After reviewing the government procurement of sorbent products, EPA believes that oil and solvent spill cleanup and animal bedding are the most common government applications for sorbents and, therefore, proposes to limit the item designation to these applications. These products are commercially available and are made with various types of recovered materials.

Sorbent used for oil/solvent clean-up spills are manufactured from a variety of organic, inorganic, and synthetic materials, or a combination thereof. In general, these sorbents can be classified into three categories as follows:

- *Organic sorbents* can be manufactured from virgin materials, but most commercially available sorbents are made from materials recovered from municipal and industrial solid waste streams.
- *Inorganic sorbents* are generally mined virgin materials, such as perlite or vermiculite. Most inorganic materials can also be recovered and used again through a laundering process.
- *Synthetic sorbents* are made from either virgin synthetic materials or synthetics recovered from the municipal and industrial solid waste streams.

2. Rationale for Designation

EPA believes that sorbents used for oil/solvent clean-ups and animal bedding containing recovered materials meets the statutory criteria for selecting items for designation.

a. *Use of materials in solid waste.* Sorbents used in spill applications are manufactured from a variety of recovered materials, including 100 percent postconsumer newspapers, tires, yard trimmings, and construction and demolition (C&D) debris, such as wood waste and gypsum. These sorbents can also be made with 100 percent recovered material from the plastics, textile, lumber, and pulp and paper industries. Animal bedding is generally made from recovered wood or other cellulosic fiber sources, such as paper. One sorbent manufacturer estimated that the company uses 2,400 pounds of old newspaper each year to make its sorbent products. Another company from which EPA obtained information estimates that it uses between 600 and 1,000 tons of lumber mill waste each year to manufacture sorbent products. Two other companies estimate that they each use 8,000 tons per year of paper fines from paper mill sludge in their sorbent products. Other companies for which EPA has information report using both wood and gypsum from construction and demolition wastes in their products.

b. *Technically proven uses.* EPA identified 43 companies that manufacture and/or distribute sorbents containing recovered materials for oil/solvent clean-ups and for use as animal bedding. The type of sorbents used for spill applications generally depends on the type of substance being sorbed, where the spill occurs, and worker health and safety issues.

The type of material(s) used to manufacture sorbents is very important to consider when choosing a sorbent product. Sorbents made from materials that are incompatible with the substance being sorbed can potentially disintegrate, create a fire hazard, or pose problems for worker safety. Organic sorbents, for example, are incompatible with, and should not be used to clean up substances such as inorganic acids, caustics, or hydrazines and hydrazides. Sorbents made from organic materials can, however, be used to clean up most oils and fuels (e.g., mineral oil, gasoline, and hydraulic fluid), coolants (e.g., antifreeze), transformer oils (including Polychlorinated Biphenyls), paints (e.g., latex based, lacquers, and thinner), alcohols, solvents, toxins (e.g., cyanides and battery acid), and insecticides and herbicides.

According to one manufacturer, using products made with recovered materials can pose some potential concerns. Postconsumer wastes can contain residuals that are incompatible with aggressive materials (e.g., highly flammable jet fuels). This manufacturer also indicated that products used to absorb some types of jet fuel need to have specific nonstatic characteristics.

Where the spill occurs will also affect the type of sorbent that is used. To clean up spills on water, for example, the sorbent used should be hydrophobic, or water resistant, so it will float on water. Sorbents that are not hydrophobic (i.e., hydrophillic) are generally not used for spills on water, as they will sink, causing problems when removing the product from the water body. Thus, for spills on water, polypropylene and a small number of organic sorbent products that are treated to make them hydrophobic—are the most commonly used and are available with recovered materials. Particulate and loose sorbents are also not recommended for use on open water because they too may absorb water and sink or be lost to recovery because of winds, waves, and currents.

End-users also must consider how a sorbent product may effect the environment, particularly when cleaning up spills in environmentally sensitive areas (e.g., salt marshes and wildlife refuges). Sorbents should not be used which could cause entanglement or digestive problems if ingested by wildlife or marine animals. Products with recovered materials are being made that satisfy these environmental concerns, however.

Worker health and safety issues also can play a role in the selection of sorbent products. Sorbent mats, pads, and rolls may be best suited for the routine spills that occur during machine maintenance operations. These products are easier to handle because they lie flat and keep walking surfaces safe for workers. Particulate sorbent materials, on the other hand, may be difficult to clean up and may cause workers to slip. Again, sorbents containing recovered materials are being made that satisfy concerns.

Under certain conditions, some sorbent materials can be reused or recycled. Some manufacturers of synthetic sorbents, for example, market products that can be reused up to 100 times. Under pressure, synthetic

sorbents will release the sorbed substance, allowing it to be recovered and the sorbent to be reused. Manufacturers of organic sorbents, on the other hand, claim their sorbents can be incinerated for energy recovery and that this process leaves very little ash residue. In addition, clay sorbents can be put through a ''laundering'' process through which the sorbed substance and clay can both be reclaimed for reuse.

EPA is aware of two government specifications for sorbent products; however, at present both preclude the use of organic sorbents in applications where the type of sorbent material is not otherwise an issue. The GSA specification, ''Absorbent Material, Oil and Water (For Floors and Decks),'' for example, states that ''the absorbent material shall consist of a uniform mixture of minerals of the silicate type.'' This specification is used when ordering from the GSA stock item program. Government agencies can procure sorbent products through the GSA's stock contracts and the Multiple Award Federal Supply Schedule. GSA stock contractors must meet GSA's Commercial Item Description specification, ''Absorbent Materials, Oil and Water (For Floors and Decks).'' Thus, when purchasing sorbent products from GSA warehouses, government agencies are limited to purchasing sorbents made from silicate minerals. When ordering sorbent products directly from a multiple award contractor, however, there are no procurement specifications. Instead, government agencies rely on the manufacturers specifications, and a full range of sorbent products (e.g., organic, inorganic, and synthetic) are available for purchase.

The National Institutes of Health specification, ''Laboratory Animal Bedding, Softwood,'' precludes the use of recovered materials. The specification states that sorbents used for ''contact bedding for animals . . . shall be from unused white pine (or related species of low resin soft pine) lumber.''

ASTM has test methods for both absorbents and adsorbents used to remove oils and other compatible fluids from water. These are ''Standard Methods of Testing Sorbent Performance of Absorbents (F716–82)'' and ''Standard Method of Testing Sorbent Performance of Adsorbents (F716–81).'' Neither of them mention any exceptions or differences for testing of sorbents made from recovered materials, however.

EPA's research on sorbents did not identify any technical basis for the exclusion of recovered materials in these items. The Agency, therefore, requests comments on whether there are technical and/or performance-related reasons why specifications for sorbents should preclude the use of recovered materials.

c. *Impact of government procurement.* EPA does not have aggregate figures for the amount or cost spent each year by government agencies for sorbent materials, but believes the amount to be significant. As previously mentioned, government agencies can procure sorbent products through the GSA's stock contracts and the Multiple Award Federal Supply Schedule.

A number of federal and state agencies purchase a variety of sorbent products. The U.S. Coast Guard's Marine Safety and Environmental Protection Division typically uses polypropylene sorbents to clean up spills on water, and paper or cellulosic sorbents to clean up spills on land (i.e., spills that occur during maintenance of vehicles and boats). The National Park Service purchases a variety of sorbent products used to clean up routine and emergency spills on water, and for spills that occur during fleet (i.e., vehicles and boats) maintenance. Although they do not track the purchase of absorbent products, a contact for the National Park Service claims they spend well over $10,000 on sorbent products each year. The U.S. Army Corps of Engineers at Dworshak Dam in Idaho is using a sorbent made from 100 percent recovered wood waste from the lumber industry for emergency spill response activities. The U.S. Department of Energy and Lockheed-Martin have a contract with a manufacturer for sorbent materials which are made from recovered paper pulp waste. According to information from Lockheed-Martin, they recently purchased more than $100,000 of these products.

EPA believes that many government agencies purchase sorbent materials, including all branches of the military and agencies that maintain motor pools.

B. Industrial Drums

The information obtained by EPA demonstrates that industrial drums are available containing postconsumer and other recovered materials, including steel, HDPE, and old corrugated containers. Today, in § 247.17(c), EPA proposes to designate industrial drums containing recovered steel, plastic, or paper as items whose procurement will carry out the objectives of section 6002 of RCRA. A final designation would not preclude a procuring agency from purchasing industrial drums manufactured from another material. It simply requires that a procuring agency, when purchasing steel, plastic, or pressed fiberboard industrial drums, purchase these items made with recovered materials when these items meet applicable specifications and performance requirements. Applicable requirements include the U.S. Department of Transportation (DOT) hazardous material packaging requirements.

1. Background

Industrial drums are cylindrical containers used for shipping and storing hazardous and nonhazardous liquid or solid materials. Industrial drums are manufactured from a variety of materials, including steel, plastic, and pressed fiberboard. The different materials used in the manufacture of industrial drums provide slightly different performance or cost benefits.

2. Rationale for Designation

EPA believes that industrial drums containing recovered materials meet the statutory criteria for selecting items for designation.

a. *Use of materials in solid waste.* Steel, plastic, and fiber drums are or can be manufactured with recovered materials. All steel drums contain at least 25 percent recovered materials. Plastic drums can be manufactured with HDPE from postconsumer plastic drums. Fiber drums are manufactured from old corrugated containers and other sources of paperboard.

Industrial drums also can be reused within a controlled distribution chain or reconditioned and reused. Partners in EPA's WasteWi$e program have found that drum reconditioning can reduce waste disposal. For example, in 1995, Dow Corning reconditioned 150,000 steel drums, eliminating 7.8 million pounds of steel. Dow Corning also eliminated 1,100 pounds of HDPE by cleaning and selling plastic drums.

b. *Technically proven uses.* There are 26 manufacturers of steel drums, all of whom use recovered steel. EPA identified two plastic drum manufacturers that use recovered materials. One manufacturer uses up to 100 percent postconsumer HDPE, while the other manufacturer produces a multi-layer drum that includes a 100 percent postconsumer recovered HDPE layer sandwiched between two virgin plastic layers. EPA also identified one manufacturer of fiber drums that uses recovered materials. Additionally, there are over 100 drum reconditioners in the United States.

The U.S. DOT specifies drum performance criteria for each of its hazardous material packing group classifications. DOT currently requires virgin plastic for drums that will be

used to transport or store hazardous materials because plastic absorbs small quantities of some materials, which could react with materials subsequently stored in the drums. However, the latest United Nations ''Recommendations on the Transport of Dangerous Goods'' allows the use of recovered plastics in hazardous materials packaging. It is likely that DOT will adopt the UN recommendations but has not yet done so. In the interim, DOT provides exemptions allowing the use of recovered content in plastic drums.

Other national specifications (e.g., the performance specifications issued by the National Motor Freight Traffic Association) do not preclude the use of recovered materials in industrial drums.

c. *Impact of government procurement.* Government agencies and their contractors purchase industrial drums for the transport of hazardous and nonhazardous materials. Thus, government procurement of industrial drums containing recovered materials will create or expand markets for this item. Additionally, EPA is aware that some DOD installations reuse or refurbish steel drums, and the Defense Reutilization and Marketing Office (DRMO) frequently provides triple-rinsed steel drums previously used to transport nonhazardous materials.

C. Awards and Plaques

The information obtained by EPA demonstrates that plaques and awards made with recovered materials are commercially available. Today, in § 247.14(d), EPA proposes to designate awards and plaques containing recovered glass, wood, paper, or plastic as items whose procurement will carry out the objectives of section 6002 of RCRA.

A final designation would not preclude a procuring agency from purchasing awards and plaques made from other materials. It simply requires that a procuring agency, when purchasing glass, wood, paper, or plastic awards and plaques, purchase these items containing recovered materials when they meet applicable specifications and performance requirements.

1. Background

Awards and plaques are articles of recognition for outstanding performance or service and are generally given for job-related duties. For the purposes of this designation, awards refer to free-standing statues while plaques refer to ''board-like'' products generally used as wall-hangings.

Awards and plaques are manufactured from a variety of materials including glass, wood, paper, and plastic. Some products are also made of a composite consisting of plastic and wood (e.g., sawdust). The agency requests comments on whether these items are made with other types of recovered materials.

2. Rationale for Designation

EPA believes that awards and plaques containing recovered materials meet the statutory criteria for selecting items for designation.

a. *Use of materials in solid waste.* Awards and plaques can be made from a variety of recovered materials including glass, wood, paper, and plastic (LDPE, HDPE, and other plastic resins). According to one manufacturer, a standard 8″ x 10″ plaque diverts approximately one pound of materials from the waste stream.

b. *Technically proven uses.* Awards and plaques are sold by manufacturers and distributors of promotional products. According to a 1995 survey, there are approximately 13,000 such distributors and manufacturers in the United States. EPA identified six companies that manufacture or distribute awards and plaques made from recovered materials. According to four of the companies contacted, recovered content awards are generally made from blown glass, while plaques are made from various materials, including compressed newsprint and sawdust.

The promotional products industry has grown from $5 billion a year in 1990 to more than $8 billion in 1995. A survey conducted by the Promotional Products Association (PPA) estimates that awards and plaques account for almost 8 percent, or approximately $62 million, of promotional product sales. No discrete data are available on the percentage of awards and plaques manufactured with recovered materials. Distributors of awards made from recovered glass indicate these products are manufactured only on an as-needed basis. Three manufacturers of plaques made from recovered materials, on the other hand, state their products are produced on a regular basis, but not in large volumes.

c. *Impact of government procurement.* Government agencies purchase awards and plaques through the GSA Federal Supply Service's Multiple Awards Contract (MAC) for ''Trophies, Awards, Plaques, Plaques with Clocks, Pins, Ribbons, Medals, Pen Sets, and Plates/Bowls Suitable for Engraving.'' GSA does not track the number of awards or plaques purchased under this contract, but informed EPA that government agencies purchased approximately $10 million worth of products under the subcategory ''awards, plaques, trophies, plaques with clocks, pins, ribbon, and medals'' between 1990 and 1993. Between 1993 and 1996, $12 million worth of products were purchased. Although EPA was unable to obtain specific information on purchasing volume, information obtained from GSA indicates that awards and plaques are the most popular items within the product category.

D. Mats

The information obtained by EPA demonstrates that mats made with recovered materials are commercially available. Today, in § 247.17(e), EPA proposes to designate mats containing recovered rubber and/or plastics as items whose procurement will carry out the objectives of section 6002 of RCRA.

A final designation would not preclude a procuring agency from purchasing mats made from other materials. It simply requires that a procuring agency, when purchasing rubber and/or plastic mats, purchase these items containing recovered materials when they meet applicable specifications and performance requirements.

1. Background

Mats are temporary or semi-permanent protective floor coverings used for numerous applications. They are used to protect carpeting by reducing wear and tear in heavy traffic areas and by removing moisture, dirt, and grime from people's shoes. They are used to protect car and truck floor boards from dirt or accidental spills, and office carpeting from wheel damage caused by swivel chairs. Mats are used to provide traction on stairs, ship decks, docks, around pools, or on marble or tile floors; to reduce worker fatigue in occupational work areas that require excessive standing; and to reduce the risk of injury during athletic events. Mats are also used for many specialty applications, such as protecting truck beds and the teeing areas of golf driving ranges.

Mats are manufactured in a wide variety of designs and from numerous materials. Some of the most common materials used include HDPE, LDPE, nylon, PET, polycarbonate, PP, PVC, rubber, cocoa fiber, tempered hardboard, and wood. Multiple materials may be used in a single mat. Vinyl or rubber ''links,'' for example, can be joined together with steel or aluminum rods. EPA's research found that mats made with recovered materials are limited to rubber and/or plastic mats which can also include aluminum or

steel linkages or frames made from recovered metals.

2. Rationale for Designation

EPA believes that mats containing recovered materials meet the statutory criteria for selecting items for designation.

a. *Use of materials in solid waste.* Mats are made with recovered and postconsumer rubber and or plastic, including PVC, HDPE, LDPE, PET, and PP. In addition, some mats contain steel or aluminum links or frames, which contain recovered metals. Some mats are manufactured from a mixture of rubber and plastics. According to manufacturers from which EPA obtained information, most mats contain at least some postconsumer materials.

b. *Technically proven uses.* Manufacturers estimate that between 75 and 95 percent of all mats manufactured in the United States are made with some percentage of postconsumer material content. According to all of the manufacturers contacted by EPA, recovered content mats perform as effectively as their virgin counterparts, although virgin materials are sometimes added to provide color or product consistency. EPA identified 44 manufacturers, distributors, or suppliers of recovered content mats. They are located throughout the United States and supply both domestic and international markets. At least 25 manufacturers of the 44 manufacturers identified produce rubber mats from at least 90 percent postconsumer tires. Several manufacturers also produce mats that contain 100 percent postconsumer PVC, 100 percent postconsumer mixtures of HDPE and PP, 100 percent postconsumer mixtures of rubber and PVC, and up to 97 percent postconsumer HDPE, LDPE, PET, and PP.

With the exception of competition wrestling mats, EPA did not identify any industry, government, or independent specifications for mats. ASTM developed a wrestling mat specification for mats used in high schools and colleges. The specification addresses the construction of closed-cell foam cores with PVC, PVC coatings, or both; foam cores, either open- or closed-cell enclosed in sewn, loose covers; and molded open-cell PVC foam with a dense skin on one surface that is an integral part of the mat. The ASTM specification does not preclude the use of recovered materials.

c. *Impact of government procurement.* EPA was unable to obtain any information regarding the quantity of mats procured by government agencies. An individual from USPS explained that, although each of the 40,000 USPS facilities probably uses antifatigue mats, USPS, like many procuring agencies, does not have a centralized procurement system.

The GSA Supply Catalog lists 36 products in 9 mat categories, including chair, door, deck, dental floor, porch floor, anti-fatigue, insulating, ribbed floor, and stair tread mats. The GSA catalog identifies 2 of the 36 products as containing recovered materials, both of which are door mats containing 100 percent postconsumer recovered rubber. The number of categories and products on the GSA schedule suggests that there is a sizable government market for mats. Most federal buildings, for example, contain numerous entrance, floor, and chair mats. The U.S. DOD procures a variety of mats, including antislip mats for boat and ship decks and docks, helicopter landing mats, and truck bed mats.

E. Signage

The information obtained by EPA demonstrates that signs and sign supports/posts made with recovered materials are commercially available. Today, in § 247.17(f), EPA proposes to designate non-road signs containing recovered plastic or aluminum and road signs containing recovered aluminum as items whose procurement will carry out the objectives of section 6002 of RCRA. In addition, this proposed designation includes sign supports and posts made from recovered plastic or steel.

A final designation would not preclude a procuring agency from purchasing signage or supports/posts made from other materials. It simply requires that a procuring agency, when purchasing plastic or aluminum signs for specific applications, purchase these items containing recovered materials when they meet applicable specifications and performance requirements. This designation pertains to plastic signs (and any associated plastic or steel supports/posts) used for non-road applications (e.g., buildings, parking lots, trails, etc.) and aluminum road signs (and any associated steel supports/posts).

1. Background

Signs made from recovered materials are used for public roads and highways, and inside and outside office buildings, museums, parks, and other public places. The Federal government procures four types of signs: (1) conventional road signs, (2) expressway signs, (3) freeway signs, and (4) miscellaneous non-road signs. Highway and other road signs are purchased by state and local governments primarily with federal government transportation funds. Non-road signs are procured at the federal and state levels on an as needed basis. Both road and non-road signs may require the use of supports/posts depending on the location of the sign.

2. Rationale for Designation

EPA believes that signage containing recovered materials meets the statutory criteria for selecting items for designation.

a. *Use of materials in solid waste.* Sign blanks, posts, and supports containing recovered materials are primarily manufactured using recovered aluminum and postconsumer or recovered plastics, including HDPE, LDPE, PET, PP, polycarbonate. Although the research conducted by EPA did not identify any manufacturers of signs, supports, or posts containing postconsumer or recovered wood, some manufacturers may use recovered wood to make signs and supports/posts. The Agency requests comments on the prevalence and use of postconsumer or recovered wood in the manufacture of signs and supports/posts. EPA obtained information on the use of steel for sign supports/posts; however, the agency did not identify any manufacturers of signs made from steel. The agency requests comments on the prevalence or use of recovered steel in the manufacture of signs.

b. *Technically proven uses.* EPA identified nine manufacturers and distributors of signs and supports/posts containing recovered materials, seven of which use various postconsumer and/or recovered plastics and two of which use recovered aluminum.

(1) Road Signs

While almost any rigid material can be used for any type of road sign, most state agencies use aluminum because it has a high strength-to-weight ratio, costs less than other materials, and withstands extreme temperatures. Aluminum's strength-to-weight ratio is an important consideration. Road signs are usually more than 3 feet wide, so they must be strong but lightweight. States occasionally use smaller road signs, which could be made of a weaker material, but they prefer to use the same material for all signs to achieve economies of scale. States also prefer aluminum because it resists environmental damage. EPA obtained information that suggested that plywood is also occasionally used for road signs, but that its use has declined over the years. Road signs are normally constructed of several extruded aluminum planks, formed into flat-

bottomed U-shapes and placed side by side. Tape is used to smooth the joints, and braces are extended across the back to stabilize the sign. A reflective polymer is applied to the front to create lettering and symbols. Sign blanks are typically comprised of either aluminum sheeting or an exterior grade plywood.

Several grades of aluminum are used in road signs. Although most aluminum products contain recovered materials, products made from lower grade aluminum usually contain higher percentages of recovered materials. A contact at the Connecticut Department of Transportation said that most states use a mid-level grade of aluminum (Grade 5051) for road signs. The Ohio Department of Transportation uses a higher grade (Grade 6061), but has recently approved the use of two lower grades (Grade 5051 and 3038) as well. According to the National Aluminum Association, common alloy sheet aluminum, from which sign blanks are made, consistently contains fairly high levels of recovered content regardless of grade, although the association could not provide an average percentage. Standard specifications for road sign size, lettering, color, strength, and other design and performance requirements can be found in the ''Manual on Uniform Traffic Control Devices'' published by the Federal Highway Administration.

(2) Non-Road Signs

These signs are used in areas other than roadways, such as office buildings, national parks, historic sites, monuments, and other places of public interest. Non-road signs are often smaller than standard roadway signs. As a result, they can be made of materials with lower strength-to-weight ratios, such as wood and plastics like HDPE and PP, although they are also often made with aluminum. There are two types of plastic signs: a simple, paintable sheet and a triple-ply, two-color sheet that is meant to be routed (or etched) to expose the interior color. The use of plastic is better suited to smaller signs, as large plastic signs can be extremely heavy.

(3) Sign Supports and Posts

Sign posts and supports can be made from a variety of materials, including steel, fiberglass reinforced plastic, thin-wall steel tubing, steel U-post or flanged channel, and standard schedule 40 steel pipe. Other materials being used in small sign supports include wood and other types of plastic. The number and type of supports selected for use at a given site depends on sign blank area and buyer preference. A period of 15 to 20 years is the maximum life expectancy for most sign posts and supports, regardless of the type of material.

c. Impact of government procurement.

(1) Road Signs

Most states purchase aluminum sign blanks made from common alloy sheet aluminum, which usually contains recovered materials. The number of states purchasing recovered plastic road signs is currently small, but that number is expected to grow as plastic sign technology matures.

(2) Non-road Signs

EPA identified a total of 24 federal and state agencies that have purchased non-road signs containing recovered materials. Federal agencies currently purchasing non-road plastic signs containing recovered materials include the National Park Service; the U.S. Forest Service; the U.S. Coast Guard; and the U.S. Navy. State agencies identified include the Michigan Department of Transportation and the Ohio Department of Natural Resources.

The National Park Service informed EPA that plastic containing recovered materials is a viable alternative for non-road signs in all national parks and national forests. Overall, they were pleased with the performance of the signs in their parks. Some of the signs have been in place for up to 8 years. A vendor that sells primarily recovered-content HDPE signs indicated an increase in demand for these signs over the past three years.

F. Strapping and Stretch Wrap

The information obtained by EPA demonstrates that manual-grade strapping is available containing postconsumer and other recovered materials, including steel, PP, and PET. Today, in § 247.17(g), EPA proposes to designate manual-grade strapping containing recovered steel or plastic as an item whose procurement will carry out the objectives of section 6002 of RCRA. A final designation would not preclude a procuring agency from purchasing strapping manufactured from another material, such as rayon or nylon. It simply requires that a procuring agency, when purchasing steel, PP, or polyester strapping, purchase these items made with recovered materials when they meet applicable specifications and performance requirements.

Machine-grade strapping also can contain postconsumer and other recovered materials. EPA determined that Federal agencies, including the Defense Logistics Agency (DLA), DOD, GSA, and USPS, purchase manual-grade strapping products for use in palletizing operations. However, EPA was unable to verify that they use machine-grade strapping. Because Federal agencies might not procure this item, EPA is not proposing today to designate machine-grade strapping. EPA requests information about Federal agency use of machine-grade strapping.

Plastic stretch wrap can be made from recovered LDPE and/or PET. In the background document for the proposed CPG II, EPA stated that it was aware of five companies that can make pallet stretch wrap from recovered plastic, but only one that produces the product as a stock item. EPA requested information on additional manufacturers using recovered materials in their stock stretch wrap. No comments were submitted. Because only one manufacturer has been identified, EPA currently is not considering stretch wrap containing recovered materials for designation in the CPG. EPA is again requesting information on the use of recovered materials by other stretch wrap manufacturers.

1. Background

Strapping refers to straps of material used with transport packaging to hold products in place on pallets or in other methods of commercial, bulk shipment. Strapping can also prevent tampering and pilferage during shipping. Stretch wrap, which is a thin, semi-adhesive plastic film, is sometimes used in conjunction with strapping to hold products or materials on a pallet.

2. Rationale for Designation

EPA believes that manual-grade strapping containing recovered materials meets the statutory criteria for selecting items for designation.

a. *Use of materials in solid waste.* There are five basic types of strapping—steel, PP, polyester, nylon, and polyester cord. Of these, steel, PP, and polyester strapping are or can be made with recovered materials. The volume of recovered materials used varies greatly depending on the type of strapping, the materials being used, the company's ability to incorporate recycled materials, and current market prices for virgin and recovered materials. For example, additional equipment is needed to use recovered PET, and manufacturing from recovered PET is only economically feasible if the price of recovered PET is comparable to virgin materials.

Steel strapping contains 25 to 100 percent recovered material, including 10 to 14 percent postconsumer material. Polypropylene strapping can contain up to 100 percent recovered materials,

including up to 50 percent postconsumer material. Polyester strapping can contain up to 100 percent PET, including up to 75 percent postconsumer material from soda bottles. In particular, polyester strapping can be made with green soda bottles and, thereby, provides a market for a recovered material that otherwise has limited markets.

b. *Technically proven uses.* At least eight manufacturers use recovered materials to manufacture PP and polyester manual-grade strapping. Of these, three manufacturers produce steel strapping containing recovered materials. These companies are identified in ''Background Document for Proposed CPG III and Draft RMAN III''. In addition, between 17 and 22 other companies currently are manufacturing strapping products and could be using recovered materials. EPA requests information on other manual-grade strapping manufacturers using recovered materials.

There are no specifications unique to strapping containing recovered materials. Rather, this item is manufactured to meet ASTM specifications and guides for strapping. These include D 3953, ''Standard Specification for Strapping, Flat Steel and Seals,'' D 3950, ''Standard Specification for Strapping, Nonmetallic (and Joining Methods).'' and D 4675, ''Standard Guide for Selection and Use of Flat Strapping Materials.'' The federal Commercial Item Descriptions for strapping have been replaced with ASTM D 3953 and D 3950.

c. *Impact of government procurement.* EPA is aware of at least four Federal agencies that use manual-grade strapping in palletizing operations: DLA, DOD, GSA, and USPS. While EPA was not able to obtain quantified information about their purchases, several agency contacts confirmed that DLA, DOD, and GSA procure strapping directly. GSA offers strapping products through its Supply Catalog, and DLA is in the process of making strapping products a regularly stocked item.

IX. Designated Item Availability

EPA has identified a number of manufacturers and vendors of the items proposed for designation in today's rule. Once the item designations in today's proposal become final, these lists will be placed in the RCRA docket for this action and will be posted on EPA's Internet web page. They will be updated periodically as new sources are identified and product information changes. Procuring agencies should contact the manufacturers and vendors directly to discuss their specific needs and to obtain detailed information on the availability and price of recycled products meeting those needs.

Other information is available from the GSA, DLA, State and local recycling offices, private corporations, and trade associations. Refer to Appendix II of the document, ''Background Document for Proposed CPG III and Draft RMAN III,'' located in the RCRA public docket, for more detailed information on these sources of information.

X. Items Dropped from Further Consideration

EPA considered the following items for proposed designation but, based on the available information, has determined that it would be inappropriate to designate them at this time. Included is a brief explanation of the basis for this determination. EPA requests additional information about these products demonstrating that they should be reconsidered for possible future designation.

Recycled Ink—EPA contacted numerous printers, ink manufacturers, and printing trade associations, but was able to identify only one potential recycled ink manufacturer. Thus, EPA has concluded that this item currently is not commonly available containing recovered materials.

Shotgun Shells: Two technical issues exist with regard to designating shotgun shells. First, shotgun shells are manufactured with an impact extrusion process that is highly sensitive to any contaminants in the plastic resin, which precludes the use of recovered plastics. Second, shotgun shells are subject to more than 15,000 pounds per square inch of pressure when a shotgun is fired and manufacturers are hesitant to introduce any impurities that may impair the integrity of the shotgun shell and result in a potentially fatal injury.

XI. Regulatory Assessments

A. Requirements of Executive Order 12866

Executive Order 12866 (58 FR 51735, October 4, 1993) requires agencies to determine whether a regulatory action is ''significant.'' and thus subject to Office of Management and Budget (OMB) review and the requirements of this Executive Order. The Executive Order defines a ''significant'' regulatory action as one that is likely to result in a rule that may: (1) have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order, it has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.''

EPA estimates that the costs associated with this proposed rule are well below the $100 million threshold. To enable the Agency to evaluate the potential impact of today's action, EPA has prepared an Economic Impact Analysis (EIA), as discussed below. For more information on the estimated economic impact of this proposed rule, see the ''Economic Impact Analysis for the Proposed Comprehensive Procurement Guideline III,'' located in the RCRA public docket for the proposed rule.

1. Summary of Costs

As shown in Table 2 below, EPA estimates that the annualized costs of today's rule will range from $6.5 to $13 million, with costs being spread across all procuring agencies (i.e., Federal agencies, State and local agencies that use appropriated Federal funds to procure designated items, and contractors to all three). These costs are annualized over a 10-year period at a 3 percent discount rate. Because there is considerable uncertainty regarding several of the parameters that drive the costs, EPA conducted sensitivity analyses to identify the range of potential costs of today's rule. Thus, high-end and low-end estimates are presented along with the best estimate. The primary parameter affecting the range of cost estimates is the number of products each procuring agency is assumed to procure each year. Details of the costs associated with this proposed rule are provided in the EIA for this rule.

TABLE 2.—SUMMARY OF ANNUALIZED COSTS OF CPG AMENDMENTS TO ALL PROCURING AGENCIES

Procuring agency	Total annualized costs ($1000)	Best estimate total annualized costs ($1000)
Federal Agencies	$8,244–$4,122	$8,244
States	1,647–823	1,647
Local Governments	2,993–1,497	2,245
Contractors	115–57	86
Total	12,999–6,499	12,222

As a result of today's proposed rule, procuring agencies will be required to perform certain activities pursuant to RCRA section 6002. The costs shown in Table 2 represent the estimated annualized costs associated with these activities, which include: rule review and implementation; estimation, certification, and verification of designated item procurement; and for Federal agencies, reporting and record keeping. Table 2 also includes estimates for Federal agencies that will incur costs for specification revisions and affirmative procurement program modification. More details of the costs associated with today's rule are included in the EIA.

With regard to possible impacts to business, including small businesses, there may be both positive and negative impacts to individual businesses. EPA anticipates that this proposed rule will provide additional opportunities for recycling businesses to begin supplying recovered materials to manufacturers and products made from recovered materials to procuring agencies. In addition, other businesses, including small businesses, that do not directly contract with procuring agencies may be affected positively by the increased demand for recovered materials. These include businesses involved in materials recovery programs and materials recycling. Municipalities that run recycling programs also are expected to benefit from increased demand for certain recovered materials.

EPA is unable to determine the number of businesses, including small businesses, that may be adversely impacted by this proposed rule. It is possible that if a business that currently supplies products to a procuring agency uses virgin materials only, the designation proposed in CPG III may reduce its ability to compete for future contracts. However, the proposed CPG III item designations will not affect existing purchase orders, nor will they preclude businesses from adapting their product lines to meet new specifications or solicitation requirements for products containing recovered materials. Thus, many businesses, including small businesses, that market to procuring agencies have the option to adapt their product lines to meet specifications.

2. Product Cost

Another potential cost of today's action is the possible price differential between an item made with recovered materials and an equivalent item manufactured using virgin materials. Relative prices of recycled content products compared to prices of comparable virgin products vary. In many cases, recycled content products are less expensive than their virgin counterparts. In other cases, virgin products have lower prices than recycled content products. Many factors can affect the price of various products. For example, temporary fluctuations in the overall economy can create oversupplies of virgin products, leading to a decrease in prices for these items. Under RCRA section 6002(c), procuring agencies are not required to purchase a product containing recovered materials if it is only available at an unreasonable price.

3. Summary of Benefits

EPA anticipates that this rule will result in increased opportunities for recycling and waste prevention (e.g., from refurbishing industrial drums). Waste prevention can reduce the nation's reliance on natural resources by reducing the amount of materials used in making products. Less raw materials use results in a commensurate reduction in energy use and a reduction in the generation and release of air and water pollutants associated with manufacturing. Additionally, waste prevention leads to a reduction in the environmental impacts of mining, harvesting, and other extraction processes.

Recycling can effect the more efficient use of natural resources. For many products, the use of recovered materials in manufacturing can result in significantly lower energy and material input costs than when virgin raw materials are used; reduce the generation and release of air and water pollutants often associated with manufacturing; and reduce the environmental impacts of mining, harvesting, and other extraction of natural resources. For example, according to information published by the Steel Recycling Institute, recycling one ton of steel saves nearly 11 million Btus of energy; 2,500 lbs. of ore; 1,000 lbs. of coal; and 40 lbs. of limestone. Recycling can also reduce greenhouse gas emissions associated with manufacturing new products. When compared to landfilling, recycling one ton of HDPE, LDPE, or PET plastic can reduce greenhouse gas emissions by up to 0.64 metric tons of carbon equivalent (MTCE). In addition to conserving nonrenewable resources and reducing the environmental impacts associated with resource extraction and processing, recycling also can divert large amounts of materials from landfills, conserving increasingly valuable space for the management of materials that truly require disposal.

By purchasing products made from recovered materials, government agencies can increase opportunities for realizing these benefits. On a national and regional level, today's proposed rule can result in expanding and strengthening markets for materials diverted or recovered through public and private collection programs. Also, since many State and local governments, as well as private companies, reference EPA guidelines when purchasing designated items, this rule can result in the increased purchase of recycled products, locally, regionally, and nationally, and can provide opportunities for businesses engaged in recycling activities.

B. Unfunded Mandates Reform Act of 1995 and Consultation with State, Local, and Tribal Governments

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, EPA generally must prepare a written statement, including cost-benefit analysis, for proposed and final rules with Federal mandates 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 in any one year. When such a statement is required for EPA rules, under section 205 of the Act, EPA must identify and consider alternatives, including the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the Act 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.

EPA has determined that today's proposed rule does not include a Federal mandate that may result in estimated annualized costs of $100 million or more to either State or local or tribal governments in the aggregate, or to the private sector. To the extent enforceable duties arise as a result of this proposed rule on State and local governments, they are exempt from inclusion as Federal intergovernmental mandates if such duties are conditions of Federal assistance. Even if they are not conditions of Federal assistance, such enforceable duties do not result in a significant regulatory action being imposed upon State and local governments since the estimated aggregate cost of compliance for them are not expected to exceed, at the maximum, $4.6 million annually. The cost of enforceable duties that may arise as a result of today's proposed rule on the private sector are estimated not to exceed $115,000 annually. Thus, the proposed rule is not subject to the written statement requirement in sections 202 and 205 of the Act.

The designated items included in the proposed CPG III may give rise to additional obligations under section 6002(I) (requiring procuring agencies to adopt affirmative procurement programs and to amend their specifications) for state and local governments. As noted above, the expense associated with any additional costs is not expected to exceed, at the maximum, $4.6 million annually. In compliance with Executive Order 12875 entitled Enhancing the Intergovernmental Partnership, 58 FR 58093 (October 28, 1993), which requires the involvement of State and local governments in the development of certain Federal regulatory actions, EPA conducts a wide outreach effort and actively seeks the input of representatives of state and local governments in the process of developing its guidelines.

When EPA proposes to designate items in a CPG, information about the proposal is distributed to governmental organizations so that they can inform their members about the proposals and solicit their comments. These organizations include the U.S. Conference of Mayors, the National Association of Counties, the National Association of Towns and Townships, the National Association of State Purchasing Officials, and the American Association of State Highway and Transportation Officials. EPA also provides information to potentially affected entities through relevant recycling, solid waste, environmental, and industry publications. In addition, EPA's regional offices sponsor and participate in regional and state meetings at which information about proposed and final designations of items in a CPG is presented. Finally, EPA has sponsored buy-recycled education and outreach activities by organizations such as the U.S. Conference of Mayors, the Northeast Recycling Council, the Environmental Defense Fund, Keep America Beautiful, and the California Local Government Commission, whose target audience includes small governmental entities.

The requirements do not significantly affect small governments, because they are subject to the same requirements as other entities whose duties result from today's rule. As discussed above, the expense associated with any additional costs to State and local governments is not expected to exceed, at the maximum, $4.6 million annually. The requirements do not uniquely affect small governments because they have the same ability to purchase these designated items as other entities whose duties result from today's rule. Additionally, use of designated items affects small governments in the same manner as other such entities. Thus, any applicable requirements of section 203 of the Act have been satisfied.

C. Impacted Entities

RCRA section 6002 applies to procuring agencies that use at least a portion of Federal funds to procure over $10,000 worth of a designated product in a given year. EPA estimates that this rule would apply to 35 Federal agencies, all 56 states and territories, and 1,900 local governments. EPA calculated the number of local entities that would be impacted based on information regarding the amount of Federal funds that are dispersed to specific counties. In addition, EPA assumed that between 200 and 1,000 contractors may be affected. A description of this information is provided in the EIA for today's proposed rule.

D. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. The following discussion explains EPA's determination.

In the case of small entities which are small governmental jurisdictions, EPA has concluded that the proposal, if promulgated, will not have a significant economic impact. EPA concluded that no small government with a population of less than 50,000 is likely to incur costs associated with the designation of the 19 items because it is improbable that such jurisdictions will purchase more than $10,000 of any designated item. Consequently, RCRA section 6002 would not apply to their purchases of designated items. Moreover, there is no evidence that complying with the requirements of RCRA section 6002 would impose significant additional costs on the small governmental entity to comply in the event that a small governmental jurisdiction purchased more than $10,000 worth of a designated item. This is the case

because in many instances items with recovered materials content may be less expensive than items produced from virgin material.

Furthermore, EPA similarly concluded that the economic impact on small entities that are small businesses would not be significant. Any costs to small businesses that are ''procuring agencies'' (and subject to RCRA section 6002) are likely to be insubstantial. RCRA section 6002 applies to a contractor with a Federal agency (or a state or local agency that is a procuring agency under section 6002) when the contractor is purchasing a designated item, is using Federal money to do so, and exceeds the $10,000 threshold. There is an exception for purchases that are ''incidental to'' the purposes of the contract, i.e., not the direct result of the funds disbursement. For example, a courier service contractor is not required to purchase re-refined oil and retread tires for its fleets because purchases of these items are incidental to the purpose of the contract. Therefore, as a practical matter, there would be very limited circumstances when a contractor's status as a ''procuring agency'' for section 6002 purposes would impose additional costs on the contractor. Thus, for example, if a State or Federal agency is contracting with a supplier to obtain a designated item, then the cost of the designated item (any associated costs of meeting section 6002 requirements) to the supplier presumably will be fully recovered in the contract price. Any costs to small businesses that are ''procuring agencies'' (and subject to section 6002) are likely to be insubstantial. Even if a small business is required to purchase other items with recovered materials content, such items may be less expensive than items with virgin content.

Therefore, I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. This rule, therefore, does not require a regulatory flexibility analysis. The basis for EPA's conclusions that today's proposed rule, if adopted, will not have a significant impact on a substantial number of small entities is described in greater detail in the EIA for the proposed rule.

While not a factor relevant to determining whether the proposed rule will have a significant impact for RFA purposes, EPA believes that the effect of today's proposed rule would be to provide positive opportunities to businesses engaged in recycling and the manufacture of recycled products. Purchase and use of recycled products by procuring agencies increase demand for these products and result in private sector development of new technologies, creating business and employment opportunities that enhance local, regional, and national economies. Technological innovation associated with the use of recovered materials can translate into economic growth and increased industry competitiveness worldwide, thereby, creating opportunities for small entities.

E. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

The Executive Order ''Protection of Children from Environmental Health Risks and Safety Risks (62FR19885, April 23, 1997), applies to any rule that EPA determines (1) ''economically significantly'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effect of the planned rule on children; and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets E.O. 13045 as encompassing only those regulatory actions that are risk based or health based, such that the analysis required under section 5–501 of the E.O. has the potential to influence the regulation. This rule is not subject to E.O. 13045 because it is not an economically significant regulatory action and does not involve decisions regarding environmental health or safety risks.

F. The National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Pub. L. 104–113, § 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards such as testing methods, sampling procedures or specifications for analyzing the recovered materials content of designated items. Therefore, EPA did not consider the use of any voluntary consensus standards.

G. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

This rule does not significantly or uniquely affect the communities of Indian tribal governments.

XII. Supporting Information and Accessing Internet

The index of supporting materials for today's proposed CPG III is available in the RCRA Information Center (RIC) and on the Internet. The address and telephone number of the RIC are provided in **ADDRESSES** above. The index and the following supporting materials are available in the RIC and on the Internet:

''Background Document for Proposed CPG III and Draft RMAN III,'' EPA530–R–98–003, U.S. EPA, Office of Solid Waste and Emergency Response, April, 1998.

''Economic Impact Analysis for Proposed Comprehensive Procurement Guideline III,'' EPA530-R–98–002, U.S. EPA, Office of Solid Waste and Emergency Response, April, 1998.

Copies of the following supporting materials are available for viewing at the RIC only:

''Recovered Materials Product Research for the Comprehensive

Procurement Guideline III,'' Draft Report, September 26, 1997.

Follow these instructions to access information electronically:

WWW: <http://www.epa.gov/epaoswer/non-hw/procure.htm>
FTP: ftp.epa.gov
Login: anonymous
Password: your Internet address
Files are located in /pub/epaoswer.

List of Subjects in 40 CFR Part 247

Environmental protection, Absorbents, Adsorbents, Awards and plaques; Carpet, Carpet backing; Carpet cushion; Construction products, Flowable fill, Food waste compost, Government procurement; Industrial drums; Landscaping products, Landscaping timbers and posts; Manual-grade strapping, Mats, Nylon carpet, Office products, Park and recreational furniture, Park and recreation products, Plastic clipboards, Plastic file folders, Plastic clip portfolios, Plastic lumber, Plastic presentation folders; Playground equipment; Procurement guidelines, Railroad grade crossing surfaces, Recycling, Signage, Solid plastic binders, Transportation products.

Dated: August 19, 1998.

Carol M. Browner,

Administrator.

For the reasons discussed in the preamble, EPA proposes to amend 40 CFR part 247 as follows:

PART 247—COMPREHENSIVE PROCUREMENT GUIDELINE FOR PRODUCTS CONTAINING RECOVERED MATERIALS

1. The authority citation for part 247 continues to read as follows:

Authority: 42 U.S.C. 6912(a) and 6962; E.O. 12873, 58 FR 54911.

2. In § 247.12, add paragraphs (h), (i), (j), and (k) to read as follows:

§ 247.12 Construction products.

* * * * *

(h) Nylon carpet (broadloom and tiles) made with backing containing recovered materials.

(i) Carpet cushion made from bonded polyurethane, jute, synthetic fibers, or rubber containing recovered materials.

(j) Flowable fill containing coal fly ash and/or ferrous foundry sands.

(k) Railroad grade crossing surfaces containing coal fly ash, recovered rubber, or recovered steel.

3. In § 247.14, add paragraphs (c) and (d) to read as follows:

§ 247.14 Park and recreation products.

* * * * *

(c) Park benches and picnic tables containing recovered steel, aluminum, plastic, or concrete.

(d) Playground equipment containing recovered plastic, steel, or aluminum.

4. In § 247.15, revise paragraph (b) and add paragraph (e) to read as follows:

§ 247.15 Landscaping products.

* * * * *

(b) Compost made from yard trimmings, leaves, grass clippings, and/or food waste for use in landscaping, seeding of grass or other plants on roadsides and embankments, as a nutritious mulch under trees and shrubs, and in erosion control and soil reclamation.

* * * * *

(e) Plastic lumber landscaping timbers and posts containing recovered materials.

5. In § 247.16, revise paragraph (d) and add paragraphs (h) through (k) to read as follows:

§ 247.16 Non-paper office products.

* * * * *

(d) Plastic-covered binders containing recovered plastic; chipboard and pressboard binders containing recovered paper; and solid plastic binders containing recovered plastic.

* * * * *

(h) Plastic clipboards containing recovered plastic.

(i) Plastic file folders containing recovered plastic.

(j) Plastic clip portfolios containing recovered plastic.

(k) Plastic presentation folders containing recovered plastic.

6. In § 247.17, add paragraphs (b) through (g) to read as follows:

§ 247.17 Miscellaneous products.

* * * * *

(b) Sorbents containing recovered materials for use in oil and solvent clean-ups and as animal bedding.

(c) Industrial drums containing recovered steel, plastic, or paper.

(d) Awards and plaques containing recovered glass, wood, paper, or plastic.

(e) Mats containing recovered rubber and/or plastic.

(f)(1) Non-road signs containing recovered plastic or aluminum and road signs containing recovered aluminum.

(2) Sign supports and posts containing recovered plastic or steel.

(g) Manual-grade strapping containing recovered steel or plastic.

[FR Doc. 98–22793 Filed 8–25–98; 8:45 am]

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federal register

Wednesday
August 26, 1998

Part III

Environmental Protection Agency

Recovered Materials Advisory Notice III; Notice

ENVIRONMENTAL PROTECTION AGENCY

[SWH–FRL–6151–9]

Recovered Materials Advisory Notice III

AGENCY: Environmental Protection Agency.

ACTION: Notice of draft document for review.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) today is providing notice of the issuance of a draft Recovered Materials Advisory Notice (RMAN III) that provides guidance to procuring agencies for purchasing certain items containing recovered materials. Under section 6002 of the Resource Conservation and Recovery Act of 1976, EPA designates items that are or can be made with recovered materials and provides recommendations for the procurement of these items. Elsewhere in today's **Federal Register**, EPA is proposing to designate the following 19 additional items: nylon carpet with recycled content backing, carpet cushion, flowable fill, railroad grade crossing surfaces, park and recreational furniture, playground equipment, food waste compost, plastic lumber landscaping timbers and posts, solid plastic binders, plastic clipboards, plastic file folders, plastic clip portfolios, plastic presentation folders, absorbents and adsorbents, industrial drums, awards and plaques, mats, signage, and manual-grade strapping. Today's draft RMAN III contains recommended recovered materials content levels for these items.

DATES: EPA will accept public comments on the recommendations contained in the draft RMAN III until October 26, 1998.

ADDRESSES: To comment on this notice, please send an original and two copies of comments to: RCRA Information Center (5305W), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Please place the docket number F–98–CP3P–FFFFF on your comments.

If any information is confidential, it should be identified as such. An original and two copies of Confidential Business Information (CBI) must be submitted under separate cover to: Document Control Officer (5305), Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Documents related to today's notice are available for viewing at the RCRA Information Center (RIC), located at: U.S. Environmental Protection Agency, 1235 Jefferson Davis Highway, Ground Floor, Crystal Gateway One, Arlington, VA 22202. The RIC is open from 9 a.m. to 4 p.m. Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials. Call (703) 603–9230 for appointments. Copies cost $.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Hotline at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. For technical information on individual item recommendations, contact Terry Grist at (703) 308–7257.

SUPPLEMENTARY INFORMATION:

I. Authority

The draft Recovered Materials Advisory Notice (RMAN III) is issued under the authority of sections 2002(a) and 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended; 42 U.S.C. 6912(a) and 2962; and section 502 of Executive Order 12873 (58 FR 54911, October 20, 1993).

II. Background

Section 6002 of RCRA establishes a Federal buy-recycled program. RCRA section 6002(e) requires EPA to (1) designate items that are or can be made with recovered materials and (2) prepare guidelines to assist procuring agencies in complying with affirmative procurement requirements set forth in paragraphs (c), (d), and (i) of section 6002. Once EPA has designated items, section 6002 requires that any procuring agency using appropriated Federal funds to procure those items must purchase them composed of the highest percentage of recovered materials practicable. For the purposes of RCRA section 6002, procuring agencies include the following: (1) any Federal agency; (2) any State or local agencies using appropriated Federal funds for a procurement, or (3) any contractors with these agencies (with respect to work performed under the contract). The requirements of RCRA section 6002 apply to such procuring agencies only when procuring designated items where the price of the item exceeds $10,000 or the quantity of the item purchased in the previous year exceeded $10,000.

Executive Order 12873 (the Executive Order) (58 FR 54911, October 22, 1993) directs EPA to designate items in a Comprehensive Procurement Guideline (CPG) and publish guidance that contains EPA's recommended recovered content levels for the designated items in the RMANs. The Executive Order further directs EPA to update the CPG annually and the RMANs periodically to reflect changes in market conditions. EPA codifies the CPG designations in the Code of Federal Regulations (CFR), but, because the recommendations are guidance, the RMANs are not codified in the CFR. This process enables EPA to revise its recommendations in response to changes in a product's availability or recovered materials content so as to provide timely assistance to procuring agencies in fulfilling their RCRA section 6002 responsibilities.

EPA issued CPG I on May 1, 1995 (60 FR 21370) designating 19 new items and published RMAN I for the designated items on the same day (60 FR 21386). These notices also consolidated the guidelines previously issued for five items designated between 1983 and 1989. The first CPG update (CPG II) was published on November 13, 1997, and designated an additional 12 products. Today, in a separate section of the **Federal Register**, EPA is proposing to designate 19 new items (CPG III). Today's draft RMAN III recommends recovered materials content levels and procurement guidance for these 19 new items: nylon carpet with backing containing recovered materials, carpet cushion, flowable fill, railroad grade crossing surfaces, park and recreational furniture, playground equipment, food waste compost, plastic lumber landscaping timbers and posts, solid plastic binders, plastic clipboards, plastic file folders, plastic clip portfolios, plastic presentation folders, absorbents and adsorbents, industrial drums, awards and plaques, mats, signage, and manual-grade strapping. Once finalized, today's RMAN will serve as companion guidance to the previous RMANs.

EPA, once again, wants to stress that the recommendations in RMAN III are just that—recommendations and guidance to procuring agencies in fulfilling their obligations under RCRA section 6002. The designation of an item as one that is or can be produced with recovered materials and the inclusions of recommended content levels for an item in the RMAN does not compel the procurement of an item when the item is not suitable for its intended purpose. RCRA section 6002 is explicit in this regard when it authorizes a procuring agency not to procure a designated item which ''fails to meet the performance standards set forth in the applicable specification or fails to meet the reasonable performance standards of the

procuring agencies.'' Section 6002(1)(B), 42 U.S.C. 6962(c)(B).

Thus, for example, in the proposal section of today's **Federal Register**, EPA has proposed to designate railroad grade crossing surfaces as items that are or can be made with recovered materials. The Agency's research shows that these items can be made with rubber, cement, or steel containing recovered materials. If EPA adopts the proposed designation and recommendations for railroad grade crossing surfaces, however, the mere fact that they are available containing recovered materials does not require the use of rubber, steel, or concrete railroad grade crossing surfaces in every circumstance. The choice of appropriate materials to be used in construction applications remains with project engineers, construction contracts, and, in the case of buildings, architects. The effect of designation (and RCRA section 6002) is simply to require the purchase of items containing recovered materials where consistent with the purpose for which the item is to be used. Procuring agencies remain free to procure designated items made from other materials where the design specifications call for other materials. However, agencies must affirmatively determine whether items containing recovered materials meet their performance needs.[1]

A. Methodology for Recommending Recovered Materials Content Levels

In providing guidance in the RMANs, the Executive Order directs EPA to present ''the range of recovered materials content levels within which the designated recycled items are currently available.'' Based on the information available to the Agency, EPA recommends ranges that encourage manufacturers to incorporate the maximum amount of recovered materials into their products without compromising competition or product performance and availability. EPA recommends that procuring agencies use these ranges, in conjunction with their own research, to establish minimum content standards for use in purchasing the designated items. EPA recommends ranges rather than minimum standards for several reasons:

First, the Executive Order directs EPA to develop ranges, not minimum content standards or specific recovered materials levels.

Second, EPA has only limited information on recovered materials content levels for the new items proposed for designation. It would not be appropriate to establish minimum content standards without more detailed information because the standards may be treated as maximum targets by manufacturers and may stifle innovative approaches for increasing recovered material use. EPA hopes that the use of ranges will encourage manufacturers producing at the low end of the recovered materials range to seek ways of increasing their recovered materials usage. Minimum content standards are less likely to encourage such innovation.

Third, many items are purchased locally rather than centrally. As a result, the recovered materials content of the items are likely to vary from region to region depending on local cost and availability of recovered materials. Minimum content standards are unlikely to be effective given the regional variance in recovered materials content because minimum content levels that are appropriate for one region, may be excessively high or low for other regions. A recovered materials content range gives regional procuring agencies the flexibility to establish their own recovered materials content standards and to make them as high as possible, consistent with the statute, given local product availability and market conditions.

EPA reviewed publicly-available information, information obtained from product manufacturers, and information provided by other government agencies regarding the percentages of recovered materials available in the items proposed for designation in CPG III. Based on this information, EPA established ranges of recovered materials content for the proposed designated items. In some instances, EPA recommends a specific content level (e.g., 100 percent recovered materials), rather than a range, because the item is universally available at that recommended level, the item contains 100% recovered materials, or that level is the maximum content currently used in that item.

In establishing the ranges, EPA's objective was to ensure the availability of the item, while challenging manufacturers to increase their use of recovered materials. By recommending ranges, EPA believes that sufficient information will be provided to enable procuring agencies to set appropriate procurement specifications when purchasing the newly designated items.

It is EPA's intention to provide procuring agencies with the best and most current information available to assist them in fulfilling their statutory obligations under RCRA section 6002. To do this, EPA will monitor the progress made by procuring agencies in purchasing designated items with the highest practical recovered materials content levels and will adjust the recommended content ranges as appropriate. EPA anticipates that the recommended ranges will narrow over time as other items become more available, although for technical reasons, many may never be available with 100 percent recovered materials content levels.

Under RCRA section 6002(I), it is each procuring agency's responsibility to establish minimum content standards, while EPA provides recommendations regarding the levels of recovered materials in the designated items. To make it clear that EPA does not establish minimum content standards for other agencies, EPA refers to its recommendations as ''recovered materials content levels,'' consistent with RCRA section 6002(e) and the Executive Order.

More information on EPA's methodology for recommending recovered materials content levels for designated items is contained in ''Background Document for Proposed CPG III and Draft RMAN III,'' located in the RCRA public docket for this notice.

B. Definitions

Today's draft RMAN III contains recommendations on the recovered materials content levels and postconsumer materials content levels at which the designated items are generally available. For several items being proposed for designation, this RMAN recommends two-part content levels—a postconsumer recovered materials content component and a total recovered materials component. In these instances, EPA found that both types of materials were being used to manufacture a product. Recommending only postconsumer content levels would fail to acknowledge the contribution to solid waste management made when manufacturers use, as feedstock, the byproducts of other manufacturing processes that would otherwise be destined for disposal as solid waste. The terms ''recovered materials'' and ''postconsumer materials'' are defined in 40 CFR 247.3. These definitions are repeated here as a reference for the convenience of the reader. The Agency is not proposing to change these definitions and will not consider any comments submitted on these terms.

[1] See also the revisions to the Federal Acquisition Regulation requiring that the statement of work for facility design contracts ''shall require that the architect-engineer specify, in the construction design specifications, use of the maximum practicable amount of recovered materials consistent with the performance requirements, availability, price reasonableness, and cost-effectiveness.'' (62 FR 44812, August 22, 1997, revising 48 CFR 36.601–3(a).)

Postconsumer materials means a material or finished product that has served its intended end use and has been diverted or recovered from waste destined for disposal, having completed its life as a consumer item. Postconsumer material is part of the broader category of recovered materials.

Recovered materials means waste materials and byproducts which have been recovered or diverted from solid waste, but such term does not include those materials and byproducts generated from, and commonly used within an original manufacturing process.

C. Request for Comments

EPA requests comments, including additional supporting documentation and information, on the types of recovered materials identified in the item recommendations, the recommended recovered and postconsumer materials content levels, and other recommendations for purchasing the designated items containing recovered materials. EPA requests specific comments and information on the following issues:

- Whether any specifications exist or are appropriate for park benches or picnic tables made from steel or aluminum containing recovered materials;
- Whether any specifications exist or are appropriate for solid plastic binders containing recovered materials;
- Whether any specifications or standards exist for awards or plaques containing recovered materials; and
- Whether any specifications or standards exist for mats containing recovered materials.

III. Supporting Information and Accessing Internet

The index of supporting materials for today's draft RMAN III is available in the RCRA Information Center (RIC) and on EPA's Internet web page. The address and telephone number of the RIC are provided in **ADDRESSES** above. The index and the following supporting materials are available on the Internet:

''Background Document for Proposed CPG III and Draft RMAN III,'' EPA530–R–98–003, U.S. EPA, Office of Solid Waste and Emergency Response, April, 1998.

Copies of the following supporting materials are available for viewing at the RIC only:

''Recovered Materials Product Research for the Comprehensive Procurement Guideline III,'' Draft Report, September 26, 1997.

Follow these instructions to access information electronically:

WWW: http://www.epa.gov/epaoswer/non-hw/procure.htm.
FTP: ftp.epa.gov
Login: anonymous
Password: your Internet address
Files are located in /pub/epaoswer.

Dated: August 19, 1998.

Carol M. Browner,

Administrator.

Recovered Materials Advisory Notice III

The following represents EPA's draft recommendations to procuring agencies for purchasing the items proposed today for designation in the Comprehensive Procurement Guideline III, in compliance with section 6002 of the Resource Conservation and Recovery Act (RCRA). These recommendations are intended to be used in conjunction with RMAN I (60 FR 21386, May 1, 1995), the Paper Products RMAN (61 FR 26985, May 29, 1996), and RMAN II (62 FR 60975, November 13, 1997). Refer to the previous RMANs or the Code of Federal Regulations at 40 CFR Part 247 for definitions, general recommendations for affirmative procurement programs, and recommendations for previously designated items.

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Section H–7. Signs Containing Recovered Plastic or Aluminum and Sign Posts/Supports Containing Recovered Plastic or Steel

I. General Recommendations

(See the May 1, 1995 RMAN I for EPA's general recommendations for definitions, specifications, and affirmative procurement programs.)

II. Specific Recommendations for Procurement of Designated Items

(See the May 1, 1995 RMAN I, the May 29, 1996 Paper Products RMAN, and the November 13, 1997 RMAN II for recommendations for previously-designated items.)

Part C—Construction Products

Note: Refer to Part F—Landscaping Products for additional items that can be used in construction applications.

Section C–8. Nylon Carpet (Broadloom and Tiles) Made With Backing Containing Recovered Materials

Preference Program: EPA recommends that, based on the recovered materials content levels shown in Table C–8, procuring agencies establish minimum content standards for use in purchasing nylon broadloom carpet and carpet tiles made with backing containing recovered materials. EPA further recommends that Federal procuring agencies use GSA's carpet contract GS–00F–8453–A when purchasing nylon broadloom carpet or carpet tiles made with backing containing recovered materials.

TABLE C–8.—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR BACKING FOR NYLON BROADLOOM AND CARPET TILES

Material	Postconsumer content (%)	Total recovered materials content (%)
Old carpets	35–70	100

Note: EPA's recommendation does not preclude a procuring agency from purchasing broadloom carpet or carpet tiles made from another material, such as wool. It simply requires that procuring agencies, when purchasing nylon broadloom carpet or carpet tiles, purchase these items made with backing containing recovered materials when they meet applicable specifications and performance requirements. Refer to Section

C–4 in RMAN I for EPA's recommendations for purchasing polyester carpet containing recovered materials.

Specifications: EPA recommends that procuring agencies review their carpet specifications and revise them as necessary to permit the use of backing containing recovered materials.

Section C–9. Carpet Cushion Made From Bonded Polyurethane, Jute, Synthetic Fibers, or Rubber Containing Recovered Materials

Preference Program: EPA recommends that, based on the recovered materials content levels shown in Table C–9, procuring agencies establish minimum content standards for use in purchasing bonded polyurethane, jute, synthetic fiber, or rubber carpet cushion containing recovered materials.

TABLE C–9.—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR BONDED POLYURETHANE, JUTE, SYNTHETIC FIBER, AND RUBBER CARPET CUSHION

Product	Material	Post consumer content (%)	Total recovered materials content (%)
Bonded polyurethane.	Old carpet cushion.	15–50	15–50
Jute	Burlap	40	40
Synthetic fibers.	Carpet fabrication scrap.	.....	100
Rubber	Tire rubber	60–90	60–90

Note: EPA's recommendations do not preclude a procuring agency from purchasing another type of carpet cushion. They simply require that procuring agencies, when purchasing bonded polyurethane, jute, synthetic fiber, or rubber carpet cushions, purchase these items made with recovered materials when these items meet applicable specifications and performance requirements. Refer to Section C–4 in RMAN I for EPA's recommendations for purchasing polyester carpet containing recovered materials.

Specifications: EPA is not aware of carpet cushion specifications unique to carpet cushions containing recovered materials. Therefore, EPA recommends that procuring agencies use the standards set by the Carpet and Rug Institute and the Carpet Cushion Council when purchasing bonded polyurethane, jute, synthetic fiber, or rubber carpet cushion containing recovered materials.

Section C–10. Flowable Fill Containing Coal Fly Ash and/or Ferrous Foundry Sands

Preference Program: EPA recommends that procuring agencies use flowable fill containing coal fly ash and/or ferrous foundry sands for backfill and other fill applications. EPA further recommends that procuring agencies include provisions in all construction contracts involving backfill or other fill applications, to allow for the use of flowable fill containing coal fly ash and/or ferrous foundry sands, where appropriate.

The specific percentage of coal fly ash or ferrous foundry sands used in flowable fill depend on the specifics of the job, including the type of coal fly ash used (Class C or Class F); the strength, set time, and flowability needed; and bleeding and shrinkage. Therefore, EPA is not recommending specific coal fly ash or ferrous foundry sands content levels for procuring agencies to use in establishing minimum content standards for flowable fill. EPA recommends that procuring agencies refer to the mix proportions in Tables C–10a and C–10b for typical proportions for high and low coal fly ash content mixes. EPA further recommends that procuring agencies refer to American Concrete Institute (ACI) report ACI 229R–94 for guidance on the percentages of coal fly ash that can be used in flowable fill mixtures.

TABLE C–10A.—TYPICAL PROPORTIONS FOR HIGH FLY ASH CONTENT FLOWABLE FILLS

Component	Range kg/m³ (lb/yd³)	Mix design kg/m³ (lb/yd³)
Fly ash (95%)	949 to 1542 (1600 to 2600)	1234 (2080)
Cement (5%)	47 to 74 (80 to 125)	62 (104)
Added water	222 to 371 (375 to 625)	*247 (416)
Total		1543 (2600)

*Equal to 189 liters (50 gallons).
Source: ''Fly Ash Facts for Highway Engineers,'' FHWA–SA–94–081, U.S. Department of Transportation, Federal Highway Administration, August 1995.

TABLE C–10B.—TYPICAL PROPORTIONS FOR LOW FLY ASH CONTENT FLOWABLE FILLS

Component	Range kg/m³ (lb/yd³)	Mix Design kg/m³ (lb/yd³)
Fly ash (6% to 14%)†	119 to 297 (200 to 500)	178 (300)
Cement	30 to 119 (50 to 200)	59 (100)
Sand	1483 to 1780 (2500 to 3000)	1542 (2600)
Added water	198 to 494 (333 to 833)	*297 (500)
Total		2076 (3500)

†High calcium fly ash is used in lower amounts than low calcium fly ash.
*Equal to 227 liters (60 gallons).
Source: ''Fly Ash Facts for Highway Engineers,'' FHWA–SA–94–081, U.S. Department of Transportation, Federal Highway Administration, August 1995.

Specifications: The following recommendations address mix designs, test methods, and performance standards.

• Mix designs. EPA recommends that procuring agencies use ACI report ACI229R–94, ''Controlled Low Strength Materials (CLSM)'' and ''Fly Ash Facts for Highway Engineers,'' (FHWA–SA–94–081, U.S. Department of Transportation, Federal Highway Administration, August 1995) in developing mix designs. Among other things, ACI229R–94 addresses materials, including coal fly ash and foundry sands, mix design, and mixing, transporting, and placing. It also provides examples of mixture designs containing coal fly used by the states of Iowa, Florida, Illinois, Indiana, Oklahoma, Michigan, Ohio, and South Carolina. ''Fly Ash Facts for Highway Engineers'' addresses materials, strength, flowability, time of set, bleeding and shrinkage.

A mix design for the use of foundry sand and coal fly ash in flowable fill was developed for Ford Motor Company. Procuring agencies can obtain a copy of this design by contacting the RCRA Hotline at 1–800–424–9346. Table C–10c provides the recommended trial mixture from this specification.

TABLE C–10C.—MATERIALS QUANTITIES FOR FLOWABLE FILL MIXTURE CONTAINING FOUNDRY SANDS AND COAL FLY ASH

Component	Quantity per cubic yard (lbs.)
Cement	50
Coal fly ash	250
Foundry sand	2850
Water	500

• Materials specifications and test methods. EPA recommends that procuring agencies use ACI229R–94 and the ASTM standards listed in Table C–10d when purchasing flowable fill or contracting for construction that involves backfilling or other fill applications.

EPA recommends that procuring agencies refer to ASTM C 33–93, ''Standard Specification for Concrete Aggregates,'' for appropriate gradation requirements for ferrous foundry sands used as aggregates in flowable fills. Procuring agencies should note that ferrous foundry sands may need to be blended with natural sand or other fine aggregate to meet the C 33–93 gradation requirements.

TABLE C–10D.—RECOMMENDED TEST METHODS FOR FLOWABLE FILLS (CONTROLLED LOW STRENGTH MATERIALS)

ASTM specification NO.	Title
D 4832–95e1	Standard Test Method for Preparation and Testing of Controlled Low Strength Material (CLSM) Test Cylinders.
D 5239–92	Standard Practice for Characterizing Fly Ash for Use in Soil Stabilization.
D 5971–96	Standard Practice for Sampling Freshly Mixed Controlled Low Strength Material.
D 6103–07	Standard Test Method for Flow Consistency of Controlled Low Strength Material.
D 6023–96	Standard Test Method for Unit Weight, Yield, Cement Content and Air Content (Gravimetric) of Controlled Low Strength Material (CLSM).
D 5971–96	Standard Practice for Sampling Freshly Mixed Controlled Low Strength Material.
D 6024–96	Standard Test Method for Ball Drop on Controlled Low Strength Material (CLSM) to Determine Suitability for Load Application.

• *State specifications.* The following states have specifications for flowable fill containing coal fly ash: California, Colorado, Delaware, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, New Hampshire, New Mexico, North Carolina, Ohio, Texas, Washington, West Virginia, and Wisconsin.

The state of Ohio has a specification entitled ''Flowable Fill Made with Spent Foundry Sand,'' and the states of Pennsylvania, Wisconsin, and Indiana are developing specifications for using foundry sands in flowable fill.

If needed, procuring agencies can obtain state specifications from the respective state transportation departments and adapt them for use in their programs. ACI229R–94 includes mix designs from several of these states.

• *Contract specifications.* EPA recommends that procuring agencies which prepare or review ''contract'' specifications for individual construction projects revise those specifications to allow the use of flowable fills containing coal fly ash and/or ferrous foundry sands.

• *Performance standards.* EPA recommends that procuring agencies review and, if necessary, revise performance standards relating to fill materials to insure that they do not arbitrarily restrict or preclude the use of flowable fills containing coal fly ash and/or ferrous foundry sands, either intentionally or inadvertently, unless the restriction is justified on a job-by-job basis: (1) to meet reasonable performance requirements for fill materials or (2) because the use of coal fly ash or ferrous foundry sands would be inappropriate for technical reasons. EPA recommends that this justification be documented based on specific performance information. Legitimate documentation of technical infeasibility can be for certain classes of applications, rather than on a job-by-job basis. Agencies should reference such documentation in individual contract specifications, to avoid extensive repetition of previously documented points. However, procuring agencies should be prepared to submit such documentation to scrutiny by interested parties and should have a review process available in the event of disagreements.

Promotion program: EPA recommends that, as part of the promotion programs required by section 6002(I) of the Resource Conservation and Recovery Act, procuring agencies conduct demonstration programs for using flowable fills containing coal fly ash and/or ferrous foundry sands. EPA further recommends that procuring agencies educate construction contractors about the design, use, and performance of flowable fills containing coal fly ash and/or ferrous foundry sands.

Section C–11. Railroad Grade Crossing Surfaces Containing Coal Fly Ash, Recovered Rubber, or Recovered Steel

Preference Program: EPA recommends that based on the recovered materials content levels shown in Table C–11a, procuring agencies establish minimum content standards for use in purchasing concrete, rubber, and steel railroad grade crossing surfaces containing recovered materials.

EPA further recommends that procuring agencies include provisions in all concrete railroad grade crossing construction contracts to allow for the use, as optional or alternate materials, of concrete containing coal fly ash, where appropriate.

TABLE C–11A.—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR CONCRETE, RUBBER, AND STEEL RAILROAD GRADE CROSSING SURFACE

Surface material	Recovered material	Post-consumer content (%)	Total recovered materials content (%)
Concrete ...	Coal fly ash.	.....	15–20
Rubber	Tire rubber	.....	85–95
Steel	Steel	16–75	20–100

Notes: EPA's recommendations do not preclude a procuring agency from purchasing another type of railroad grade crossing surface, such as wood or asphalt. They simply require that procuring agencies, when purchasing concrete, rubber, or steel grade crossing surfaces, purchase these items made with recovered materials when these items meet applicable specifications and performance requirements. However, EPA recommends that procuring agencies consider using concrete, rubber, or steel grade crossing surfaces.

The recommended recovered materials content levels for rubber railroad grade crossing surfaces are based on the weight of the raw materials, exclusive of any additives such as binders or additives.

Coal fly ash can be used as an ingredient of concrete slabs, pavements, or controlled density fill product, depending on the type of concrete crossing system installed. Higher percentages of coal fly ash can be used in the concrete mixture; the higher percentages help to produce a more workable and durable product but can prolong the curing process.

Specifications: EPA recommends that procuring agencies use the ASTM standards listed in Table C–11b when purchasing rubber railroad grade crossing surfaces. EPA recommends that procuring agencies use the ASTM and AASHTO standards listed in Table C–11c when purchasing concrete railroad grade crossing surfaces.

TABLE C–11B.—RECOMMENDED SPECIFICATIONS FOR RUBBER RAILROAD GRADE CROSSINGS

ASTM specification No.	Title
D 2000–96 ...	Rubber Products in Automotive Applications.
D 2240–97 ...	Rubber Property—Durometer Hardness.
D 412–97	Vulcanized Rubber and Thermoplastic Rubbers and Thermoplastic Elastomers—Tension.

TABLE C–11B.—RECOMMENDED SPECIFICATIONS FOR RUBBER RAILROAD GRADE CROSSINGS—Continued

ASTM specification No.	Title
D 297–93	Rubber Products—Chemical Analysis.
E 303–93	Measuring Surface Frictional Properties Using the British Pendulum Tester.
D 1171–94 ...	Rubber Deterioration—Surface Ozone Cracking Outdoors or Chamber (Triangular Specimens).
D 573–88	Deterioration in an Air Oven.
D 395–89	Rubber Property—Compression Set.
D 257–93	DC Resistance or Conductance of Insulating Materials.
D 2137–94 ...	Rubber Property—Brittleness Point of Flexible Polymers and Coated Fabrics.

TABLE C–11C.—RECOMMENDED SPECIFICATIONS FOR CEMENT AND CONCRETE CONTAINING RECOVERED MATERIALS

Specification No.	Title
ASTM C 595	Standard Specification for Blended Hydraulic Cements.
ASTM C 150	Standard Specification for Portland Cement.
AASHTO M 240	Blended Hydraulic Cements.
ASTM C 618	Standard Specification for Fly Ash and Raw or Calcined Natural Pozzolan for Use as a Mineral Admixture in Portland Cement Concrete.
ASTM C 311	Standard Methods of Sampling and Testing Fly Ash and Natural Pozzolans for Use as a Mineral Admixture in Portland Cement Concrete.

Part E. Park and Recreation Products

Section E–3. Picnic Tables and Park Benches Containing Recovered Steel, Aluminum, or Plastic

Preference Program: EPA recommends that, based on the recovered materials content levels shown in Table E–3a, procuring agencies establish minimum content standards for use in purchasing aluminum, steel, or plastic park benches and picnic tables containing recovered materials.

TABLE E–3A.—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR PICNIC TABLES AND PARK BENCHES CONTAINING RECOVERED ALUMINUM, STEEL, CONCRETE OR PLASTIC

Material	Post-consumer content (%)	Total recovered materials content (%)
Plastics	90–100	100
Plastic composites	50–100	100
Aluminum	25	25
Concrete	.....	15–40
Steel	16–25	100

Notes: ''Plastics'' includes both single and mixed plastic resins. Picnic tables and park benches made with recovered plastics may also contain other recovered materials such as sawdust, wood, or fiberglass. The percentage of these materials contained in the product would also count toward the recovered materials content level of the item.

EPA's recommendations do not preclude a procuring agency from purchasing park benches or picnic tables made from other materials. They simply require that procuring agencies, when purchasing park benches or picnic tables made from plastic, aluminum, concrete, or steel purchase these items made with recovered materials when these items meet applicable specifications and performance requirements.

Specifications: EPA did not identify any specifications for park benches or picnic tables made from steel or aluminum and requests comments on whether any specifications exist or are appropriate for these materials when used in park benches and picnic tables.

EPA recommends that procuring agencies use the ASTM specifications referenced in Table E–3b for park benches and picnic tables made from plastic lumber.

TABLE E–3B.—RECOMMENDED SPECIFICATIONS FOR PLASTIC LUMBER USED IN PARK BENCHES AND PICNIC TABLES

ASTM specification number	Title
D 6108–97 ...	Standard Test Method for Compressive Properties of Plastic Lumber.
D 6109–97 ...	Standard Test Method for Flexural Properties of Unreinforced and Reinforced Plastic Lumber.

TABLE E–3B.—RECOMMENDED SPECIFICATIONS FOR PLASTIC LUMBER USED IN PARK BENCHES AND PICNIC TABLES—Continued

ASTM specification number	Title
D 6111–97 ...	Standard Test Method for Bulk Density and Specific Gravity of Plastic Lumber and Shapes by Displacement.
D 6112–97 ...	Standard Test Method for Compressive and Flexural Creep and Creep Rupture of Plastic Lumber and Shapes.
D 6117–97 ...	Standard Test Method for Mechanical Fasteners in Plastic Lumber and Shapes.

Section E–4. Playground Equipment

Preference Program: EPA recommends that, based on the recovered materials content levels shown in Table E–4a, procuring agencies establish minimum content standards for use in purchasing playground equipment made from plastic lumber, steel, or aluminum containing recovered materials.

TABLE E–4A.—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR PLAYGROUND EQUIPMENT CONTAINING RECOVERED PLASTIC, STEEL, OR ALUMINUM

Material	Post-consumer content (%)	Total recovered materials content (%)
Plastics	90–100	100
Plastic Composites	50–75	95–100
Steel	25–100	25–100
Aluminum	25	25

Notes: ''Plastics'' includes both single and mixed plastic resins. Playground equipment made with recovered plastics may also contain other recovered materials such as wood or fiberglass. The percentage of these materials contained in the product would also count toward the recovered materials content level of the item.

EPA's recommendations do not preclude a procuring agency from purchasing playground equipment made from other materials. They simply require that procuring agencies, when purchasing playground equipment made from plastic, aluminum, or steel purchase these items made with recovered materials when the item meets applicable specifications and performance requirements.

Specifications: EPA recommends that procuring agencies use the specifications in Table E–4b when procuring playground equipment. Playground equipment may also be subject to state and local codes and standards as well as Federal child safety laws. EPA also recommends that procuring agencies use the ASTM specifications referenced in Table E–4c for playground equipment made from plastic lumber.

TABLE E–4B.—RECOMMENDED SAFETY SPECIFICATIONS FOR PLAYGROUND EQUIPMENT

Specification	Title
Consumer Product Safety Commission (CPSC) Publication No. 325	Handbook for Public Playground Safety.
ASTM F–1487–95	Safety Performance Specification for Playground Equipment for Public Use.

TABLE E–4C.—RECOMMENDED SPECIFICATIONS FOR PLASTIC LUMBER USED IN PLAYGROUND EQUIPMENT

ASTM specification number	Title
D 6108–97	Standard Test Method for Compressive Properties of Plastic Lumber.
D 6109–97	Standard Test Method for Flexural Properties of Unreinforced and Reinforced Plastic Lumber.
D 6111–97	Standard Test Method for Bulk Density and Specific Gravity of Plastic Lumber and Shapes by Displacement.
D 6112–97	Standard Test Method for Compressive and Flexural Creep and Creep Rupture of Plastic Lumber and Shapes.
D 6117–97	Standard Test Method for Mechanical Fasteners in Plastic Lumber and Shapes.

Part F. Landscaping Products

Section F–2. Compost Made From Yard Trimmings and/or Food Waste (Revised)

Note: Following are EPA's revised recommendations for purchasing compost. The revisions add recommendations for purchasing compost made from food waste to EPA's 1995 recommendations for purchasing yard trimmings compost. When EPA issues final recommendations for purchasing composts made from yard trimmings and/or food waste, procuring agencies should substitute them for the recommendations found in Section F–2 of the 1995 RMAN I.

Preference Program: EPA recommends that procuring agencies purchase or use compost made from yard trimmings, leaves, grass clippings and/or food wastes in such applications as landscaping, seeding of grass or other plants on roadsides and embankments, as nutritious mulch under trees and shrubs, and in erosion control and soil reclamation.

EPA further recommends that those procuring agencies that have an adequate volume of yard trimmings, leaves, grass clippings, and/or food wastes, as well as sufficient space for composting, should implement a composting system to produce compost from these materials to meet their landscaping and other needs.

Specifications: EPA recommends that procuring agencies ensure that there is no language in their specifications relating to landscaping, soil amendments, erosion control, or soil reclamation that would preclude or discourage the use of compost. For instance, if specifications address the use of straw or hay in roadside revegetation projects, procuring agencies should assess whether compost could substitute for straw or hay or be used in combination with them.

The U.S. Department of Transportation's ''Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects 1996,'' specifies compost as one of the materials suitable for use in roadside revegetation projects associated with road construction. These standards do not preclude the use of compost made from yard trimmings, leaves, grass, clippings, and/or food waste.

The State of Maine has developed quality standards for compost products

that are used by its agencies and/or purchased with state funds. The quality standards have been set for six types of compost products, ranging from topsoil (three classes), to wetland substrate, to mulch (two classes). For each of these types of compost product, standards for maturity, odor, texture, nutrients, pH, salt content, organic content, pathogen reduction, heavy metals, foreign matter, moisture content, and density have been established. EPA recommends that procuring agencies obtain and adapt this or another suitable specification for their use in purchasing compost products.

The Composting Council is helping to define and develop industry wide standards for composts made from various combinations of materials, including yard trimmings, leaves, grass clippings, and food wastes. The Composting Council publishes these standards in an operating guide for composting facilities entitled, ''Test Methods for Examination of Composting and Compost.'' The guide also provides standards for the suitability of different types of composts made for different applications, depending on the compost mix.

Section F–5. Plastic Lumber Landscaping Timbers and Posts Containing Recovered Materials

Preference Program: EPA recommends that, based on the recovered materials content levels shown in Table F–5a, procuring agencies establish minimum content standards for use in purchasing plastic lumber landscaping timbers and posts containing recovered materials.

TABLE F–5A.—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR PLASTIC LUMBER LANDSCAPING TIMBERS AND POSTS

Material	Post-consumer-content (%)	Total recovered materials content (%)
HDPE	25–100	75–100
Mixed Plastics/Sawdust	50	100
HDPE/Fiberglass	75	95
Other mixed resins	50–100	95–100

Note: EPA's recommendations do not preclude a procuring agency from purchasing wooden landscaping timbers and posts. They simply require that procuring agencies, when purchasing plastic landscaping timbers and posts purchase these items made with recovered materials when the items meet applicable specifications and performance requirements.

Specifications: EPA recommends that procuring agencies use the ASTM specifications referenced in Table F–5b for plastic lumber landscaping timbers and posts.

TABLE F–5B.—RECOMMENDED SPECIFICATIONS FOR PLASTIC LUMBER LANDSCAPING TIMBERS AND POSTS

ASTM specification No.	Title
D 6108–97	Standard Test Method for Compressive Properties of Plastic Lumber.
D 6109–97	Standard Test Method for Flexural Properties of Unreinforced and Reinforced Plastic Lumber.
D 6111–97	Standard Test Method for Bulk Density and Specific Gravity of Plastic Lumber and Shapes by Displacement.
D 6112–97	Standard Test Method for Compressive and Flexural Creep and Creep Rupture of Plastic Lumber and Shapes.
D 6117–97	Standard Test Method for Mechanical Fasteners in Plastic Lumber and Shapes.

Part G. Non-Paper Office Products

Section G–8. Solid Plastic Binders, Plastic Clipboards, Plastic File Folders, Plastic Clip Portfolios, and Plastic Presentation Folders Containing Recovered Plastic

Preference Program: EPA recommends that, based on the recovered materials content levels shown in Table G–8, procuring agencies establish minimum content standards for use in purchasing solid plastic binders, plastic clipboards, plastic file folders, plastic clip portfolios, and plastic presentation folders containing recovered materials.

TABLE G–8.—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR SOLID PLASTIC BINDERS, CLIPBOARDS, FILE FOLDERS, CLIP PORTFOLIOS, AND PRESENTATION FOLDERS

Product	Material	Postconsumer content (%)	Total recovered materials content (%)
Solid plastic binders	HDPE	90	90
	PE	30–50	30–50
	PET	100	100
	Misc. Plastics	80	80
Plastic clipboards	HDPE	90	90
	PS	50	50
	Misc. Plastics	15	15–80
Plastic file folders	HDPE	90	90
Plastic clip portfolios	HDPE	90	90
Plastic presentation folders	HDPE	90	90

Note: EPA's recommendations do not preclude a procuring agency from purchasing binders, clipboards, file folders, clip portfolios, or presentation folders made from another material, such as paper. They simply require that procuring agencies, when purchasing these items made from solid plastic, purchase them made with recovered plastics when these items meet applicable specifications and performance requirements. For EPA's recommendations for purchasing pressboard binders and paper file folders containing recovered materials, see table A–1c in the Paper Products RMAN (61 FR 26986, May 29, 1996). See Table G–3 in RMAN I for EPA's recommendations for purchasing plastic-covered binders containing recovered materials.

Specifications: EPA did not identify any specifications for solid plastic

binders, clipboards, file folders, clip portfolios, and presentation folders and requests comments on whether any specifications exist or are appropriate for these items containing recovered plastic.

Part H. Miscellaneous Products

Section H–2. Sorbents

Preference Program: EPA recommends that, based on the recovered materials content levels shown in Table H–2a, procuring agencies establish minimum content standards for use in purchasing sorbent materials for use in oil and solvent clean-ups and for use as animal bedding.

TABLE H–2A.—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR SORBENTS USED IN OIL AND SOLVENTS CLEAN-UPS AND FOR USE AS ANIMAL BEDDING

Material	Post-consumer content (%)	Total recovered materials content (%)
Paper	90–100	100
Textiles	95–100	95–100
Plastics	.....	25–100
Wood	.....	100
Other Organics/Multi-Materials	.....	100

Notes: ''Wood'' includes materials such as sawdust and lumber mill trimmings. Examples of other organics include, but are not limited to, peanut hulls and corn stover. An example of multi-material sorbents would include, but not be limited to, a polymer and cellulose fiber combination.

EPA's recommendations do not preclude a procuring agency from purchasing sorbents made from other materials. They simply require that procuring agencies, when purchasing sorbents made from paper, wood, textiles, plastics, or other organic materials, purchase them made with recovered materials when these items meet applicable specifications and performance requirements.

Specifications: EPA recommends that procuring agencies ensure that there is no language in their specifications for sorbents that would preclude or discourage the use of products containing recovered materials.

EPA recommends that procuring agencies use the ASTM specifications in Table H–2b when procuring sorbents for use on oil and solvent clean-ups.

TABLE H–2B.—ASTM SPECIFICATIONS FOR ABSORBENTS AND ADSORBENTS

ASTM specification No.	Title
F 716–81	Standard Method of Testing Sorbent Performance of Adsorbents.
F 716–82	Standard Method of Testing Sorbent Performance of Absorbents.

Section H–3. Industrial Drums Containing Recovered Steel, Plastic, and Paper

Preference Program: EPA recommends that, based on the recovered materials content levels shown in Table H–3, procuring agencies establish minimum content standards for use in purchasing steel, plastic, or fiber industrial drums containing recovered materials. EPA further recommends that procuring agencies reuse drums, purchase or use reconditioned drums, or procure drum reconditioning services, whenever feasible.

TABLE H–3.—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR STEEL, PLASTIC, AND FIBER INDUSTRIAL DRUMS

Product	Material	Post consumer content (%)	Total recovered materials content (%)
Steel drums.	Steel	16	20–30
Plastic drums.	HDPE	30–100	30–100
Fiber drums.	Paper	100	100

Note: EPA's recommendation does not preclude a procuring agency from purchasing another type of industrial drum. It simply requires that procuring agencies, when purchasing steel, plastic, or fiber industrial drums, purchase these items made with recovered materials when these items meet applicable specifications and performance requirements.

Specifications: EPA is not aware of specifications unique to industrial drums containing recovered materials. EPA notes that industrial drums containing recovered materials can meet applicable U.S. Department of Transportation specifications for packaging hazardous materials. Additionally, the National Motor Freight Traffic Association specifications for containers used to transport goods via truck do not prohibit the use of industrial drums containing recovered materials.

Section H–4. Awards and Plaques

Preference Program: EPA recommends that, based on the recovered materials content levels shown in Table H–4, procuring agencies establish minimum content standards for use in purchasing awards and plaques containing recovered materials.

TABLE H–4.—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR AWARDS AND PLAQUES CONTAINING RECOVERED MATERIALS

Material	Post-consumer content (%)	Total recovered materials content (%)
Glass	75–100	100
Wood	.....	100
Paper	40–100	40–100
Plastic and Plastic/Wood Composite	50–100	95–100

Note: EPA's recommendations do not preclude a procuring agency from purchasing awards or plaques made from other materials. They simply require that procuring agencies, when purchasing awards or plaques made from paper, wood, glass, or plastics/plastic composites, purchase them made with recovered materials when these items meet applicable specifications and performance requirements.

Specifications: EPA is not aware of specifications or standards for awards or plaques containing recovered materials and requests comments on whether any applicable specifications or standards have been developed.

Section H–5. Mats

Preference Program: EPA recommends that, based on the recovered materials content levels shown in Table H–5, procuring agencies establish minimum content standards for use in purchasing mats containing recovered materials.

TABLE H–5.—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR MATS

Material	Post-consumer content (%)	Total recovered materials content (%)
Rubber	75–100	85–100
Plastic	10–100	100
Rubber/Plastic Composite	100	100

Note: EPA's recommendations do not preclude a procuring agency from purchasing mats made from other materials. They simply require that procuring agencies, when purchasing mats made from rubber and/or plastic, purchase them made with recovered materials when these items meet applicable specifications and performance requirements.

Specifications: EPA is not aware of specifications or standards for mats containing recovered materials and requests comments on whether any applicable specifications or standards have been developed. EPA is aware of one ASTM specification for wrestling mats, but does not believe that this type of mat is purchased in appreciable quantities by procuring agencies.

Section H–6. Manual-Grade Strapping Containing Recovered Steel and Plastic

Preference Program: EPA recommends that, based on the recovered materials content levels shown in Table H–6a, procuring agencies establish minimum content standards for use in purchasing manual-grade strapping containing recovered materials.

TABLE H–6A.—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR MANUAL-GRADE POLYESTER, POLYPROPYLENE, AND STEEL STRAPPING

Product	Material	Post-consumer content (%)	Total recovered materials content (%)
Polyester strapping.	PET	50–85	50–85
Polypropylene strapping.	PP		10–40
Steel strapping.	Steel	10–15	25–100

Note: EPA's recommendations do not preclude a procuring agency from purchasing another type of strapping, such as nylon. They simply require that procuring agencies, when purchasing polyester, polypropylene, or steel manual-grade strapping, purchase these items made with recovered materials when these items meet applicable specifications and performance requirements.

Specifications: EPA is not aware of specifications unique to strapping containing recovered materials. EPA notes that strapping containing recovered materials can meet the ASTM strapping specifications and selection guide listed in Table H–6b.

Table H–6b.—RECOMMENDED ASTM SPECIFICATIONS AND GUIDE FOR STRAPPING

ASTM specification/guide No.	Title
ASTM D 3953 ...	Standard Specification for Strapping, Flat Steel and Seals.
ASTM D 3950 ...	Standard Specification for Strapping, Nonmetallic (and Joining Methods).
ASTM D 4675 ...	Standard Guide for Selection and Use of Flat Strapping Materials.

Section H–7. Signage

Preference Program: EPA recommends that, based on the recovered materials content levels shown in Table H–7, procuring agencies establish minimum content standards for use in purchasing plastic signs for non-road applications (e.g., building signs, trail signs) and aluminum signs for roadway or non-road applications containing recovered materials. EPA also recommends that, based on the recovered materials content levels shown in Table H–7, procuring agencies establish minimum content standards for use in purchasing sign supports and posts containing recovered plastic or steel.

TABLE H–7.—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR SIGNS CONTAINING RECOVERED PLASTIC OR ALUMINUM AND SIGN POSTS/SUPPORTS CONTAINING RECOVERED PLASTIC OR STEEL

Item/material	Post consumer content (%)	Total recovered materials content (%)
Plastic signs	80–100	80–100
Aluminum signs	25	25
Plastic sign posts/supports	80–100	80–100
Steel sign posts/supports	25–100	25–100

Notes: Plastic signs and sign posts are recommended for nonroad applications only such as, but not limited to, trailway signs in parks and directional/informational signs in buildings.

EPA's recommendations do not preclude a procuring agency from purchasing signs or sign posts made from other materials. They simply require that procuring agencies, when purchasing signs made from plastic or aluminum or sign posts made from plastic or steel, purchase them made with recovered materials when these items meet applicable specifications and performance requirements.

Specifications: EPA is not aware of specifications for non-road signs containing recovered materials. Standard specifications for road sign size, lettering, color, strength, and performance requirements can be found in the ''Manual on Uniform Traffic Control Devices,'' which is published by the Federal Highway Administration.

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Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 440

Financial Responsibility Requirements for Licensed Launch Activities; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 440

[Docket 28635; Amendment No. 98–1]

RIN 2120–AF98

Financial Responsibility Requirements for Licensed Launch Activities

AGENCY: Federal Aviation Administration, Associate Administrator for Commercial Space Transportation, DOT.

ACTION: Final rule.

SUMMARY: Under its licensing authority, the Associate Administrator for Commercial Space Transportation (AST) of the Federal Aviation Administration (FAA) determines financial responsibility requirements for licensees authorized to conduct commercial space launch activities. This rulemaking establishes procedures for demonstrating compliance with those requirements and for implementing risk allocation provisions of 49 U.S.C. Subtitle IX, chapter 701, formerly the Commercial Space Launch Act of 1984, as amended.

DATES: This final rule is effective on October 26, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Esta M. Rosenberg, Attorney-Advisor, Regulations Division, Office of the Chief Counsel, Federal Aviation Administration, U.S. Department of Transportation, (202) 366–9320.

SUPPLEMENTARY INFORMATION:

Availability of Final Rules

An electronic copy of this document may be downloaded, using a modem and suitable communications software, from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339), the **Federal Register's** electronic bulletin board service (telephone: 202–512–1661), or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board service (telephone: 800–322–2722 or 202–267–5948).

Internet users may reach the FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm or the **Federal Register's** webpage at http://www.access.gpo.gov/su__docs/aces/aces140.html for access to recently published rulemaking documents.

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the amendment number or docket number of this final rule.

Persons interested in being placed on the mailing list for future Notices of Proposed Rulemaking and Final Rules should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, that describes the application procedure.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires the FAA to report inquiries from small entities concerning information on, and advice about, compliance with statutes and regulations within the FAA's jurisdiction, including interpretation and application of the law to specific sets of facts supplied by a small entity.

If you are a small entity and have a question, contact your local FAA official. If you do not know how to contact your local FAA official, you may contact Charlene Brown, Program Analyst Staff, Office of Rulemaking, ARM–27, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 1–888–551–1594. Internet users can find additional information on SBREFA in the Quick Jump section of the FAA's web page at http://www.faa.gov and may send electronic inquiries to the following Internet address: 9–AWA–SBREFA@faa.dot.gov.

Background

49 U.S.C. Subtitle IX, chapter 701—Commercial Space Launch Activities, formerly the Commercial Space Launch Act of 1984, as amended (CSLA), directs the Secretary of Transportation to establish insurance (or other financial responsibility) requirements in amounts sufficient to address certain risks associated with the conduct of licensed launch activities. In addition, the CSLA provides detailed requirements for allocating risk among the various launch participants, including U.S. Government agencies involved in launch services. Enacted in 1988, this comprehensive scheme was intended to facilitate development of the U.S. commercial launch industry by allowing it to compete effectively in the international marketplace and by providing to launch participants certain protections against the risk of catastrophic losses that could result from hazardous launch activities. The U.S. Government benefits from these provisions by limiting its own liability exposure including obligations that arise under international treaties. Additionally, a viable commercial launch industry contributes to the national interest of the United States.

The Secretary implements statutory-based financial responsibility and risk allocation requirements through the licensing and regulatory program carried out by the Federal Aviation Administration's Associate Administrator for Commercial Space Transportation (referred to herein as the FAA or agency). Under delegated authority, the agency licenses commercial space launches and the commercial operation of launch sites carried out within the United States or by U.S. citizens abroad. As directed by the CSLA, the agency exercises its licensing authority in a manner consistent with public health and safety, the safety of property, and U.S. national security and foreign policy interests. The CSLA is also intended to encourage and facilitate private sector launch activities through simplified licensing procedures and use of Government-developed space technology, and to enhance U.S. space transportation infrastructure with public and private involvement.

This rulemaking is vital to the agency's goal of creating a stable regulatory environment, with predictable costs and benefits, for the commercial launch industry. Through a clear enunciation of regulatory requirements for insurance and allocation of risk, the commercial launch industry will have the information and certainty it requires to make informed risk management decisions that affect relationships with customers and suppliers.

Notice of Proposed Rulemaking

The agency issued a notice of proposed rulemaking (NPRM) on July 25, 1996 (61 FR 38992), soliciting public comments on its proposal for implementing financial responsibility and allocation of risk requirements. The NPRM provided a 60-day comment period that closed on September 23, 1996. A technical corrections document was published on August 23, 1996 (61 FR 43814). In response to requests for an extension of time in which to submit comments, the agency reopened the comment period for an additional 60 days. The comment period closed again on December 2, 1996. (*See* Notice published October 2, 1996 (61 FR 51395).)

In the NPRM, the agency proposed to codify existing practices, except where otherwise indicated, and to standardize its approach to implementing the CSLA financial responsibility and allocation of risk regime in rules of general applicability.

Eight comments were submitted to the docket. Three comments were submitted by launch services providers currently licensed by the FAA to conduct commercial space launch activities. They are Lockheed Martin Corporation (Lockheed Martin), Orbital Sciences Corporation (Orbital Sciences) and McDonnell Douglas Corporation (McDonnell Douglas). Boeing Commercial Space Company commented on behalf of Sea Launch Limited Partnership (Sea Launch), an international joint venture not yet licensed by the FAA, and The Boeing Company (Boeing) commented separately. Since the close of the comment period in December 1996, The Boeing Company merged with McDonnell Douglas Corporation; however, McDonnell Douglas Corporation, operating as a wholly-owned subsidiary of The Boeing Company, remains responsible for providing commercial launch services for the Delta family of launch vehicles. In this document, comments submitted by McDonnell Douglas before the merger are identified as McDonnell Douglas comments for ease of reference and to distinguish them from Boeing's comments. Spaceport Florida Authority (Spaceport Florida) was a prospective commercial launch site operator at the time it submitted comments and has since obtained an FAA license. Hughes Electronics, a communications satellite manufacturer, and Intelsat, a public international organization that owns and operates a global telecommunications network for members and users, also submitted comments. The agency sought clarification of certain comments it received and the clarifications are reflected either in the discussion below or in the docket maintained by the FAA Rules Docket Clerk and available for public inspection.

Second Reopening of Comment Period and Request for Comments

Several events following the close of the comment period on December 2, 1996, resulted in an agency decision to reopen the rulemaking docket a second time in order to allow industry an additional opportunity to offer views on the content of the NPRM.

A Delta launch vehicle failure at Cape Canaveral Air Station (CCAS) during a Government launch on January 17, 1997, damaged real and personal property located at the facility. Although it was not an FAA-licensed launch, and therefore not subject to CSLA financial responsibility requirements, the failure led to heightened scrutiny of insurance certificates provided by launch licensees in demonstrating satisfaction of FAA license orders.

The ensuing dialogue between agency officials and industry representatives revealed a fundamental lack of understanding within the commercial launch services industry of agency requirements with respect to coverage for claims of Government employees and employees of Government contractors and subcontractors. Since 1989, the agency has intended for launch licensees to provide coverage for these claims as part of the liability coverage required under a license, and has determined the necessary amount of insurance accordingly. However, this requirement was not evident to launch licensees until the agency provided clarifying information, in writing, in late April and early May, 1997.

Shortly thereafter, the Commercial Space Transportation Advisory Committee (COMSTAC) adopted a resolution recommending that the FAA publish a supplemental notice of proposed rulemaking for additional industry comment before adopting a final rule. In lieu of accepting the COMSTAC recommendation, the agency deemed it appropriate to reopen the comment period on the outstanding NPRM in order to afford industry an additional opportunity to formally express views on the agency's approach to financial responsibility and risk allocation for licensed launch activities. Reopening the docket also provided to industry the first opportunity to comment on these matters with the benefit of the agency's proposed definition of the term, ''licensed launch activities,'' which appears in a Notice of Proposed Rulemaking on Commercial Space Transportation Licensing Regulations (Licensing Regulations), published March 19, 1997 (62 FR 13216). A Notice reopening the comment period for an additional 30 days was published in the **Federal Register** on July 3, 1997 (62 FR 36028). The Notice posed a number of questions regarding the appropriate scope of CSLA-based liability insurance requirements and requested specific comments on costs and benefits associated with the rulemaking; however, commenters were not limited to responding to those questions. Four additional comments were submitted to the docket. Lockheed Martin and Orbital Sciences supplemented their initial responses and Kistler Aerospace Corporation (Kistler) and Marsh & McLennan, an insurance brokerage, commented for the first time. (Both the initial and supplemental comments of Lockheed Martin and Orbital Sciences are referenced in this Supplementary Information and distinguished as appropriate.)

Upon consideration of all of the comments received, the agency has determined that issuance of a final rule is appropriate at this time in order to ensure that Government, as well as commercial, interests are adequately protected. Absent a clear understanding of how the risks that attend licensed launch activities are to be allocated and managed under the CSLA, all launch participants, including the U.S. Government, may unwittingly remain exposed to uncovered liabilities.

Costs and benefits of this final rule have been assessed by the agency and appear in the final Regulatory Evaluation available for public review in the docket.

General Comments

The three commenters currently licensed by the FAA to conduct launch activities, Lockheed Martin, Orbital Sciences and McDonnell Douglas, have been subject to the agency's case-by-case implementation of financial responsibility requirements since commencing commercial launch activities. Accordingly, they are each well-situated to assess the significance of the NPRM to their current business practices. Their comments indicate that in a number of instances the agency's existing practices, as explained in the NPRM, were not apparent to the commercial launch industry or their insurers, and in their view the NPRM reflects fundamental changes in the agency's approach.

Two commenters noted that the NPRM reflects a trend towards significant reallocation of risk from the Government to commercial launch services providers. Two launch licensees indicated that the NPRM would require extensive and difficult changes to existing long-term contractual arrangements between launch services providers, their customers and their contractors. Rather than facilitating the industry, the NPRM, if made final, would have damaging and adverse effects on the U.S. commercial launch industry, according to these commenters. Although the licensees agreed that rulemaking to clarify financial responsibility requirements would be useful to the industry, they believe that additional opportunities for input and submission of comments should be afforded to the industry before issuance of a final rule. Two licensees recommended that the FAA utilize the COMSTAC by tasking it to review and comment on a redrafted document

reflecting industry comments on the NPRM.

The agency has determined that it is appropriate and timely to issue a final rule. The FAA's decision follows years of dialogue between the agency and the commercial launch industry, a public meeting covering financial responsibility matters, and a total comment period of 150 days on the NPRM. The agency will not further delay this rulemaking proceeding on the basis of the comments received. However, the agency's existing regulations allow any interested person to petition for amendment or repeal of a regulation and this remedy remains available to members of the public who seek a change in these final rules, 14 CFR 404.3.

In its general comments, Lockheed Martin suggested that certain issues raised in the NPRM be segmented from this rulemaking and the subject of separate, more focused, rulemaking proceedings. The agency agrees generally with this comment and, as indicated below, has identified issues that may require more detailed regulatory treatment beyond the general requirements contained in this final rule.

McDonnell Douglas has suggested that additional discussions between the commercial launch industry, the agency and the Air Force would be useful before issuance of final rules in light of ongoing Air Force efforts to replace existing commercialization agreements with the Commercial Space Operations Support Agreement (CSOSA). The CSOSA would also address insurance requirements and allocation of risk between the Air Force and range users.

The agency has participated in discussions between the Air Force and the commercial launch services industry to ensure that financial responsibility and risk allocation requirements under the CSLA apply to range users conducting licensed launch activities. Financial responsibility for unlicensed activities would be addressed by the CSOSA. The pending rulemaking on Licensing Regulations will determine in final rules the point at which lines are drawn by the agency between unlicensed and licensed launch activities. Given that understanding, the agency does not see the need to tie issuance of these rules to execution of a CSOSA.

McDonnell Douglas further urged that any changes to current industry practice that would be effected by proceeding directly to a final rule should not apply to licensed launch activities conducted in connection with any launch contracts, including options, executed prior to issuance of the final rule. In clarifying remarks, McDonnell Douglas explained its concern that this rulemaking would affect its costs. Where a fixed price contract has been negotiated with a commercial customer there would be no opportunity to adjust the price or allocate those costs differently. Therefore, in fairness to the industry and to facilitate the smooth implementation of these requirements, contract negotiations already concluded should not be impacted by this rulemaking, according to the commenter.

The agency maintains that, for the most part, these final rules reflect longstanding agency practices and should not impose significant additional costs on the industry. A Regulatory Evaluation prepared as part of this rulemaking proceeding assesses its cost implications. As required, the agency has considered those costs, as well as benefits, to the public in determining to issue this final rule. A single effective date for imposition of a final rule is necessary to ensure a common understanding of CSLA-based financial responsibility and risk allocation requirements, and staggered effective dates would be unworkable and confusing to all launch participants. Accordingly, the FAA rejects the suggestion of deferring the rule's effective date.

Spaceport Florida provided general comments to the docket maintaining the view that the proposed rules do not apply to a licensed commercial launch site operator. The agency agrees that the NPRM proposes requirements applicable to licensed launch activities. Customers of a launch site operator that hold FAA launch licenses would be required to comply with the agency's financial responsibility requirements. In the agency's view, a licensed launch site operator would obtain the benefits and responsibilities of a contractor to the launch licensee as a provider of launch property and services. The recently concluded memorandum of agreement between the Department of Defense, National Aeronautics and Space Administration (NASA) and the FAA reflects this approach to risk allocation for licensed commercial launch site operators.

Spaceport Florida further noted that the import of the NPRM would be to add to the levels of insurance historically required of launch licensees. This would make launch activities conducted within the United States more expensive and would hurt the competitive posture of the U.S. commercial launch industry vis-a-vis its foreign competitors.

The agency disagrees with Spaceport Florida's supposition that insurance levels will increase if the proposed rules are made final. The maximum probable loss methodology as well as the agency's general approach to assessing risks to certain property and personnel, as described in the NPRM, are utilized currently by the agency in establishing required levels of insurance. Insurance requirements will not necessarily increase by virtue of this rulemaking.

Risk Allocation Under the 1988 Amendments

In developing this rulemaking, the agency's goal has been to carry out congressional intent and facilitate the competitive posture of the U.S. commercial launch industry through statutory-based risk sharing arrangements. However, in certain instances, the statutory language has left more questions unanswered than settled. For this reason, the agency sought industry views and clarification of the appropriate means of implementing particular provisions of the statute concerning liability insurance coverage and allocation of risks, including the requirement for inter-party waivers of claims.

This final rule represents the agency's position on how best to reconcile statutory requirements with the divergent views reflected in industry comments, taking into account the Government's limited acceptance of risk under the CSLA. In this discussion, the FAA has articulated its understanding of basic risk allocation principles of the 1988 Amendments (Pub. L. 100–657) and, in particular, the reciprocal waiver of claims provisions of 49 U.S.C. 70112(b) which lie at the heart of this rulemaking effort.

As outlined in the NPRM, two principal purposes of risk allocation under the 1988 Amendments to the CSLA are to limit the cost of managing launch risks by restricting litigation among launch participants and protect the commercial launch industry from the risk of catastrophic losses from third-party liability claims. The CSLA also insulates the U. S. Government from a significant measure of liability exposure at little or no cost to the Government. As explained in the NPRM, the Government faces liability exposure to third-party claims by virtue of its involvement in licensed launch activities through use of its property, personnel, facilities, equipment and services to support commercial launches and as a result of treaty obligations which impose strict liability on the United States for certain damage when the United States is a launching

state (Convention on International Liability for Damage Caused by Space Objects (Liability Convention), entered into force September 1972). The United States also bears international responsibility for national activities in outer space carried on by non-governmental entities which require authorization and continuing supervision by the appropriate State Party, according to Article VI of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (Outer Space Treaty), entered into force October 1967.

In order to ensure the comprehensive intent of the CSLA risk allocation scheme is fulfilled, the agency sought to identify all potential sources of claims against the various launch participants for injury, damage or loss and the financial resources that would be available to respond to those claims, either through insurance, self-insurance or congressional appropriations. Sources of claims can be separated into two broad groups: (1) those entities and individuals who are involved in licensed launch activities, and (2) those entities and individuals who are not involved in licensed launch activities. The agency then sought to identify potential targets of claims to ensure that their liability exposure would be addressed. These entities can also be classified into two groups: (1) the licensee, its customer, and the contractors and subcontractors of each involved in launch services, referred to collectively in this document as private party launch participants (PPLPs), and (2) the United States and its agencies, and their contractors and subcontractors, involved in licensed launch activities, referred to collectively herein as Government launch participants (GLPs). These categorizations are important because implementation of the benefits and responsibilities that flow from the CSLA risk allocation scheme depends upon how an entity is characterized. Traditionally, AST has utilized the classification of PPLPs and GLPs in license orders establishing financial responsibility requirements.

Absent the CSLA risk allocation scheme, each launch participant is vulnerable to claims from other launch participants for injury, damage or loss to property and personnel as well as persons having no involvement in launch activities. The CSLA alters relationships among launch participants in several ways.

First, the CSLA directs that each PPLP enter into a mutual or reciprocal waiver of claims whereby each launch participant agrees to waive claims it may have against the other launch participants for its own property damage or loss and further agrees to be responsible for property damage or loss it sustains as a result of licensed launch activities. When implemented properly, each of the entities participating in the launch should be effectively estopped or foreclosed from asserting claims for property damage or loss against the other launch participants, and each launch participant is relieved of the threat and cost of inter-party litigation as well as the need to obtain liability insurance covering its potential liability to other launch participants for property damage or loss for which it might otherwise be legally responsible. However, the waiver of claims agreement is not intended to replace contractual rights and remedies negotiated by the parties, such as the right to a replacement launch in the event of a failed launch attempt.

Example 1: Launch company A's contractor is negligent and damages satellite customer B's spacecraft. By executing the statutory waiver of claims agreement, B has waived its right to pursue a claim for damages against A and A's contractor based on the latter's negligent act.

Second, the CSLA further directs the Government to execute a similar waiver of claims agreement with PPLPs when the Government is involved in launch services by virtue of its property or personnel; however, the Government's acceptance of risk under the statutory waiver of claims agreement is more limited than that undertaken by PPLPs. For property damage, the Government's waiver is limited to claims in excess of the required amount of Government property insurance. The CSLA instructs the Department of Transportation (DOT) to enter into the agreement for, or on behalf of, the Government, executive agencies of the Government involved in launch services, and the Government's contractors and subcontractors involved in launch services, collectively referred to herein and in agency license orders as Government launch participants (GLPs). The agency views this provision as establishing for the Government's contractors and subcontractors involved in licensed launch activities third-party beneficiary rights in the waiver agreement between the DOT and PPLPs.

Example 2: Launch company A's vehicle is destroyed seconds after ignition and lift-off causing extensive damage to the Government-owned launch pad from which the launch took place. As a condition of A's license, the agency required that A obtain insurance covering damage to Government property at the launch site in the amount of $40 million, based upon the agency's determination of maximum probable loss. If the amount of damage to the launch pad is assessed at $60 million, the Government absorbs $20 million of loss to its property because it has waived claims for property damage in excess of the required amount of insurance.

Third, the CSLA provides that each signatory to a reciprocal waiver of claims agreement must also agree to be responsible for personal injury, property damage or loss sustained by its own employees resulting from licensed launch activities. Individuals employed by the various launch participants do not waive claims for their own property damage or loss or for personal injury suffered on the job under the CSLA reciprocal waiver of claims requirement. An employee who is injured or suffers loss in the course of employment as a result of licensed launch activities may recover workers compensation from his or her employer. Alternatively, that employee may elect to pursue his or her legal remedies against another launch participant whose negligence caused or contributed to the injury or loss. Ascertaining where financial responsibility lies under the CSLA for covering individual employee claims has proven to be one of the more controversial issues in this rulemaking.

The CSLA also alters traditional insurance practices with respect to third-party liability coverage. Under the CSLA, each launch participant involved in licensed launch activities is also an additional insured under the statutorily-mandated liability policy obtained by the launch licensee and is covered in the event of third-party claims, up to the required level of insurance. In this manner, entities participating in the launch are relieved of the need to obtain separate liability policies covering the shared risk of third-party liability. This approach of insuring all launch participants against third-party liability maximizes the capacity of the space launch insurance market to cover the risk of third-party claims.

Example 3: Launch company A's launch vehicle is destroyed mid-flight and debris impacts a nearby community. Community residents file suit naming both launch company A and its customer, satellite company B, as defendants and joint tortfeasors. Launch company A's liability policy must respond to cover both A's and B's liability, up to the limits of the policy established by the agency, unless a policy exclusion applies.

Finally, the CSLA provides a mechanism whereby the Government accepts the risk of third-party claims that exceed the limits of the liability insurance established by the agency, subject to approval of a compensation plan prepared by the agency and congressional appropriation of funds. This catastrophic risk protection is frequently referred to within the space transportation industry as ''indemnification'' although that term does not appear in the statute. In the previous example, if successful claims against A and B exceed the amount of insurance established by the FAA for A's launch, the FAA would prepare a compensation plan for the President to submit to Congress for an additional appropriation or other legislative authority, up to $1.5 billion (as adjusted for inflation occurring after January 1, 1989) above the amount of insurance established by the FAA. Above that amount, A and B would remain liable for judgments against them.

Identified earlier in this discussion, is the troublesome issue of determining how the CSLA is intended to address financial responsibility for employee losses and injuries. Defining the class of ''third parties'' whose claims would be covered by the statutorily-required liability policy has also been one of the more problematic issues associated with this rulemaking. The two issues are closely related, as explained below.

In this final rule, the FAA concludes that although all employees of the various entities involved in licensed launch activities meet the statutory definition of the term ''third party,'' the statutorily-mandated liability policy is not intended to respond to PPLP employee claims. Rather, the CSLA imposes on PPLPs financial responsibility for covering their employees' claims in a manner that is separate from the launch liability coverage a licensee must obtain. In essence, the agreement undertaken by each PPLP to be responsible for its employees' losses contractually obligates each PPLP to indemnify and hold the other launch participants harmless in the event of claims by one's own employees for injury, property damage or loss.

From the comments received and clarifications provided by licensees concerning their existing risk management programs, the agency understands that different methods are employed to provide the financial responsibility that covers this additional obligation. Some launch liability policies will respond to a contractual obligation assumed by an insured under the policy, including the obligation assumed under the reciprocal waiver of claims agreement to be responsible for one's own employees' losses. Alternatively, launch participants may rely on separate insurance, such as their comprehensive general liability policy, to respond to this obligation. Either way, the agency concludes that financial responsibility for PPLP employee losses is intended to be addressed, first, through employer-provided workers compensation coverage, and second, through contractual obligations undertaken by each PPLP through the reciprocal waiver of claims agreement in the event one's own employee claims against another launch participant for loss or injury.

A different approach is utilized for claims of GLP employees, referred to in the NPRM as Government personnel. Because of limitations under appropriations laws on the Government's ability to assume an unfunded contingent financial responsibility and the additional costs that would otherwise flow to the Government if additional risks were imposed on Government contractors and subcontractors, the Government does not accept the additional financial responsibility of indemnifying other launch participants in the event of GLP employee claims within the limits of the liability policy. Therefore, GLP employee claims against other launch participants must be covered by the licensee's launch liability policy, together with other third-party claims.

By removing from the statutorily-required liability coverage those claims that have the greatest probability of occurrence, that is, PPLP claims for property damage or loss and claims of PPLP employees for injury, property damage or loss, along with the attendant risks and costs that would accompany inter-party litigation in the event of such claims, the universe of risks covered by statutory-based insurance is significantly reduced. In this manner, the launch liability insurance market is able to cover all launch participants' potential liability to uninvolved persons and claims of GLP employees. The agency understands that insurance satisfying CSLA-based requirements is available at reasonable cost under current market conditions.

Detailed immediately below is a more complete discussion of the agency's initial proposal on risk allocation, specifically as it relates to coverage for employee losses, industry comments on the proposal and the agency's rationale for adopting this final rule. Comments on other substantive areas of the rulemaking are summarized and addressed following this discussion in the section-by-section analysis.

Notice of Proposed Rulemaking

Proposed Approach to Government Risk Allocation

Under the NPRM, financial risks associated with commercial launch activities would be allocated primarily to the commercial entities engaged in such activities. The only exceptions are for those financial risks expressly assigned to the Government by the CSLA. They are: (1) the risk otherwise borne by the U.S. commercial launch industry of catastrophic losses and unlimited liability associated with commercial launch activities, up to the statutory limit of $1.5 billion (as adjusted for inflation occurring after January 1, 1989) above required third-party liability insurance, subject to enactment of legislation, 49 U.S.C. 70113(a); (2) the risk of property damage or loss to U.S. Government launch property or facilities in excess of required insurance, 49 U.S.C. 70112(b)(2); and (3) acceptance of liability for death, bodily injury or property damage or loss that results from the willful misconduct of the United States or its agents, 49 U.S.C. 70112(e).

All other financial risks would be allocated under the NPRM to commercial entities engaged in the commercial launch business. Through reciprocal waiver of claims agreements, private party launch participants (PPLPs) would be required to accept responsibility for their own property damage or loss and for injury or loss sustained by their employees. Except for insurance required by the CSLA, the NPRM proposed to leave to the various launch participants the determination of how best to cover their resultant financial responsibilities.

Financial protection for the Government would be provided through required insurance and the reciprocal waiver of claims scheme. Insurance covering the Government's risk would be in the form of: (1) liability insurance that protects the Government from third-party liability, including liability imposed on the United States by virtue of treaty obligations; and (2) property insurance up to a prescribed amount that covers Government property, range assets and property of Government launch participants (GLPs), on or near a Federal range facility, that is exposed to risk of loss or damage as a result of licensed launch activities.

The CSLA reciprocal waiver of claims scheme would benefit the Government by freeing GLPs from the risk of claims

for property damage or loss by PPLPs. The Government would waive claims for property damage or loss occurring at a Federal range facility, on behalf of itself and GLPs, to the extent losses exceed the required amount of Government property insurance. The Government could also waive property damage claims, consistent with the CSLA, where a policy exclusion is deemed ''usual'' for the type of insurance involved. Unlike the additional financial responsibilities accepted by PPLPs for their employees' losses, the NPRM further explained that the Government does not accept this responsibility with respect to losses suffered by Government personnel, defined as employees of GLPs, because they would be deemed ''third parties'' whose claims must be addressed by the launch licensee's liability policy.

The NPRM proposed that Government contractors and subcontractors involved in launch services would be treated no differently than the United States for purposes of required insurance coverage and risk allocation. The rationale offered for the agency's approach was three-fold: (1) that contractors and subcontractors of the United States are third-party beneficiaries of the Government's waiver of claims agreement with the licensee, its customer, and their respective contractors and subcontractors, (2) to relieve the Government of certain costs and burdens that would otherwise flow to it in the event of damage to property of Government contractors and subcontractors, and (3) to avoid violation of the Anti-Deficiency Act which prohibits the Government from agreeing to assume an unfunded contingent liability absent specific statutory authority to do so.

The approach proposed to risk allocation for Government contractors and subcontractors was intended to facilitate commercial use of Federal range launch property and services. When a commercial user contracts with a Government agency for use of a Federal range facility, the commercial user also obtains the benefit of certain services provided by the Government through its contractors and subcontractors. Services include base operations support, equipment, maintenance and other ancillary activities that support Federal range operations. Although the Government has a means of accounting for contractor services utilized in support of commercial operations and is able to allocate direct costs to commercial users, the Government does not contract differently in terms of risk allocation depending upon whether the support or services provided are in support of commercial as opposed to government launches. Therefore, if Government contractors were confronted with additional risks of liability and financial responsibilities arising out of their support for commercial launch operations and had to obtain additional insurance to cover those risks, either the cost of the additional insurance would be charged to the Government as an allowable cost but one that is not recoverable from the commercial user or the contractor could refuse to assume the risk of additional liability and decline to do business with the Government or to support commercial operations.

To avoid these results, and to limit financial exposure of the Government, the agency has consistently treated Government contractors and subcontractors as though they stand in the Government's shoes for purposes of insurance and risk allocation. Accordingly, the NPRM proposed to continue the agency's longstanding practice of imposing on Government contractors and subcontractors only the limited obligation to waive claims and assume responsibility for employee losses in excess of required property and liability insurance, respectively, that the agency currently accepts when entering into a reciprocal waiver of claims agreement on behalf of the Government and its agencies involved in licensed launch activities. Thus, under the NPRM, and consistent with existing license orders, property belonging to Government contractors and subcontractors involved in launch services at a Federal range facility would be covered by the insurance provided for damage or loss to Government property, even if those entities maintain their own property insurance. Similarly, Government contractor and subcontractor employees would be accorded ''third party'' status whose claims would be addressed by the launch licensee's liability policy. In addition, Government personnel would be named as additional insureds under the launch licensee's liability policy and their potential liability to third parties would also be covered.

Proposed Risk Allocation for Employee Losses

(1) Definition of ''Third Party''

In the NPRM, the agency proposed a new definition of the term ''third party'' to facilitate understanding and implementation of the agency's approach to risk allocation for employee losses. The term ''third party'' is especially significant in this rulemaking because it is used to determine the universe of potential third-party claimants under the required liability insurance obtained by the licensee, determines eligibility for payment by the U.S. Government of excess third-party claims, and has implications bearing on the proper implementation of reciprocal waiver of claims agreements whereby launch participants assume responsibility for losses sustained by their own employees as a result of licensed launch activities. The definition of ''third party'' must be examined with each of these considerations in mind to ensure a fair allocation of risk as contemplated by the CSLA.

The statutory definition of ''third party'' is one of exclusion. It means ''a person except—(A) the United States Government or the Government's contractors or subcontractors involved in launch services; (B) a licensee or transferee under (49 U.S.C. Subtitle IX, ch. 701); (C) a licensee's or transferree's contractors, subcontractors, or customers involved in launch services; or (D) the customer's contractors or subcontractors involved in launch services. 49 U.S.C. 70102(11). Conspicuous by its absence from the statutory definition is any mention of employees of the various launch participant entities involved in launch services, including the Government. Therefore, employees of all entities involved in launch services may be considered ''third parties'' under the statutory definition because they are not excepted from the definition. In essence, the CSLA defines a third party as any person that is not directed by the statute to sign a reciprocal waiver of claims agreement.

Nevertheless, the definition of ''third party'' proposed in the NPRM explicitly included Government personnel, defined to include Government employees and employees of Government contractors and subcontractors involved in launch services for licensed launch activities, and excluded employees of private party launch participants (PPLPs). The definition, as proposed, differentiates between employees of PPLPs and those of Government launch participants (GLPs) because under the NPRM the former's claims are intended to be addressed through reciprocal waiver of claims agreements and the latter's are intended to be covered by the required liability policy. This distinction was justified as necessary (and intended by Congress) because, in the agency's view, financial responsibility for all claims of Government employees and employees of Government contractors and

subcontractors against other launch participants has not been assumed by the Government. Under the proposed definition, claims for damage or loss suffered by Government personnel against other launch participants would be covered up to the limits of the liability insurance required of a launch licensee. The Government would only be responsible for covering its employees' claims against other launch participants, as well as other third-party claims, if the liability policy would not respond because of a policy exclusion deemed usual for the type of insurance or if the policy limits were exhausted. Claims of employees of PPLPs would not be covered by the liability policy and would have to be addressed through some other means. Accordingly, the NPRM definition of the term ''third party'' nearly echoes the statutory definition, with the following proviso: ''Government personnel, as defined in this section (at 440.3(a)(6)) are third parties. For purposes of these regulations, employees of other launch participants identified in paragraphs (a)(15)(i) (B) and (C) of this section are not third parties.''

In practice, this definition is consistent with the agency's approach since 1989, to setting risk-based insurance requirements. That is, for all launch licenses issued to date, the amount of liability insurance required as a condition of each license takes into consideration the value of the maximum probable loss from claims by Government personnel for death, bodily injury, or property damage or loss. It does not account for potential claims of PPLP employees.

(2) Assumption of Responsibility for Employee Losses

The NPRM explained the assumption of responsibility for losses sustained by one's own employees as a mutual undertaking by each entity to ''cover'' losses of its own employees, and leaves to each launch participant the determination of how best to manage their resultant risk. As one possible approach, the agency offered that launch participants could maintain other liability insurance to cover the financial risk that arises out of this contractual obligation.

The Government is not able to assume an unfunded contractual liability under appropriations laws absent explicit statutory authority to do so, and the agency does not view the statute as providing the necessary authority except to the extent third-party claims may be the subject of an additional appropriation under the statutory payment of excess claims procedures presented in 49 U.S.C. 70113. Therefore, according Government employees the status of a ''third party'' ensures that financial resources will be available, through the licensee's liability policy, to cover Government employee claims against other launch participants and avoids the need for each launch participant to maintain insurance covering their potential liability for such claims. It also reconciles the statutory assumption of responsibility obligation with limitations on the Government's ability to assume an unfunded contingent liability except where Congress has clearly provided a mechanism for doing so and allowed the Government to accept this risk. For example, Public Law 85–804 authorizes certain agency heads to enter into contracts for national defense purposes which expressly provide that the United States will hold harmless and indemnify its contractors for third-party claims, loss or damage to contractor property and loss or damage to Government property, without regard to appropriations laws applicable to Government contracting. This authority is limited to claims or losses arising out of or resulting from unusually hazardous or nuclear risks.

To avoid passing additional costs to the Government, third-party status is also accorded to employees of Government contractors and subcontractors involved in launch services under current practice and this is the approach reflected in the NPRM.

In 1993, the agency revised the form of Agreement for Waiver of Claims and Assumption of Responsibility (Agreement) that accompanies each launch license to clarify that the Government waives claims and assumes responsibility for property damage it sustains and for any bodily injury or property damage sustained by its own employees only to the extent that those claims exceed the amount of property and liability insurance required under the CSLA. Under current practice, it is this limited waiver, release of claims and assumption of responsibility that the Government obligates itself to extend to its contractors and subcontractors under paragraph 4(c) of the Agreement now in use. In this regard, the FAA maintains that the approach to risk allocation set forth in the NPRM is, in practical effect, consistent with current practice. However, because Government employee claims would be regarded as third-party claims the agency proposed to remove reference to responsibility for losses sustained by Government employees from the proposed form of agreement presented in Appendix II of the NPRM. Additionally, because employees of Government contractors and subcontractors would also be deemed third parties, the Government would not be required to obligate its contractors and subcontractors to accept responsibility for their employees' losses and reference to this obligation was also omitted from the proposed form of agreement presented in Appendix II.

In summary, whereas PPLPs would waive claims against the other launch participants and agree to be responsible for their own property damage or loss and for losses sustained by their employees, the Government's waiver would be limited to property damage suffered by GLPs at the launch site, in excess of required property insurance. Claims of Government personnel would be covered by the required liability insurance up to the limits specified by the agency. Uncovered claims of Government personnel would be included in a compensation plan submitted to Congress as part of a request for appropriations to cover excess third-party claims.

Comments on the NPRM

The agency requested comments on the approach to risk allocation proposed in the NPRM in light of the following considerations: (1) absence of any indication in the CSLA or legislative history that employees of nongovernmental launch participants are intended to be included in the definition of ''third parties,'' whereas the legislative history explicitly indicates that Government employees are to be considered ''third parties,'' S. Rep. No. 100–593, 100th Cong., 2d Sess. 8 (1988); (2) absence of any indication that the Government would compensate the claims of employees of PPLPs as excess third-party claims; (3) considering employees of launch participants as third parties would run counter to the assumption of responsibility for their losses required by the statute; and (4) third-party liability insurance requirements would likely increase if employees of all launch participants are considered third parties.

Industry reaction to the NPRM and the agency's clarification of insurance requirements in the spring of 1997, following a Delta launch vehicle failure earlier in the year, led the agency to reopen the docket for an additional 30-day comment period. In doing so, the agency queried whether employee claims are intended to be addressed by the liability policy a launch licensee obtains to cover all launch participants' third-party liability. Alternatively, we

asked whether the reciprocal waiver of claims agreement in which launch participants agree to assume responsibility for losses sustained by their employees imposes additional financial responsibilities on the parties to cover these claims. More specifically, the Notice announcing the reopened docket requested answers to the following questions: ''Are employees of the Federal Government and its contractors and subcontractors (defined in the NPRM as ''Government personnel'') properly classified as third parties? If not, how should their claims against other launch participants for damage, injury, or loss be addressed, particularly in light of the limits on the Government's ability under appropriations laws to accede to unfunded contingent liability? From an insurance perspective, what issues or problems does the proposed definition present in providing liability insurance coverage for third-party claims? Should employees of all private party launch participants also be deemed third parties? If so, how would this affect CSLA-based liability coverage? If these employees are not third parties, how should their claims be managed? That is, how should the various launch participants protect themselves financially from claims by other launch participants' employees?'' (62 FR 36029, July 3, 1997).

The range of comments received and summarized below underscores the lack of clarity in the statute. In particular, industry opinion was divided on the appropriate definition of the term ''third party'' and the intent of the reciprocal waiver of claims requirement.

Both Boeing, commenting in September 1996, before its merger with McDonnell Douglas Corporation, and Sea Launch suggested that all employees of all launch participants should be viewed as ''third parties'' whose claims must be addressed by the required liability policy obtained by the licensee.

In support of its position, Boeing stated that the intent of the CSLA is to provide to all launch participants protection against claims by those who suffer injury as a result of an errant launch—either through statutorily-required liability insurance or through the inter-party waivers required by the CSLA. Because employees are not required to enter into waiver of claims agreements their individual claims against the other launch participants are not waived. Yet, according to Boeing, if employees are not accorded third-party status their claims may not be covered by the required third-party liability insurance nor would they be eligible for payment by the Government as part of the catastrophic loss protection contemplated by the CSLA. (Boeing erroneously refers to umbrella insurance coverage provided by the U.S. Government to cover excess third-party claims. The Government does not maintain insurance to cover catastrophic losses resulting from licensed launch activities. Rather, the CSLA provides a procedure whereby Congress may vote to appropriate funds to cover those losses.) According to Boeing, this is an ironic result because launch participant employees are the most likely to be injured in the event of a launch accident. Moreover, absent liability insurance coverage for employee claims, launch participants would be vulnerable to, and potentially liable for, claims from launch participant employees and there is no clear statutory basis for suggesting that launch participants must indemnify each other for those claims. Finally, according to Boeing, there is no basis for treating Government employees differently from all other employees in light of the statutory definition of ''third party'' which omits any reference to employees of any entity involved in launch services, and therefore all employees should be considered ''third parties.''

Boeing also refuted any suggestion that the assumption of responsibility provisions of the CSLA and reciprocal waiver of claims agreement imposes a requirement on a party to indemnify another launch participant for successful claims by that party's own employee. Without offering an opinion as to the meaning of the assumption of responsibility provision of the statute, Boeing argued that if Congress had intended for there to be an indemnification obligation it would have done so explicitly and the term ''indemnification'' does not appear in the CSLA. The comment cites a legal encyclopedia in support of the argument that a party claiming a right to be indemnified against its own negligence must establish that a contract clearly expresses such an intention and notes further that such agreements have been held void as against public policy. The better view, according to the comment, is that all employees, government and nongovernment, should be considered third parties.

Sea Launch commented that all employees of the various launch participants should be considered ''third parties,'' based on the statutory definition, whose claims would be covered by the required liability insurance and then by the Government under the excess claims provision of the statute. Sea Launch echoed many of the concerns expressed by Boeing in noting that unless considered ''third parties,'' injured employees would be unable to recover for their losses in the event the negligent party did not maintain adequate coverage for the claim.

Sea Launch also suggested that if employee claims are not eligible for payment by the Government as excess third-party claims because they are covered by their employer's assumption of responsibility, then the same reasoning should apply to claims of Government personnel. In Sea Launch's view, it is reasonable to expect the Government to cover excess claims of Government personnel as third party claims and the same eligibility should apply to claims of all employees. Finally, Sea Launch disagreed that covering all employees' claims as third-party claims would significantly increase the amount of required insurance because a responsible launch licensee would obtain such coverage in any event, whether or not required by regulation.

Like Boeing, Sea Launch also did not offer a definitive view on the intended meaning of the reciprocal waiver of claims provisions of the statute; however, it postulated that if the assumption of responsibility is an agreement to indemnify other parties for claims brought by one's own employees then that obligation should be backed by financial resources, such as the liability coverage obtained by the licensee, in order to effectuate the intent of the CSLA. In clarifying remarks, Sea Launch indicated that the statutory-based assumption of responsibility is intended to be an affirmative obligation to indemnify other launch participants in the event one's own employee, a third party, claims against another participant, and the licensee's liability policy provides the financial resources covering this obligation. In other words, the liability policy effectively provides a financial guaranty that each launch participant will fulfill its contractual obligation to other launch participants to be responsible for its employees' losses. Whether the basis for the claim is viewed as the contractual obligation to indemnify another party, or as a third-party claim, the policy should respond, according to Sea Launch, because ultimately it is the employee/third party that must be compensated for his or her loss. As between a launch participant and its contractor, Sea Launch commented that it would be a contractual matter that would be negotiated by the parties outside of the CSLA.

Kistler offered the view that all employees should be considered third parties otherwise employees of PPLPs would be limited to workers compensation while Government personnel would benefit from more extensive recoveries. The substance of this comment has already been addressed in the preceding summary of the 1988 Amendments; however, the agency reiterates here that no employees are required to waive their claims under the reciprocal waiver of claims agreement and that any injured employee may elect to pursue legal remedies against a negligent launch participant other than his or her employer.

Lockheed Martin, Orbital Sciences and McDonnell Douglas put forward a contrasting view of the intended coverage of the term ''third party.'' According to these three launch licensees, no employees should be considered ''third parties'' for purposes of the required liability insurance coverage. Under their view, the assumption of responsibility for employee losses requires that each signatory to the reciprocal agreement indemnify the other signatories for claims made by one's own employees.

McDonnell Douglas and Orbital Sciences specifically commented that personnel are part of the entity of which they are members and therefore no personnel, not even Government personnel, should be considered ''third parties'' for purposes of required liability insurance coverage. According to McDonnell Douglas and Orbital Sciences, an employee's claims are the responsibility of his or her employer, including the U.S. Government and its contractors. Under the inter-party waiver agreement, that responsibility includes a requirement to indemnify other signatories to the agreement in the event of claims by one's own employee against the other signatories.

As a result of the Boeing-McDonnell Douglas merger, effective August 1, 1997, the risk management program for commercial launches of the Delta family of launch vehicles was consolidated within Boeing. Because of the divergence of views expressed in docket submissions by McDonnell Douglas and Boeing prior to the merger, the agency sought clarification from Boeing's Insurance Department, Space and Liability Risks, as to Boeing's views of appropriate implementation of risk allocation under the CSLA. By way of clarification, Boeing's insurance manager endorsed the view espoused by McDonnell Douglas in its written comments that financial responsibility for one's own employees' losses is intended to be addressed by the reciprocal waiver of claims agreement undertaken by each launch participant and not by the liability policy provided by the launch licensee. By implication, no employees would be deemed ''third parties'' in the sense that their claims would not be covered by the required liability policy. Rather, each signatory to a reciprocal waiver of claims agreement is responsible for maintaining insurance that responds to its contractual obligation to indemnify other launch participants in the event of an employee claim for injury, damage or loss.

Orbital Sciences' insurance broker clarified its comment further by stating that allowing a launch participant's employee to recover as a third party against another launch participant would defeat the intent of the reciprocal waiver of claims provisions of the statute to limit inter-party claims. Also, allowing additional insureds (both the entity and its employees) to also be claimants under the same policy could be done at a cost; however, this approach flies in the face of the CSLA, according to the comment.

Orbital Sciences' insurance broker further stated that at the time the 1988 Amendments were enacted, it had been understood that special consideration was warranted for Government employees because of limitations on the Government's ability to assume an unfunded contingent liability to cover successful claims of Government employees against other launch participants. However, the same treatment was not believed to be appropriate for employees of Government contractors because those entities can obtain insurance to cover this responsibility.

Orbital Sciences reaffirmed its position in supplemental comments to the docket noting further that its launch insurance did not cover claims of Government personnel and that doing so could double the cost of insurance. Orbital Sciences also made the following additional points: First, Government personnel are not now and ought not be classified as ''third parties.'' Second, each signatory to the reciprocal waiver of claims agreement, including the Government, agrees to indemnify the other signatories for claims made by its own employees resulting from licensed launch activities. Third, the agency's views, as expressed in the NPRM and in correspondence with the industry, represent an inappropriate, unnecessary and unwarranted expansion of industry's liability burden, as well as a shift of liability from the Government to the industry. Fourth, the statutory limitation on the Government's waiver of property damage has no bearing on and does not in any way limit its assumption of responsibility for employee losses. Fifth, limitations on the Government's ability to accede to unfunded contingent liability should not impede the Government's ability to assume responsibility for its employees' losses and should be handled in a manner similar to the excess claims provisions of the CSLA. Sixth, the notion of reasonable cost of insurance is a relative term and in any event allowing inter-party claims instead of relying upon the reciprocal waiver regime defeats a fundamental goal of the CSLA. Seventh, allowing Government personnel to be claimants and insureds under the same policy is unorthodox and renders the reciprocal waiver scheme useless. Eighth, under the agency's proposal the licensee's loss record would be unfairly impacted because its liability policy would have to respond to claims caused by a grossly negligent launch participant, defeating the ''immunity'' from such claims that the reciprocal waiver scheme would otherwise provide. According to Orbital Sciences, this is particularly problematic where the Government's contractor is involved because the licensee has no direct control over that entity or its employees.

In further clarification of its remarks, OSC's broker explained that a licensee's liability policy can be written so as to respond to the liability assumed by an insured under a contract or agreement, including the contractual obligation each launch participant assumes under the reciprocal waiver of claims agreement to be responsible for its employees' losses. This approach fulfills the important objective that underlies the reciprocal agreement to be responsible for employees' losses of keeping litigation costs to a minimum.

Lockheed Martin's initial comments also expressed concern over the inclusion of Government personnel as ''third parties,'' noting that including them would have far-reaching effects on the statutory risk allocation scheme, including the maximum probable loss determination for third-party losses, the nature and scope of required liability coverage, coverage for employee claims, scope of the reciprocal waivers of claims, and the U.S. Government's payment of excess third-party claims. Lockheed Martin noted that the statutory definition of ''third party'' does not differentiate between employees of the Government or its contractors and subcontractors and employees of private party launch participants (PPLPs). Lockheed Martin

also questioned the resultant lack of responsibility on the part of the Government for its employees' claims under the definition of ''third party'' proposed in the NPRM. Lockheed Martin initially suggested that it might be beneficial to consider all launch participant employees as ''third parties,'' but noted that this action should not be taken without understanding the consequences, such as higher insurance requirements for third-party liability. Lockheed Martin also stressed the importance of understanding how the agency interprets the reciprocal agreement between launch participants in which parties agree to be responsible for injury or losses sustained by their own employees.

In supplemental comments to the docket, Lockheed Martin unequivocally objected to defining the term ''third party'' to include any employees, whether Government-related or private party, and opposed any interpretation of the term ''third party'' that would relieve the Government of responsibility for its employees' losses and those of Government contractor employees under the reciprocal waiver of claims scheme of the CSLA. Lockheed Martin further stressed that although it has accommodated the Government's clarification that employees of the Government and its contractors and subcontractors are to be considered third parties, this was viewed by Lockheed Martin and its insurers as a new interpretation that transfers additional risk to the launch liability policy and could have significant adverse impacts on the licensee's loss exposure and premiums.

Lockheed Martin believes that the assumption of responsibility for employee losses imposes on each signatory to the interparty waiver agreement an obligation to indemnify another signatory/launch participant for the amount recovered by one's own employee for losses suffered as a result of licensed launch activities. According to Lockheed Martin, insurance that is separate and apart from the licensee's launch liability policy is available to cover this contractual obligation. In this manner, risk exposures and premium costs are more fairly distributed among launch participants without overburdening or distorting the licensee's actual loss record. Further expanding the definition of ''third party'' to include employees of Government contractors and other launch participants would effectively negate the inter-party waiver of claims scheme and leave Lockheed Martin financially responsible for all such losses, resulting in premium increases as high as $500,000 per launch, according to Lockheed Martin's supplemental comments.

Lockheed Martin incorporated by reference comments submitted by Marsh & McLennan, now J&H Marsh & McLennan, an aerospace insurance broker. According to Marsh & McLennan, insurance underwriters have long understood that Government employee claims and claims of Government contractor employees remained the responsibility of the Government or its contractors, respectively, as evidenced by the waiver of claims agreement. While the insurance market can respond to the Government's requirement that its employees be covered as third party claimants, inclusion of Government contractor employees is more problematic from an allocation of risk equity standpoint as it could significantly affect the cost of insurance, according to the comment. This view is consistent with that expressed to the agency by an insurance underwriter who added that requiring coverage for Government contractor employees could adversely affect launch services providers' ability to obtain insurance in the future at reasonable rates because their loss records would reflect claims for which they were not responsible.

To sum up, opponents of the proposed definition of ''third party'' argue that the additional coverage that would be required to comply with regulatory requirements would result in higher risk exposures and insurance premiums, that doing so is contrary to or would defeat the purpose of the reciprocal waiver scheme required by statute, and would lead to difficulties in implementation in that Government launch participant (GLP) employees would be both additional insureds protected from third party liability claims, as well as potential claimants, in effect making claims against their own liability policy. It could also allow a negligent employee to recover against another negligent launch participant, neither of whom is under the licensee's control or direction. This would unfairly impact the licensee's loss record—assuming the insurance market is able to respond to the additional risk.

Final Rule Approach to Risk Allocation for Employee Losses

Having summarized the range of views expressed, the agency resolves, as a matter of regulation, two issues that are critical to defining appropriate risk allocation and financial responsibility under the CSLA. First, the agency concludes that the reciprocal waiver of claims agreement in which launch participants assume responsibility for their employees' losses is intended to address financial responsibility for losses sustained by private party launch participant (PPLP) employees and remove the risk of such claims from the launch liability insurance coverage required under the CSLA. Second, although the agency agrees with those commenters who stated that the liability policy obtained by the launch licensee is not intended to cover PPLP employee claims because they are addressed through the reciprocal waiver of claims agreement, the agency further concludes that the launch licensee's liability policy is required to cover Government launch participant (GLP) employee claims up to the limits established by the agency in license orders. In resolving these issues, the agency maintains the distinction described in the NPRM between PPLPs and GLPs.

This final rule focuses primarily on risk allocation among private party launch participants (PPLPs) involved in licensed launch activities and between PPLPs and Government launch participants (GLPs) when the Government performs its traditional role as manager of the Federal launch ranges and provider of range safety services. The NPRM separately addressed the situation in which a Government agency is a customer of commercial launch services. The NPRM stated the FAA's view that because Government agencies cannot agree to an unfunded contingent liability absent express statutory authority to do so, employees of Government agency customers are also considered third parties whose claims would be covered by the licensee's launch liability policy. However, as explained in the NPRM, a Government-owned payload is not covered by statutorily-required Government property insurance and the U.S. Government agency customer accepts responsibility for property damage to the payload. This approach reflects current agency practice in establishing risk-based financial responsibility requirements for third-party liability and Government property damage. That said, the final rule does not resolve, as a matter of regulation, the form of reciprocal waiver of claims agreement the Government will utilize when a Government agency is involved in launch services as a customer and such agreements will continue to be addressed on an individual basis.

(1) Assumption of Responsibility for Employee Losses

This rulemaking requires that the agency clarify proper implementation of

the statutory language appearing in 49 U.S.C. 70112(b)(1) and (2) which provides that ''each party to the waiver *agrees to be responsible* for property damage or loss it sustains, or for personal injury to, death of, or property damage or loss sustained by its own employees resulting from an activity carried out under the license.'' (Emphasis added.) As one commenter queried, is it a restatement or elaboration of the requirement to provide a waiver? Is it a restatement of a requirement that a party would have even in the absence of the statute? Is it an affirmative obligation to indemnify other parties for claims brought against them by one's own employees?

One possible interpretation of the provision is that the agreement to be responsible for one's own employees' losses means compliance with workers compensation insurance requirements, a requirement an employer would have regardless of the CSLA. Ensuring workers compensation coverage is provided for employee claims reduces the likelihood that an injured employee will pursue claims against another launch participant but does not preclude this possibility. Because workers compensation laws are left to the states, and significant differences are found among the various state programs, the agency concludes that a federal statute is not required, or even appropriate, to ensure compliance with state law and the FAA therefore views this as an unlikely interpretation. That is, the statutory provision for assumption of responsibility is intended to have significance beyond a requirement already imposed on employers by most (49) states to provide workers compensation insurance coverage for their employees under existing state laws.

Another possibility is that by enacting this provision Congress intended to affect certain workers compensation schemes by removing any rights of subrogation that an employer's workers compensation insurance carrier may have under state law. This is also not likely, particularly for PPLPs whose workers compensation insurance carriers are not signatories to the reciprocal waiver of claims agreement. State workers compensation programs vary widely in terms of subrogation rights and it is not likely that Congress intended to interfere directly in their implementation.

It is conceivable that Congress intended for the Secretary of Transportation to waive subrogated claims of Federal agencies under the Federal Employee Compensation Act (FECA), but doing so would still not affect the rights of Government employees to independently pursue claims against other launch participants because their claims are not waived under the reciprocal waiver of claims agreement. However, it is possible that fewer claims by Government employees against other launch participants would be brought if Government agencies' subrogated rights were waived.

Simply put, FECA is the Federal Government's workers compensation program. Under FECA, a Federal employee is compensated for work-related injuries and if the injury was caused by a negligent third party, the employee is advised to pursue a claim against that negligent party. If the employee is successful in his claim, he or she is required to reimburse the Government the amount paid to the employee by the Government, with certain adjustments for legal fees and other expenses. Even if the CSLA means that the Government must forego its right to recover, it does not mean that Government employees forego their rights as injured claimants to proceed against a negligent launch participant.

The presence or absence of workers compensation coverage does not eliminate inter-party litigation, a primary objective of the CSLA risk allocation scheme. Workers compensation provides to an employee an exclusive remedy against his or her employer for injuries arising out of and suffered in the course of employment. However, an injured employee may elect to sue a launch participant other than his or her employer for negligently causing the injury. Generally, a majority of jurisdictions would deny to that negligent launch participant the right to seek contribution from the employer because the workers compensation remedy is exclusive to the employer. Yet, contribution may be possible under a substantive indemnity law or on the basis of an indemnity agreement or if an independent duty is owed by the employer to the negligent launch participant. In that event, the negligent launch participant may proceed against the employer by maintaining that a contractual agreement removes the bar that would otherwise prevent the negligent launch participant from seeking contribution from the employer. Even so, variations in state workers compensation programs may result in a host of issues still being litigated.

Therefore, in the interest of avoiding costly inter-party litigation, the agency concludes that Congress intended to create an indemnity obligation making each PPLP financially responsible, by contract, for its employees' claims or otherwise establishing an independent duty owed by each employer to the other launch participants. This responsibility may be termed a legislatively-mandated contractual indemnification obligation.

As between a launch participant and its contractors and subcontractors, the assumption of responsibility could be viewed as a ''contractor-under'' requirement whereby each party provides workers compensation insurance that would cover its contractors and subcontractors employees' claims in the event its contractors and subcontractors failed to provide coverage. Doing so would minimize the likelihood that an injured employee of a contractor would look to another launch participant's deep pockets for recourse. (Generally speaking, state law provisions of this nature are intended to give a general contractor an incentive to require subcontractors to carry workers compensation insurance. 2A Larson, Workers Compensation Law, 72.31(b).) However, the FAA declines to interfere with variations in state workers compensation programs and concludes that it is unnecessary to do so as long as we regard the assumption of responsibility to be a contractual indemnification obligation of each PPLP to the other launch participants to assume financial responsibility for its own employees' losses.

That said, the agency does not agree with the commenters that a comparable obligation is accepted by the Government through the reciprocal waiver of claims agreement. Whereas each PPLP undertakes a contractual obligation to indemnify other launch participants from claims of its own employees through the inter-party waiver agreement, the Government is unable to accept this contractual obligation absent express authority to do so because it would amount to an unfunded contingent contractual liability which is prohibited by appropriations laws. The agency does not believe that the statute authorizes the Government to undertake an additional unfunded obligation *except* if a policy exclusion is deemed ''usual'' or the available limits of the policy are exhausted. In either of those events, the Government would be responsible under the CSLA for covering those claims, subject to Congress appropriating funds for that purpose.

Moreover, the CSLA authorizes the Secretary of Transportation to establish financial responsibility requirements, consistent with the CSLA, to protect the Government, its agencies, and personnel from liability, death, bodily injury, or property damage or loss as a result of a

launch or operation of a launch site involving a facility or personnel of the Government. 49 U.S.C. 70112(e). The appropriate way to reconcile this provision with the Government's assumption of responsibility obligations in 49 U.S.C. 70112(b)(2) is to conclude that the Government accepts responsibility for its employees' losses but, as in the Government's waiver for property damage, *only* to the extent that they exceed required insurance or other demonstration of financial responsibility.

The Government's limited agreement to be responsible for losses sustained by its employees, as reflected in the final rule, is consistent with similar requirements imposed by the Air Force in existing commercialization agreements to hold the Government harmless from third-party liability, including losses suffered by members of the Armed Forces. Regardless of whether or not an FAA license is issued for a commercial activity, the Government is not willing to accept additional financial responsibility for its employees' losses, other than that imposed under FECA or other comparable Federal compensation program, when Government personnel are involved in supporting commercial launch activities and this is the view that is reflected in the CSLA at 49 U.S.C. 70112(e). Absent further clarification from Congress, the agency is unwilling to place on the Government responsibility for covering the liability of other parties whose negligence causes injury, damage or loss to Government employees involved in commercial launch services. Moreover, the Government is foreclosed from insuring this risk under appropriations laws and therefore it is both necessary and appropriate that claims of Government employees against the other launch participants be addressed by the licensee's liability policy.

This approach to covering claims of Government employees results from the agency's understanding of statutory objectives and the practical consequences of appropriations laws, as well as the practicalities of seeking recovery from the Government. The same approach is not necessary to address the claims of employees of PPLPs. Therefore, with respect to PPLPs, the agency adopts the view, expressed by the majority of commenters, that the agreement to be responsible for losses sustained by one's own employees establishes a contractual, substantive right in each signatory to the reciprocal agreement to be indemnified and held harmless from claims of the other signatories' employees. Commenters offering this understanding of the reciprocal waiver of claims agreement also stated that insurance, separate from launch liability insurance, can be obtained by each signatory to the agreement to cover this contractual obligation.

As a practical matter, the agency's determination that the Government assumes a limited acceptance of responsibility for its employees' losses should not impose an unreasonable burden on the commercial launch industry. Even if the Government assumed responsibility for losses sustained by Government personnel, a prudent PPLP would maintain insurance to cover its liability in the event Congress failed to appropriate funds for this obligation. Rather than risk an uncovered liability, we believe it should be preferable for all entities involved in launch services to ensure adequate resources exist to cover claims of Government employees through the liability policy obtained by the licensee in accordance with the CSLA.

The issue remains as to whether the agency's approach of addressing claims of Government employees is appropriate for employees of the Government's contractors and subcontractors involved in launch services. Although Government contractors and subcontractors are private entities not subject to the restrictions of appropriations laws, the agency maintains that it is appropriate to accord to those employees the same status as Government employees for this limited risk management purpose and require that the licensee's liability policy respond to claims of Government personnel. The waiver requirement set forth in the statute provides that the Government waives claims ''for'' or ''on behalf of'' its contractors involved in launch services. In doing so, the Government takes on additional responsibilities to safeguard the interests and rights of those entities that perform launch services, at the behest of the Government, in support of commercial operations. For this reason, Government contractors and subcontractors should not be required to accept additional liability or insurance obligations when they perform services in support of commercial launch operations under contract to the Government. Although Government contractors and subcontractors could obtain insurance to cover a contractual indemnification obligation, they are not currently required to do so. Thus, costs incurred in obtaining this additional coverage would likely be passed through to the Government as allowable and allocable costs. Rather than incur additional costs or risks, the agency has determined to maintain its current practice of requiring that the liability policy obtained by the licensee under the CSLA respond to claims of Government contractor and subcontractor employees.

The agency's interpretation of the statutory agreement in which parties agree to be responsible for losses of their own employees may be controversial in that it effectively relieves a party of the financial consequences of its own negligence. At first blush, this might seem an illogical result, or one that flies in the face of public policy; however, it is consistent generally with the no-fault, no-subrogation reciprocal waiver scheme required by the CSLA. Parties may validly contract for or require indemnification against their own future negligent acts as long as it is clearly done, as in the revised form of reciprocal waiver of claims agreement presented in Appendix II of the final rule. However, it would be contrary to public policy to allow a party to contract for indemnification against willful misconduct and the ''Agreement for Waiver of Claims and Assumption of Responsibility'' contained in Appendix II of the final rule does not allow a launch participant to be relieved of liability for such behavior. The agency anticipates that the commercial market will respond to these requirements by ensuring that only responsible launch participants will be employed to perform hazardous operations in order to reduce each participant's risk of financial responsibility for employee losses.

(2) Liability Insurance Coverage for Third Parties

In making the determinations reflected in the final rule, the FAA also considered the question of whether the liability policy a launch licensee obtains ought to respond, in the first instance, to all employee claims. The approach suggested by Boeing and Sea Launch of considering all employees to be third parties whose claims must be covered by the licensee's liability policy under the CSLA is attractive for several reasons. It ensures sufficient financial resources will be available to cover employee claims through the liability policy and as follows: In the event an employee's claims are not compensated by that policy, either because of an insurance exclusion deemed ''usual'' within the meaning of the statute or exhaustion of policy limits, the Government may elect to cover the claim under the procedures set forth in 49 U.S.C. 70113. If the Government fails to do so, then the launch participant/

employer's agreement to be responsible for the claim could be invoked and the sued launch participant would seek indemnification from the launch participant/employer for the amount of the employee's recovery. This approach offers the benefit of reconciling the view that employees of all launch participants may be third parties without stripping the CSLA-mandated agreement to be responsible for employee losses of substantive import. However, where the uncovered claim belongs to Government personnel, the agency would need to resolve whether the Government's agreement to be responsible for its employees' losses would be subject to 49 U.S.C. 70113 procedures or absolute.

In evaluating the issue, the agency considered the additional burdens that would be imposed upon launch licensees if all employees were deemed third parties whose claims would be addressed by the launch licensee's liability policy. To do so, the agency surveyed Air Force installations at which launches take place to ascertain the maximum number of employees, other than Government personnel (because their exposure is currently assessed by the agency in setting insurance requirements), that may be exposed to hazardous operations. Using $3 million as the value of life, the amount currently used by the agency in making maximum probable loss (MPL) determinations, and applying a conservative assumption that half the personnel exposed would suffer casualties within MPL thresholds, the agency determined that liability insurance levels would increase anywhere from $12–15 million to $54 million depending upon the launch vehicle and the Federal installation from which it is launched.

Although these increases in loss limits do not seem extraordinary in light of the statutory ceiling on required liability insurance of $500 million, the agency understands that directing additional coverage for claims of all launch participant employees would shift the risk of such claims to the liability policy and increase its cost, assuming insurance of this nature could be obtained. The agency considered whether the imposition of additional costs and risks on the launch industry that would be associated with this approach is warranted and justified in light of statutory objectives. Accordingly, the agency re-examined closely the intent of the 1988 Amendments in light of liability concerns confronting the commercial launch industry at the time the 1988 Amendments were enacted.

Extensive hearings on H.R. 3765, a predecessor to the 1988 Amendments, before the Subcommittee on Space Science and Applications on February 16–17, 1988, are illuminating in this regard. The various panelists presenting views at the hearings, as well as the Subcommittee Members, made clear in their remarks that it was the risk of catastrophic failures and potentially unlimited liability to persons completely unassociated with launch activities that was at the heart of the industry's concern in operating in a commercial manner at a time when insurance capacity was extremely limited.

The testimony suggests that third party liability risks at issue were risks to the public, that is, the uninvolved, unassociated innocent bystander having nothing to do with the launch activity, not employees of launch participants who would at least have some remedy under workers compensation statutes. In questioning Richard E. Brackeen, president of Martin Marietta Commercial Titan, Inc., Congressman Jack Buechner, R. Mo., asked about the history of claims for loss or injury of persons who were not involved in activities at the launch site. In his question, he carved out catastrophic losses to astronauts and the Challenger disaster, as well as workers compensation claims. ''I'm talking about people outside of the immediate launch system. I mean, it seems to me that as we get into these questions of indemnification, we're talking about a risk analyses [sic] that has to be done.'' *H.R. 3765, The Commercial Space Launch Act Amendments: Hearings Before the Subcommittee on Space Science and Applications of the House Comm. on Science, Space, and Technology*, 100th Cong., 2d Sess. 210 (1988).

In passing the 1988 Amendments, Congress determined that financial resources had to be available to cover claims by the public in the event a launch accident caused injury or damage to uninvolved persons. These resources would also satisfy the obligations of the United States under the Outer Space Treaties in the event of damage caused by a launch from the United States to a foreign territory. Earlier testimony suggests reason to believe that claims between the launch participants, including their employees, were regarded as first and second party claims that would be addressed through reciprocal waiver agreements, and not as third-party claims. In this manner, and in combination with the waiver by launch participants of first party damage or loss, the highest risk claims would be removed from liability coverage at a time when insurance capacity was extremely limited. This is consistent with the views expressed in this rulemaking by some commenters and their insurance brokers that employees are considered part of their employing entity whose claims were intended to be addressed through reciprocal waiver of claims agreements and separately from the third-party claims of uninvolved persons.

The legislative history points to a unique conclusion with respect to Government employees, however. As reported out of the House Committee on Science, Space and Technology, the definition of ''third party'' in H.R. 4399 included United States personnel involved in launch services as part of the definition thereby excluding them from ''third party'' status. The Senate Report accompanying the 1988 Amendments indicates generally that the definition of the term ''third party'' is ''intended to be any person not associated directly with commercial launch operations.'' S. Rep. No. 100–593, 100 Cong., 2d Sess. at p. 8 (1988). Yet, the report language expressly reserves third party status for Government personnel directly associated with commercial launch operations and reference to Government personnel was removed from the definition of ''third party'' in the bill. Public Law 100–657, known as the ''Commercial Space Launch Act Amendments of 1988'' also makes no reference to Government personnel in the definition of ''third party.'' Thus, the FAA concludes that a deliberate decision was made to reclassify Government employees as third parties. Despite the lack of clarity in the statutory definition, ample basis exists to include Government employees in the universe of potential third-party claimants.

The agency has also been advised by aerospace insurance brokers that the special circumstances of Government appropriations law was understood within the insurance community at the time the 1988 Amendments were enacted and that accommodation for covering Government employee claims could be made. This is accomplished by ensuring that Government employees are regarded as third parties for purposes of ensuring that the launch licensee's liability policy will respond to their claims for injury, damage or loss.

The agency does not find the same indications that the launch licensee's liability policy was intended to respond to claims of employees of PPLPs involved in a launch. Even if these

employees are ''third parties'' within the statutory definition of the term, the agency concludes that the mandatory agreement by each PPLP to be responsible for its employees' losses is a substantive requirement which supersedes the need to address their claims through the required liability policy. According to the insurance community, this interpretation is consistent with the universe of risks underwriters have agreed to accept by insuring launch liability. The agency is advised that underwriters have agreed to provide coverage for an unorthodox breadth of risks, as required by the CSLA—a single liability policy covering all launch participants as additional insureds—with the understanding that the claims having the highest risk of occurrence (claims for injury by individuals involved in licensed launch activities) would be addressed through other means, specifically, the waiver of claims and assumption of responsibility obligations of the CSLA. It is unclear whether the launch insurance market could or would respond to the imposition of additional risks from PPLP employee claims. Including coverage for GLP employee claims has been accommodated, but evidently not without some resistance. The agency does not find it necessary to further strain insurance capacity by considering all employees as third parties whose claims must be covered by the liability policy when we believe the assumption of responsibility provides the appropriate response, and the final rule reflects this view.

The agency concludes that Government employees, but not PPLP employees, must be considered third parties whose claims against other launch participants will be responded to by the licensee's liability policy. Ensuring that the liability policy is available to cover claims of Government employees provides financial protection to all launch participants from Government employee claims. The following scenario and alternative results illustrate the financial risks that would confront all launch participants if Government employee claims were not eligible for coverage under the liability policy:

Scenario: Government employee ''A'' is injured at Cape Canaveral Air Station while monitoring licensed launch activities. The injury to ''A'' results from the launch licensee's negligence in performing the hazardous licensed operation of integrating the payload with the launch vehicle. The launch licensee's customer also performed in a negligent manner contributing to ''A's'' injuries. ''A'' files a claim under the Federal Employee Compensation Act (FECA), and receives prompt notification of his entitlement to compensation from the Government for his injury. FECA provides employee ''A'' an exclusive remedy against the Government for job-related injuries. Whether or not the Government's subrogated rights are waived under the CSLA, ''A'' may elect to sue the launch licensee and its customer, alleging that their negligence caused his injury. The launch licensee is a well-known launch services provider with considerable financial assets. Its customer is a not-for-profit research institution. ''A'' determines to sue the launch licensee alleging that its negligence caused his injuries and does not name the customer in the lawsuit. Assume that ''A'' will be successful and obtain a judgment of $1 million against the launch licensee.

Alt. 1: Under the view expressed by the agency in this final rule, the launch licensee has obtained a launch liability policy covering its liability to ''A.'' The liability policy responds to ''A's'' claim. Under the final rule, the licensee's insurer waives all rights of subrogation against the other insureds covered by the policy. Even if ''A'' had named the customer in his suit, the claim would be covered by the launch licensee's liability policy because the customer as well as other PPLPs and GLPs are named as additional insureds under the policy.

Alt. 2: The launch licensee's liability policy does not respond to ''A's'' claim because it excludes coverage for claims of any insured's employees against any other insured under the policy. The launch licensee presents the reciprocal waiver of claims agreement to the Government and argues that the Government has agreed to be financially responsible for its employees. Although FECA provides to ''A'' an exclusive remedy against the Government, the licensee's action is not barred *if* it can establish either a substantive right to indemnity under the Federal Tort Claims Act or a contractual right to indemnity under the reciprocal waiver agreement dictated by the CSLA. Assuming that ''A'' did not perform in a negligent manner and that the Government was not negligent in its supervision of ''A,'' and the licensee cannot establish any other duty owed to it by the Government, the launch licensee will not be successful under the Federal Tort Claims Act and must establish a contractual obligation on the part of the United States to indemnify it for ''A's'' recovery. The agency has long held the view that the Anti-Deficiency Act precludes the Government from accepting an unfunded contingent liability and does not find in the CSLA language a clear, unequivocal removal of this restriction. Moreover, even if a special appropriation were requested to cover the launch licensee's liability to ''A,'' Congress may refuse to appropriate the funds, leaving ''A'' with a $1 million judgment against the launch licensee.

Alt. 3: The launch licensee's liability policy does not respond to ''A's'' claim because it excludes coverage for claims of any insured's employees against any other insured under the policy and the licensee impleads its customer as a third-party defendant thereby defeating the CSLA objective of avoiding inter-party litigation. As a practical matter, the launch licensee has deeper pockets than the customer who may or may not have sufficient insurance or assets to cover its liability, leaving the licensee potentially responsible for satisfying the entire judgment from other general liability insurance coverage or corporate assets.

The first alternative described above provides the best outcome by: (i) relieving each participant of the need to obtain separate liability insurance to cover Government employee claims; (ii) providing reasonable assurance of financial protection to Government employees exposed to risk of loss in supporting commercial launch activities; and (iii) avoiding inter-party litigation.

In the final rule, the definition of ''third party'' is revised to remove the express exclusion of employees of private party launch participants. As revised, the regulation does not *preclude* coverage by a licensee's launch liability policy for claims by employees of PPLPs. A licensee may obtain additional liability coverage in excess of amounts required under the terms of a launch license to cover claims of other parties' employees. However, the amount of insurance required by the agency does not reflect this additional source of claims nor can claims of other parties' employees dilute or diminish the amount of insurance that must remain available to respond to the intended class of third-party claimants, that is, persons uninvolved in the launch as well as claims of GLP employees. As long as those claims are satisfied, the Government would have no say as to whether a licensee's liability policy may respond to satisfy claims of other launch participants' employees if such coverage is available under the terms of the policy, either as a liability claim or to cover the contractual indemnification obligation of an insured. However, in the event the liability insurance is exhausted, claims

of employees of PPLPs would be the responsibility of their employer under the reciprocal waiver agreement and not eligible for Government payment under 49 U.S.C. 70113. Because providing additional coverage for losses sustained by employees of PPLPs may result in some additional expense, the agency leaves it to the parties to negotiate appropriate cost-sharing arrangements if they elect to pursue this route.

To summarize briefly, the preceding discussion of risk allocation under the 1988 Amendments began by characterizing sources of claims for injury, damage or loss as falling within two groups: 1) those entities and individuals involved in licensed launch activities, and 2) those entities and individuals not involved in licensed launch activities. Those involved in licensed launch activities include PPLPs, GLPs, and their employees. Financial responsibility for claims of either group is provided as follows: Whereas PPLPs are required to waive claims for their own property damage or loss and obligate themselves contractually to cover or indemnify another launch participant in the event of losses sustained by one's own employee, the Government accepts a more limited responsibility. Through its participation in the reciprocal waiver of claims scheme, the Government agrees to waive claims for its own and its contractors' and subcontractors' property damage at a Federal range facility in excess of the amount of Government property insurance required under the license. The Government also accepts responsibility for losses of its employees and its contractors' and subcontractors' employees only to the extent they are not covered by required liability insurance, either because of a ''usual'' policy exclusion or because the policy limits have been exhausted. Claims of entities and individuals not involved in licensed launch activities would be addressed by the single liability policy obtained by the launch licensee to cover claims by any third party, as defined in this rulemaking, against any PPLP or GLP. Claims in excess of the required amount of liability insurance become the responsibility of the Government, subject to appropriation of funds, up to $1.5 billion (as adjusted for inflation occurring after January 1, 1989) above the amount of insurance that the agency requires.

Section-by-Section Analysis

Summarized in this section are specific comments addressing particular provisions of the proposed rule or responding to the agency's request for views on matters not covered above, followed by the agency's response to the comments. The agency has also identified certain provisions in the NPRM that would benefit from additional elaboration. Each is discussed below in numerical order. Nonsubstantive changes in the regulatory text of the final rule are not specifically identified or discussed.

Section 440.1—Scope; Basis

Section 440.1 as proposed indicates that the financial responsibility and allocation of risk requirements of this rulemaking apply to all licensed launch activities. There are no changes to this section in the final rule.

Kistler submitted comments and recommendations for the agency's consideration to the extent these rules would apply to launches of reusable launch vehicles (RLVs). Legislation under consideration in Congress would authorize the agency to license separately the reentry of an RLV and impose financial responsibility requirements to cover risks associated with the reentry event. Currently, launch, but not reentry, of an RLV would be covered by existing statutory requirements for financial responsibility. Accordingly, the agency intends for these rules to apply to licensed RLV launch activities, as defined in a license, and will develop rules for reentry financial responsibility once specific licensing authority over reentry is enacted.

Section 440.3—Definitions

The term ''contractors and subcontractors'' as defined in § 440.3(a)(2) of the NPRM prompted two comments. The proposed definition would encompass entities involved directly or indirectly in licensed launch activities, including suppliers of property and services and component manufacturers. McDonnell Douglas and Orbital Sciences expressed concern that broadening the definition from that contained in the form of Agreement for Waiver of Claims and Assumption of Responsibility (Cross-Waiver Agreement) currently in use by the agency would impose additional burdens on the licensee and its customers to implement the reciprocal waiver of claims requirements of § 440.17, in the following ways. Long-term contracts with subcontractors at every tier would have to be amended at significant burden and expense. By corollary, the licensee (and its customer) would be required to accept greater responsibility under the proposed form of reciprocal waiver of claims agreement set forth in Appendix II to the NPRM in the event it failed to pass on, or flow down, the cross-waiver requirements to all of its contractors and subcontractors. Commenters were also concerned that the expanded definition would remove the licensee's prerogative of either obtaining waiver of claims agreements from its contractors or indemnifying other parties for failure to implement properly the waiver of claims agreements. McDonnell Douglas clarified its comment by noting that the proposed definition would be acceptable if the indemnification option were preserved.

The agency believes these concerns are misplaced. The proposed definition has been broadly crafted in order to ensure that the liability insurance protection required of a launch licensee under the CSLA is available to cover third-party claims against any contractor or subcontractor involved directly or indirectly in licensed launch activities. Consistent with the CSLA scheme, the definition would include any contractor or subcontractor that has potential liability exposure to third parties as a result of licensed launch activities. However, in the section-by-section discussion of proposed § 440.17—Reciprocal Waiver of Claims Requirements, the NPRM explains that not all of those entities are expected or required to participate in the reciprocal waiver of claims scheme in order to carry out its purpose. Only those participants, including contractors and subcontractors, whose personnel or property are at risk in the conduct of licensed launch activities and who therefore could pursue claims against other participants in the event of injury, damage or loss need enter into the reciprocal waiver of claims agreement. (61 FR at 39012, July 25, 1996).

The indemnification provisions referred to by the commenters appear in paragraph 5 of the proposed form of reciprocal waiver of claims agreement in Appendix II of the NPRM. These provisions continue the agency's current practice of providing a contractual remedy to launch participants who must defend against claims brought by other launch participants' contractors or subcontractors because of the latter party's failure to implement properly the extension, or flow down, provisions of the agreement with its contractors and subcontractors. The indemnification and hold harmless provisions in paragraph 5 of the proposed form of agreement at Appendix II are not intended to relieve a launch participant of its responsibility to implement waivers of claims with its contractors and subcontractors by allowing the launch participant to elect

whether or not to comply. The reciprocal waiver of claims scheme works best when PPLPs implement the waiver of claims requirements fully and properly because failure to do so will result in additional costs and burdens to a party that must defend against a claim. (Commenters raised the very same arguments in opposition to the Government's view that it need not flow down the waiver requirements to its contractors and subcontractors. However, because the Government would be responsible for uncovered property losses sustained by those entities, the agency believes that the approach proposed in the NPRM wherein the Government would waive claims on behalf of its contractors and subcontractors should not be objectionable.)

The revised form of reciprocal waiver of claims agreement appearing in this final rule at Appendix II continues the current practice of requiring a three-party agreement to be executed by the licensee, its customer and the agency on behalf of the Government and imposing an express indemnification obligation on signatories to the agreement for failure to implement properly the flow down provisions of the agreement to contractors and subcontractors. Consistent with current practice, the agency leaves implementation of these provisions to launch participants and does not intend to monitor compliance with the flow-down requirements.

Two comments were submitted regarding the proposed definition of ''customer'' in section 440.3(a)(3). Hughes Electronics, a communications satellite manufacturer, endorsed the proposed definition, in that it would include any person to whom the procurer of launch services conditionally sells, leases, assigns or otherwise transfers its rights in the payload. Sea Launch suggested broadening the definition to include not just any person to whom the procurer of launch services has transferred a right in the payload, but also any person to whom the procurer of launch services has transferred a right to the launch services but remains in privity of contract with the launch services provider, such as when the procuring party transfers or brokers those rights to another party. The agency agrees with the comment and has revised the definition accordingly in the final rule and Appendix II agreement.

Through the broad definition of the term ''customer,'' the agency intends that the financial responsibility and risk allocation provisions of the CSLA, including rights to liability insurance coverage and eligibility for Government payment of excess liability claims, as well as the responsibility to participate in the reciprocal waiver of claims scheme, apply not just to the procurer (or transferee) of launch services, but also to any person having any rights in the payload to be launched. A question arises as to whether a person who places property on board a payload to obtain launch or payload services, or who has rights in the payload, should properly be viewed as a customer (or customer of the customer) or a contractor in that it is supplying property. The question is raised in the context of determining whether, and in what capacity, the person whose property is on the payload is expected to accede to the reciprocal waiver of claims scheme. The more traditional view of this person as a customer is correct and his or her rights and responsibilities under the cross-waiver agreement are equivalent to those of the customer who signs the three-party agreement with the licensee and the agency on behalf of the Government. Thus, it must be clearly understood that the customer who executes the three-party reciprocal waiver of claims agreement required as a condition of the license does so on behalf of all of its customers. It is incumbent upon that party to implement the extension, or flow down, provisions of the agreement to its customers and the same indemnification protections would be afforded the other launch participants in the event of the signatory customer's failure to do so. In essence, while the customer's customer becomes a third-party beneficiary of the three-party waiver of claims agreement, it is also expected to sign a waiver agreement and assume the burdens of a customer that signs the reciprocal waiver agreement with DOT and the licensee. The definition of ''customer'' is further modified in the final rule to include any person who places property on board a payload for the purpose of obtaining launch or payload services and the form of reciprocal waiver of claims agreement in Appendix II of the final rule is also revised to reflect the additional indemnification obligations of the customer.

The term ''Government personnel'' remains unchanged in the final rule and is used to facilitate the distinction between employees of Government launch participants (GLPs) whose claims must be addressed by the launch licensee's liability policy and employees of private party launch participants (PPLPs) whose claims are the responsibility of their employer, as discussed above. The agency considers FAA personnel who carry out inspections or compliance monitoring activities at the launch site to be Government personnel.

No comments were received on the proposed definition of ''liability'' contained in § 440.3(a)(8). However, the agency wishes to clarify that legal liability of the United States under international law may include treaty obligations of the United States and the liability insurance policies obtained by licensees must cover those obligations. No change in the proposed definition is required.

For reasons explained above in the supplementary information, the proposed definition of the term ''third party'' is revised in the final rule by removing the following sentence: ''For purposes of these regulations, employees of other launch participants identified in paragraphs (a)(15)(i)(B) and (C) of this section are not third parties.'' The licensee's liability policy may respond to losses sustained by employees of PPLPs either as a third-party or contractual liability and the agency is not foreclosing that possibility. However, the public is advised that the agency does not consider potential losses of PPLP employees in determining the required amount of liability insurance and does not find in the statute congressional intent to address those losses through the excess claims provisions of 49 U.S.C. 70113.

Definitions of other terms not specifically addressed herein remain as proposed in the NPRM.

Section 440.5—General

Section 440.5 as proposed sets forth the basic requirement that launch licensees must comply with financial responsibility and allocation of risk requirements established by the agency. Once established, the prescribed financial responsibility requirements become the exclusive requirements of the Government for financial responsibility, allocation of risk and related matters covered by 49 U.S.C. 70112 and 70113. Other agencies may impose requirements to address matters that are not covered by the financial responsibility provisions of 49 U.S.C. 70112, such as unemployment insurance or comprehensive automobile liability, and licensees are not relieved of the obligation to comply with them.

Proposed § 440.5(b) provides that the agency will prescribe in a license order the amount of financial responsibility a licensee must obtain. Similarly, any modifications of that amount would also be established through license orders.

Lockheed Martin, McDonnell Douglas and Orbital Sciences registered concern

over the agency's assertion of continuing authority to revise requirements based upon changes in exposed property or risks, indicating that such revisions create uncertainty and could impact cost and availability of insurance.

Operator licenses are currently issued for a two-year period, and may be renewed upon application by a licensee. It is reasonable to expect that some change will occur in the property or number of third parties exposed to risk of loss over the course of several years and the agency must be able to respond appropriately to those changes. Changes may result from actions of the licensee, such as a change in launch plans, the Government, or third parties. For example, a change in launch trajectory may heighten or reduce risks to third parties or Government property. Similarly, a person uninvolved in a licensee's activities may establish facilities on a launch site, possibly increasing risk to third-party property and increasing the value of the maximum probable loss (MPL) determination associated with licensed launch activities. A change in the MPL, in either direction, should properly be reflected in the mandated amount of insurance coverage.

The FAA does not anticipate frequent or rapid fluctuations in required levels of insurance. As indicated in the NPRM, transient Government property is not included as part of the MPL analysis. Although it must be covered by the licensee's insurance, the amount of insurance coverage required would not depend upon the presence or absence of transient Government property on any given day and it is not the Government's intent to alter this approach in retaining discretion to revise requirements. No change to this provision is required in the final rule to address the commenters' concern.

A number of comments were directed at § 440.5(c), which states the fundamental principle that a demonstration by a licensee of financial responsibility for liability, loss or damage suffered by the United States as a result of licensed launch activities is not a substitute for actual financial responsibility. Section 440.5 of the NPRM further provides the only circumstances under which the licensee would be relieved of this responsibility, as follows: (1) when liability, loss or damage sustained by the United States results from willful misconduct of the United States or its agents, including Government personnel; (2) third-party claims for bodily injury or property damage covered by the licensee's liability insurance exceed the amount of financial responsibility established by the agency under the regulations up to $1.5 billion (as adjusted for inflation occurring after January 1, 1989) above that amount and are payable under the payment of excess claims provision of the CSLA (49 U.S.C. 70113); (3) claims for loss or damage to property of the U.S. Government, its agencies, contractors and subcontractors exceed the required amount of Government property insurance; and (4) in the event the licensee has no liability for third-party claims arising out of any particular launch that exceed $1.5 billion (as adjusted for inflation occurring after January 1, 1989).

Lockheed Martin requested that the agency reconcile various statements regarding the Government's responsibility in the event of its own willful misconduct with other provisions in the proposed regulations concerning waiver of claims and assumption of responsibility.

Section 70112(e) of the CSLA directs the Secretary of Transportation to establish financial responsibility requirements and other assurances necessary to protect the Government and its agencies and personnel from liability, death, bodily injury, or property damage or loss as a result of licensed activities involving Government facilities or personnel. 49 U.S.C. 70112(e). Significantly, 49 U.S.C. 70112(e) does not relieve the licensee's obligation to cover claims for damage to Government property or personnel that result from willful misconduct of the Government or its agents. However, it does provide that the Secretary may not relieve the Government of liability under this subsection for death, bodily injury, or property damage or loss resulting from the willful misconduct of the Government or its agents. As a matter of public policy, the Government ought not be able to assert claims against the licensee or any other person for property damage that it suffers as a result of its own willful misconduct or that of its agents. In the limited circumstances in which willful misconduct by the Government or its agents results in property damage or loss to Government property, the licensee is relieved of ultimate responsibility for the claim under § 440.5(c)(1) of the final rule. Consistent with current practice, the Agreement for Waiver of Claims and Assumption of Responsibility presented in Appendix II of the final rule also requires that the licensee hold the Government and its agencies, servants, agents, employees and assignees harmless from liability for property damage or injury except where, among other things, the claim results from willful misconduct of the Government or its agents. Because Government contractors and their employees are not typically considered agents of the Government in most circumstances, the final rule is revised to remove reference to Government personnel in § 440.5(c)(1); paragraph 7(b) of the form of agreement presented in Appendix II of the final rule is similarly revised.

Two additional revisions appear in § 440.5(c) of the final rule. First, section 440.5(c)(3) effectively provides that the licensee is relieved of ultimate responsibility for damage to or loss of GLP property in excess of Government property insurance required under § 440.9(d). As a matter of public policy and consistent with current practice, licensees are not relieved of financial responsibility for excess Government property damage where the Government's claims result from the licensee's willful misconduct and this policy is now reflected in § 440.5(c)(3) of the final rule. No change is necessary in the Agreement for Waiver of Claims and Assumption of Responsibility in Appendix II of the rule because, consistent with current practice, it provides that waivers of claims shall not apply where the claims result from willful misconduct of any of the parties.

Second, several commenters pointed out an inadvertent omission in § 440.5(c)(4), as proposed. This exception to the licensee's ultimate responsibility for liability or losses sustained by the United States from licensed launch activities is intended to refer to claims in excess of $1.5 billion above the amount of required insurance, and is corrected in the final rule. The Agreement for Waiver of Claims and Assumption of Responsibility appearing in Appendix II of this final rule is also corrected.

Lockheed Martin further objected to § 440.5(c)(4), as corrected. It believes the practical effect would be to make the licensee jointly and severally liable with other launch participants for damages in excess of the required amount of insurance plus the $1.5 billion payable under 49 U.S.C. 70113, unless the licensee could prove no liability whatsoever. Lockheed Martin objected that limiting this provision to those instances in which the licensee proves it has no liability would be unduly burdensome to launch licensees. Lockheed Martin also noted that requiring a licensee to be solely responsible for these claims could even be uninsurable if the exposure were viewed by insurers as an unlimited indemnification, presumably of the

other launch participants, regardless of fault.

The intent of this provision is to ensure that the Government's liability will be covered as directed by 49 U.S.C. 70112(e) and the agency has retained the proposed approach in the final rule. However, nothing in this rule prevents a licensee from contractually allocating this risk with other PPLPs so that the cost of the liability would be shared among responsible PPLPs.

Section 440.7—Determination of Maximum Probable Loss

This section of the final rule sets forth the agency's procedure for issuing maximum probable loss (MPL) determinations that form the basis for financial responsibility requirements contained in license orders. Lockheed Martin commented on this section of the NPRM by indicating that it is difficult to understand how actual determinations are made and what the impact of the NPRM would be on existing MPL determinations.

It has not been the agency's intent to announce changes to its MPL methodology through this rulemaking. Rather, the agency has attempted to shed some light on the methodology employed in setting insurance requirements pending completion and issuance of a comprehensive report on MPL. In doing so, the agency learned that its inclusion of certain risks in the MPL analysis, such as risks to Government personnel, was not clearly understood within the commercial launch industry. To avoid additional misunderstandings and to facilitate industry's ability to obtain financial protection from launch risks, the agency agrees with the comment recommendation to make its analytical documentation available to licensees upon request. In fact, this is the agency's current practice although few licensees have made such requests.

Two launch licensees, Orbital Sciences and McDonnell Douglas, commented on the 90-day period in which the agency issues its MPL determination following receipt of all required information. Section 440.7(b) provides for notification to a licensee if issuance of the MPL determination will be delayed due to statutorily-mandated interagency consultations. The commenters expressed concern that an open-ended review period is contrary to the CSLA's intent to protect launch licensees by limiting and clearly defining the review period. The agency understands the industry's need to receive MPL determinations in order to obtain required insurance in a timely manner. Moreover, until the agency establishes its financial responsibility requirements, insurance requirements imposed by the Federal range facility remain in place and are not preempted or superceded by the agency's risk-based requirements under the CSLA. The agency commits to facilitating as efficient and expedited an interagency review as practicable but hopes the industry will understand those infrequent occasions when the process is not as fluid as intended.

Kistler also expressed reservations that the 90-day provision for issuing an MPL determination would compromise the fast turn-around anticipated for RLV operations. Kistler suggested that MPL determinations could be issued for a class of launches and payloads at the time a license is issued, and that the determination could ''stand'' unless a proposed launch or payload falls outside of specified parameters. In that event, only the changed information should be required of the licensee for purposes of recalculating the MPL determination using the initial determination as a baseline. The agency agrees with Kistler and, in practice, already implements the approach proposed in Kistler's recommendations. The agency notes that Kistler is not yet licensed to conduct launch activities and therefore may not be familiar with the agency's approach to establishing insurance requirements that cover a range of authorized launch activities within identified parameters.

Section 440.7(d) provides that the agency amends an MPL determination, if warranted, before completion of licensed launch activities when new information requires an adjustment in insurance requirements. Lockheed Martin, Orbital Sciences, and McDonnell Douglas expressed concern that the ability to amend insurance requirements would create uncertainty for the industry and add unpredictability to the industry's ability to manage risks. Marsh & McLennan offered its concerns that licensees and their brokers be allowed sufficient time—at least 30 to 60 days—to work with underwriters to increase policy limits and noted that doing so may be impossible if insurance market capacity is insufficient to provide increased limits at a reasonable price.

As indicated above in the discussion of comments to § 440.5, the agency is apprised of new information from time to time in the life of a license, currently a two-year renewable term for operator licenses, that affects the MPL determination. In some cases, the MPL may even be reduced on the basis of this information. It would be irresponsible to ignore changes in the risks that attend launch activities; however, the FAA intends to provide licensees a sufficient period of time in which to comply with revised insurance requirements.

Kistler objected to increasing insurance requirements mid-flight. Section 440.7(d), as proposed, was intended to allow the agency flexibility to address longer term changes in risk that would affect insurance determinations for the remaining life of a launch license. The need to do so is driven, generally, by the agency's practice of issuing licenses that cover a multitude of launches or that remain effective for a multi-year, renewable term. It was not intended to alter risk allocation arrangements between the launch participants and the Government in mid-flight by revising required levels of insurance after ignition. The agency does not agree that any change to this provision is required in the final rule.

Appendix I of the final rule contains information requirements relevant to establishing MPL. Information concerning post-flight processing operations may become unnecessary if the agency defines licensed launch activities as ending, for purposes of ground operations, upon successful lift-off of a launch vehicle. In that event, the agency would amend its requirements by removing post-flight processing operations from Appendix I.

Section 440.9—Insurance Requirements for Licensed Launch Activities

Section 440.9 presents in a regulation the requirement for launch licensees to obtain two types of insurance coverage—one for third-party liability and one for damage or loss to Government property at a Federal range facility. Section 440.9(b) requires that the third-party liability policy protect Government personnel as additional insureds. Sea Launch indicated its belief that employees of the PPLPs should also be identified as additional insureds. Lockheed Martin queried why Government personnel would be treated differently than other employees.

The agency agrees with the commenters and currently requires that all launch participant employees be protected from third-party liability. This coverage is routinely provided in liability policies that name, among the additional insureds, employees of the various launch participants acting within the scope of their employment. The CSLA singles out personnel employed by Government agencies in the statutory requirement set forth in 49 U.S.C. 70112(a)(4), and for this reason so did § 440.9(b), as proposed. The final rule is revised to require liability coverage for third-party claims against

employees of all launch participants involved in licensed launch activities.

The CSLA specifically mandates protection for the Government, its executive agencies and personnel from liability, death, bodily injury or property damage or loss as a result of a launch or operation of a launch site involving a facility or personnel of the Government. 49 U.S.C. 70112(e). Thus, the agency concludes that it is reasonable and necessary that employees of the Government be classified as both additional insureds and third parties. And, for reasons detailed above in the discussion of risk allocation, passes on similar status and benefits to employees of Government contractors and subcontractors involved in licensed launch activities. Some of the comments received point out that employees are viewed, for insurance purposes, as part of the entity that employs them and therefore it would be unusual, and not customary, to also view them as claimants against the policy. Accordingly, the approach adopted in the final rule with respect to Government personnel is the exception.

Section 440.9(c) provides that the agency will prescribe liability insurance requirements not to exceed the lesser of $500 million or the maximum available on the world market at a reasonable cost, as determined by the agency. Marsh & McLennan offered, as a caveat to this provision, that insurers of weak or questionable solvency that provide coverage at reasonable cost may not be financially able to cover claims and that care should be taken in determining what is available at reasonable cost. The agency appreciates this caution and hopes to avoid this situation by requiring that policies be placed with insurers of recognized reputation and responsibility, as provided in § 440.13(a)(8) of the final rule. A future rulemaking may be necessary to provide criteria for assessing an insurer's acceptability to the agency.

Section 440.9(d) sets forth the requirement for Government property insurance and requires coverage for property of Government contractors and subcontractors at a Federal range facility. In its comments, Lockheed Martin observed that doing so relieves the Government from the obligation to pass on to its contractors and subcontractors the waiver of claims provisions of § 440.17, as reflected in the form of agreement in Appendix II to the NPRM, and relieves those contractors and subcontractors from the obligation to assume responsibility for their property damage or loss. The comment stated that the rationale for disparate treatment of Government contractors and subcontractors as compared to PPLPs' contractors and subcontractors is unclear.

The agency's rationale for treating Government contractors and subcontractors differently than PPLPs is based on statutory language. Whereas 49 U.S.C. 70112(b)(1) directs the licensee to make a reciprocal waiver of claims with its contractors, subcontractors, and customers, and the contractors and subcontractors of its customers, involved in launch services, 49 U.S.C. 70112(b)(2) directs the Secretary of Transportation to make, for the Government, executive agencies of the Government involved in launch services, and contractors and subcontractors involved in launch services, a reciprocal waiver of claims with the licensee and other PPLPs. (Emphasis added.) This difference in language is meaningful. As stated in the NPRM, the agency views Government contractors and subcontractors as third-party beneficiaries of the reciprocal waiver agreement and the Government is responsible for protecting their interests. In addition, by waiving claims for property damage in excess of required insurance on behalf of its contractors and subcontractors, the Government accepts the additional risk of their property damage. The additional risk to the Government is managed in two ways. First, the licensee is required to obtain property insurance covering damage or loss to property of Government contractors and subcontractors involved in licensed launch activities, in addition to Government-owned property. Second, Government contractors and subcontractors must also maintain insurance for their property, the cost of which is charged to the Government as an allowable cost. In the event Government contractor property is damaged, the Government would look first to the licensee's property policy for coverage in order to relieve financial risks to the Government. The contractor's insurance would cover the second tier of risk up to policy limits. In both instances, the risk of loss above statutorily-required insurance is borne by the Government.

A technical correction is added to § 440.9(d) to more accurately reflect Government contractor and subcontractor property that must be covered under this insurance requirement as that belonging to contractors and subcontractors involved in licensed launch activities. As stated in the NPRM, other Government contractor and subcontractor property would be covered by a licensee's launch liability policy (61 FR 39000–39001).

An inadvertent omission is corrected in § 440.9(e) of the final rule by providing that the maximum amount of property insurance that would be required under this provision is the lesser of $100 million or the maximum amount available on the world market at a reasonable cost, as determined by the agency.

Two commenters, Orbital Sciences and McDonnell Douglas, objected to the agency's view that all Government property located on the Federal range facility must be covered by insurance, wherever located. The commenters viewed this requirement as excessive and offered, as an alternative, that only Government property located in the launch hazard corridor as defined by the National Range Safety Office should be covered. In clarifying remarks, McDonnell Douglas suggested that perhaps Government property outside this corridor should be self-insured by the Government and that reclassifying it as third-party property may simply shift the risk (and therefore the cost of insurance) to different insurance rather than limiting industry's risk exposure for damage to Government property. Orbital Sciences submitted supplemental comments in which it narrowed further the scope of Government property that it believes should be covered by insurance as that within the care, custody and control of the licensee. Orbital Sciences asserted that the cost of insuring other Government property, even that within the launch hazard corridor, could be prohibitive and that a requirement to insure such property does not account for differences in liability and property insurance.

The agency considered defining the specific property at a Federal range facility that must be covered by property insurance and found this approach cumbersome and unnecessarily limiting and risky for the Government. Although accident scenarios can be used to identify the property most exposed to risk, they may not cover the full range of accidents which, by definition, are unpredictable events. Also, this alternative approach would eliminate from coverage any transient property not identified by the Government in its insurance requirements but that was on the site at the time of a launch accident and therefore must be covered by insurance.

The agency's approach to assuring coverage for Government range assets exposed to risk from commercial launch activities is necessarily comprehensive. The CSLA is clear that financial responsibility and other assurances are necessary to protect the Government

from the risk of damage or loss when its property or personnel are exposed to risk from licensed activities. The agency views as significant the distinction in the CSLA between liability insurance for third-party claims and Government property insurance protection that must respond to Government claims against any person. The purpose of the Government property insurance requirement is to ensure funds are immediately available to restore valuable range assets and property damaged by a commercial launch effort. This requirement is not limited to the space launch complex within the immediate care, custody and control of the licensee. An errant launch vehicle may expose other range property to risk. For example, an Athena-2 launch from Launch Complex 46, operated by Spaceport Florida Authority under an FAA license, at CCAS exposes both Launch Complex-36A and 36B, utilized for Atlas launches, to risk of damage or loss within the MPL threshold for quantifying Government property risks. Accordingly, coverage for all range assets, as well as Government contractor property involved in a licensed launch, is consistent with CSLA objectives and risk allocation principles. Furthermore, the agency does not regard the Government's waiver of claims for excess property damage as extending beyond the Federal range facility at which a launch takes place and any adjacent or nearby range assets. As explained in the NPRM, no greater risk or cost to licensees should result from considering off-site, non-launch related Government property as equivalent to any other third-party property for purposes of liability coverage. Section 440.9(c), as revised in the final rule, makes clear that claims for such property damage or loss are covered by the licensee's launch liability policy. This provision reflects the FAA's existing practice in establishing financial responsibility requirements for third-party liability and should not be construed as requiring excess insurance for waived Government property damage claims.

The agency currently affords a fair amount of latitude to the commercial launch industry in providing coverage for Government property. For example, the agency has allowed the licensee's property policy to cover only that Government property which is in the licensee's care, custody and control, and risks to all other Government range property to be addressed through the licensee's liability policy, as long as doing so does not reduce the amount of coverage that must be available to cover third-party liability. The agency accepts this approach based on its understanding that it relieves a burden on the launch industry and conforms with certain insurance industry practices for insuring property. Also, because all launch participants are insureds, the liability policy is expected to respond to Government claims for damage or loss to range assets, regardless of fault, absent willful misconduct by the Government or its agents. The agency will continue to allow certain Government property to be addressed through the liability policy as long as doing so does not defeat the statutory objective of ensuring funds are quickly made available to restore or replace damaged Government assets. However, the agency is not willing to compromise the effectiveness or breadth of coverage it requires for Government range assets and property.

Section 440.11—Duration of Coverage

Section 440.11(a) provides that insurance coverage must attach upon commencement of licensed launch activities and remain in effect for the time period specified in the license order. The time period is intended to extend up to the point when risk to third parties and Government property is sufficiently small, as determined through the agency's risk analysis, such that insurance is no longer necessary. As proposed, § 440.11(a) would allow the agency to amend the required duration in the event of a launch anomaly to ensure that insurance remains in place until the resultant risks are considered to be sufficiently small. As explained in the section-by-section analysis of the NPRM, the period of time required for orbital launch insurance is typically 30 days measured generally from payload insertion. Thirty days is considered to be sufficient time to assess the possible consequences of a launch anomaly, such as delivery to a wrong orbit or failure of a payload to separate from the vehicle's second stage such that reentry is likely, and determine whether extended insurance coverage appears to be necessary.

The agency's current practice is to require that insurance remain in place for 30 days following flight of the launch vehicle. As explained in the NPRM, the agency has viewed 30 days as an appropriate length of time in which to determine whether an anomalous situation has occurred, the consequences of which are yet unknown. The agency also has taken the position in the past that in the event such a situation arises, the agency can require the licensee to maintain its insurance for more than 30 days, until risks to third parties or the Government can be determined to be sufficiently small such that insurance is no longer needed. This approach was utilized early in the agency's licensing program when an Intelsat payload failed to separate from the second stage of a Titan launch vehicle. The agency considered that the second stage and payload would reenter the earth's atmosphere, with the possibility of reentry impacts and resultant damage, and advised the licensee that if reentry did not occur within the 30-day period specified in the license for insurance duration, the agency would require the licensee to extend its policy coverage. (This eventuality was considered by the agency in assessing MPL. At issue was the required duration of insurance, not the sufficiency of amount.) The agency's authority to dictate this extension and the licensee's ability to respond were never tested because reentry took place within three weeks of the launch event.

Lockheed Martin, Orbital Sciences, and McDonnell Douglas objected to the proposal that would allow the agency to extend the required duration of insurance coverage in the event of a launch anomaly. All three licensees stated that this requirement was not in conformance with insurance practices and would be difficult and costly, if not impossible, to fulfill. McDonnell Douglas objected on the grounds that doing so places unrealistic and open-ended liability on the commercial launch industry and therefore undermines the National Space Policy and CSLA goals of promoting the growth and international competitiveness of the industry. Lockheed Martin pointed to this proposal as a clear instance of the Government's efforts to reallocate risks from the Government to the licensee. Lockheed Martin opined that if risk analysis is the basis for the agency's determination of the appropriate duration of insurance, then the anomaly should be viewed as foreseeable and addressed in the MPL analysis and determination. In the event the anomaly was so improbable that it would not be a factor in determining MPL, under the CSLA the Government assumes the risk either by waiving property damage claims or providing indemnification for third-party losses. Marsh & McLennan cautioned that uncertainties in the insurance market make it difficult to know whether coverage available and provided one year will be available the next and these market factors should be taken into account in determining the required duration of insurance requirements.

Based on these comments, the agency has reconsidered its views on the appropriate duration of insurance coverage, keeping in mind that Arianespace provides customers with a 3-year indemnification for liability. The difficulty in establishing appropriate time limits on insurance stems from the statutory language and the Government's continuing prospect of fault-based liability under the Outer Space Treaties long after the launch is concluded. The Government's exposure under the Liability Convention, in particular, suggests that insurance should be required to remain in place for as long a time as practicable. However, absent the *quid pro quo* notion underlying the allocation of risk provisions of the CSLA, that is, if there will be no Government payment of excess claims (or ''indemnification'') for damage not proximately caused by the launch event, the agency would feel reluctant in requiring long-term insurance.

In reevaluating its position on the appropriate duration of insurance, the agency considered an event test, a time test, and a combination of the two.

Under an event test, the duration of insurance coverage could be tied to a specific event for a nominal launch, such as payload separation or safing of the vehicle's upper stage, as explained in the NPRM. However, if an anomalous event occurred, it would be difficult to identify a particular point in time at which insurance coverage could terminate. Forecasting a range of anomalous on-orbit scenarios could be extremely time-consuming, yield great uncertainty and result in extremely long timeframes (up to hundreds of years, perhaps) associated with measurable risk.

Alternatively, a time test could be fashioned to capture only near-term anomalous events that could result in third-party losses or damage to Government property, such as anomalous payload delivery or separation that results in an unplanned reentry or collision. However, it could also result in an extremely long-term insurance requirement because anomalous situations could result in adverse conditions remaining long after launch vehicle flight is concluded. These situations are difficult to predict, because the space environment is constantly changing with additional placement of objects on orbit and the effects of orbital decay.

The agency has determined that a combination of event and time tests should be utilized in setting the required duration of insurance for licensed launch activities. The result is similar to the current requirement of the agency that insurance remain in place for 30 days following launch, measured generally from the time of payload separation. However, the revised requirement in the final rule limits the duration of insurance to 30 days following launch and removes the agency's discretion to impose extended insurance requirements on licensees during the 30-day period.

Accordingly, for risks associated with orbital launches, the agency believes the appropriate insurance duration is 30 days following launch, measured from payload separation for nominal launches or attempted separation in the event an anomaly results in unsuccessful payload separation. For other launch anomalies or failures, the 30-day requirement runs from initiation of launch vehicle flight. For suborbital launches, insurance duration is at least through motor impact and payload recovery; however, the agency may prescribe a different duration in a license order depending upon the results of its risk analysis. Suborbital launches may, in the foreseeable future, include reusable launch vehicle activities that must be evaluated on a case-by-case basis. The agency reserves discretion to conclude that a different duration of required insurance is appropriate for such activities based on its case-by-case evaluation of suborbital reusable launch vehicle missions and their attendant risks.

For purposes of ground operations the licensee is required to maintain insurance at all times during occupancy of a Federal range facility under a launch license.

Despite limitations on the duration of required insurance, the space industry should be cognizant of its liability in the event its space object damages another on-orbit space object or reenters at any time, and manage risks appropriately. The industry should also be aware of views previously expressed by congressional staff that a sufficient causal nexus does not exist between a launch and a planned payload reentry that causes third-party damage or loss to invoke the Government's responsibilities under 49 U.S.C. 70113.

In the NPRM, the agency requested views on the appropriate causal nexus that must exist between a launch event and a third-party claim in order for the payment of excess claims provisions of the CSLA to be applicable. Under 49 U.S.C. 70113(a), the Government provides for the payment of successful claims against a launch participant ''*resulting from* an activity carried out under the license.* * *'' (emphasis added) As pointed out in the Supplementary Information accompanying the NPRM, the Government's responsibilities under 49 U.S.C. 70113 apply from the first dollar of loss when the licensee is no longer required to maintain insurance under the license if the claim results from the licensed activity. However, events associated with a launch may result in damage years after the launch is concluded and it is not clear at what point events become too attenuated from the launch to be considered eligible for consideration under 49 U.S.C. 70113.

Only Sea Launch responded and questioned the wisdom or practicality of attempting to characterize this nexus beyond the statutory language of ''resulting from an activity carried out under the license.'' In doing so, the comment noted that a proximate cause analysis would be required and would depend on the unique facts of the situation. The agency agrees that determining eligibility for payment of excess third-party claims is necessarily a fact-based inquiry and will depend on the particular circumstances giving rise to the claim and does not propose to issue rules of general applicability to determine eligibility requirements.

Section 440.11(b) provides that financial responsibility shall not expire by its own terms prior to the time specified in a license order. Many licenses are issued for a multi-year period and may be renewed upon application of the licensee; however, the agency understands that certificates evidencing insurance coverage are typically valid for one year. This has not been a problem as long as evidence of policy renewal is provided to the agency sufficiently in advance of the certificate expiration date to allow the agency ample review time. Accordingly, the final rule is revised to provide that a renewal certificate must be provided at least 30 days in advance of the expiration date of the current certificate. A licensee may petition the agency for a waiver or extension of this or any time requirement in the final rule if it is unable to comply.

Environmental and Clean-Up Costs

The agency's current practice of determining maximum probable loss from claims resulting from licensed launch activities does not include assessment of the environmental consequences associated with licensed launch activities. These risks are difficult to quantify and, to the extent coverage is not available, assigning a dollar value to these risks could increase required amounts of insurance without assuring coverage.

As part of the NPRM discussion on the appropriate duration of required insurance, the agency requested comments on a number of related issues having to do with environmental consequences of launch activities. First, to what extent should insurance be required to compensate claims of third parties and the Government for short-term, or immediate, environmental damage or, alternatively, whether the costs of cleaning up hazardous waste or removing this type of damage should be paid by the launch licensee to the Government as part of launch services which are charged as a direct cost under the CSLA. Second, to what extent should insurance be required to protect against claims for long-term environmental or property damage. As part of this request for views, the agency asked commenters to address the implications on MPL determinations of requiring insurance coverage for these potential claims and the adequacy of existing insurance ceilings under the CSLA ($100 million for Government property coverage and $500 million for third-party liability insurance, or the maximum available on the world market at a reasonable cost if insurance up to those amounts is not available). Third, whether and to what extent insurance to protect against property damage resulting from orbital debris long after the launch is completed should be required. The damage contemplated by the question could be to other on orbit or airborne objects or to property on the ground in the event of reentering debris.

Only Lockheed Martin offered a view with respect to the immediate environmental consequences associated with a launch event. Lockheed Martin indicated that this type of immediate consequence should not be treated as a matter for ''direct cost'' charges to the launch licensee, but should be addressed in terms of an appropriate allocation of financial responsibility for the risk.

In clarifying its view, Lockheed Martin distinguished between environmental consequences and the usual activities involved in readying a launch pad or complex for future use. Typically, Lockheed Martin would clean up the launch complex from which its launch has taken place in anticipation of the next launch campaign. For example, it would remove any ground debris and restore the complex to its prior condition, as required under the terms of its agreement with the Federal range facility. If it failed to do so, the Federal range could provide this service and under these circumstances could charge the direct cost of doing so.

Lockheed Martin pointed to the legislative history accompanying the 1988 Amendments to the CSLA which lists the types of Government support that were envisioned to be provided under direct costing principles as: operations and maintenance services and range support costs. Operations and maintenance services include facilities engineering support, vehicle and equipment support, launch complex support, power system support, and roads and ground support. Range support costs include logistics, ordinance support, radar support, communications support, tracking support, documentation, fire services, range safety, work control (administration), security services and meteorological services. S. Rep. 100–593, 100th Cong., 2d Sess., at p. 24. It appears that launch complex maintenance and range services are appropriate for direct cost charging. In the commenter's view, the notion of environmental damage falls outside these categories and was not intended to be subject to the direct cost pricing provisions of the CSLA for launch property and services provided by the Government to the private sector.

Lockheed Martin indicated that the consequences of a particular launch, like any other damage, should be part of the financial responsibility and risk allocation scheme provided in the CSLA. However, Lockheed Martin's comments further indicated that the issue of how to allocate financial responsibility for risks associated with environmental damage, both short-term and long-term, is extremely complex and merits further study and analysis before the agency proceeds to rulemaking.

McDonnell Douglas noted that long-term environmental damage insurance is generally unavailable, and to the extent it is obtainable would be narrow and limited in coverage, not to mention cost prohibitive. McDonnell Douglas felt strongly that claims of this nature should not be included in the MPL determination for a licensed launch activity.

The issue of environmental damage before the agency in this rulemaking can be reframed as follows: whether the consequences of a launch event to which CSLA-based insurance and waivers of claims are intended to apply should be limited to immediate impacts and destructive risks, such as collision of a launch vehicle with ground, airborne or space objects or the consequences of explosion. (Even an explosion or collision could result in the types of short-term environmental consequences under consideration.) By short-term or immediate risks, the agency intends to refer generally to the sudden, immediate, and identifiable and foreseeable, though unintended, consequences of a launch. These consequences could include fuel spills, toxic release, and ground contamination resulting from a particular launch. Whether or not insurance coverage is available for these risks, they are comprehended by the terms ''bodily injury'' and ''property damage'' for which the CSLA requires insurance and they are reasonably intended to be addressed by CSLA financial responsibility and risk allocation provisions. This is also consistent with an early Air Force commercialization agreement which defines ''damage'' as including ''that caused by a release of or exposure to a hazardous substance, as that term is defined in [CERCLA]'' and the current Air Force definition of ''damage.'' These risks are properly addressed through the CSLA and should be comprehended by the statute's risk allocation scheme. A future rulemaking may be necessary to better define the types of immediate environmental consequences intended to be included under the CSLA scheme for risk management.

The agency views long-term environmental consequences, sometimes referred to as long-tail liability, as more problematic for a number of reasons. First, it would be difficult to prove that liability attaches to a particular launch event. It is probably impossible to ascertain whether damage results from a government or commercial launch when the same vehicles are used for both purposes, and perhaps an apportionment theory would be required. There is no indication that CSLA risk allocation mechanisms, with ceilings on insurance and statutory references to claims resulting from a particular launch, were intended to address long-term environmental consequences. Similarly, there is no indication that the so-called indemnification provisions of the CSLA were intended to cover claims other than those directly and proximately associated with a particular launch event. Accordingly, the agency takes the position that the consequences of a licensed launch that are reasonably foreseeable and proximately caused by a particular launch are covered by CSLA financial responsibility and risk allocation. Long-term environmental consequences would not qualify for coverage under this characterization and, accordingly, the FAA concludes that their associated risks are not

intended to be addressed through CSLA risk-based insurance requirements and risk allocation.

Section 440.13—Standard Conditions of Insurance Coverage

Section 440.13 provides the terms and conditions applicable to insurance policies licensees must obtain under existing licenses and the proposed regulations.

Marsh & McLennan requested clarification of the requirement in § 440.13(a)(2) that policy limits apply separately to each occurrence and to the total claims arising out of licensed launch activities in connection with any particular launch. The per-occurrence limit applies to the total of all claims arising from the same occurrence, and not for each claimant per occurrence, and this is made clear in § 440.13(a)(6). It provides that all policy provisions, except the policy limits, must operate as if there were a separate policy with and covering the licensee and each additional insured. To remove any doubt, the final rule is revised to clarify that the policy limits apply for each occurrence and that for each occurrence the limits apply to the total of claims that arise out of licensed launch activities in connection with any particular launch.

The three current launch licensees, Lockheed Martin, Orbital Sciences and McDonnell Douglas, cautioned that two of the required terms, breach of warranty coverage and a severability of interest clause are available under current conditions in the insurance market but may not be in the future. In clarifying remarks, one commenter indicated that a licensee's ability to obtain the required coverage may become an issue if coverage not currently provided, such as for claims of Government personnel, is required. Licensees may request a waiver of these terms or petition for rulemaking in the future if market conditions make it impossible to comply with them.

Section 440.15—Demonstration of Compliance

Section 440.15(a)(1) of the final rule continues the agency's current practice of requiring that licensees submit an executed reciprocal waiver of claims agreement at least 30 days before commencement of licensed launch activities involving the customer(s) that is required to sign the agreement. This requirement appears in all currently effective financial responsibility license orders. Under this final rule, the term ''licensed launch activities'' would be defined in a launch license; however, the agency is in the process of standardizing the definition of ''launch'' in a related rulemaking addressing launch licensing requirements and standards.

A question arises as to whether the agreement must be submitted before commencement of any licensed launch activities or whether timing of its submission should be tied to arrival of the customer's payload. Presumably, the customer would not have significant property at risk before arrival of its payload and therefore does not need to waive claims for damage or loss to its property until that event. However, as between the launch licensee and the Government, and the respective contractors and subcontractors of each, the agency views with concern the risk to which each participant is exposed in the event of damage to its property or injury to personnel in the absence of an executed waiver of claims agreement. Moreover, taken literally, until the Government executes the reciprocal waiver of claims agreement with the licensee and customer, the Government has not waived claims in excess of required Government property insurance for damage or loss to its property and PPLPs could face liability exposure for excess claims by the Government or its contractors and subcontractors.

To avoid these unnecessary risks, the time requirement set forth in the final rule for submission of a reciprocal waiver agreement signed by the licensee and its customer is 30 days before the licensee intends to commence licensed launch activities involving that customer. Generally speaking, commencement of licensed launch activities involving a particular customer should coincide with arrival of the launch vehicle or its major components at the launch site. The agency is not aware of circumstances in which a launch services provider engages in a launch campaign, consisting of such hazardous activities as erecting the launch vehicle or processing vehicle components at the launch site, without a customer under contract for the launch event. However, because outstanding operator licenses utilize the agency's gate-to-gate approach to licensing commercial space launch activities, it is foreseeable that a launch vehicle operator will occupy a launch site under an FAA license before arrival of the launch vehicle and may perform preparatory activities other than vehicle processing. Because these activities are not typically ultra-hazardous in nature, the agency views their associated risks as limited in nature and therefore manageable without the benefit of the completed statutory risk allocation scheme dictated by the CSLA. The agency will not require that a reciprocal waiver of claims agreement be submitted 30 days prior to the licensee's occupancy at the site, but rather, 30 days before it intends to commence licensed launch activities involving a particular customer.

Early submission of the agreement allows the agency sufficient time to complete its review, resolve any outstanding concerns surrounding a licensee's demonstration of financial responsibility, and fulfill the Government's responsibility to waive claims on behalf of its agencies and contractors and subcontractors involved in launch services. Issues may arise that require modification of an agreement to accommodate a Government agency customer, a reluctant customer, participation of multiple customers in the inter-party waiver scheme, or a licensee's request to modify the standard form of agreement that accompanies a launch license. On occasion, resolution of a party's concerns delays execution and submission of the agreement by the licensee or the agency's ability to complete execution of the agreement on behalf of the U.S. Government during the 30-day period preceding commencement of licensed launch activities involving a particular customer. The agency has demonstrated its willingness to work with licensees and customers to address their unique concerns. However, in the absence of an executed reciprocal waiver of claims agreement, launch participants may be assuming risks that are intended to be allocated through the reciprocal waiver scheme dictated by 49 U.S.C. 70112(b).

To avoid this result and ensure that launch participants remain mindful of the time constraints imposed by these regulations and in license orders, the agency intends to enforce compliance with the time requirements codified in § 440.15 of the final rule, absent good cause shown for waiving or extending them. Enforcement of these requirements may be accomplished through the imposition of civil penalties in accordance with the CSLA or suspension of the authorization granted in a launch license to perform licensed activities. Licensees are urged to keep the agency informed, in writing, of foreseeable difficulties in meeting these regulatory requirements so that the agency may determine whether an extension of the deadline for submission of an agreement is warranted. Of course, once the agreement is executed by all three parties, licensees need not wait an additional 30 days before commencing

licensed launch activities involving a particular customer.

Evidence of insurance would be required at least 30 days before commencement of any licensed launch activities, and additional time is required if a form of financial responsibility other than insurance is used. The agency's experience has been that most licensees are able to comply with these time constraints and all have been extremely responsive to agency questions and concerns regarding evidence of insurance.

Proposed § 440.15 contains additional requirements for licensees in demonstrating compliance with financial responsibility requirements from those currently required in license orders. Specifically, the proposed regulations would require a signed opinion of the insurer stating that the insurance obtained by the licensee complies with regulatory requirements and license orders concerning insurance. The three launch services providers licensed by the agency, Lockheed Martin, Orbital Sciences, and McDonnell Douglas, objected to this requirement and stated that it would be difficult to obtain an insurer's opinion. Marsh & McLennan also asserted that insurers will not agree to provide an opinion letter because it could impose additional obligations on the insurers that are above and beyond the terms and conditions of policies. They prefer to provide certificates of insurance and let the certificates speak for themselves. Orbital Sciences and McDonnell Douglas suggested that requiring an opinion of the insurance broker should suffice.

The agency will accede to the commenters' suggestion that a signed opinion of the insurance broker accompanying insurance certificates will be sufficient under the regulations. The agency's current practice is to accept insurance certificates in lieu of policies as evidence of compliance with insurance requirements. Doing so relieves a burden on licensees to supply policies in advance of licensed launch activities and we understand that complete policies may not be available for agency review sufficiently in advance of licensed launch activities even though the required coverage is in place. This practice also relieves the agency of the burden of reviewing policies.

The agency continues to be satisfied with this approach but stresses the caveat stated in license orders and reflected in these regulations that demonstration of financial responsibility does not relieve the licensee of ultimate responsibility for liability, loss or damage sustained by the United States. The agency may need to reconsider its position if there is any indication that the coverages and exclusions are not sufficiently detailed in insurance certificates to assure the agency of the adequacy of licensees' compliance.

Section 440.17—Reciprocal waiver of claims requirement and Appendix II

Comments received on § 440.17 and the proposed form of waiver of claims agreement presented in Appendix II to the NPRM concern the third-party status accorded to Government personnel in the NPRM and the proposed method by which the Government waives claims for its contractors and subcontractors. Most of these comments have already been addressed and resolved by clarifying that, for purposes of establishing liability insurance requirements, employees of the Government and its contractors and subcontractors are considered third parties. Employees of all other launch participants are the responsibility of their employing entity. Through the reciprocal agreement required under this section, PPLPs agree to be responsible for their employees' losses and property damage. The agreement to be responsible for losses suffered by an employee amounts to a contractual obligation to hold harmless and indemnify other launch participants against whom an employee has made a claim and this obligation is now expressly stated in the form of agreement presented at Appendix II of the final rule. According to the comments received, insurance is available to cover this contractual obligation.

Additional comments on the requirements of § 440.17 and the proposed form of agreement are discussed below.

Sea Launch suggested that launch participants should be required to waive claims against employees of the other launch participants. The agency agrees in principle with this comment because claims by PPLPs against employees would amount to an attempt to circumvent the inter-party waiver of claims. The reciprocal waiver of claims agreement currently in use requires that a signatory to the agreement hold harmless and indemnify employees of the other signatories to the agreement from and against liability for claims against them by its contractors and subcontractors and the form of agreement that appears at Appendix II to the final rule continues this practice, absent willful misconduct by the individual employee. Therefore, claims against individual employees should be effectively precluded by the waiver of claims agreement, absent the employee's willful misconduct, and further changes to the rule are not necessary to address Sea Launch's suggestion.

Intelsat, a public international organization which owns and operates a global commercial telecommunications network for its members and users, objected to the requirement that parties waive claims ''regardless of fault.'' This language appears in the Agreement currently used by the agency and in the proposed form of agreement set forth in Appendix II to the NPRM to carry out the no-fault reciprocal waiver scheme. Intelsat objected that the language could relieve or insulate a party from its own gross negligence and that the CSLA and its legislative history do not support such an expansive view of the waiver requirement. The comment cites the Fourth Circuit's holding in *Martin Marietta Corporation* v. *International Telecommunications Satellite Organization*, 978 F.2d 140 (4th Cir. 1992); *op. amended*, 991 F.2d 94 (1993), for support of its position. Moreover, Intelsat argued that there is no basis either in the CSLA or its legislative history to support waiving claims regardless of fault, presumably even if that phrase is limited to negligence-based claims.

The agency is troubled by the comment and for the following reasons has determined to retain the ''regardless of fault'' language in the final rule. The FAA understands that the intent of the reciprocal waiver of claims requirement is to relieve launch participants of the threat of inter-party claims for damage or loss. If the waiver of claims did not apply to fault-based claims, and assuming it is not intended to relieve parties of contractual rights and responsibilities for which they have bargained in good faith, then the waiver would be of very little use. The only exception indicated to the statutory risk allocation scheme is for willful misconduct in that the Secretary is not required to provide for payment of excess third-party claims which result from willful misconduct by the licensee and the Government is not relieved of liability under 49 U.S.C. 70112(e) for damage or losses resulting from the Government's willful misconduct or that of its agents.

The Fourth Circuit opinion is not fully dispositive in the agency's opinion. The dispute before the court involved a waiver provision in a launch services contract that pre-dated the 1988 Amendments to the CSLA. The court held that under Maryland state law, parties to a contract cannot waive

liability for gross negligence. The court further opined that even if the 1988 Amendments could apply retroactively to the contract, neither the statutory language nor its legislative history evidences Congressional intent to protect parties from liability for their own gross negligence. 991 F.2d at 100. The Fourth Circuit addressed the issue because the district court, in dismissing a counterclaim alleging gross negligence, had interpreted the waiver of claims requirement of the CSLA as evidence of the intent of the contractual waiver provision. *Martin Marietta Corporation* v. *International Telecommunications Satellite Organization*, 763 F. Supp. 1327 (D. Md. 1991). The Fourth Circuit reversed the district court's holding on the gross negligence counterclaim and remanded it to the district court. A settlement was reached in the latter half of 1993.

Careful examination of the Fourth Circuit's reasoning reveals the following. In construing Maryland state law, the Fourth Circuit relied upon *Boucher* v. *Riner*, 68 Md. App. 539, 514 A.2d 485 (Md. Ct. Spec. App. 1986), which held that a waiver of a right to sue is ineffective to shift the risk of a party's own *willful*, wanton, reckless, or *gross* conduct. 514 A.2d at 488. (Emphasis added.) It appears from the court's holding that Maryland may be among those states that tend to blur the distinction between gross negligence and willful misconduct.

The Court of Appeals for the District of Columbia defines the standard for finding willful misconduct differently than that for gross negligence. To prove willful misconduct, there must be a showing of intent, that is, that an act was intentionally performed with the knowledge that it was likely to result in injury, or with reckless and wanton disregard of the probable consequences of the act. *Saba* v. *Compagnie Nationale Air France*, 78 F.3d 664, 316 U.S. App. D.C. 303 (D.C. Cir. 1996). In *Saba*, the court described a ''continuum that runs from simple negligence through gross negligence to intentional misconduct. Recklessness, or reckless disregard, lies between gross negligence and intentional harm,'' *78 F.3d at 668*. According to the court's opinion, willful misconduct and reckless disregard are equivalent in that reckless disregard evidences the subjective knowledge of the likely consequences of an act and thereby fulfills the requirement to show the requisite intent.

The issue before the court in *Saba* was whether the facts presented amounted to willful misconduct, thereby avoiding the limitation of liability provisions of the Warsaw Convention. In maintaining a higher standard for willful misconduct than for negligence, gross or otherwise, the court stated:

> It is not all that easy to avoid the Convention's limitations by establishing willful misconduct (or reckless disregard). But the signatories obviously thought the economics of air travel, and therefore the overall welfare of passengers, dictated those limitations. It simply will not do for courts to chip away at that liability limit out of a natural desire to remedy the negligence that can be all too apparent in any individual case.

78 F.3d at 671.

Jurisdictions that equate the standard for gross negligence with that of willful misconduct could effectively undo the congressional intent underlying the reciprocal waiver of claims requirement and thereby have more far reaching consequences on the economics of launch services than Congress intended in enacting the comprehensive risk allocation provisions of the 1988 Amendments.

That said, the question before the agency is whether it has the authority to resolve, as a matter of federal law, whether claims between a launch licensee and its customer for gross negligence are necessarily removed from the statutory inter-party waiver scheme when Congress has indicated its intended purpose is to limit the total universe of claims that might arise as a result of a launch and maximize the coverage of available insurance resources by avoiding the costs of duplicate litigation between the parties. S. Rep. No. 100–593, 100th Cong., 2d Sess. 14 (1988). The FAA declines to presume this authority.

Under the agency's current implementation of the statutory-based risk allocation scheme, the only exclusion expressly provided is for willful misconduct and this is consistent with views recently expressed by the Air Force in revising its commercialization agreement. Absent legislative clarification otherwise, and for the reasons expressed in the NPRM of July 25, 1996 (61 FR 39013), the final rule retains the regardless of fault language.

Two commenters, Orbital Sciences and McDonnell Douglas, objected to the proposed form of agreement for waiver of claims in Appendix II to the NPRM in that it does not contain a provision requiring the Government to flow down, or extend, the waiver provisions to its contractors and subcontractors. The comment overlooks that the definition of ''United States Government'' in the proposed form of agreement includes Government contractors and subcontractors; hence there would be no need to flow down the waiver requirement. In this regard, the NPRM proposed a deviation from the agency's current practice. The form of reciprocal waiver agreement presented in Appendix II of the final rule reverts to the approach used in current practice whereby the FAA signs on behalf of the United States and its agencies involved in licensed launch activities and agrees to pass to its contractors and subcontractors the limited agreement and assumption of responsibility assumed by the Government in the reciprocal waiver agreement.

Lockheed Martin expressed concern with the qualifying language appearing in § 440.17(d) of the NPRM and reflected in paragraph 5(c) of the proposed form of agreement in Appendix II as to the need for additional legislation to support the indemnification agreement by the Government to other launch participants for failure to implement properly the waiver requirement.

The CSLA directs the Government to waive claims in excess of Government property insurance on behalf of its contractors and subcontractors involved in launch services. In the agency's view, the effect of this waiver requirement is to make the Government responsible for the excess property damage claims of those contractors and subcontractors. Therefore, even if the Government fails to flow down the waiver of claims and assumption of responsibility provisions of the agreement to its contractors and subcontractors, PPLPs will be financially protected from Government contractor and subcontractor property damage claims. In addition, by entering into the reciprocal waiver agreement for its contractors and subcontractors, the Government takes on responsibility to cover losses sustained by employees of the Government's contractors and subcontractors that are not covered by the licensee's liability policy because they exceed the required amount of insurance or are subject to a policy exclusion deemed usual for that type of insurance. Although appropriations must be authorized for this purpose, the CSLA effectively obligates Congress to act to appropriate funds for this express purpose. The form of agreement that appears in Appendix II of this final rule reflects at paragraph 5(c) the hold harmless and indemnification obligation of the United States for claims of its contractors and subcontractors against PPLPs for property damage or loss and responsibility for their employees' losses in excess of required levels of insurance, respectively.

McDonnell Douglas and Orbital Sciences further noted that the proposed form of reciprocal waiver of claims agreement restricts the Government's waiver to property damage claims, whereas the Agreement currently in use refers also to claims of Government employees. The agency's rationale for removing reference to employee claims from the proposed form of agreement presented in the NPRM was that their third-party status removed the need for the Government to accept responsibility for their claims. Upon reconsideration, the FAA has restored to the form of agreement the Government's acceptance of responsibility for uncovered claims of its employees against the other launch participants.

Orbital Sciences, in clarifying remarks, indicated that the approach utilized in the NPRM is particularly awkward where the same entity is both a contractor to the Government and to the launch licensee. The agency agrees and acknowledges that the ability of various entities to wear different hats, including the Government when it is both range services provider and launch customer, complicates the reciprocal waiver of claims scheme even further. In the agency's view, the capacity in which a party was functioning when the claim arose will determine the rights and responsibilities of the various parties to the waiver agreement.

In discussions unrelated to this rulemaking, the agency has been asked whether cross-waivers of claims are required between a licensee or customer and its contractors and subcontractors given that the form of reciprocal waiver agreement currently in use does not appear to require them. The CSLA intends for parties to enter into such agreements with their contractors and subcontractors and this requirement appears in § 440.17(b) of the final rule. However, the FAA leaves it to those entities to carry out the requirement as part of their contract negotiations. As a regulatory matter, the FAA has been primarily concerned with ensuring that parties not otherwise in contractual privity with a licensee or customer are protected from claims by those entities and their contractors and subcontractors. Accordingly, the form of agreement in Appendix II of the final rule does not address waivers between a licensee or customer with its respective contractors and subcontractors.

Finally, reference to the special circumstances of a Government agency customer is removed from § 440.17(c) of the final rule. As indicated previously in the Supplementary Information, necessary modifications to the form of reciprocal waiver of claims agreement utilized when a Government agency is a customer of commercial launch services will be addressed on an individual basis.

Section 440.19—United States Payment of Excess Third-Party Liability Claims

Section 440.19 of the final rule provides in a regulation general procedures for implementing the statutory payment of excess claims provisions of 49 U.S.C. 70113. The issue that generated the most comments on this proposed section of the regulations concerns the determination of ''usual'' exclusions. Where an exclusion is considered usual for the type of insurance involved, the Secretary may provide for paying uncovered third-party claims from the first dollar of loss and will likewise waive claims for Government property damage from the first dollar of loss. In the section-by-section analysis of the NPRM, the agency explained that it does not make a final determination on what may be considered a usual exclusion upon submission of insurance certificates in advance of licensed launch activities. This determination would be made if and when the agency is required to prepare a compensation plan to cover excluded claims. The NPRM proposed a reasonable cost standard for determining whether an exclusion may be deemed ''usual.''

Lockheed Martin, McDonnell Douglas and Orbital Sciences, as well as Sea Launch objected to the after-the-fact approach the agency utilizes in making the determination as to whether an exclusion is usual for the type of insurance, stating that the Government has an obligation to do so in advance of licensed launch activities in order to afford licensees some measure of certainty and predictability in their management of launch risks. Marsh & McLennan similarly stated that the government should not wait for a loss to occur before making its determination and should do so before commencement of launch activities. Lockheed Martin, McDonnell Douglas and Orbital Sciences objected to using a reasonable cost standard for determining whether insurance could have been provided to cover the excluded risk. The notion of ''buying out'' an exclusion is viewed by these commenters as objectionable because of the unpredictability and fluctuation of the insurance market. This approach does not comport with the CSLA, according to the commenters, which is intended to promote a predictable and stable environment in which the commercial launch industry can operate.

The agency is troubled by the suggestion implicit in the commenters' views that the proposed requirement imposes additional burdens and uncertainty on the industry and that the Government should accept both this burden and uncertainty. As a practical matter, the industry is, or ought to be, in the best position to know whether insurance coverage is available to address the risks that attend its hazardous business. It is not unreasonable for the Government to expect the industry, as part of prudent risk management practices, to keep abreast of the insurance market, its capacity and the availability of insurance to cover the risks that confront this industry.

When a launch licensee submits an insurance certificate evidencing various exclusions, in essence, the licensee is representing to the agency that the exclusion is usual for that type of insurance under prevailing market conditions, otherwise coverage for that risk would have been obtained. If the industry wants to obtain a formal finding from the agency it can submit factual data, such as cost information and market data, in support of an assertion that an exclusion should be deemed usual either because the coverage simply is not available or because it is cost prohibitive. Absent such proofs, the agency should not be required to insure or guarantee the industry's representation that insurance is not available at reasonable cost. The agency is considering whether a future rulemaking to better define ''usual'' exclusions would be desirable but is reluctant to effectively waive insurance coverage for certain risks thereby foreclosing the development of new insurance markets that might respond to those risks.

The agency also wishes to stress that it currently does not make findings that an exclusion is usual upon submission of insurance certificates in advance of licensed launch activities even though the agency does question, and may request correction of, representations that do not appear to comply with license order requirements. Acceptance by the agency of a licensee's insurance certificate does not signify a finding by the agency as to the sufficiency of the coverage.

Consistent with naming employees of PPLPs as additional insureds under § 440.9(b), § 440.19(a) is revised in this final rule to reflect that excess third-party claims against an employee of any launch participant that is an additional insured under the liability policy would also be eligible for payment by the Government under 49 U.S.C. 70113,

absent willful misconduct by that employee.

Statutory Authority for This Proposed Rule

This final rule is issued pursuant to 49 U.S.C. Subtitle IX, ch. 701—Commercial Space Launch Activities, §§ 70101–70119, formerly the Commercial Space Launch Act of 1984 (CSLA), as amended (49 U.S.C. App. 2601–2623). In 1988, Congress amended the CSLA by replacing general insurance requirements with a detailed financial responsibility and allocation of risk regime for licensed operations. The provisions, referred to as the 1988 Amendments, include procedures whereby the United States Government requires risk-based insurance to compensate for third-party liability and Government property damage claims, waives certain claims for its property damage and, subject to an appropriation law or other legislative authority, agrees to provide for payment of third-party claims in excess of required liability insurance. In addition, the 1988 Amendments require launch participants to enter into reciprocal waivers of claims in which the parties agree to absorb certain losses and the private party launch participants agree to be responsible for claims of their employees for damage or loss.

The agency has been implementing the 1988 Amendments on a case-by-case basis, through license orders issued with each license authorizing commercial space launch activities. In this final rule, the agency standardizes financial responsibility requirements in rules of general applicability, wherever practicable.

Paperwork Reduction Act

Information collection requirements in the new part 440 have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), and have been assigned OMB Control # 2120–0601.

Regulatory Evaluation Summary

Issuance of Federal regulations is subject to several economic analyses. First, Executive Order 12866 directs that agencies shall propose or adopt a regulation only upon a determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget (OMB) directs agencies to assess the effect of regulatory changes on international trade. In addition, under Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 26, 1979), this rule is considered significant because there is substantial public interest in the rulemaking. The FAA certifies that this rule will not have a significant impact on a substantial number of small entities and will not constitute a barrier to international trade. The FAA invited the public to provide comments, including supporting data on the assumptions made in the draft regulatory evaluation during the comment period. All comments received were considered in the final regulatory evaluation. This rule has been reviewed by OMB under Executive Order 12866.

Economic Impacts

This final rule formalizes the procedures for implementing financial responsibility requirements imposed on commercial space launch licensees by the Commercial Space Launch Act of 1984, as amended in 1988. These requirements have essentially been implemented so this rule does not change present practice. The rule will provide launch licensees (i.e., commercial launch operators) with clear and reliable information on the financial responsibility requirements they must meet to carry out licensed activities. To provide some perspective, this evaluation estimates the financial responsibility costs on both the commercial space industry and the U.S. Government as a result of the 1988 Amendments to the CSLA.

The FAA estimates that, based in part upon an analysis by Princeton Synergetics Inc.[1] (PSI), as a consequence of the U.S. Government's assumption of exposure up to $1.5 billion (as adjusted for inflation occurring after January 1, 1989) for third-party claims, the 1988 Amendments will result in the maximum reallocation of costs from licensees to the Federal government in the range of $21,000 to $37,000 undiscounted or $18,200 to $30,300 discounted over a five-year period. The actual economic impact on a licensee is small and not quantifiable because the increase in the risk of bearing the costs of injury or loss of life to third parties due to the ''redefinition'' of Government employees is estimated to be ''de minimus'' and could not be calculated. The administrative or paperwork cost to the Federal Government associated with FAA's responsibilities under the 1988 Amendments is estimated at $884,000 undiscounted or $725,000 discounted over five years. The paperwork cost estimate is an upper bound and it is believed that the actual costs are substantially lower. Given current practice, these costs will be reduced to $606,000 undiscounted or $414,000 discounted. The additional paperwork costs incurred by the licensees in complying with the requirements for reciprocal waivers is expected to be negligible.

The final rule should result in a stronger, more stable, commercial space transportation industry. The reciprocal waiver provisions of the final rule should lower the costs of litigation among private party launch participants in licensed activities. The benefit of transferring expected costs of damage and loss or injury claims from the licensees to the government will aid the commercial space transportation industry by eliminating the need to insure for these claims and by showing support for the commercial space transportation industry by the U.S. Government. Also, limiting risk based on maximum probable loss (MPL) should result in greater certainty for potential costs (and resulting lower business risk) to commercial space transportation firms. Finally, the requirement for cross-waivers limits the risk of liability to others in licensed activities (other than the licensee) and results in a more certain business environment (or lower business risk) for these parties.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (RFA), as amended, was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The Act requires that whenever an agency publishes a general notice of proposed rulemaking, an initial regulatory flexibility analysis identifying the economic impact on small entities, and considering alternatives that may lessen those impacts must be conducted if the proposed rule would have a significant economic impact on a substantial number of small entities.

The FAA issued a notice of proposed rulemaking on July 25, 1996 (61 FR 38992) soliciting comments on its proposal for implementing financial responsibility and allocation of risk requirements. As a result, eight comments were submitted to the docket. Several events following the close of the comment period on December 2, 1996 resulted in a decision to reopen the

[1] The basis for this analysis is Contract DTOS–59–59 by Princeton Synergetics Inc. (PSI) entitled: *Economic Impact Assessment of Financial Responsibility Requirements for Licensed Launch Activities (14 CFR Part 440).* Princeton, New Jersey. March 16, 1998.

docket in order to allow industry another opportunity to offer views on the content of the proposed rule. There were no significant issues raised by public comments in response to the regulatory flexibility certification.

The FAA has estimated that an average of four launch licenses per year will be issued. The vast majority of these licenses will be issued to companies like Lockheed Martin Corporation, Orbital Sciences Corporation, McDonnell Douglas Corporation, now The Boeing Company. There are a number of firms (probably fewer than 10) that are currently attempting to enter the space launch services business by developing both advanced expendable and reusable launch vehicles. Perhaps 50 to 75 percent of these may be considered small business entities in that they are start-up situations though typically having large capitalizations. Thus, the universe of small entities that may be concerned with the provision of space launch services and that may be potentially affected by this financial responsibility rulemaking is on the order of 5 to 10.

The regulatory evaluation states that over five years, the change in the expected cost of claims to licensees will be a cost savings of between $21,000 and $37,000 or between $17,200 and $30,300 discounted. The annualized cost savings to all of these firms will be between $4,200 and $7,400. If four licenses are issued annually, then the annualized cost savings per license would be less than $2,000 per license. As previously stated, the final rule results from the financial responsibility requirements imposed by the Commercial Space Launch Act of 1984, as amended. This final rule formalizes current practice. The FAA concludes that this regulation will impose little or no cost or cost savings on this industry, and certifies that it will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

This final rule is not expected to have any impact on trade opportunities for U.S. firms doing business overseas or foreign firms doing business in the United States.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed ''significant intergovernmental mandate.'' A ''significant intergovernmental mandate'' under the Act is any provision in a Federal agency regulation that will impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This final rule does not contain a Federal intergovernmental or private sector mandate that exceeds $100 million a year. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Federalism Implications

This final regulation would not have substantial direct effects on the states, on the relationship between the Federal 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 regulation does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 14 CFR Part 440

Armed forces, Federal buildings and facilities, Government property, Indemnity payments, Insurance, Reporting and recordkeeping requirements, Space transportation and exploration.

The Amendment

In consideration of the foregoing, the Associate Administrator for Commercial Space Transportation, Federal Aviation Administration amends the Commercial Space Transportation Licensing Regulations, 14 CFR Ch. III, as follows:

1. Subchapter C of Chapter III, Title 14, Code of Federal Regulations, is amended by adding a new Part 440 to read as follows:

PART 440—FINANCIAL RESPONSIBILITY

Subpart A—Financial Responsibility for Licensed Launch Activities

Sec.
440.1 Scope of part.
440.3 Definitions.
440.5 General.
440.7 Determination of maximum probable loss.
440.9 Insurance requirements for licensed launch activities.
440.11 Duration of coverage; Modifications.
440.13 Standard conditions of insurance coverage.
440.15 Demonstration of compliance.
440.17 Reciprocal waiver of claims requirement.
440.19 United States payment of excess third-party liability claims.
Appendix A to Part 440—Information requirements for obtaining a maximum probable loss determination for licensed launch activities
Appendix B to Part 440—Assignment for waiver of claims and assumption of responsibility

Authority: 49 U.S.C. 70101–70119; 49 CFR 1.47.

§ 440.1 Scope of part.

This part sets forth financial responsibility and allocation of risk requirements applicable to commercial space launch activities that are authorized to be conducted under a launch license issued pursuant to this subchapter.

§ 440.3 Definitions.

(a) For purposes of this part—

(1) *Bodily injury* means physical injury, sickness, disease, disability, shock, mental anguish, or mental injury sustained by any person, including death.

(2) *Contractors and subcontractors* means those entities that are involved at any tier, directly or indirectly, in licensed launch activities, and includes suppliers of property and services, and the component manufacturers of a launch vehicle or payload.

(3) *Customer* means the person who procures launch services from the licensee, any person to whom the customer has sold, leased, assigned, or otherwise transferred its rights in the payload (or any part thereof) to be launched by the licensee, including a conditional sale, lease, assignment, or transfer of rights, any person who has placed property on board the payload for launch or payload services, and any person to whom the customer has

transferred its rights to the launch services.

(4) *Federal range facility* means a Government-owned installation at which launches take place.

(5) *Financial responsibility* means statutorily required financial ability to satisfy liability as required under 49 U.S.C. 70101–70119.

(6) *Government personnel* means employees of the United States, its agencies, and its contractors and subcontractors, involved in launch services for licensed launch activities. Employees of the United States include members of the Armed Forces of the United States.

(7) *Hazardous operations* means activities, processes, and procedures that, because of the nature of the equipment, facilities, personnel, or environment involved or function being performed, may result in bodily injury or property damage.

(8) *Liability* means a legal obligation to pay claims for bodily injury or property damage resulting from licensed launch activities.

(9) *License* means an authorization to conduct licensed launch activities, issued by the Office under this subchapter.

(10) *Licensed launch activities* means the launch of a launch vehicle as defined in a regulation or license issued by the Office and carried out pursuant to a launch license.

(11) *Maximum probable loss (MPL)* means the greatest dollar amount of loss for bodily injury or property damage that is reasonably expected to result from licensed launch activities;

(i) Losses to third parties, excluding Government personnel and other launch participants' employees involved in licensed launch activities, that are reasonably expected to result from licensed launch activities are those having a probability of occurrence on the order of no less than one in ten million.

(ii) Losses to Government property and Government personnel involved in licensed launch activities that are reasonably expected to result from licensed launch activities are those having a probability of occurrence on the order of no less than one in one hundred thousand.

(12) *Office* means the Associate Administrator for Commercial Space Transportation of the Federal Aviation Administration, U.S. Department of Transportation.

(13) *Property damage* means partial or total destruction, impairment, or loss of tangible property, real or personal.

(14) *Regulations* means the Commercial Space Transportation Licensing Regulations, codified at 14 CFR Ch. III.

(15) *Third party* means:

(i) Any person other than:

(A) The United States, its agencies, and its contractors and subcontractors involved in launch services for licensed launch activities;

(B) The licensee and its contractors and subcontractors involved in launch services for licensed launch activities; and

(C) The customer and its contractors and subcontractors involved in launch services for licensed launch activities.

(ii) Government personnel, as defined in this section, are third parties.

(16) *United States* means the United States Government, including its agencies.

(b) Except as otherwise provided in this section, any term used in this part and defined in 49 U.S.C. 70101–70119, or in § 401.5 of this chapter shall have the meaning contained therein.

§ 440.5 General.

(a) No person shall commence or conduct launch activities that require a license unless that person has obtained a license and fully demonstrated compliance with the financial responsibility and allocation of risk requirements set forth in this part.

(b) The Office shall prescribe the amount of financial responsibility a licensee is required to obtain and any additions to or modifications of the amount in a license order issued concurrent with or subsequent to the issuance of a license.

(c) Demonstration of financial responsibility under this part shall not relieve the licensee of ultimate responsibility for liability, loss, or damage sustained by the United States resulting from licensed launch activities, except to the extent that:

(1) Liability, loss, or damage sustained by the United States results from willful misconduct of the United States or its agents;

(2) Covered claims of third parties for bodily injury or property damage arising out of any particular launch exceed the amount of financial responsibility required under § 440.9(c) of this part and do not exceed $1,500,000,000 (as adjusted for inflation occurring after January 1, 1989) above such amount, and are payable pursuant to 49 U.S.C. 70113 and § 440.19 of this part. Claims of employees of entities listed in § 440.3(a)(15)(i)(B) and (C) of this part for bodily injury or property damage are not covered claims;

(3) Covered claims for property loss or damage exceed the amount of financial responsibility required under § 440.9(e) of this part and do not result from willful misconduct of the licensee; or

(4) The licensee has no liability for covered claims by third parties for bodily injury or property damage arising out of any particular launch that exceed $1,500,000,000 (as adjusted for inflation occurring after January 1, 1989) above the amount of financial responsibility required under § 440.9(c) of this part.

(d) A licensee's failure to comply with the requirements in this part may result in suspension or revocation of a license, and subjects the licensee to civil penalties as provided in part 405 of this chapter.

§ 440.7 Determination of maximum probable loss.

(a) The Office shall determine the maximum probable loss (MPL) from covered claims by a third party for bodily injury or property damage, and the United States, its agencies, and its contractors and subcontractors for covered property damage or loss, resulting from licensed launch activities. The maximum probable loss determination forms the basis for financial responsibility requirements issued in a license order.

(b) The Office issues its determination of maximum probable loss no later than ninety days after a licensee or transferee has requested a determination and submitted all information required by the Office to make the determination. The Office shall consult with Federal agencies that are involved in, or whose personnel or property are exposed to risk of damage or loss as a result of, licensed launch activities before issuing a license order prescribing financial responsibility requirements and shall notify the licensee or transferee if interagency consultation may delay issuance of the MPL determination.

(c) Information requirements for obtaining a maximum probable loss determination are set forth in Appendix A of this part. Any person requesting a determination of maximum probable loss must submit information in accordance with Appendix I requirements, unless the Office has waived requirements. In lieu of submitting required information, a person requesting a maximum probable loss determination may designate and certify certain information previously submitted for a prior determination as complete, valid, and equally applicable to its current request. The requester is responsible for the continuing accuracy and completeness of information submitted under this part and shall promptly report any changes in writing.

(d) The Office shall amend a determination of maximum probable

loss required under this section at any time prior to completion of licensed launch activities as warranted by supplementary information provided to or obtained by the Office after the MPL determination is issued. Any change in financial responsibility requirements as a result of an amended MPL determination shall be set forth in a license order.

(e) The Office may make a determination of maximum probable loss at any time other than as set forth in paragraph (b) of this section upon request by any person.

§ 440.9 Insurance requirements for licensed launch activities.

(a) As a condition of each launch license, the licensee must comply with insurance requirements set forth in this section and in a license order issued by the Office, or otherwise demonstrate the required amount of financial responsibility.

(b) The licensee must obtain and maintain in effect a policy or policies of liability insurance, in an amount determined by the Office under paragraph (c) of this section, that protects the following persons as additional insureds to the extent of their respective potential liabilities against covered claims by a third party for bodily injury or property damage resulting from licensed launch activities:

(1) The licensee, its customer, and their respective contractors and subcontractors, and the employees of each, involved in licensed launch activities;

(2) The United States, its agencies, and its contractors and subcontractors involved in licensed launch activities; and

(3) Government personnel.

(c) The Office shall prescribe for each licensee the amount of insurance required to compensate the total of covered third-party claims for bodily injury or property damage resulting from licensed launch activities in connection with any particular launch. Covered third-party claims include claims by the United States, its agencies, and its contractors and subcontractors for damage or loss to property other than property for which insurance is required under paragraph (d) of this section. The amount of insurance required is based upon the Office's determination of maximum probable loss; however, it will not exceed the lesser of:

(1) $500 million; or

(2) The maximum liability insurance available on the world market at a reasonable cost, as determined by the Office.

(d) The licensee must obtain and maintain in effect a policy or policies of insurance, in an amount determined by the Office under paragraph (e) of this section, that covers claims by the United States, its agencies, and its contractors and subcontractors involved in licensed launch activities for property damage or loss resulting from licensed launch activities. Property covered by this insurance must include all property owned, leased, or occupied by, or within the care, custody, or control of, the United States and its agencies, and its contractors and subcontractors involved in licensed launch activities, at a Federal range facility. Insurance must protect the United States and its agencies, and its contractors and subcontractors involved in licensed launch activities.

(e) The Office shall prescribe for each licensee the amount of insurance required to compensate claims for property damage under paragraph (d) of this section resulting from licensed launch activities in connection with any particular launch. The amount of insurance is based upon a determination of maximum probable loss; however, it will not exceed the lesser of:

(1) $100 million; or

(2) The maximum available on the world market at a reasonable cost, as determined by the Office.

(f) In lieu of a policy of insurance, a licensee may demonstrate financial responsibility in another manner meeting the terms and conditions applicable to insurance as set forth in this part. The licensee must describe in detail the method proposed for demonstrating financial responsibility and how it assures that the licensee is able to cover claims as required under this part.

§ 440.11 Duration of coverage; modifications.

(a) Insurance coverage required under § 440.9, or other form of financial responsibility, shall attach upon commencement of licensed launch activities, and remain in full force and effect as follows:

(1) Until completion of licensed launch activities at the launch site; and

(2) For orbital launches, until the later of—

(i) Thirty days following payload separation, or attempted payload separation in the event of a payload separation anomaly; or

(ii) Thirty days from ignition of the launch vehicle.

(3) For suborbital launches, until the later of—

(i) Motor impact and payload recovery; or

(ii) The Office's determination that risk to third parties and Government property as a result of licensed launch activities is sufficiently small that financial responsibility is no longer necessary, as determined by the Office through the risk analysis conducted before the launch to determine MPL and specified in a license order.

(b) Financial responsibility required under this part may not be replaced, canceled, changed, withdrawn, or in any way modified to reduce the limits of liability or the extent of coverage, nor expire by its own terms, prior to the time specified in a license order, unless the Office is notified at least 30 days in advance and expressly approves the modification.

§ 440.13 Standard conditions of insurance coverage.

(a) Insurance obtained under § 440.9 shall comply with the following terms and conditions of coverage:

(1) Bankruptcy or insolvency of an insured, including any additional insured, shall not relieve the insurer of any of its obligations under any policy.

(2) Policy limits shall apply separately to each occurrence and, for each occurrence to the total of claims arising out of licensed launch activities in connection with any particular launch.

(3) Except as provided herein, each policy must pay claims from the first dollar of loss, without regard to any deductible, to the limits of the policy. A licensee may obtain a policy containing a deductible amount if the amount of the deductible is placed in an escrow account or otherwise demonstrated to be unobligated, unencumbered funds of the licensee, available to compensate claims at any time claims may arise.

(4) Each policy shall not be invalidated by any action or inaction of the licensee or any additional insured, including nonpayment by the licensee of the policy premium, and must insure the licensee and each additional insured regardless of any breach or violation of any warranties, declarations, or conditions contained in the policies by the licensee or any additional insured (other than a breach or violation by the licensee or an additional insured, and then only as against that licensee or additional insured).

(5) Exclusions from coverage must be specified.

(6) Insurance shall be primary without right of contribution from any other insurance that is carried by the licensee or any additional insured.

(7) Each policy must expressly provide that all of its provisions, except

the policy limits, operate in the same manner as if there were a separate policy with and covering the licensee and each additional insured.

(8) Each policy must be placed with an insurer of recognized reputation and responsibility that is licensed to do business in any State, territory, possession of the United States, or the District of Columbia.

(9) Except as to claims resulting from the willful misconduct of the United States or its agents, the insurer shall waive any and all rights of subrogation against each of the parties protected by required insurance.

(b) [Reserved.]

§ 440.15 Demonstration of compliance.

(a) A licensee must submit evidence of financial responsibility and compliance with allocation of risk requirements under this part, as follows, unless a license order specifies otherwise due to the proximity of the licensee's intended date for commencement of licensed launch activities:

(1) The three-party reciprocal waiver of claims agreement required under § 440.17(c) of this part must be submitted at least 30 days before commencement of licensed launch activities involving the customer that will sign the agreement;

(2) Evidence of insurance must be submitted at least 30 days before commencement of licensed launch activities;

(3) Evidence of financial responsibility in a form other than insurance, as provided under § 440.9(f) of this part, must be submitted at least 60 days before commencement of licensed launch activities; and

(4) Evidence of renewal of insurance or other form of financial responsibility must be submitted at least 30 days in advance of its expiration date.

(b) Upon a complete demonstration of compliance with financial responsibility and allocation of risk requirements under this part, the requirements shall preempt any provisions in agreements between the licensee and an agency of the United States governing access to or use of United States launch property or launch services for licensed launch activities which address financial responsibility, allocation of risk and related matters covered by 49 U.S.C. 70112, 70113.

(c) A licensee must demonstrate compliance as follows:

(1) The licensee must provide proof of insurance required under § 440.9 by:

(i) Certifying to the Office that it has obtained insurance in compliance with the requirements of this part and any applicable license order;

(ii) Filing with the Office one or more certificates of insurance evidencing insurance coverage by one or more insurers under a currently effective and properly endorsed policy or policies of insurance, applicable to licensed launch activities, on terms and conditions and in amounts prescribed under this part, and specifying policy exclusions;

(iii) In the event of any policy exclusions or limitations of coverage that may be considered usual under § 440.19(c) of this part, or for purposes of implementing the Government's waiver of claims for property damage under 49 U.S.C. 70112(b)(2), certifying that insurance covering the excluded risks is not commercially available at reasonable cost; and

(iv) Submitting to the Office, for signature by the Department on behalf of the United States Government, the waiver of claims and assumption of responsibility agreement required by § 440.17(c) of this part, executed by the licensee and its customer.

(2) Certifications required under this section must be signed by a duly authorized officer of the licensee.

(d) Certificate(s) of insurance required under paragraph (c)(1)(ii) of this section must be signed by the insurer issuing the policy and accompanied by an opinion of the insurance broker that the insurance obtained by the licensee complies with the specific requirements for insurance set forth in this part and any applicable license order.

(e) The licensee must maintain, and make available for inspection by the Office upon request, all required policies of insurance and other documents necessary to demonstrate compliance with this part.

(f) In the event the licensee demonstrates financial responsibility using means other than insurance, as provided under § 440.9(f) of this part, the licensee must provide proof that it has met the requirements set forth in this part and in a license order issued by the Office.

§ 440.17 Reciprocal waiver of claims requirements.

(a) As a condition of each launch license, the licensee shall comply with reciprocal waiver of claims requirements as set forth in this section.

(b) The licensee shall implement reciprocal waivers of claims with its contractors and subcontractors, its customer(s) and the customer's contractors and subcontractors, under which each party waives and releases claims against the other parties to the waivers and agrees to assume financial responsibility for property damage it sustains and for bodily injury or property damage sustained by its own employees, and to hold harmless and indemnify each other from bodily injury or property damage sustained by its employees, resulting from licensed launch activities, regardless of fault.

(c) For each licensed launch in which the U.S. Government, its agencies, or its contractors and subcontractors is involved in licensed launch activities or where property insurance is required under § 440.9(d) of this part, the Federal Aviation Administration of the Department of Transportation, the licensee, and its customer shall enter into a three-party reciprocal waiver of claims agreement in the form set forth in Appendix II to this part or that satisfies its requirements.

(d) The licensee, its customer, and the Federal Aviation Administration of the Department of Transportation on behalf of the United States and its agencies but only to the extent provided in legislation, must agree in any waiver of claims agreement required under this part to indemnify another party to the agreement from claims by the indemnifying party's contractors and subcontractors arising out of the indemnifying party's failure to implement properly the waiver requirement.

§ 440.19 United States payment of excess third-party liability claims.

(a) The United States pays successful covered claims (including reasonable expenses of litigation or settlement) of a third party against the licensee, the customer, and the contractors and subcontractors of the licensee and the customer, and the employees of each involved in licensed launch activities, and the contractors and subcontractors of the United States and its agencies, and their employees, involved in licensed launch activities to the extent provided in an appropriation law or other legislative authority providing for payment of claims in accordance with 49 U.S.C. 70113, and to the extent the total amount of such covered claims arising out of any particular launch:

(1) Exceeds the amount of insurance required under § 440.9(b); and

(2) Is not more than $1,500,000,000 (as adjusted for inflation occurring after January 1, 1989) above that amount.

(b) Payment by the United States under paragraph (a) of this section shall not be made for any part of such claims for which bodily injury or property damage results from willful misconduct by the party seeking payment.

(c) The United States shall provide for payment of claims by third parties for

bodily injury or property damage that are payable under 49 U.S.C. 70113 and not covered by required insurance under § 440.9(b), without regard to the limitation under paragraph (a)(1) of this section, because of an insurance policy exclusion that is usual. A policy exclusion is considered usual only if insurance covering the excluded risk is not commercially available at reasonable rates. The licensee must submit a certification in accordance with § 440.15(c)(1)(iii) of this part for the United States to cover the claims.

(d) Upon the expiration of the policy period prescribed in accordance with § 440.11(a), the United States shall provide for payment of claims that are payable under 49 U.S.C. 70113 from the first dollar of loss up to $1,500,000,000 (as adjusted for inflation occurring after January 1, 1989).

(e) Payment by the United States of excess third-party claims under 49 U.S.C. 70113 shall be subject to:

(1) Prompt notice by the licensee to the Office that the total amount of claims arising out of licensed launch activities exceeds, or is likely to exceed, the required amount of financial responsibility. For each claim, the notice must specify the nature, cause, and amount of the claim or lawsuit associated with the claim, and the party or parties who may otherwise be liable for payment of the claim;

(2) Participation or assistance in the defense of the claim or lawsuit by the United States, at its election;

(3) Approval by the Office of any settlement, or part of a settlement, to be paid by the United States; and

(4) Approval by Congress of a compensation plan prepared by the Office and submitted by the President.

(f) The Office will:

(1) Prepare a compensation plan outlining the total amount of claims and meeting the requirements set forth in 49 U.S.C. 70113;

(2) Recommend sources of funds to pay the claims; and

(3) Propose legislation as required to implement the plan.

(g) The Office may withhold payment of a claim if it finds that the amount is unreasonable, unless it is the final order of a court that has jurisdiction over the matter.

Appendix A to Part 440—Information Requirements for Obtaining a Maximum Probable Loss Determination for Licensed Launch Activities

Any person requesting a maximum probable loss determination shall submit the following information to the Office, unless the Office has waived a particular information requirement under 14 CFR 440.7(c):

I. General Information

A. Mission description.

1. A description of mission parameters, including:

a. Launch trajectory;

b. Orbital inclination; and

c. Orbit altitudes (apogee and perigee).

2. Flight sequence.

3. Staging events and the time for each event.

4. Impact locations.

5. Identification of the launch range facility, including the launch complex on the range, planned date of launch, and launch windows.

6. If the applicant has previously been issued a license to conduct launch activities using the same launch vehicle from the same launch range facility, a description of any differences planned in the conduct of proposed activities.

B. Launch Vehicle Description.

1. General description of the launch vehicle and its stages, including dimensions.

2. Description of major systems, including safety systems.

3. Description of rocket motors and type of fuel used.

4. Identification of all propellants to be used and their hazard classification under the Hazardous Materials Table, 49 CFR 172.101.

5. Description of hazardous components.

C. Payload.

1. General description of the payload, including type (e.g., telecommunications, remote sensing), propellants, and hazardous components or materials, such as toxic or radioactive substances.

D. Flight Termination System.

1. Identification of any flight termination system (FTS) on the launch vehicle, including a description of operations and component location on the vehicle.

II. Pre-Flight Processing Operations

A. General description of pre-flight operations including vehicle processing consisting of an operational flow diagram showing the overall sequence and location of operations, commencing with arrival of vehicle components at the launch range facility through final safety checks and countdown sequence, and designation of hazardous operations, as defined in 14 CFR 440.3. For purposes of these information requirements, payload processing, as opposed to integration, is not a hazardous operation.

B. For each hazardous operation, including but not limited to fueling, solid rocket motor build-up, ordnance installation, ordnance checkout, movement of hazardous materials, and payload integration:

1. Identification of location where each operation will be performed, including each building or facility identified by name or number.

2. Identification of facilities adjacent to the location where each operation will be performed and therefore exposed to risk, identified by name or number.

3. Maximum number of Government personnel and individuals not involved in licensed launch activities who may be exposed to risk during each operation. For Government personnel, identification of his or her employer.

4. Identification of launch range facility policies or requirements applicable to the conduct of operations.

III. Flight Operations

A. Identification of launch range facilities exposed to risk during launch vehicle lift-off and flight.

B. Identification of accident failure scenarios, probability assessments for each, and estimation of risks to Government personnel, individuals not involved in licensed launch activities, and Government property, due to property damage or bodily injury. The estimation of risks for each scenario shall take into account the number of such individuals at risk as a result of lift-off and flight of a launch vehicle (on-range, off-range, and down-range) and specific, unique facilities exposed to risk. Scenarios shall cover the range of launch trajectories, inclinations and orbits for which authorization is sought in the license application.

C. On-orbit risk analysis assessing risks posed by a launch vehicle to operational satellites.

D. Reentry risk analysis assessing risks to Government personnel and individuals not involved in licensed launch activities as a result of reentering debris or reentry of the launch vehicle or its components.

E. Trajectory data as follows: Nominal and 3-sigma lateral trajectory data in x, y, z and x (dot), y (dot), z (dot) coordinates in one-second intervals, data to be pad-centered with x being along the initial launch azimuth and continuing through impact for suborbital flights, and continuing through orbital insertion or the end of powered flight for orbital flights.

F. Tumble-turn data for guided vehicles only, as follows: For vehicles with gimbaled nozzles, tumble turn data with zeta angles and velocity magnitudes stated. A separate table is required for each combination of fail times (every two to four seconds), and significant nozzle angles (two or more small angles, generally between one and five degrees).

G. Identification of debris lethal areas and the projected number and ballistic coefficient of fragments expected to result from flight termination, initiated either by command or self-destruct mechanism, for lift-off, land overflight, and reentry.

IV. Post-Flight Processing Operations

A. General description of post-flight ground operations including overall sequence and location of operations for removal of vehicle components and processing equipment from the launch range facility and for handling of hazardous materials, and designation of hazardous operations.

B. Identification of all facilities used in conducting post-flight processing operations.

C. For each hazardous operation:

1. Identification of location where each operation is performed, including each building or facility identified by name or number.

2. Identification of facilities adjacent to location where each operation is performed

and exposed to risk, identified by name or number.

3. Maximum number of Government personnel and individuals not involved in licensed launch activities who may be exposed to risk during each operation. For Government personnel, identification of his or her employer.

4. Identification of launch range facility policies or requirements applicable to the conduct of operations.

Appendix B to Part 440—Agreement for Waiver of Claims and Assumption of Responsibility

THIS AGREEMENT is entered into this _____ day of _____, by and among [Licensee] (the ''Licensee''), [Customer] (the ''Customer'') and the Federal Aviation Administration of the Department of Transportation, on behalf of the United States Government (collectively, the ''Parties''), to implement the provisions of section 440.17(c) of the Commercial Space Transportation Licensing Regulations, 14 CFR Ch. III (the ''Regulations'').

In consideration of the mutual releases and promises contained herein, the Parties hereby agree as follows:

1. Definitions

Customer means the above-named Customer on behalf of the Customer, any person to whom the Customer has sold, leased, assigned, or otherwise transferred its rights in the payload (or any part thereof) to be launched by the licensee, including a conditional sale, lease, assignment, or transfer of rights, any person who has placed property on board the payload for launch or payload services, and any person to whom the Customer has transferred its rights to the launch services.

License means License No. _____ issued on _____, by the Associate Administrator for Commercial Space Transportation, Federal Aviation Administration, Department of Transportation, to the Licensee, including all license orders issued in connection with the License.

Licensee means the Licensee and any transferee of the Licensee under 49 U.S.C. Subtitle IX, ch. 701.

United States means the United States and its agencies involved in Licensed Launch Activities.

Except as otherwise defined herein, terms used in this Agreement and defined in 49 U.S.C. Subtitle IX, ch. 701—Commercial Space Launch Activities, or in the Regulations, shall have the same meaning as contained in 49 U.S.C. Subtitle IX, ch. 701, or the Regulations, respectively.

2. Waiver and Release of Claims

(a) Licensee hereby waives and releases claims it may have against Customer and the United States, and against their respective Contractors and Subcontractors, for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Launch Activities, regardless of fault.

(b) Customer hereby waives and releases claims it may have against Licensee and the United States, and against their respective Contractors and Subcontractors, for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Launch Activities, regardless of fault.

(c) The United States hereby waives and releases claims it may have against Licensee and Customer, and against their respective Contractors and Subcontractors, for Property Damage it sustains, and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Launch Activities, regardless of fault, to the extent that claims it would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under sections 440.9(c) and (e), respectively, of the Regulations, 14 CFR 440.9(c) and (e).

3. Assumption of Responsibility

(a) Licensee and Customer shall each be responsible for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Launch Activities, regardless of fault. Licensee and Customer shall each hold harmless and indemnify each other, the United States, and the Contractors and Subcontractors of each Party, for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Launch Activities, regardless of fault.

(b) The United States shall be responsible for Property Damage it sustains, and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Launch Activities, regardless of fault, to the extent that claims it would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under section 440.9(c) and (e), respectively, of the Regulations, 14 CFR 440.9(c) and (e).

4. Extension of Assumption of Responsibility and Waiver

(a) Licensee shall extend the requirements of the waiver and release of claims, and the assumption of responsibility, hold harmless, and indemnification, as set forth in paragraphs 2(a) and 3(a), respectively, to its Contractors and Subcontractors by requiring them to waive and release all claims they may have against Customer and the United States, and against the respective Contractors and Subcontractors of each, and to agree to be responsible, for Property Damage they sustain and to be responsible, hold harmless and indemnify Customer and the United States, and the respective Contractors and Subcontractors of each, for Bodily Injury or Property Damage sustained by their own employees, resulting from Licensed Launch Activities, regardless of fault.

(b) Customer shall extend the requirements of the waiver and release of claims, and the assumption of responsibility, hold harmless, and indemnification, as set forth in paragraphs 2(b) and 3(a), respectively, to its Contractors and Subcontractors by requiring them to waive and release all claims they may have against Licensee and the United States, and against the respective Contractors and Subcontractors of each, and to agree to be responsible, for Property Damage they sustain and to be responsible, hold harmless and indemnify Licensee and the United States, and the respective Contractors and Subcontractors of each, for Bodily Injury or Property Damage sustained by their own employees, resulting from Licensed Launch Activities, regardless of fault.

(c) The United States shall extend the requirements of the waiver and release of claims, and the assumption of responsibility as set forth in paragraphs 2(c) and 3(b), respectively, to its Contractors and Subcontractors by requiring them to waive and release all claims they may have against Licensee and Customer, and against the respective Contractors and Subcontractors of each, and to agree to be responsible, for any Property Damage they sustain and for any Bodily Injury or Property Damage sustained by their own employees, resulting from Licensed Launch Activities, regardless of fault, to the extent that claims they would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under section 440.9(c) and (e), respectively, of the Regulations, 14 CFR 440.9(c) and (e).

5. Indemnification

(a) Licensee shall hold harmless and indemnify Customer and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any or them, and the United States and its agencies, servants, agents, subsidiaries, employees and assignees, or any or them, from and against liability, loss or damage arising out of claims that Licensee's Contractors and Subcontractors may have for Property Damage sustained by them and for Bodily Injury or Property Damage sustained by their employees, resulting from Licensed Launch Activities.

(b) Customer shall hold harmless and indemnify Licensee and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any or them, and the United States and its agencies, servants, agents, subsidiaries, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims that Customer's Contractors and Subcontractors, or any person on whose behalf Customer enters into this Agreement, may have for Property Damage sustained by them and for Bodily Injury or Property Damage sustained by their employees, resulting from Licensed Launch Activities.

(c) To the extent provided in advance in an appropriations law or to the extent there is enacted additional legislative authority providing for the payment of claims, the United States shall hold harmless and indemnify Licensee and Customer and their respective directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims that Contractors and Subcontractors of the United States may have for Property Damage sustained by them, and for Bodily Injury or Property Damage sustained by their employees, resulting from Licensed Launch Activities, to the extent that claims they would otherwise have for such

damage or injury exceed the amount of insurance or demonstration of financial responsibility required under sections 440.9(c) and (e), respectively, of the Regulations, 14 CFR 440.9(c) and (e).

6. Assurances Under 49 U.S.C. 70112(e)

Notwithstanding any provision of this Agreement to the contrary, Licensee shall hold harmless and indemnify the United States and its agencies, servants, agents, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims for Bodily Injury or Property Damage, resulting from Licensed Launch Activities, regardless of fault, except to the extent that: (i) as provided in section 7(b) of this Agreement, claims result from willful misconduct of the United States or its agents; (ii) claims for Property Damage sustained by the United States or its Contractors and Subcontractors exceed the amount of insurance or demonstration of financial responsibility required under section 440.9(e) of the Regulations (14 CFR 440.9(e)); (iii) claims by a Third Party for Bodily Injury or Property Damage exceed the amount of insurance or demonstration of financial responsibility required under section 440.9(c) of the Regulations (14 CFR 440.9(c)), and do not exceed $1,500,000,000 (as adjusted for inflation after January 1, 1989) above such amount, and are payable pursuant to the provisions of 49 U.S.C. 70113 and section 440.19 of the Regulations (14 CFR 440.19); or (iv) Licensee has no liability for claims exceeding $1,500,000,000 (as adjusted for inflation after January 1, 1989) above the amount of insurance or demonstration of financial responsibility required under section 440.9(c) of the Regulations (14 CFR 440.9(c)).

7. Miscellaneous

(a) Nothing contained herein shall be construed as a waiver or release by Licensee, Customer or the United States of any claim by an employee of the Licensee, Customer or the United States, respectively, including a member of the Armed Forces of the United States, for Bodily Injury or Property Damage, resulting from Licensed Launch Activities.

(b) Notwithstanding any provision of this Agreement to the contrary, any waiver, release, assumption of responsibility or agreement to hold harmless and indemnify herein shall not apply to claims for Bodily Injury or Property Damage resulting from willful misconduct of any of the Parties, the Contractors and Subcontractors of any of the Parties, and in the case of Licensee and Customer and the Contractors and Subcontractors of each of them, the directors, officers, agents and employees of any of the foregoing, and in the case of the United States, its agents.

(c) In the event that more than one customer is involved in Licensed Launch Activities, references herein to Customer shall apply to, and be deemed to include, each such customer severally and not jointly.

(d) This Agreement shall be governed by and construed in accordance with United States Federal law.

IN WITNESS WHEREOF, the Parties to this Agreement have caused the Agreement to be duly executed by their respective duly authorized representatives as of the date written above.

LICENSEE

By: _____

Its: _____

CUSTOMER

By: _____

Its: _____

DEPARTMENT OF TRANSPORTATION

Issued in Washington, DC, on August 18, 1998.

Patricia Grace Smith,

Associate Administrator for Commercial Space Transportation, Federal Aviation Administration.

[FR Doc. 98–22728 Filed 8–25–98; 8:45 am]

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Wednesday
August 26, 1998

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Parts 91, 121, 135

Terrain Awareness and Warning System; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 121, 135

[Docket No. 29312; Notice No. 98–11]

RIN 2120–AG46

Terrain Awareness and Warning System

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Aviation Administration (FAA) proposes to issue operating rules that would prohibit operation of turbine-powered U.S.-registered airplanes type certificated to have six or more passenger seats, exclusive of pilot and copilot seating, unless that airplane is equipped with an FAA-approved terrain awareness and warning system (also referred to as an enhanced ground proximity warning system). This proposal would affect aircraft operated under parts 91, 121 and 135. Because operators under part 125 and operators of U.S.-registered airplanes under part 129 must comply with part 91, they would also have to meet this requirement. This change is needed because there have been several accident investigations and studies that have shown a need to expand the safety benefits of ground proximity warning systems to certain additional operations. In addition, these investigations and studies have shown that there is a need to increase the warning times and situational awareness of flight crews to decrease the risk of controlled flight into terrain accidents.

DATES: Comments must be received by November 24, 1998.

ADDRESSES: Comments on this notice should be mailed, in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. 29312, 800 Independence Avenue, SW., Washington, DC 20591. Comments may also be sent electronically to the Rules Docket by using the following Internet address: 9-nprm-cmts@faa.dot.gov. Comments must be marked Docket No. 29312. Comments may be examined in the Rules Docket in Room 915G on weekdays between 8:30 a.m. and 5:00 p.m., except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Manuel Macedo, Aircraft Engineering Division, AIR–100, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone: (202) 267–9566.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that may result from adopting the proposals in this notice are also invited. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions. Communications should identify the regulatory docket number and be submitted in triplicate to the above specified address. All communications and a report summarizing any substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. The docket is available for public inspection both before and after the closing date for receiving comments.

Before taking any final action on this proposal, the Administrator will consider all comments made on or before the closing date for comments, and the proposal may be changed in light of the comments received.

The FAA will acknowledge receipt of a comment if the commenter includes a self-addressed, stamped postcard with the comment. The postcard should be marked ''Comments to Docket No. 29312.'' When the comment is received by the FAA, the postcard will be dated and returned to the commenter.

Availability of the Notice

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Rulemaking, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9677. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future FAA NPRM's should request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes application procedures.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339). Internet users may reach the FAA's web page at http://www.faa.gov or the Federal Register's webpage at http://www.access.gpo.gov/NARA/index.html for access to recently published rulemaking documents.

Background

Beginning in the early 1970's, a number of studies looked at the occurrence of ''controlled flight into terrain'' (CFIT)-type accidents, where a properly functioning airplane under the control of a fully qualified and certificated crew is flown into terrain (or water or obstacles) with no apparent awareness on the part of the crew.

Findings from these studies indicated that many such accidents could have been avoided if a warning device called a ground proximity warning system (GPWS) was used. As a result of these studies and recommendations from the National Transportation Safety Board (NTSB), in 1974 the FAA required all part 121 certificate holders (*i.e.*, those operating large turbine-powered airplanes) and some part 135 certificate holders (*i.e.*, those operating large turbojet airplanes) to install Technical Standard Order (TSO) approved GPWS equipment (§§ 121.360 and 135.153). (39 FR 44439, December 18, 1974).

In 1978 the FAA extended the GPWS requirement to part 135 certificate holders operating smaller airplanes: turbojet-powered airplanes with 10 or more passenger seats. These operators were required to install TSO-approved GPWS equipment or alternative ground proximity advisory systems that provide routine altitude callouts whether or not there is any imminent danger (§ 135.153). (43 FR 28176, June 29, 1978). This requirement was considered necessary because of the complexity, size, speed, and flight performance characteristics of these airplanes. The GPWS equipment was considered essential in helping the pilots of these airplanes to regain altitude quickly and avoid what could have been a CFIT-type accident.

Installation of GPWS's or alternative FAA-approved advisory systems was not required on turbo-propeller powered (turboprop) airplanes operated under part 135 because, at that time, the general consensus was that the performance characteristics of turboprop airplanes made them less susceptible to CFIT accidents. For example, it was thought that turboprop airplanes had a greater ability to respond quickly in situations where altitude control was inadvertently neglected, as compared to turbojet airplanes. However later studies, including investigations by the NTSB, analyzed CFIT accidents involving turboprop airplanes and found that many of these accidents could have been avoided if GPWS equipment had been used.

Some of these studies also compared the effectiveness of the alternative ground proximity advisory system to the GPWS. GPWS was found to be superior in that it would warn only when necessary, provide maximum warning time with minimal unwanted alarms, and use command-type warnings.

Based on these reports and NTSB recommendations, in 1992 the FAA amended § 135.153 to require GPWS equipment on all turbine-powered airplanes with 10 or more passenger seats. (57 FR 9944, March 20, 1992).

NTSB Recommendations

Following the investigation of a CFIT accident south of Dulles International Airport on June 18, 1994, involving a Learjet 25D in which there were 12 fatalities, the NTSB recommended (Recommendation A–95–35) that the FAA mandate that all turbojet-powered airplanes equipped with six or more passenger seats have an operating ground proximity warning system installed. That recommendation also made reference to an earlier, similar NTSB recommendation (Recommendation A–92–055) resulting from a 1991 CFIT accident involving a Beechjet 400. Both planes were corporate jets flying under part 91 and were not required to have GPWS equipment installed.

More recently, the NTSB issued Recommendation A–96–101, based on its investigation of a CFIT accident northeast of Cali, Colombia, on December 20, 1995, involving an American Airlines Boeing 757 airplane operating under part 121, which resulted in 159 fatalities. The NTSB recommended that the FAA examine the effectiveness of enhanced ground proximity warning equipment (described in the following section), and if found effective, require all transport-category aircraft to be equipped with this equipment. Although the accident airplane was equipped with the mandatory GPWS, the GPWS did not provide the warning in time for the crew to successfully avoid the mountainous terrain.

Terrain Awareness and Warning System (Enhanced Ground Proximity Warning System)

Advances in terrain mapping technology have permitted the development of a new type of ground proximity warning system that provides greater situational awareness for flight crews. The FAA has approved certain installations of this type of equipment, known as the enhanced ground proximity warning system (EGPWS). However, in this NPRM, the FAA is using the broader term ''terrain awareness and warning system'' (TAWS) because the FAA expects that a variety of systems may be developed in the near future that would meet the improved standards being proposed in this NPRM.

TAWS improves on existing systems by providing the flight crew automatic advanced aural and visual warning of impending terrain, much earlier warning, forward looking capability, and operability in landing configuration. These improvements provide more time for the flight crew to make smoother and gradual corrective action. These functions are more fully described under ''Functions and Approval of TAWS.''

Volpe National Transportation Systems Center Studies

In recent years, the FAA commissioned several studies by DOT's Volpe National Transportation Systems Center (VNTSC) to examine the effectiveness of GPWS and EGPWS in preventing CFIT accidents in various aircraft categories and operations. These are described below.

Part 91 Study

In 1996, the FAA commissioned VNTSC to consider the installation of current GPWS or EGPWS on all part 91 turbine-powered airplanes of 6 or more passenger seats. Although NTSB Recommendation A–95–35 addressed only turbojets, the FAA expanded the study focus to include all turbine-powered airplanes because of the results of the previous studies and rulemaking discussed earlier.

Forty-four CFIT accidents that occurred between 1985 and 1994 were studied. The airplanes involved had from six to ten passenger seats and were operating under part 91. Eleven were turbojets and 33 were turboprops. Because these flights were not conducted under parts 121 or 135, GPWS was not required and none of the airplanes had GPWS installed. By using computer modeling techniques, VNTSC came to the following conclusions: (1) GPWS meeting TSO–C92 could have avoided 33 of the 44 (75%) accidents and 96 fatalities; and (2) EGPWS could have avoided 42 of the 44 (95%) accidents and 126 fatalities. The EGPWS evaluated in the Volpe studies would meet the TAWS requirements proposed in this NPRM. A more detailed analysis is included in FAA study DOT–TSC–FA6D1–96–01, Investigation of Controlled Flight Into Terrain, which is included in the public docket for this rulemaking, or can be obtained by contacting the Aircraft Engineering Division, AIR–100, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone: (202) 267–9566.

Part 121/135 Study

Later in 1996, the FAA commissioned VNTSC for a second study focusing on a retrofit of GPWS with EGPWS on airplanes operated under part 121 and part 135. This study documents an investigation of CFIT aircraft accidents involving aircraft flying under part 121 and 135 flight rules, or their foreign equivalents, and evaluating the potential for accident prevention by EGPWS.

There were over 100 fatal CFIT accidents worldwide during the study period of 1985 to 1995. A list of 47 domestic and 104 foreign accidents of aircraft with characteristics similar to those that would be covered by the proposed rule was compiled. Of these totals, 38 domestic accidents and 96 foreign accidents involved fatalities. Due to resource constraints, detailed analysis of all these accidents was not possible. The staff of the VNTSC developed a methodology and scheme for selecting a representative sample for detailed study and analysis. While not an exhaustive compilation of all CFIT accidents, it represents an effort to review the characteristics of most major CFIT accidents. From this process nine accidents were selected for detailed analysis worldwide.

Analysis showed that four of the nine accidents (44%) should have been prevented by the basic GPWS equipment that had been installed. However, in two cases the GPWS equipment was either disconnected or it malfunctioned. In the other two cases, poor flight crew coordination led to inaction following the GPWS warning, rather than decisive recovery maneuvers, until impact could not be avoided.

In contrast, EGPWS warning times would have been more than the warning time of GPWS (which was assumed by VNTSC to be 12–15 seconds) in all nine cases. In seven, warning times expected with EGPWS exceeded those of GPWS by over 20 seconds; two of these cases involved differences of over one minute. In general, EGPWS should have provided an additional margin in which flight crews could assess their situation, discover errors, regain situational awareness, and take appropriate action before impact. In only one case was an assumed EGPWS warning duration only slightly above the 12–15 second minimum. In this case it can be argued that if the visual forward looking terrain

display in EGPWS had been installed, it may have prevented the pilot's fatal wrong turn towards the mountains in the first place. Thus, it is reasonable to assume that EGPWS could probably have prevented all nine (100%) of these accidents.

VNTSC Conclusion: GPWS vs. EGPWS

The VNTSC part 121/135 study credits GPWS as a significant factor in reducing the frequency of CFIT accidents since 1975. However, these accidents have not been totally eliminated for two major reasons:

First, many of the GPWS systems currently in use are earlier generation systems, installed after the first GPWS rulemaking in the 1970's. Since that time, GPWS equipment has been improved. These advances typically involve improvements in terrain detection logic that enables increased terrain warning durations in the order of 10–15 seconds on average resulting in additional time for the pilot that can be crucial in preventing accidents. The NTSB addressed this issue by recommending to the FAA that early generation GPWS equipment be upgraded. (NTSB recommendations A–92–39 through A–92–42.)

As a result, in 1996, the FAA revised TSO–C92b and issued TSO–C92c. Specifically, this new TSO added new requirements and features to GPWS: aural warnings that would identify the reason for GPWS warnings; the inclusion of airspeed in the logic that determines GPWS warning times; altitude callouts during nonprecision approaches; and warnings based on airport location and aircraft position data.

Second, even with these added features, GPWS equipment has two important limitations: (1) GPWS does not have the capability to ''look forward,'' but instead only ''looks down,'' relying on radio altimeter data. For this reason, there is little or no warning if the terrain ahead of an airplane rises in a steep gradient. This limitation is known as the ''vertical cliff'' limitation. (2) To prevent nuisance ground proximity warnings during final approach, for an aircraft in stabilized descent on a non-precision approach (i.e., one in which lateral, but not vertical or glide slope, guidance is provided), with gear and flaps extended, all GPWS warning modes are desensitized. Thus a flight crew will receive no warning if their aircraft is not in fact lined up with a runway. This limitation is known as the ''non-precision approach (NPA) trap'' limitation.

In its conclusion, the VNTSC states that there is compelling evidence of the potential effectiveness of EGPWS in preventing CFIT accidents. EGPWS would have provided the same or increased warning durations over GPWS had each aircraft continued along the accident track, and should have provided sufficient warning to effectively prevent all nine cases studied. The study emphasized that the CFIT accident prevention in all cases would have resulted not so much from increased warning durations following system detection of terrain threats, as from the fact that flight crews, given a continuous terrain display, would have perceived these terrain threats and responded to them well before EGPWS was required to generate warnings.

Elaborating further, the study states that the continuous terrain display feature of EGPWS may be even more important than the terrain threat detection/alert/warning features in breaking the chain of decisions leading to CFIT. Flight crews lacking visual perspective are given a continuous display of nearby terrain, greatly heightening situational awareness. Rather than a ''last ditch'' warning of imminent danger, the continuous terrain display would allow crews to maneuver to avoid terrain long before it ever becomes an obstruction to their flight path. It thus represents a pivotal advance in providing flight crew terrain awareness.

The FAA agrees that the terrain situation awareness display is a valuable function and therefore proposes to mandate its use. However, the alerting functions also are critical. Because of the various piloting duties, functions and activities, a pilot does not monitor one instrument 100% of the time, and this will be the case with a terrain situation awareness display. The alerting functions provide the final safety margin that directs the pilot to take life-saving action.

While recognizing the terrain awareness benefits of the terrain display, the VNTSC study also recognizes that such a display may present a new set of challenges to pilots. The TAWS's topographical map display will offer a temptation for pilots to use it for navigational purposes. Pilot training should emphasize that other aircraft systems are intended for this purpose, and any TAWS terrain display features are intended only to provide terrain awareness, not for aerial navigation. See also Notice N8110.64, Enhanced Ground Proximity Warning System, which provides guidance on EGPWS and specifies that Airplane Flight Manuals should state that EGPWS shouldn't be used for navigational purposes.

In light of the potential savings of human life and the economic costs of destroyed or damaged aircraft, the report recommends that the FAA amend 14 CFR parts 121 and 135 to require mandatory installation in affected aircraft fleets of TAWS. A more detailed discussion and analysis is included in FAA study DOT–TSC–FA6D1–96–03, Investigation of Controlled Flight Into Terrain (For Selected Aircraft Accidents Involving Aircraft Flying Under FAR Parts 121 and 135 Flight Rules and the Potential for Their Prevention by Enhanced Ground Proximity Warning System (EGPWS)).

Functions and Approval of TAWS

Functions of TAWS

Recent technological advancements—such as more precise navigation systems, increased computer memory storage and better display technology—have allowed the development of terrain alerting and warning systems. Current systems under development have three common features: (1) Use of airplane position information from the airplane's navigation system(s), (2) an onboard terrain data base, and (3) a means of displaying the surrounding terrain. All systems currently under development function in the following same manner. Airplane position information from the airplane navigation system is fed to the TAWS computer. The TAWS computer compares the airplane's current position and flight path with the terrain data base also in the TAWS computer. If there is a potential threat of collision with terrain, the TAWS computer sends warning alerts to the airplane's audio system. The TAWS computer also inputs display data to either the weather radar, the Electronic Flight Information System (EFIS) or some other display screen on which then is shown the surrounding terrain with the threat terrain highlighted. Specific certification requirements for the TAWS is contained in TSO–C151.

An example of a specific TAWS currently certificated by the FAA handles the above functions as follows:

(1) Alerting Times

The function of the new proposed TAWS standard is to prevent CFIT by providing alerting times earlier than those provided by existing ground proximity warning systems manufactured in accordance with Technical Standard Order (TSO)–C92c. Typically GPWS aural and visual warnings occur about 20 seconds or less before potential impact with terrain.

The visual warning is usually a blinking light and the aural warning is usually a message through the airplane's audio system.

Studies indicate that average combined pilot and aircraft reaction time to avoid a CFIT after warning is within the 12 to 15 second range. The FAA has approved for installation a TAWS (the EGPWS) that provides an initial alert approximately 60 seconds before potential impact and another alert about 30 seconds before potential impact. These alerts are both aural and visual. These alerting times were based on data from actual CFIT accidents and were chosen by the manufacturer as the best compromise to provide timely alerts while still minimizing nuisance alarms. Human factors research and FAA experience show that, if an aural cockpit alarm sounds too often as a false alarm, the flight crew will either begin to ignore it or will be tempted to disable the system. Therefore, while the forward looking capability of TAWS could provide an alert far in advance of potential impact, the alerting time must be as short as possible, while still allowing an adequate time to avoid impact. The FAA will carefully evaluate the alerting times for each proposed TAWS, but expects that manufacturers will provide at least 20 seconds in advance of a potential impact.

(2) Forward Looking Capability

The increased alerting function is made possible by a ''forward looking'' feature. This function in turn is made possible by inputting aircraft position from the global positioning system (GPS) or a flight management system (FMS) into the TAWS computer in which a terrain database is already stored. Using aircraft position, performance and configuration data, the TAWS computer calculates an envelope along the projected flight path of the aircraft and compares that to the terrain database. If there is a potential impact with terrain, the system provides appropriate aural and visual alerts. This feature also makes possible a terrain (situational) awareness display that could be used on a dedicated TAWS display screen, a weather radar, or an EFIS display screen. Terrain within certain vertical distances of the aircraft is displayed in various color densities. The FAA would accept green, yellow and red because these are the colors currently available on the weather radar display.

(3) Terrain Clearance Floor

TAWS also provides a terrain clearance floor that adds an additional element of protection to the GPWS warning modes. The terrain clearance floor creates an increasing terrain clearance envelope around the intended airport runway directly related to the distance from the runway. The terrain clearance floor alerts are based on aircraft location, nearest runway center point position, and radio altitude. The terrain clearance floor provides an alert based on insufficient terrain clearance even when in landing configuration. This is an improvement over the current GPWS, which becomes deactivated when an airplane's wing flaps and landing gear are in landing configuration.

If an airport has glide-slope equipment that is operating, the flight crew can rely on that equipment to guide the airplane; the TAWS terrain clearance floor function may not be needed. However, if the airport does not have glide-slope equipment or it is not operating, the flight crew must perform a non-precision approach. In this case, if the flight crew is unaware of its location and comes in too low or too soon, the terrain clearance floor function would generate an aural alarm.

Approval of TAWS

Currently, the FAA approves the manufacture and installation of Ground Proximity Warning Systems through Technical Standard Orders. Sections 121.360 and 135.153 require the use of GPWS meeting TSO–C92, which has been reissued as TSO–C92a, TSO–C92b, and TSO–C92c. The FAA does not intend to revise TSO–C92c to include TAWS requirements.

Instead, the FAA is developing and will issue a new and separate TSO for TAWS. The new TSO–C151, Terrain Awareness and Warning System, is being developed through the FAA TSO process which allows for public comments. Any person desiring to review and comment on the draft TSO–C151 may obtain a copy of the draft TSO–C151 from the person mentioned in the section entitled **FOR FURTHER INFORMATION CONTACT.** This TSO would be the means to obtain FAA approval of the TAWS product. The FAA also will develop and issue a TAWS advisory circular (AC). This AC would describe an acceptable means of obtaining FAA installation approval. Notice 8110.64, Enhanced Ground Proximity Warning System (EGPWS) is the current interim guidance to be used for the installation and approval of TAWS. The FAA has issued a policy statement that states that the contents of Notice 8110.64 shall remain valid until the TSO and AC are published.

An applicant that meets the proposed requirements of TSO–C151 also will be entitled to a TSO–C92c authorization, if requested, with a TSO–C151 authorization. The performance and environmental standards of TSO–C92c are included within TSO–C151. Any equipment bearing a TSO–C151 label will meet the requirements of FAR part 121.360 and 135.153.

The Proposal

The FAA is proposing to add §§ 91.223, 121.354, and 135.154 to require the installation of FAA-approved terrain awareness and warning systems (TAWS). The FAA is also proposing to amend §§ 121.360 and 135.153 to add an expiration date of four years after the effective date of the final rule for the use of current GPWS systems, thereafter, compliance with those sections would not be allowed in lieu of the provisions proposed herein.

For operations under part 121 the proposed rule would apply to all turbine-powered airplanes. For all other operations (parts 91, 125, 129, and 135) the proposed rule would apply to all turbine-powered airplanes type certificated to have six or more passenger seats, excluding any pilot seat. The FAA proposes that, beginning one year after the effective date of the final rule, U.S.-registered airplanes manufactured after that date be equipped with TAWS. The FAA also proposes that existing turbine-powered airplanes be equipped with TAWS within four years after the effective date of the final rule. This requirement for existing airplanes would apply to all airplanes manufactured on or before one year after the effective date of the final rule. (For more discussion of the compliance dates and how they were chosen, see the Regulatory Evaluation Summary later in this preamble.)

The proposal would therefore ensure that all applicable airplanes operated under parts 91, 121, and 135 have the most up-to-date and effective equipment needed to help prevent CFIT accidents. The proposal would also ensure that operators under part 125 and operators of U.S.-registered airplanes under part 129, who must also comply with part 91, are similarly equipped in order to prevent CFIT accidents.

The FAA is also proposing that operators include in their Airplane Flight Manuals the appropriate procedures for operating and responding to the audio and visual warnings of TAWS.

The FAA is not proposing changes to current training requirements in this NPRM. However recent new training requirements on crew resource management (CRM) for flight crewmembers should provide additional

safeguards in conjunction with the use of TAWS. This requirement will apply to flight crewmembers operating under parts 121 and 135 and will take effect on March 19, 1998. (60 FR 65940, December 20, 1995).

The proposed rule would apply only to turbine-powered airplanes. The FAA specifically requests comments on whether it should require the installation of TAWS on reciprocating engine-powered airplanes. What would be the impact on safety of such a requirement? Are there technical reasons why TAWS is or is not appropriate for reciprocating engine-powered airplanes? Should TAWS be required for reciprocating engine-powered airplanes of a certain size? The FAA will study data and information submitted by commenters in response to these questions before making a determination as to whether TAWS should be required for reciprocating engine-powered airplanes. If the decision is made to require TAWS on reciprocating engine-powered airplanes it will be addressed in a separate rulemaking.

Impact of the Proposed Rule

The impact of the proposed rule on operations under parts 91, 121, and 135 would be similar to the impact of the installation of TAWS on newly manufactured airplanes, *i.e.*, installation would be required beginning one year after the effective date of the final rule. Because operators under part 125 and operators of U.S.-registered airplanes under part 129 must comply with part 91, they would also have to meet this requirement.

The requirement for TAWS on existing airplanes would impact operators under the affected parts differently. Those operators under part 91 (including operators under part 125 and operators of U.S.-registered airplanes under part 129) who are currently not required to have GPWS would, in most cases, be required to install TAWS within the four year compliance period. In those cases where GPWS was previously installed on a voluntary basis, operators would also be required to retrofit their airplanes with TAWS within four years. Retrofits would also apply in cases where part 125 operators lease part 121 airplanes that are already equipped with GPWS.

For existing airplanes under parts 121 and 135, which currently must have GPWS, operators would be required to retrofit their airplanes to install TAWS within four years. It should also be noted that the proposed rule adds to the existing part 135 requirement by requiring TAWS on an additional group of airplanes: those type certificated to have six to nine passenger seats, excluding any pilot seat. The current rule requires GPWS for airplanes with 10 or more seats under part 135. If the operators of this group of airplanes have not already installed EGPWS voluntarily, the proposed rule would require a new installation of TAWS. The FAA acknowledges that this proposal may require the retrofit of aircraft that are equipped with current generation GPWS. For example, the 1992 rule discussed earlier, required GPWS on all turbine-powered airplanes with 10 or more passenger seats. The FAA specifically requests comment on the requirement for TAWS for such airplanes. (*e.g.* Should the retrofit be required only in airplanes carrying more than a certain number of passengers?)

Regulatory Evaluation Summary

Proposed changes to Federal regulations must undergo several analyses. First Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effects of regulatory changes on international trade. Finally, the Unfunded Mandates Reform Act of 1995 requires that agencies assess the impact of regulatory changes on State, local tribal governments and private sector. In conducting these analyses, the FAA has determined that this rule: (1) Would generate benefits that justify its costs and is a ''significant regulatory action'' as defined in the Executive Order; (2) is significant as defined in DOT's Regulatory Policies and Procedures; (3) would have a significant impact on a substantial number of small entities, (4) would not constitute a barrier to international trade, and (5) would not impose a significant intergovernmental mandate on State, local or tribal governments.

Costs and Benefits for Airplanes Operated Under 14 CFR Part 121

Under the assumption that in-service airplanes must be equipped with a terrain awareness and warning system by January 1, 2003 (four years after an assumed effective date of December 31, 1998), the FAA estimates that approximately 6,000 in-service airplanes operating under 14 CFR part 121 would be affected by the proposed rule. In addition, the proposal would impact approximately 400 newly manufactured turbojet and turboprop transports delivered to part 121 air carriers per year. These estimates—which are based on Aircraft Registry records, insurance data, and proprietary forecasts—do not account for voluntary installations of TAWS equipment. Overall, the FAA projects that approximately 1,100 airplanes operating under 14 CFR part 121 would be equipped with TAWS by the year 2002 in the absence of any requirement. Adjusting these estimates to account for voluntary installations, however, would not significantly affect the conclusions since the effect would be roughly proportional on both total benefits and costs.

The FAA approves TAWS installations either through Supplemental Type Certificates issued to an applicant other than the airframe manufacturer; or, in the case of the manufacturer, either a STC or a FAA-approved type-design change. Discussions with industry indicate that a typical first-of-type certification program would cost approximately $79,000 for a part 121 turbojet airplane model and $37,000 for a part 121 turboprop airplane model. These costs include FAA engineering and administrative costs. First-of-type STC's would then be amended to cover additional model-variants. The FAA estimates that such amendments, also called ''follow-ons,'' could be developed at a cost of approximately $67,000 for turbojets and $26,000 for turboprops (again, inclusive of FAA costs).

Accurately estimating the number of STC's required by the proposed rule is problematic since flight deck equipment may differ between operators of the same model-variant. For example, several different approvals may be required for different, say, B737–400's depending on the equipment options selected by the various operators. This analysis assumes 68 first-of-type certification programs and 84 follow-on programs. It should be noted that, even when multiple firms perform retrofits on a particular model-variant, the FAA would not necessarily require multiple certification or follow-on programs: in practice, only the first entity would incur full STC development costs. Subsequent firms could then purchase the STC incurring incremental expenses associated with ground and flight testing.

The FAA estimates that total STC costs (including follow-ons) for 14 CFR part 121 operators would be approximately $8.4 million, or $7.1 million at present value (assuming that STC expenses are uniformly distributed

during the period 1999–2000, and that the discount rate is 7%).

Since ground proximity warning systems are already required for part 121 operators, equipment and installation costs associated with this proposal would include: (1) For newly manufactured airplanes, the difference in cost between current generation GPWS and TAWS, and, (2) for in-service airplanes, the cost of removing the existing ground proximity warning system and replacing it with TAWS (net the rebate value of the GPWS equipment). Since GPWS and TAWS units are approximately the same weight, and since TAWS requires no more maintenance than GPWS, incremental part 121 operating and maintenance costs associated with the proposed rule are negligible.

Retrofit costs depend on the type of equipment already in use in an affected airplane. Differences in costs can be ascribed to the relative trade-in values of various vintages of GPWS units and the fact that, in some cases, GPWS includes an integral windshear detection system. (In some cases, operators may be forced to replace both the GPWS and windshear detection systems. The analysis accounts for this additional cost where applicable.) Unit (*i.e.* per airplane) retrofit costs can be summarized as follows: (1) In-service turbojet airplanes equipped with early-generation GPWS—$59,480, (2) in-service turbojet airplanes equipped with current-generation GPWS—$64,980, (3) newly manufactured turbojet airplanes—$12,000, (4) in-service 30+ passenger turboprop airplanes equipped with early-generation GPWS—$59,480, (5) in-service 30+ passenger turboprop airplanes equipped with current-generation GPWS—$57,280, (6) newly manufactured 30+ passenger turboprop airplanes—$12,000, (7) in-service less-than-30-seat turboprop airplanes—$20,600, (8) newly manufactured less-than-30-seat turboprop airplanes—$2,000.

These unit costs include: TAWS system costs, installation kit costs, installation labor costs, an adjustment for spares and simulator installations (assumed to be 10% of TAWS systems costs), and adjustments for additional navigation equipment and displays required in some aircraft. Aside from the provision for simulator units, incremental training costs are assumed to be negligible. The FAA invites comment on these cost assumptions.

The FAA estimates that TAWS equipment and installation costs for the affected in-service 14 CFR part 121 fleet would be approximately $361.5 million, or $297.0 million at present value. Total equipment and installation costs for newly manufactured airplanes delivered to part 121 air carriers during the ten year forecast period 1999–2008 would be approximately $47.5 million, or $31.3 million at present value. Therefore, total part 121 costs—including certification costs, retrofit costs, and incremental TAWS costs for newly manufactured airplanes delivered between 1999 and 2008—would be approximately $408.9 million, or $328.3 million at present value.

The benefits of TAWS again depend on the type of GPWS unit it would replace. The risk reduction potential of TAWS when measured against an early-generation GPWS system, for example, is higher than the risk reduction potential measured against a current-generation system. Risk reduction estimates for various combinations of airplane types and GPWS vintages are based on analyses of eight CFIT accidents involving 14 CFR part 121 air carriers (this includes two part 135 air carriers now required to operate under 14 CFR part 121) which occurred during the ten-year period 1986–1995. The analyses—conducted by the Volpe National Transportation Systems Center and referred to earlier in the preamble—took into consideration, among other things, the type of GPWS equipment (if any), on-board at the time of the accident, and the relative effects of current-generation GPWS versus TAWS. On the basis of the Volpe results, the FAA estimates the following rates of CFIT risk reduction: (1) Turbojet airplanes equipped with early-generation GPWS—0.079 averted accidents per million flight hours, (2) turbojet airplanes equipped with current-generation GPWS—0.048 averted accidents per million flight hours, (3) 30+ passenger turboprop airplanes equipped with early-generation GPWS—0.079 averted accidents per million flight hours, (4) 30+ passenger turboprop airplanes equipped with current-generation GPWS—0.048 averted accidents per million flight hours, (5) less-than-30-seat turboprop airplanes—0.118 averted accidents per million flight hours.

Estimates of lifecycle benefits were calculated on a per-airplane basis and summed over all affected part 121 airplanes to obtain an estimate of the expected fleet benefits. The calculations took into consideration: (1) The passenger capacity of each airplane, (2) average load factors for various types of operations, (3) the number of flight crew, (4) the probability of fatalities given a CFIT accident, (5) the expected value of the airplane at the time of accident, and (6) the expected remaining service life of the airplane.

The FAA estimates that total lifecycle benefits for the affected 14 CFR part 121 fleet (including the lifecycle benefits accruing to newly manufactured airplanes delivered during the period 1999–2008) are approximately $5.9 billion, or $2.1 billion at present value. Therefore, the ratio of discounted benefits to discounted costs is approximately 6.5 to 1.0.

Three of the eight preventable part 121 CFIT accidents occurred during international operations of U. S. carriers. The FAA evaluated the benefits and costs of lesser requirements on operators conducting only domestic flights. This analysis, however, showed substantial benefits associated with the TAWS requirement for in-service airplanes flying only domestic routes. (See the Preliminary Regulatory Evaluation, Section VII ''Analysis of Alternatives.'')

Costs and Benefits for Airplanes Operated Under 14 CFR Part 135

The FAA estimates that approximately 1,100 in-service airplanes operating under 14 CFR part 135 would be affected by the proposed rule. Approximately 800 of these are 10–30 seat airplanes that are currently required to have GWPS, and 300 are 6–9 seat turbojets and turboprops currently not required to have GPWS. In addition, the rule would affect approximately 500 new turbojet and turboprop airplanes delivered to part 135 air carriers during the period 1999–2008. The FAA is not aware of any large scale efforts to voluntarily equip part 135 airplanes with terrain awareness and warning systems.

The FAA estimates that total certification costs for typical 14 CFR part 135 turbojet and turboprop airplane models would be approximately $28,000 and $20,000, respectively. An estimate of total part 135 certification costs, then, is obtained by multiplying the per-certification costs by an estimate of the total number of certifications required. As in the analysis of part 121, predicting the number of required STC's for part 135 is problematic owing to potential differences between and within airplane model-variants. In some cases, more than one TAWS STC may be required per model, in other cases, one STC may cover more than one model. The FAA estimates that approximately 50 turbojet STC's and 32 turboprop STC's would be required to retrofit the affected part 135 fleet. Therefore, total fleet certification costs are approximately $2.1 million, or $1.8 million at present value (again,

assuming that certification costs are uniformly distributed during the period 1999–2000 and that the discount rate is 7%).

As noted earlier, the incremental costs (and benefits) of the rule depend in part on the type of GPWS equipment already in service. Operators who already have GPWS equipment, for example, would incur no additional operating or maintenance costs. In the absence of detailed information on which particular airplanes have or do not have GPWS, the FAA assumes that all airplanes are in compliance with current Federal Aviation Regulations—but do not exceed those requirements (that is, there is no adjustment made for voluntary GPWS installations). Thus, it is assumed that all 6–9 passenger seat turbine engine airplanes are not equipped with any type of ground proximity warning system.

Unit equipment and installation costs for affected part 135 airplanes are as follows: (1) In-service turbojet airplanes seating 6–9 passengers—$27,950, (2) newly-manufactured turbojet airplane seating 6–9 passengers—$26,475, (3) in-service turbojet airplanes seating 10 or more passengers—$24,300, (4) newly manufactured turbojet airplanes seating 10 or more passengers—$7,000, (5) in-service turboprop airplanes seating 6–9 passengers—$30,150, (6) newly-manufactured turboprop airplanes seating 6–9 passengers—$28,575, (7) in-service turboprop airplanes seating 10 or more passengers—$24,300, (8) newly manufactured turboprop airplanes seating 10 or more passengers—$7,000. (Recall that GPWS is already required for 10–30 seat airplanes. Therefore, incremental TAWS cost for newly manufactured airplanes in this group equal the difference in cost between TAWS and basic GPWS.) As before, these costs include: TAWS equipment costs, installation kit costs, GPS and display costs, and an adjustment for a radar altimeter (not present on some aircraft).

As noted above, incremental operating and maintenance costs are only associated with airplanes lacking GPWS equipment—by assumption airplanes seating 6–9 passengers. The FAA estimates that the weight of an average TAWS installation would be approximately 9 pounds for a turbojet airplane and 8 pounds for a turboprop airplane. Annual maintenance costs are approximately 5% of TAWS equipment costs, therefore annual incremental operating (fuel consumption) and maintenance costs equal $870 and $936 for 6–9 passenger turbojet and turboprop airplanes, respectively.

Total lifecycle costs for the affected 14 CFR part 135 fleet—including certification, equipment, installation, operating and maintenance costs—would be approximately $45.2 million, or $30.8 million at present value. Again, this total includes projected lifecycle costs for newly manufactured 6+ seat turbojet and turboprop airplanes delivered to part 135 operators between 1999 and 2008.

Following the procedure discussed under part 121, the estimated benefits for 14 CFR part 135 operations are a function of airplane seating capacity, load factors, annual flight hours, GPWS equipage, *etc.* Again, expected TAWS benefits for any particular airplane depend on whether or not the airplane already has GPWS and, if it does, the vintage of system installed. Risk reduction estimates are as follows: (1) Turbojet airplanes seating 6–9 passengers—0.861 accidents averted per million flight hours, (2) turbojet airplanes seating 10 or more passengers—0.036 accidents averted per million flight hours, (3) turboprop airplanes seating 6–9 passengers—2.310 accidents averted per million flight hours, (4) turboprop airplanes seating 10 or more passengers—0.091 accidents averted per million flight hours. For airplanes with 6–9 seats, risk estimates are based on analyses of approximately 40 accidents involving turbojet and turboprop airplanes operating under 14 CFR part 91. For airplanes with 10–30 seats, risk estimates are based on the service experience of similar airplanes operated under 14 CFR part 121. (At the time of this writing, the FAA has asked the Volpe center to review the part 135 CFIT accident data from the original study

Based on these results, the FAA projects that TAWS benefits—that is the value of reduced CFIT risks—for 14 CFR part 135 operators would be approximately $84.4 million, or $38.2 million at present value (including benefits accruing to affected part 135 airplanes delivered between 1999 and 2008). Therefore, the ratio of discounted benefits to discounted costs would be approximately 1.24 to 1.0.

The FAA notes that in the case of airplanes carrying fewer numbers of passengers, there is a clear overall net benefit in requiring TAWS to replace early generation GPWS. While relative benefits are lower for smaller aircraft that have only recently been retrofitted with current generation GPWS, excepting such airplanes could create a situation where the FAA would require more sophisticated equipment for noncommercial aircraft as compared with some commercial aircraft.

Costs and Benefits for Airplanes Operated Under 14 CFR Part 91

Affected 14 CFR part 91 airplanes, for the purpose of this analysis, are defined as a residual—*i.e.* the total affected fleet of U.S. registered turbine powered airplanes minus the affected 14 CFR parts 121 and 135 fleets. The part 91 residual includes general aviation aircraft (corporate, business, personal, instruction, aerial application, and other), large airplanes (having a seating capacity of 20 or more or a maximum payload capacity of 6,000 pounds or more) operating under 14 CFR part 125, and U.S. registered airplanes operating under 14 CFR part 129. Under this simple residual approach, the FAA estimates that approximately 5,500 turbojet airplanes and 5,700 turboprop airplanes (not operating under 14 CFR parts 121 and 135) would be affected by the proposed rule. The FAA estimates that an additional 220 newly manufactured turboprops and 120 newly manufactured turbojets would be affected annually.

The FAA estimates that the proposed rule would require approximately 57 STC's at a total cost of $1.3 million, or $1.1 million at present value (assuming that certification costs are uniformly distributed over the period 1999–2000, and that the discount rate is 7%).

Per airplane equipment and installation costs would be approximately $27,950 and $30,150 for typical in-service turbojet and turboprop airplanes, respectively. TAWS equipment and installation costs for newly manufactured airplanes—approximately $26,475 per turbojet airplane and $28,575 per turboprop airplane—are slightly lower reflecting lower installation costs.

Annual incremental operating and maintenance costs would be approximately $870 for turboprop airplanes and $936 for turbojet airplanes. Total lifecycle costs for the affected (residual) 14 CFR part 91 fleet, then, are approximately $642.9 million, or $415.3 million at present value. As in the analyses of 14 CFR parts 121 and 135, cost estimates include lifecycle costs for in-service airplanes and newly manufactured airplanes delivered between 1999 and 2008.

Estimates of the benefits accruing to part 91 operators are based on the Volpe accident analyses (discussed above). Of the 44 accidents, 11 involved turbojets and 33 involved turboprops. Probable cause, as determined by NTSB, was pilot error in all cases—principally through failure to maintain proper altitude, use of improper instrument flight rules or visual flight rules

procedures, or poor planning/decision-making. Volpe analyses determined that current technology ground proximity warning systems could have prevented 33 of the 44 accidents. On the other hand, TAWS could have prevented 42 of the 44 accidents; 11 turbojet airplane accidents and 31 turboprop airplane accidents. On the basis of the accident history, the FAA estimates that TAWS would prevent 2.46 turboprop airplane accidents per million flight hours and 0.86 turbojet airplane accidents per million flight hours. This translates to fleet benefits of approximately $1.5 billion, or $663 million at present value. Therefore, the ratio of discounted benefits to discounted costs is approximately 1.6 to 1.0.

The FAA invites comment on these estimates. Comments should include details such as: (1) Alternative cost assumptions, (2) alternative aircraft population forecasts, (3) the extent of voluntary industry action, *etc.*

Analysis of Alternatives

The FAA concludes that this NPRM is a significant regulatory action based on the proposal's expected cost, its potential impact on safety, and the extent of public interest in this issue. For matters determined to be significant, Executive Order 12866 requires ''an assessment, including the underlying analysis, of costs and benefits of potentially effective and reasonably feasible alternatives to the planned regulation.'' Accordingly, the FAA has considered regulatory options to identify the least intrusive and most cost-effective means of achieving the goal of reducing the probability of CFIT accidents.

The alternatives considered fall under two general groupings: (1) require different levels of TAWS or GPWS technologies for different subsegments of the regulated population, and (2) impose different compliance deadlines on different subsegments of the regulated population.

Different Levels of TAWS or GPWS for Different Subsegments of the Regulated Population

One group of alternatives consists of options that would require different levels of TAWS or GPWS technologies for different subsegments of the regulated population (including the option of *not* requiring GPWS or TAWS equipment at all). There are three broad classifications of TAWS/GPWS technologies: (1) Early-generation GPWS, (2) current-generation or upgraded GPWS (with improved capabilities and a lower probability for nuisance warnings), and (3) TAWS. It is possible to identify several regulatory alternatives, then, based on these technology levels.

One alternative would be to exclude certain types of airplanes or operators from a TAWS or GPWS requirement altogether. Based on its evaluation of benefits and costs, the FAA does not consider this to be the best option. Excluding operators of 6–9 seat airplanes, for example, would run contrary to a significant body of analyses—by the DOT, FAA and NTSB—that indicates that a TAWS requirement would result in substantial reductions in CFIT casualties and property losses.

Another alternative would be to require GPWS without regard to technology. Under this option, any vintage of GPWS—even the oldest systems—would be compliant. Approximately 95% of the world's commercial airline fleet are equipped with some form of ground proximity warning system. Also, anecdotal evidence suggests that there are some other, non-air carrier operators who have voluntarily installed GPWS. This alternative, therefore, would primarily affect general aviation operators and commercial operators of 6–9 seat turbine powered airplanes. There are two drawbacks to this option. First, a detailed analysis shows that the greatest potential for CFIT fatality reductions is produced by requiring TAWS in commercial airplanes *that are already equipped with GPWS*. For 14 CFR part 121, for example, TAWS is expected to reduce the accident rate by up to 0.079 per million flight hours. The FAA's analysis of part 135 carriers—most of whom already have current generation GPWS technology—also shows that significant benefits, which more than justify the costs, can be realized by requiring TAWS retrofit. Second, this option would effectively force on-demand air taxi and other general aviation operators to a higher standard than that required for the largest commercial carriers. This follows since early generation GPWS systems are no longer being produced for installation in the United States. This option would therefore require small operators to install upgraded GPWS or TAWS while many part 121 operators could legally continue to use technology developed over 20 years ago.

A third alternative would be to require current technology GPWS only. This alternative would also reduce the number of affected airplanes. The FAA estimates that approximately 3,200 airplanes operating under 14 CFR part 121, and 1,100 airplanes operating under 14 CFR part 135 already have upgraded GPWS equipment (or will have such equipment by the projected effective date of the proposed rule). Under this alternative, these airplanes would not require retrofit. In addition, incremental costs associated with the purchase of newly manufactured airplanes would be zero for part 121 operators and many part 135 operators. (Again, this follows since early generation GPWS units are no longer being produced for installation in the United States.) Limiting the requirement to upgraded GPWS would also marginally reduce compliance costs for some affected operators since upgraded GPWS would be less expensive than TAWS in some cases. A variant of this alternative would be to except smaller aircraft that may have been required to, or have voluntarily been equipped with current generation GPWS. The FAA concludes, however, that this exception may result in requiring more sophisticated equipment on certain noncommercial aircraft relative to some commercial aircraft.

There are safety and cost-effectiveness concerns with this alternative. It clearly provides a lower level of safety than the proposed rule; moreover, although this option is substantially cheaper than the proposed rule, ironically its costs do not justify its benefits for some types of operations. For example, in some cases the limited risk reduction potential would not justify replacing early-generation GPWS with upgraded current-generation systems. For airplanes that currently lack any GPWS, the FAA concludes that requiring only upgraded GPWS is a suboptimal strategy based on the relatively small difference in cost between upgraded GPWS versus TAWS combined with the relatively large differential in risk reduction potential between the two systems. Finally, significant safety benefits would be foregone for those airplanes already equipped with current-generation GPWS.

Clearly, there are dozens of combinations of the two previous alternatives involving different subsegments of the U.S. registered fleet. In general, they include: (1) Exempting, or imposing reduced requirements on, in-service aircraft, (2) exempting, or imposing reduced requirements on, domestic operations; (3) exempting, or imposing reduced requirements on, non-part 121 operations; (4) exempting, or imposing reduced requirements on, operations not involving the carrying of passengers for compensation or hire.

The FAA does not favor options requiring TAWS installation only for newly manufactured airplanes. While it is true that this alternative would

significantly reduce compliance costs (indeed, some manufacturers are, or will soon be, offering TAWS as standard equipment), 30 or more years would elapse before the entire non-TAWS fleet is retired and replaced with TAWS-equipped airplanes. The foregone benefits—reduced fatalities, injuries, and property loss—associated with such a strategy are serious disadvantages of this alternative.

The FAA also considered options that would combine TAWS installations for certain newly manufactured airplanes, with a GPWS requirement for in-service airplanes equipped with no, or early-generation, GPWS. While less costly than the proposed rule, such alternatives would actually be less cost-effective: significant safety benefits associated with replacing upgraded GPWS with TAWS would be foregone, and, as noted earlier, in many cases it does not make economic sense to replace early-generation GPWS systems with upgraded systems.

The accident history shows that substantial benefits can be achieved by requiring TAWS on international flights. An obvious alternative, then, would be to require TAWS retrofit only for airplanes conducting international operations, and impose lesser requirements for the remainder of the U.S. registered fleet (for example, require TAWS on newly manufactured airplanes only). Under this strategy, operators conducting only domestic flights would incur little or no costs. While the FAA acknowledges that a greater-than-proportional share of CFIT fatalities involving U.S. registered airplanes involve international operations, analyses (see the discussion of DOT Volpe National Transportation Systems Center analysis in the preamble, for example) show that substantial reductions in CFIT risks can be achieved by also requiring TAWS for domestic operations.

As part of its analysis, the FAA estimated the domestic CFIT rate for 14 CFR part 121 carriers. This study showed that the discounted TAWS benefits—considering the domestic CFIT accident rate alone—would exceed discounted costs—associated with retrofitting the entire turbine-powered part 121 fleet—by approximately 50%.

Finally, the FAA considered the option of requiring TAWS only on aircraft carrying passengers for compensation or hire. Accident analyses by the NTSB and DOT, however, show that a TAWS requirement would provide substantial safety benefits—that justify TAWS costs—for non-commercial, general aviation airplanes.

Different Compliance Deadlines for Different Subsegments of the Regulated Population

Economic and safety considerations complicate the selection of a meaningful compliance period. With too long a period, important safety benefits may be foregone; with too short a period, the cost burden on industry becomes excessive. For in-service airplanes, the compliance alternatives can be summarized as follows: (1) Select a compliance period shorter than 4 years, (2) select a compliance period longer than 4 years, (3) different combinations of compliance years and equipment requirements.

Shortening the compliance period for TAWS installation, while beneficial from the standpoint of reduced CFIT risk, would raise important economic and technical problems. First, in the absence of technical standards and a substantial body of TAWS installation/retrofit experience—particularly for general aviation airplane types—approximately 200 STC's (or STC follow-ons) or type design change programs would have to be undertaken by industry and processed and approved by the FAA. Substantially shortening the compliance period for TAWS retrofit could impinge on other modification or repair work (which may also have safety implications) and could necessitate a reallocation of FAA resources and disrupt other FAA projects.

Second, production information provided by the manufacturer of the only existing TAWS-compliant system indicates that building a sufficient number of units to accommodate a shorter deadline would be problematic. Theoretically, the FAA could grant extensions, but widespread use of this authority would result in inefficiencies—to modification centers, operators, and the FAA—and, in the end, result in no sooner achieving full fleet compliance than simply selecting a more appropriate compliance deadline in the first place.

Other costs associated with a shorter deadline include: (1) Increased probability of service disruption, (2) decreased likelihood of the availability of competing TAWS products, and (3) difficulties in drafting and approving FAA technical standards for TAWS technology.

The principle objection to lengthening the compliance period is that the flying public would forego significant safety benefits without a substantial decrease in costs. The FAA's analysis indicates that delaying the compliance deadline beyond the current proposal would not result in lower downtime or certification costs. Rather, cost savings would equal the modest return to capital (that would be spent on TAWS equipment) that would be realized during the short time that the operator could postpone retrofit. It is true that a longer compliance period would permit some airplanes to be retired without retrofit. However, these airplanes would have to be replaced with TAWS compliant aircraft (either through purchase or lease), therefore the net cost savings is negligible.

The FAA also considered a hybrid two-stage approach designed to: (1) Give operators of older airplanes a cheaper compliance option, and (2) require quicker fleet installation of at least a current generation GPWS unit. In this approach, all U.S. registered turbine-powered airplanes with 6 or more passenger seats would be required to have a minimum of upgraded GPWS within an initial compliance period (*e.g.* 1 year); and an FAA-approved terrain awareness and warning system by a second compliance period (*e.g.* 5 years). Theoretically, costs for many operators would be lower due to lower GPWS costs and the availability of GPWS STC's for most affected airplane models. There are two problems with this approach

First, this proposal increases the likelihood of service disruptions. The two-stage approach only makes sense if the initial and secondary compliance deadlines are sufficiently far apart. If the initial and secondary deadlines were only separated by one or two years, for example, it is unlikely that any operator would choose to install an upgraded GPWS system. Delaying the secondary (TAWS) deadline is unacceptable to FAA for the safety reasons cited above. Thus, the initial deadline—affecting all airplanes with no or early-generation GPWS equipment—would have to be relatively early. Depending on the specific date chosen, the initial deadline could require retrofit of over 12,000 airplanes (with current generation GPWS) within a one or two year period.

Second, FAA's analysis of the affected airplane population indicates that a large number of operators of airplanes that would need to be retrofitted by the initial deadline would choose to have TAWS equipment (primarily because they would expect these airplanes to be in-service after the secondary deadline). As noted above, it is unlikely that TAWS production will be able to accommodate this demand. Thus, operators who could not obtain TAWS would have to install upgraded GPWS and then retrofit TAWS approximately five years later. That is, the FAA would

compel some operators—most likely smaller operators with little market influence—to retrofit twice within five years.

Third, as noted above, it is difficult to justify retrofitting upgraded GPWS in place of an existing early-generation system. The cost difference between GPWS and TAWS is relatively small—especially in consideration of the trade-in value of the existing unit (in some installations upgraded GPWS may be more expensive than TAWS)—but the difference in risk reduction is substantial. A preliminary analysis (of a compliance alternative that would require upgraded GPWS within one year and TAWS within five years) showed that the projected reduction in the part 121 CFIT accident rate associated with replacing early GPWS with TAWS was three times the rate reduction associated with replacing early GPWS with upgraded GPWS.

The FAA invites comment on the alternatives discussed in this section and suggestions or other regulatory alternatives that have not been considered. Submitted alternatives should include an analysis of the issues discussed here, including: (1) Technical feasibility, (2) economic considerations (*e.g.* TAWS production constraints, probability of service disruption, supplier competition), and (3) public safety impacts.

Initial Regulatory Flexibility Determination and Analysis

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. Specifically, the RFA requires federal agencies to prepare an initial regulatory flexibility analysis for any proposed rule that would have a ''significant economic impact on a substantial number of small entities.'' The purpose of this analysis is to ensure that the agency has considered all reasonable regulatory alternatives that would minimize the rule's economic burdens for affected small entities, while achieving its safety objectives.

Entities potentially affected by the proposed rule include manufacturers of transport category airplanes, manufacturers of TAWS/GPWS systems, and air carriers. In addition, the rule would affect many other types of small entities which operate turbine-powered airplanes seating six or more passengers under 14 CFR part 91 (*e.g.* small business, governments, and other private or public organizations). There are thousands of operators of such airplanes and, therefore, potentially thousands of entities representing hundreds of industries, organizations, and institutions. The FAA acknowledges, therefore, that a substantial number of small entities could be significantly affected by the proposed rule.

As noted above, the proposed rule is the culmination of an analysis of a number of alternatives (in fact, the FAA has ruled out several alternatives that would have imposed more costly requirements on small entities). Three cost-reducing compliance options were considered for small entities specifically: (1) Exclude small entities, (2) extend compliance deadline for small entities, and (3) establish lesser technical requirements for small entities.

The FAA's analysis indicates that the option to exempt small entities from the requirements of the proposed rule is not justified. In fact, as noted in the preamble, the accident history of part 91 operators (many of whom are small entities) forms the basis of the NTSB's recommendation to require ground proximity warning systems on smaller turbojet and turboprop airplanes.

The FAA also considered options that would lengthen the compliance period for small operators. The requirement as proposed, however, would place a modest burden on small entities with respect to time constraints. Small entities—by definition operating small numbers of airplanes—would have four years from the effective date of the rule to complete retrofit work. As noted earlier, delaying the compliance deadline beyond the current proposal would not result in lower downtime or certification costs. Rather, cost savings would equal the modest return to capital (that would be spent on TAWS equipment) that would be realized during the short time that the operator could postpone retrofit. On the other hand, lengthening the compliance period would expose airplane occupants to significant safety risks for a longer period of time.

Finally, the FAA's analysis indicates that compliance options that would permit non-TAWS technologies are not cost-effective. For airplanes not equipped with any ground proximity warning system, TAWS units would provide up to 23% greater CFIT risk reduction over current-generation GPWS at very little additional cost. (In fact, in some installations, upgraded GPWS may be more expensive than TAWS.) In cases where aircraft already have GPWS, VNTSC and FAA analyses indicate that the safety benefits of TAWS outweigh the costs of retrofit.

The FAA invites comments on its analysis of small entity impacts and alternatives. Comments should include: (1) Compliance issues that are specific to small entities (*e.g.* cost and technical feasibility), (2) public safety impacts, and (3) other small entity compliance alternatives not considered here.

International Trade Impact Assessment

Recognizing that nominally domestic regulations often affect international trade, the Office of Management and Budget directs Federal Agencies to assess whether or not a rule or regulation will affect any trade-sensitive activity. The proposed rule could potentially affect international trade by burdening domestic businesses or air carriers with requirements that are not applicable to their foreign competitors. In general, the FAA concludes that the potential international trade impacts associated with the proposed rule would be negligible. Many domestic and foreign air carriers are already voluntarily installing TAWS equipment in recognition of the substantial safety benefits. A summary of potential impacts follows.

There is only one line of FAA-approved systems that meets the requirements of the proposed rule. The proposed requirement could give the manufacturer of this product line a competitive advantage relative to foreign and domestic competitors by creating a substantial and immediate demand for enhanced GPWS units. Monopolistic control of this large market, in turn, may permit the manufacturer to take advantage of scale economies and learning curve effects—advantages that would be unavailable to other potential manufacturers who have not yet developed TAWS equipment. This production cost advantage may permit the dominant manufacturer to set prices so as to exclude market entry, but maintain economic profits. (''Economic profits'' in the sense that they are above the standard return for that particular industry.)

The FAA's analysis indicates that the proposed rule would have a negligible effect on the competitive position of domestic airframe manufacturers. Under the proposed rule, domestic manufacturers, could continue to offer basic GPWS units on airplanes sold to foreign customers (if the airplane is not U.S. registered). Foreign airframe manufacturers, on the other hand, would be required to equip airplanes sold to U.S. customers (operating under 14 CFR parts 91, 121, or 135) with TAWS.

Domestic firms leasing aircraft to foreign operators may be adversely

affected by the part 91 provisions of the proposed rule. Domestic leasing companies, for liability reasons or to position themselves to lease to both 14 CFR part 121 and foreign carriers, often choose to maintain U.S. registered fleets. Thus, their lease prices would have to reflect TAWS retrofit costs while the prices of foreign competitors would not (in some cases, the lessee is directly responsible for modifications required by airworthiness directive or regulations—but in either case the disincentive effect is the same). Given the small cost of TAWS relative to average airplane values, the FAA concludes that the potential international trade impact would be small. Also, TAWS equipped airplanes would be safer and thus more attractive to potential lessees—and their passengers. Increased patronage attributable to the operation of safer airplanes would also partially offset the costs of compliance.

The potential impact to air carriers is, again, a function of the aircraft registration. Foreign air carriers operating U.S. registered airplanes would be required to install TAWS as would U.S. air carriers. To this extent, operators of U.S. registered airplanes would have costs not applicable to non-U.S. registered competitors.

Conversely, CFIT accidents are a leading cause of commercial aviation fatalities worldwide. It is likely that knowledgeable passengers would be more than willing to pay the small difference in price to travel on an airplane equipped with TAWS. Voluntary industry initiatives to install enhanced ground proximity warning systems are consistent with the view that TAWS benefits far exceed its costs, and could have beneficial effects for domestic airlines competing for international passenger traffic.

Unfunded Mandates Reform Act Analysis

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed ''significant intergovernmental mandate.'' A ''significant intergovernmental mandate'' under the Act is any provision in a Federal agency regulation that will impose an enforceable duty upon State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

The FAA has determined that the proposed rule would likely have an economic impact *on the private sector* exceeding $100 million in certain years; and that the economic impact to State, local, and tribal governments would be far less than this threshold. Since the proposed rule does not impose an enforceable duty upon State, local, and tribal governments in the aggregate, of $100 million (adjusted annually for inflation) in any one year, the FAA concludes that it does not constitute a significant intergovernmental mandate as defined in the Act.

Federalism Implications

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

Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted a copy of these proposed sections to the Office of Management and Budget for its review. The agency is not collecting information. This NPRM proposes to mandate a Terrain Awareness and Warning System for all turbine powered airplanes of 6 or more passenger seating. TAWS is a passive, electronic, safety device located in the avionics bay of the airplane. TAWS alerts pilots when there is terrain in the airplanes' flight path. Since there is not an actual collection of information, we cannot estimate a burden hour total. However, for the purpose of controlling this submission, we will assign a one hour burden to the package. There is a total cost estimate of 140 million dollars per year, for installation of the passive, electronic, safety device.

Organizations and individuals desiring to submit comments on the information, billing, and collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10202, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for Federal Aviation Administration. These comments should reflect whether the proposed collection is necessary; whether the agency's estimate of the burden is accurate; how the quality, utility and clarity of the information to be collected can be enhanced; and how the burden of the collection can be minimized. A copy of the comments also should be submitted to the FAA Rules Docket.

OMB is required to make a decision concerning the collection of information contained in this NPRM between 30 and 60 days after publication in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the NPRM.

International Compatibility

The FAA has reviewed corresponding International Civil Aviation Organization international standards and recommended practices and Joint Aviation Authorities requirements. TAWS is a new system recently developed by American industry. The FAA intends to work through the ICAO process to harmonize this rule with the international community.

List of Subjects

14 CFR Part 91

Aircraft, Aviation safety.

14 CFR Part 121

Aircraft, Aviation safety, Safety.

14 CFR Part 135

Aircraft, Aviation safety.

The Proposed Amendment

For the reasons discussed above, the Federal Aviation Administration proposes to amend 14 CFR parts 91, 121, and 135 as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46502, 46504, 46506–46507, 47122, 47508, 47528–47531.

2. Section 91.223 is added to read as follows:

§ 91.223 Terrain awareness and warning system.

(a) *Airplanes manufactured after [one year after the effective date of the final rule].* No person may operate a turbine-powered U.S.-registered airplane type certificated to have six or more passenger seats, excluding any pilot seat, unless that airplane is equipped with an approved terrain awareness and warning system, including a terrain situational awareness display, that meets the requirements of TSO–C151.

(b) *Airplanes manufactured on or before [one year after the effective date of the final rule].* No person may operate a turbine-powered U.S.-registered airplane type certificated to have six or more passenger seats, excluding any pilot seat, after [4 years after the effective date of the final rule] unless that airplane is equipped with an approved terrain awareness and warning system, including a terrain situational awareness display, that meets the requirements of TSO–C151.

(c) *Airplane Flight Manual.* The Airplane Flight Manual shall contain appropriate procedures for—

(1) The use of the terrain awareness and warning system; and

(2) Proper flight crew reaction with respect to the terrain awareness and warning system audio and visual warnings.

PART 121—OPERATING REQUIREMENTS; DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

3. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

4. Section 121.354 is added to read as follows:

§ 121.354 Terrain awareness and warning system.

(a) *Airplanes manufactured after [one year after the effective date of the final rule].* No person may operate a turbine-powered airplane unless that airplane is equipped with an approved terrain awareness and warning system, including a terrain situational awareness display, that meets the requirements of TSO–C151.

(b) *Airplanes manufactured on or before [one year after the effective date of the final rule].* No person may operate a turbine-powered airplane after [four years after the effective date of the final rule], unless that airplane is equipped with an approved terrain awareness and warning system, including a terrain situational awareness display, that meets the requirements of TSO–C151.

(c) *Airplane Flight Manual.* The Airplane Flight Manual shall contain appropriate procedures for—

(1) The use of the terrain awareness and warning system; and

(2) Proper flight crew reaction with respect to the terrain awareness and warning system audio and visual warnings.

5. Section 121.360 is amended by adding paragraph (g) to read as follows:

§ 121.360 Ground proximity warning—glide slope deviation alerting system.

* * * * *

(g) This section expires on [four years after the effective date of the final rule].

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON-DEMAND OPERATIONS

6. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

7. Section 135.153 is amended by adding paragraph (f) to read as follows:

§ 135.153 Ground proximity warning system.

* * * * *

(f) This section expires on [four years after the effective date of the final rule].

8. Section 135.154 is added to read as follows:

§ 135.154 Terrain awareness and warning system.

(a) *Airplanes manufactured after [one year after the effective date of the final rule].* No person may operate a turbine-powered airplane type certificated to have six or more passenger seats, excluding any pilot seat, unless that airplane is equipped with an approved terrain awareness and warning system, including a terrain situational awareness display, that meets the requirements of TSO–C151.

(b) *Airplanes manufactured on or before [one year after the effective date of the final rule].* No person may operate a turbine-powered airplane type certificated to have six or more passenger seats, excluding any pilot seat, after [insert date 4 years after the effective date of the final rule], unless that airplane is equipped with an approved terrain awareness and warning system, including a terrain awareness and warning system, that meets the requirements of TSO–C151.

(c) *Airplane Flight Manual.* The Airplane Flight Manual shall contain appropriate procedures for—

(1) The use of the terrain awareness and warning system; and

(2) Proper flight crew reaction with respect to the terrain awareness and warning system audio and visual warnings.

Issued in Washington, DC, on August 19, 1998.

Thomas E. McSweeny,

Director, Aircraft Certification Service.

[FR Doc. 98–22751 Filed 8–25–98; 8:45 am]

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federal register

Wednesday
August 26, 1998

Part VI

Department of Education

Office of Special Education and Rehabilitative Services; Special Education—Research and Innovation To Improve Services and Results for Children With Disabilities and Special Education—Technology and Media Services for Individuals With Disabilities Programs; Notice

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Special Education—Research and Innovation To Improve Services and Results for Children With Disabilities and Special Education—Technology and Media Services for Individuals With Disabilities Programs

AGENCY: Department of Education.

ACTION: Correction notice.

SUMMARY: On August 13, 1998 a notice inviting applications for new awards for the Office of Special Education and Rehabilitative Services for Fiscal Year (FY) 1999 was published in the **Federal Register** (63 FR 43597). This notice corrects the Fiscal Year stated in the table heading that was included in the notice on page 43602. The published table heading reads ''Individuals with Disabilities Education Act Application Notice for Fiscal Year 1998''. It is corrected to read ''Individuals with Disabilities Education Act Application Notice for Fiscal Year 1999''.

INDIVIDUALS WITH DISABILITIES EDUCATION ACT APPLICATION NOTICE FOR FISCAL YEAR 1999

CFDA No. and name	Applications available	Application deadline date	Deadline for intergovernmental review	Maximum award (per year) [1]	Page limit [2]	Estimated numbers of awards
84.324B Student Initiated Research Projects	8/20/98	2/05/99	4/06/99	$20,000	25	12
84.324C Field Initiated Research Projects	8/20/98	9/28/98	11/27/98	180,000	50	14
84.324N Initial Career Awards	8/20/98	9/28/98	11/27/98	75,000	30	4
84.324M Model Demonstration Projects for Children with Disabilities	8/20/98	10/05/98	12/04/98	150,000	40	18
84.324R Outreach Projects for Children with Disabilities	8/20/98	10/05/98	12/04/98	150,000	40	21
84.327A Steppingstones of Technology Innovation for Students with Disabilities	8/20/98	12/18/98	2/16/99		40	15
Phase 1 and 2				200,000		
Phase 3				300,000		

[1] The Secretary rejects and does not consider an application that proposes a budget exceeding the amount listed for each priority for any single budget period of 12 months.

[2] Applicants must limit the Application Narrative, Part III of the Application, to the page limits noted above. Please refer to the ''Page Limit'' section of this notice for the specific requirements. The Secretary rejects and does not consider an application that does not adhere to this requirement.

FOR FURTHER INFORMATION CONTACT: Grants and Contracts Service Team, 600 Independence Avenue, SW, Room 3317, Switzer Building, Washington, DC 20202–2641. Telephone: (202) 260–9182. Individual who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8953.

Individuals with disabilities may obtain a copy of this notice in an alternate format (e.g. Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office at (202) 512–1530 or, toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins, and Press Releases.

Note: The official version of a document is the document published in the **Federal Register**.

Dated: August 20, 1998.

Curtis L. Richards,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 98–22835 Filed 8–25–98; 8:45 am]

BILLING CODE 4000–01–P

federal register

Wednesday
August 26, 1998

Part VII

Federal Trade Commission

16 CFR Part 4

Electronic Freedom of Information Act of 1996; Miscellaneous Rules; Final Rule and Proposed Rule

FEDERAL TRADE COMMISSION

16 CFR Part 4

Electronic Freedom of Information Act of 1996; Miscellaneous Rules

AGENCY: Federal Trade Commission (FTC).

ACTION: Final rule.

SUMMARY: The Federal Trade Commission is implementing the requirements of the Electronic Freedom of Information Act Amendments of 1996 by revising its Rules of Practice governing access to agency records. The Commission is also making other ''housekeeping'' amendments to its Rules, including changes to reflect the Commission's establishment of a Consumer Response Center, which replaces the former Public Reference Branch, and the transfer of responsibility for initial Freedom of Information Act and Privacy Act requests to the Office of the General Counsel.

DATES: These amendments are effective August 26, 1998.

FOR FURTHER INFORMATION CONTACT: Alex Tang, Attorney, (202) 326-2447, Office of the General Counsel, FTC.

SUPPLEMENTARY INFORMATION: On October 2, 1996, the President signed the Electronic Freedom of Information Act Amendments of 1996 (E–FOIA), Pub. L. 104–231, 110 Stat. 3048, amending the Freedom of Information Act (FOIA), 5 U.S.C. 552. In a separate document published elsewhere in today's **Federal Register**, the Commission is seeking public comment on its proposal to amend its Rules of Practice to incorporate, among other things, procedures for expedited processing and aggregation of requests. This document contains implementing Rule amendments that do not require public comment. This document also includes Rule amendments reflecting recent organizational changes that affected the agency units responsible, respectively, for providing routine access to public records and for processing initial requests for non-public records under the FOIA and Privacy Act.

Making Certain Documents Previously Released Under the FOIA Available For Routine Public Inspection And Copying

Section (a)(2) of the FOIA, 5 U.S.C. 552(a)(2), which lists the agency records that must be made available for routine public inspection and copying, was amended by adding two new subsections, 5 U.S.C. 552(a)(2) (D) and (E). Previously, section (a)(2) applied only to final opinions and orders in the adjudication of cases, agency policy statements and interpretations not published in the **Federal Register**, and administrative staff manuals and instructions affecting the public. *See* 5 U.S.C. 552(a)(2)(A), (B), (C). In practice, the Commission makes these and numerous other materials available for routine inspection and copying on its public record. *See* Commission Rule 4.9(b), 16 CFR 4.9(b).

The FOIA, as amended by the E–FOIA, now requires that the Commission also make routinely available ''copies of all records, regardless of form or format, which have been released to any person under [the FOIA] and which, because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records.'' 5 U.S.C. 552(a)(2)(D). An index of those records must also be made routinely available. 5 U.S.C. 552(a)(2)(E). Accordingly, the Commission is revising its list of public records in Rule 4.9(b) to include these items. The new provisions are being designated as Rules 4.9(b)(10) (ix) and (x), respectively, and certain existing paragraphs are being revised and redesignated.

These changes will likely reduce the number of requests made under the FOIA, although the Commission expects a corresponding increase in the number of requests received for public record materials. Because placing previously released documents on the public record and providing access through that process is generally less costly than providing access through the Commission's FOIA process, this proposed change to the Rules will probably decrease the overall costs to the Commission and should eliminate search and review fees that might otherwise be incurred by requesters with respect to such records.

The General Counsel (or designee) will determine, on a case-by-case basis, which documents may be appropriate to make routinely available on the public record under Rule 4.9(b)(10)(ix). The Commission, however, does not intend that documents placed on the public record under that Rule will include information that is legally exempt from public disclosure. One example is information about an individual that, even where it is not exempt from mandatory disclosure to that individual as a first-party requester, would still be withheld in response to subsequent requests from others if the materials are otherwise exempt under the FOIA. *See, e.g.,* 5 U.S.C. 552(b)(6), (7)(C). Other examples include information that is submitted to the Commission (either under compulsory process, or voluntarily in lieu thereof) in a Commission law enforcement investigation, or confidential business information. Again, that information may be released back to a first-party requester, but would be withheld from others under FOIA Exemption 3, by virtue of sections 6(f) and 21 (b) and (f) of the FTC Act, 15 U.S.C. 46(f) and 57b–2 (b) and (f), and FOIA Exemption 4.

Likewise, the Commission does not intend for Rule 4.9(b)(10)(ix) to apply where the public interest in the documents is insufficient to conclude that the documents are likely to be requested by others. Further, documents placed on the public record under the Rule will be removed, consistent with the statutory language and purpose of the requirement, when it appears that they are no longer likely to be routinely requested.

Making Certain Records Available Electronically

Section (a)(2) of the FOIA, as amended, further provides that documents subject to routine public inspection and copying under that provision must also be made accessible to the public electronically (*e.g.,* by ''computer telecommunications,'' such as a direct computer dial-in system or through the Internet). This provision, which became effective on November 1, 1997, applies to all covered records created on or after November 1, 1996. Furthermore, beginning December 31, 1999, the agency must make the document index required under section (a)(2)(E) of the FOIA and new Rule 4.9(b)(10)(x), as discussed earlier, publicly accessible by computer telecommunications, whether or not the agency employs such a system for making other required documents electronically available. The Commission is using its Internet Web site (WWW.FTC.GOV) to meet the requirements of this provision. Accordingly, the Commission is amending Rule 4.9(a)(3), which identifies the locations from which public record materials may be obtained, to include the Commission's Web site address. This change is intended to promote electronic access to Commission information and documents.

Providing Records In the Format Requested

The FOIA, as amended, now requires that records released thereunder be made available in the form or format requested if the material is ''readily

reproducible'' in that form or format. *See* 5 U.S.C. 552(a)(3)(B). The Commission is amending Rule 4.11(a)(1)(iv)(C) to reflect this requirement.

In most instances, records are reproduced in their existing format (*e.g.*, paper) because no particular format has been requested. In other cases, no version of the requested records may exist in the particular format specified by the requester (*e.g.*, a request that paper-only records be made available in electronic form, or that records maintained in one electronic format be made available in a different electronic format). The Commission has determined that, in those cases, whether a record is ''readily reproducible'' in the requested format will depend on whether the record can be converted to that format with a reasonable amount of effort. The relevant time and cost to the requester, if any, will be determined in accordance with Commission Rule 4.8 before such records are converted and reproduced in the requested format. (The companion rulemaking document being published by the Commission in today's **Federal Register** proposes a new category of fees to be charged for conversions of paper records to electronic format.)

Searching For Electronic Records

New section (a)(3)(C) of the FOIA, 5 U.S.C. 552(a)(3)(C), requires that the Commission, in processing a FOIA request, make reasonable efforts to search for any responsive records that may exist in electronic form or format, except when such efforts would significantly interfere with the operation of the agency's automated information systems. In practice, the Commission already follows this procedure. Accordingly, the Commission is modifying Rules 4.8(a)(1) and 4.11(a)(1)(iv)(A) to conform its Rules with the statute and the Commission's current practice.

Amended Time Limit For Responding To Initial Requests

Section (a)(6) of the FOIA provides that the agency must determine whether requested records will be released or withheld, either in whole or in part, and respond to the request within specified periods of time. The E–FOIA increased the time available to the Commission to respond to an initial request from 10 working days to 20 working days. *See* 5 U.S.C. 552(a)(6)(A)(i), as amended. Rule 4.11(a)(1)(iii)(A) is amended to incorporate that change into the agency's Rules of Practice. (This particular amendment is also included in the Commission rulemaking document being published elsewhere in today's **Federal Register**, which proposes other changes to Rule 4.11(a)(1)(iii)(A) requiring public comment.) The E-FOIA did not change the time available to respond to an administrative appeal of an initial denial of records, which remains 20 working days. Therefore, no change is being made to the corresponding portions of the Rules related to appeals.

Extensions Of Time For Responding To FOIA Requests

The FOIA permits agencies to extend the time limit for responding to a FOIA request, including any appeal of a denied request, by up to 10 working days in ''unusual'' circumstances. 5 U.S.C. 552(a)(6)(B); *see* Commission Rule 4.11(a)(1)(iii)(B). While the criteria for such extensions were not amended, the FOIA now provides that when an agency determines, in ''exceptional'' circumstances, that it cannot meet the extended deadline, the requester will be so notified and given the opportunity to modify the request or agree to an alternative time-frame. 5 U.S.C. 552(a)(6)(B)(ii). The Commission's FOIA unit has employed a similar procedure for many years to satisfy the needs of requesters and to limit the Commission's costs in responding to requests. Rules 4.11(a)(1)(iii)(B) and (C) and 4.11(a)(2)(ii)(B) have been amended to incorporate this statutory change.

Estimating the Volume Of Withheld Materials

The amended statute now requires that, at both the initial and administrative appeal levels, the agency must reasonably estimate the volume of materials to which access is denied and to provide that estimate to the requester, unless providing such an estimate would harm an interest protected by an exemption in section (b) of the statute that was cited as a basis for withholding materials. *See* 5 U.S.C. 552(a)(6)(F).

The statute does not state how specific the estimate must be. The Commission has determined that a good-faith approximation of the number of pages (or boxes of documents) being withheld should be sufficient to comply with this provision, and has modified Rules 4.11(a)(1)(iv)(A) (related to initial determinations) and 4.11(a)(2)(iii)(A) (related to appeal determinations) to effect these statutory changes.

Guide To Requesting Information

The FOIA now requires that the agency prepare and make publicly available reference material or a guide for requesting records or information from the Commission, including an index of all major information systems, a description of major information and record locator systems maintained, and a handbook for obtaining various types and categories of public information. *See* 5 U.S.C. 552(g). The Commission has developed a handbook containing all of the required guidance in one document, and is adding a new Rule 4.9(b)(8)(v) to include that document in the list of agency records that are routinely available to the public.

Organizational Changes

The Commission has established within its Bureau of Consumer Protection a new Consumer Response Center, which is responsible for providing access to public records previously provided by the Commission's former Public Reference unit. The Commission has also transferred agency staff responsible for processing initial requests for non-public records under the FOIA and the Privacy Act, 5 U.S.C. 552a, from the Office of Information and Technology Management to the Office of the General Counsel. Thus, the processing of initial requests under the FOIA and Privacy Act, and initial determinations on all requests for fee waivers, are now consolidated in the General Counsel's office, which also retains its authority over the processing of appeals in such matters. Initial request and appeal functions will remain separate, however, and different staff and officials will process and decide initial requests and appeals. Revisions are being made throughout Rules 4.8, 4.11 and 4.13 to reflect these organizational changes.

The Rules are also being amended to clarify the General Counsel's responsibility for appeals of initial FOIA and Privacy Act requests and related matters (*e.g.*, initial denials of fee waivers, expedited treatment, etc.), including the General Counsel's discretion to refer unusual or difficult appeals of such matters to the Commission. *See, e.g.*, 16 CFR 4.11(a)(2)(iii)(A), 4.13(i)(1). In that regard, various references to the ''Commission'' in Rules 4.8, 4.11 and 4.13 have been deleted as unnecessary, as it is implicit that the Commission may exercise any of the authority over appeals that it has otherwise delegated to the General Counsel in cases where the General Counsel has referred the appeal to the Commission.

Public Records Previously Omitted From Rule 4.9

In amending Rule 4.9 to include certain materials on the public record, as required by the E–FOIA, the Commission is also taking the

opportunity to update that rule to include three additional categories of records that the Commission is otherwise required by law, or has determined as a matter of policy, to make routinely available on its public record. These three categories are being added to Rule 4.9 as paragraphs (b)(10)(xi), (xii), and (xiii), respectively.

The first category comprises grants of early termination of waiting periods by the Commission under the premerger review provisions of the Hart-Scott-Rodino amendments to the Clayton Act. That Act requires that such early terminations be published in the **Federal Register.** *See* 15 U.S.C. 18a(b)(2). Thus, the Commission recognizes that this information should be treated as part of its public record. The second category is reports on applicable energy consumption and efficiency submitted under the Commission's Appliance Labeling Rule, 16 CFR 305.8. The Commission has previously voted to make such reports routinely available to the public without a FOIA request. The third category is a ''catch-all'' provision for any other documents that the Commission determines to place on its public record as a matter of policy, where such records would otherwise be considered non-public under the Commission's Rules and, thus, subject to release only upon a written FOIA request. This category includes, for example, particular responses to inquiries from Congressional committees and subcommittees that the Commission determines are of sufficient public interest or importance to make available for routine public inspection and copying (after any portions exempt from mandatory disclosure under the FOIA have been redacted).

Method of Payment

Rule 4.8 (i) is also being amended to delete the option for payment of processing fees by credit card, which the Commission no longer accepts. The Commission has found that the small volume of such transactions did not justify their processing costs. Requesters continue to have the option of paying fees by check or money order.

The Commission certifies that the Rule amendments set forth in this notice do not require an initial or final regulatory analysis under the Regulatory Flexibility Act because the amendments will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 605(b). Most requests for access to FTC records are filed by individuals, who are not ''small entities'' within the meaning of that Act. 5 U.S.C. 601(6). In any event, the economic impact of the rule changes on all requestors is expected to be minimal, if any. The Rule amendments also do not contain information collection requirements within the meaning of the Paperwork Reduction Act, 44 U.S.C. 3501–3520. The Commission has also determined, in consultation with the Office of Management and Budget, that none of the amendments constitutes a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801–808.

Furthermore, the notice-and-comment requirements of the Administrative Procedure Act (APA), 5 U.S.C. 553, do not apply to these Rule amendments. The Commission has determined that it is unnecessary to obtain public comment on the amendments to implement the E–FOIA, to the extent those amendments are required by statute and do not involve an exercise of agency discretion. *See* 5 U.S.C. 553(B). The Rule amendments that reflect organizational changes within the Commission are matters relating to agency management or personnel that are expressly exempt from the APA's requirements. *See* 5 U.S.C. 553(a)(2). Finally, the addition of certain categories of public records to the Commission's rules are merely technical amendments to rules of procedure that do not require public comment. *See* 5 U.S.C. 553(A).

List of Subjects in 16 CFR Part 4

Administrative practice and procedure, Freedom of Information Act.

For the reasons set forth in the preamble, the Federal Trade Commission amends Title 16, Chapter I, Subchapter A of the Code of Federal Regulations as follows:

PART 4—MISCELLANEOUS RULES

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

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46.

2. Section 4.8 is amended by revising paragraphs (a)(1), (c), (e)(1), (g), (h) and (i) to read as follows:

§ 4.8 Costs for obtaining Commission records.

(a) * * *

(1) The term *search* includes all time spent looking, manually or by automated means, for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents.

* * * * *

(c) *Information to determine fees.* Each request for records shall set forth whether the request is made for other than commercial purposes and whether the requester is an educational institution, a noncommercial scientific institution, or a representative of the news media. The Assistant General Counsel for Legal Counsel (Management & Access) or his or her designee initially, or the General Counsel on appeal, will use this information, any additional information provided by the requester, and any other relevant information to determine the appropriate fee category in which to place the requester.

* * * * *

(e) *Public interest fee waivers.*—(1) *Procedures.* A requester may apply for a waiver of fees. The requester shall explain why a waiver is appropriate under the standards set forth in this paragraph. The application shall also include a statement, as provided by paragraph (d) of this section, of whether the requester agrees to pay costs if the waiver is denied. The Assistant General Counsel for Legal Counsel (Management & Access) or his or her designee initially, or the General Counsel on appeal, will rule on applications for fee waivers.

* * * * *

(g) *Aggregating requests.* If the Assistant General Counsel for Legal Counsel (Management & Access) or his or her designee initially, or the General Counsel on appeal, reasonably believes that a requester, or a group of requesters acting in concert, is attempting to evade an assessment of fees by dividing a single request into a series of smaller requests, the requests may be aggregated and fees charged accordingly.

(h) *Advance payment.* If the Assistant General Counsel for Legal Counsel (Management & Access) or his or her designee initially, or the General Counsel on appeal, estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250.00, or if the requester has previously failed to pay a fee within 30 days of the date of billing, the requester may be required to pay some or all of the total estimated charge in advance. Further, the requester may be required to pay all unpaid bills, including accrued interest, prior to processing the request.

(i) *Means of payment.* Payment shall be made by check or money order payable to the Treasury of the United States.

* * * * *

3. Section 4.9 is amended by: redesignating paragraph (b)(10)(ix) as (b)(10)(xiv); adding new paragraphs (b)(8)(v) and (b)(10)(ix), (x), (xi), (xii) and (xiii); and revising paragraphs

(a)(3), (a)(4)(i), (b)(8)(iii) and (iv), and (b)(10)(viii) to read as follows:

§ 4.9 The public record.

(a) * * *

(3) *Location.* All of the public records of the Commission are available for inspection at the principal office of the Commission on each business day from 9 a.m. to 5 p.m., and copies of some of those records are available at the regional offices on each business day from 8:30 a.m. to 5 p.m. Copies of records that the Commission is required to make available to the public electronically, pursuant to 5 U.S.C. 552(a)(2), may be obtained in that format from the Commission's Web site on the Internet, WWW.FTC.GOV.

(4) *Copying of public records*—(i) *Procedures.* Reasonable facilities for copying public records are provided at each office of the Commission. Subject to appropriate limitations and the availability of facilities, any person may copy public records available for inspection at each of those offices. Further, the agency will provide copies to any person upon request. Written requests for copies of public records shall be addressed to the Supervisor, Consumer Response Center, and shall specify as clearly and accurately as reasonably possible the records desired. For records that cannot be specified with complete clarity and particularity, requesters shall provide descriptions sufficient to enable qualified Commission personnel to locate the records sought. In any instance, the Commission, the Supervisor of the Consumer Response Center, the General Counsel, the Assistant General Counsel for Legal Counsel (Management & Access), or the official in charge of each office may prohibit the use of Commission facilities to produce more than one copy of any public record, and may refuse to permit the use of such facilities for copying records that have been published or are publicly available at places other than the offices of the Commission.

* * * * *

(b) * * *

(8) * * *

(iii) Summaries or other explanatory materials relating to matters to be considered at open meetings made available pursuant to § 4.15(b)(3)

(iv) Commission minutes of open meetings, and, to the extent they are not exempt from mandatory public disclosure under the Sunshine Act or the Freedom of Information Act, portions of minutes or transcripts of closed meetings; and

(v) A guide for requesting records or information from the Commission, including an index of all major information systems, a description of major information and record locator systems maintained by the Commission, and a handbook for obtaining various types and categories of public information.

* * * * *

(10) * * *

(viii) The Commission's annual report submitted after the end of each fiscal year, summarizing its work during the year (available for inspection at each of the offices of the Commission with copies obtainable from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402) and any other annual reports made to Congress on activities of the Commission as required by law;

(ix) Records, as determined by the General Counsel or his or her designee, that have been released in response to a request made under the Freedom of Information Act, 5 U.S.C. 552, and which, because of the nature of the subject matter, have become or are likely to become the subject of subsequent requests for substantially the same records, except where some or all of those records would be exempt from disclosure under 5 U.S.C. 552 if requested by another party;

(x) A general index of the records referred to under paragraph (b)(10)(ix) of this section;

(xi) Grants of early termination of waiting periods published in accordance with the Hart-Scott-Rodino premerger notification provisions of the Clayton Act, 15 U.S.C. 18a(b)(2);

(xii) Reports on appliance energy consumption or efficiency filed with the Commission pursuant to § 305.8 of this chapter;

(xiii) Other documents that the Commission has determined to place on the public record; and

* * * * *

4. Section 4.11 is amended by revising paragraphs (a)(1)(i)(A); (a)(1)(iii)(A), (B), introductory text, and (C); (a)(1)(iv)(A), (B), and (C); (a)(2)(ii)(B); and (a)(2)(iii)(A) to read as follows:

§ 4.11 Disclosure requests.

(a) * * *

(1) * * *

(i) * * *

(A) A request under the provisions of the Freedom of Information Act, 5 U.S.C. 552, as amended, for access to Commission records shall be in writing and addressed as follows:

Freedom of Information Act Request, Assistant General Counsel for Legal Counsel, (Management & Access), Office of the General Counsel, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

* * * * *

(iii) *Time limit for initial determination.* (A) The Assistant General Counsel for Legal Counsel (Management & Access) or his or her designee will, within 20 working days of the receipt of a request, either grant or deny, in whole or in part, such request.

(B) Except in exceptional circumstances as provided in paragraph (a)(1)(iii)(C) of this section, the Assistant General Counsel for Legal Counsel (Management & Access) or his or her designee may extend the time limit by not more than 10 working days if such extension is: * * *

(C) If the Assistant General Counsel for Legal Counsel (Management & Access) or his or her designee extends the time limit for initial determination pursuant to paragraph (a)(1)(iii)(B) of this section, the requester will be notified in accordance with 5 U.S.C. 552(a)(6)(B). In exceptional circumstances, when the request cannot be processed within the extended time limit, the requester will be so notified and provided an opportunity to limit the scope of the request so that it may be processed within such time limit, or to arrange an alternative time frame for processing the request or a modified request. ''Exceptional'' circumstances will not include delays resulting from a predictable workload of requests under this section. Unwillingness to make reasonable modifications in the scope of the request or to agree to an alternative time frame may be considered as factors in determining whether exceptional circumstances exist and whether the agency has exercised due diligence in responding to the request.

* * * * *

(iv) *Initial determination.* (A) The Assistant General Counsel for Legal Counsel (Management & Access) or his or her designee will make reasonable efforts to search, using either manual or electronic means, for the requested records in electronic form or format, except when such efforts would significantly interfere with the operation of the Commission's automated information systems. Access will be granted to requested records, or any portions thereof, that must be made available under the Freedom of Information Act. Access will be denied to records that are exempt under the Freedom of Information Act, 5 U.S.C. 552(b), unless the Assistant General Counsel for Legal Counsel (Management & Access) or his or her designee determines that such records fall within

a category the Commission or the General Counsel has previously authorized to be made available to the public as a matter of policy. Denials will set forth the reasons therefor and advise the requester that this determination may be appealed to the General Counsel if the requester believes either that the records are not exempt, or that the General Counsel should exercise discretion to release such records notwithstanding their exempt status. The Assistant General Counsel for Legal Counsel (Management & Access) or his or her designee will also provide a reasonable, good-faith estimate of the volume of any materials to which access is denied, unless providing such an estimate would harm an interest protected by an exemption in 5 U.S.C. 552(b) that was cited as a basis for withholding materials.

(B) The Assistant General Counsel for Legal Counsel (Management & Access) or his or her designee is deemed to be the sole official responsible for all denials of initial requests, except denials of access to materials contained in active investigatory files, in which case the Director or Deputy Director of the Bureau or the Director of the Regional Office responsible for the investigation will be the responsible official.

(C) Records to which access has been granted will be made available to the requester in any form or format specified by the requester, if the records are readily reproducible in that form or format, or can be converted to that form or format with a reasonable amount of effort, and they will remain available for inspection and copying for a period not to exceed 30 days from date of notification to the requester unless the requester asks for and receives the consent of the Assistant General Counsel for Legal Counsel (Management & Access) or his or her designee to a longer period. Records assembled pursuant to a request will remain available only during this period and thereafter will be refiled. Appropriate fees may be imposed for any new or renewed request for the same records.

* * * * *

(2) * * *

(ii) * * *

(B) The General Counsel may, by written notice to the requester in accordance with 5 U.S.C. 552(a)(6)(B), extend the time limit for deciding an appeal by not more than 10 working days pursuant to paragraph (a)(1)(iii)(B) of this section, provided that the amount of any extension utilized during the initial consideration of the request under that paragraph will be subtracted from the amount of additional time otherwise available. Where exceptional circumstances do not permit the processing of the appeal within the extended time limit, the notice and procedures set forth in paragraph (a)(1)(iii)(C) of this section shall apply.

(iii) * * *

(A) The General Counsel has the authority to grant or deny all appeals and to release as an exercise of discretion records exempt from mandatory disclosure under 5 U.S.C. 552(b). In unusual or difficult cases, the General Counsel may, in his or her sole discretion, refer an appeal to the Commission for determination. A denial of an appeal in whole or in part will set forth the basis for the denial; will include a reasonable, good-faith estimate of the volume of any materials to which access is denied, unless providing such an estimate would harm an interest protected by an exemption in 5 U.S.C. 552(b) that was cited as a basis for withholding materials; and will advise the requester that judicial review of the decision is available by civil suit in the district in which the requester resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia.

* * * * *

5. Section 4.13 is amended by revising paragraphs (c), (d), (e), (f), (h), (i), (j), and (k) to read as follows:

§ 4.13 Privacy Act rules.

* * * * *

(c) *Procedures for requests pertaining to individual records in a record system.* An individual may request access to his or her records or any information pertaining to that individual in a system of records, and notification of whether and to whom the Commission has disclosed a record for which an accounting of disclosures is required to be kept and made available to the individual, using the procedures of this section. Requests for the disclosure of records under this section or to determine whether a system of records contains records pertaining to an individual or to obtain an accounting of disclosures, shall be in writing and if mailed, addressed as follows:

Privacy Act Request, Assistant General Counsel for Legal Counsel (Management & Access), Office of the General Counsel, Federal Trade Commission, 6th Street and Pennsylvania Avenue N.W., Washington, DC 20580.

If requests are presented in person at the Office of the General Counsel, the individual shall be required to execute a written request. All requests shall name the system of records that is the subject of the request, and shall include any additional information specified in the pertinent system notice as necessary to locate the records requested. If the requester wants another person to accompany him or her to review the records, the request shall so state. Nothing in this section will allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

(d) *Times, places, and requirements for identification of individuals making requests.* Verification of identity of persons making written requests to the Assistant General Counsel for Legal Counsel (Management & Access) ordinarily will not be required. The signature on such requests will be deemed a certification by the signatory that he or she is the individual to whom the record pertains or is the parent or guardian of a minor or the legal guardian of the individual to whom the record pertains. The Assistant General Counsel for Legal Counsel (Management & Access) or his or her designee may require additional verification of a requester's identity when such information is reasonably necessary to assure that records are not improperly disclosed; provided, however, that no verification of identity will be required if the records sought are publicly available under the Freedom of Information Act.

(e) *Disclosure of requested information to individuals.* Within 10 working days of receipt of a request under § 4.13(c), the Assistant General Counsel for Legal Counsel (Management & Access) or his or her designee will acknowledge receipt of the request. Within 30 working days of the receipt of a request under § 4.13(c), the Assistant General Counsel for Legal Counsel (Management & Access) or his or her designee will inform the requester whether a system of records containing retrievable information pertaining to the requester exists, and if so, either that the request has been granted or that the requested records or information is exempt from disclosure pursuant to § 4.13(m). When, for good cause shown, the Assistant General Counsel for Legal Counsel (Management & Access) or his or her designee is unable to respond within 30 working days of the receipt of the request, that official will notify the requester and inform him or her approximately when a response will be made.

(f) *Special procedures: Medical records.* When the Assistant General Counsel for Legal Counsel (Management & Access) or his or her designee determines that disclosure of a medical

or psychological record directly to a requesting individual could have an adverse effect on the individual, he or she will require the individual to designate a medical doctor to whom the record will be transmitted.

* * * * *

(h) *Agency review of request for correction or amendment of record.* Whether presented in person or by mail, requests under § 4.13(g) will be acknowledged by the Assistant General Counsel for Legal Counsel (Management & Access) or his or her designee within 10 working days of the receipt of the request if action on the request cannot be completed and the individual notified of the results within that time. Thereafter, the Assistant General Counsel for Legal Counsel (Management & Access) or his or her designee will promptly either make the requested amendment or correction or inform the requester of his refusal to make the amendment or correction, the reasons for the refusal, and the requester's right to appeal that refusal in accordance with § 4.13(i).

(i) *Appeal of initial adverse agency determination.* (1) If an initial request filed under § 4.13(c) or § 4.13(g) is denied, the requester may appeal that denial to the General Counsel. The appeal shall be in writing and addressed as follows:

Privacy Act Appeal, Office of the General Counsel, Federal Trade Commission, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

Within 30 working days of the receipt of the appeal, the General Counsel will notify the requester of the disposition of that appeal, except that the General Counsel may extend the 30-day period for good cause, in which case, the General Counsel will advise the requester of the approximate date on which review will be completed. In unusual or difficult cases, the General Counsel may, in his or her sole discretion, refer an appeal to the Commission for determination.

(2)(i) If the General Counsel refuses to amend or correct the record in accordance with a request under § 4.13(g), the General Counsel will notify the requester of that decision and inform the requester of the right to file with the Assistant General Counsel for Legal Counsel (Management & Access) a concise statement setting forth the reasons for the requester's disagreement with the General Counsel's determination and the fact that the requester's statement will be treated as set forth in paragraph (i)(2)(ii) of this section. The General Counsel will also inform the requester that judicial review of the decision is available by a civil suit in the district in which the requester resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia.

(ii) If the individual files a statement disagreeing with the General Counsel's determination not to amend or correct a record, such disagreement will be clearly noted in the record involved and the individual's statement will be made available to anyone to whom the record has been disclosed after September 27, 1975, or is subsequently disclosed together with, if the General Counsel deems it appropriate, a brief statement of his or her reasons for declining to amend the record.

(j) *Disclosure of record to person other than the individual to whom it pertains.* Except as provided by 5 U.S.C. 552a(b), the written request or prior written consent of the individual to whom a record pertains, or of his parent if a minor, or legal guardian if incompetent, shall be required before such record is disclosed. If the individual elects to inspect a record in person and desires to be accompanied by another person, the Assistant General Counsel for Legal Counsel (Management & Access) or his or her designee may require the individual to furnish a signed statement authorizing disclosure of his or her record in the presence of the accompanying named person.

(k) *Fees.* No fees will be charged for searching for a record, reviewing it, or for copies of records made by the Commission for its own purposes incident to granting access to a requester. Copies of records to which access has been granted under this section may be obtained by the requester from the Assistant General Counsel for Legal Counsel (Management & Access) or his or her designee on payment of the reproduction fees provided in § 4.8(b)(6).

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 98–22631 Filed 8–25–98; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

16 CFR Part 4

Freedom of Information Act; Miscellaneous Rules

AGENCY: Federal Trade Commission (FTC).

ACTION: Proposed rule.

SUMMARY: The Federal Trade Commission proposes to amend its Rules of Practice to address expedited processing and aggregation of requests under the Freedom of Information Act, as amended by the Electronic Freedom of Information Act Amendments of 1996. The Commission also proposes to alter its fee schedule to reflect changes in the costs of providing services, and to add other fees for new services.

DATES: Comments must be submitted on or before September 25, 1998.

ADDRESSES: Comments should be addressed to the Secretary, Federal Trade Commission, 6th Street & Pennsylvania Avenue, NW, Washington, DC 20580.

Comments will be entered on the public record of the Commission and will be available for public inspection in Room 130 at the above address during the hours of 9 a.m. until 5 p.m.

FOR FURTHER INFORMATION CONTACT: Alex Tang, Attorney, (202) 326–2447, Office of General Counsel, FTC.

SUPPLEMENTARY INFORMATION: On October 2, 1996, the President signed the Electronic Freedom of Information Act Amendments of 1996 (E–FOIA), Pub. L. 104–231, 110 Stat. 3048, amending the Freedom of Information Act (FOIA), 5 U.S.C. 552. Certain sections of the E–FOIA require or permit the Commission to make various changes in its procedures for FOIA requests and appeals, as well as in the descriptions of its public and non-public records. The Commission has also determined that it is necessary to revise its fee schedule to reflect the fact that the costs of providing services related to the dissemination of information and records under the FOIA have changed since 1992, when the Commission last assessed those costs.

As required by the FOIA, the Commission is seeking public comment on the proposed regulations set forth in this notice. In a separate notice published elsewhere in today's edition of the **Federal Register**, the Commission has published final regulations to implement other portions of the E–FOIA and to make other related administrative rule changes that do not require public comment. For example, those Rule amendments reflect the recent organizational transfer of initial FOIA and Privacy Act request functions and staff to the Commission's Office of General Counsel, as discussed further in that notice.

Aggregation of Requests

Section (a)(6)(B)(iv) of the FOIA, as amended, permits the Commission to promulgate regulations that provide for the aggregation of clearly related requests by the same requester, or by a group of requesters acting in concert, if the agency reasonably believes that the requests actually constitute a single request that would otherwise satisfy the circumstances for an extension of the statutory time limits. 5 U.S.C. 552(a)(6)(B)(iv). To implement this provision, the Commission proposes to amend Rule 4.11 by redesignating existing paragraph (a)(1)(iii)(D) as (E) and inserting a new paragraph (D).

Expedited Processing

Section (a)(6)(E) of the FOIA, as amended, requires the Commission to promulgate regulations providing for expedited processing of requests for records where the person requesting the records demonstrates a compelling need or in other cases where the Commission determines to expedite processing. See 5 U.S.C. 552(a)(6)(E)(i). The statute defines ''compelling need'' to include situations where a failure to obtain requested records on an expedited basis ''could reasonably be expected to pose an imminent threat to the life or physical safety of an individual,'' or where, with respect to a request made by a person primarily engaged in ''disseminating information,'' there is an ''urgency to inform the public concerning actual or alleged Federal Government activity.'' See 5 U.S.C. 552(a)(6)(E)(v)(I) and (II).

While the kinds of records generally maintained by the Commission make it unlikely that requests for expedited processing will meet the first prong of the ''compelling need'' standard, the Commission does receive some requests from parties who may qualify for expedited treatment in certain cases under the standard's second prong. Under that prong, a request must involve a matter of ''current exigency'' to the public such that a reasonable person might conclude that a delayed response ''would compromise a significant recognized interest,'' other than the public's general ''right to know,'' which is common to all FOIA requests and will not suffice to meet the standard. H.R. Rep. No. 795, 104th Cong. 25–26 (1996) (standard for granting expedited treatment is to be construed narrowly).

The Commission proposes to amend paragraph (a)(1)(i)(E) of Rule 4.11 to implement the statutory standard. As required by the FOIA, the requester shall be responsible for certifying that the standard has been met. Conforming changes are also being proposed in paragraphs (a)(1)(i)(B), (a)(1)(iii)(A), (a)(2)(i)(A), (B), and (a)(2)(ii)(A) of Rule 4.11. (Rule 4.11(a)(1)(iii)(A), as amended, incorporates the expanded 20-day time limit for responding to initial FOIA requests, which is discussed more fully in the Commission's separate document, published elsewhere in today's **Federal Register**, of final rule changes not requiring public comment.)

Fees

Rule 4.8(b)(6), 16 CFR 4.8(b)(6), contains the Commission's uniform schedule of fees that applies to records held by all constituent units of the Commission and to all requests made for materials on the public record and those made under the FOIA and Privacy Act. Periodically, the Commission reviews that rule to update those fees to reflect current costs to the Commission. The Commission last revised the fee schedule in 1992. In most instances, costs have increased since that time, but in a few instances, costs to the Commission have decreased since 1992. The Commission has also determined that the separate category for duplication of ''computer paper'' is no longer necessary, and that the fees specified for paper copies in general will apply to such duplication. Accordingly, the Commission proposes to amend Rule 4.8(b)(6) to make the following adjustments in its fee schedule.

	Current	Proposed	Unit
Duplication:			
Paper Copy (up to 8½″ x 14″) (Reproduced by Commission staff)	$0.14	$0.14	Per page.
(Reproduced by Requester)	0.05	0.05	Per page.
Microfilm Services:			
Film Copy—Paper to 16mm film	0.02	0.04	Per frame.

	Current	Proposed	Unit
Fiche Copy—Paper to 105mm fiche	0.02	0.08	Per frame.
Film Copy—Duplication of existing 100 ft. roll of 16mm film	3.35	9.50	Per roll.
Fiche Copy—Duplication of existing 105mm fiche	0.04	0.26	Per fiche.
Paper Copy—Converting existing 16mm film to paper (by Commission Staff)	0.23	0.26	Per page.
Paper Copy—Converting existing 105mm fiche to paper (by Commission Staff)	0.23	0.23	Per page.
Film Cassettes	3.60	2.00	Per cassette.
Electronic services:			
Converting paper into electronic format	N/A	2.50	Per page.
Computer programming	N/A	8.00	Per qtr. hour.
Other Fees:			
Computer Tape	18.50	18.50	Per tape.
Certification	10.35	10.35	Each.
Express Mail	*5.00	**3.50	Per request.

* First pound and $.89 for each additional pound
** For the first pound and $3.67 for each additional pound (up to $15.00)

The Commission has determined to retain the existing method, outlined in Rule 4.8(b)(6), for assessing search and review fees.

The Commission believes that the proposed Rule amendments do not require an initial or final regulatory analysis under the Regulatory Flexibility Act because the amendments will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 605(b). Most requests for access to FTC records are filed by individuals, who are not ''small entities'' within the meaning of that Act, 5 U.S.C. 601(6), and, in any event, the economic impact of the rule changes on all requesters is expected to be minimal, if any. Likewise, the proposed amendments do not appear to contain information collection requirements within the meaning of the Paperwork Reduction Act, 44 U.S.C. 3501–3520. The Commission nonetheless solicits comments on any economic and regulatory impact of the proposed rule; paperwork requirements, if any, that the amendments are believed to impose upon private persons; and possible regulatory alternatives to reduce the amendments' economic impact, if any, while fully implementing the statutory mandate. The Commission will consider any such comments before promulgating the amendments in final form.

List of Subjects in 16 CFR Part 4

Administrative practice and procedure, Freedom of Information Act.

For the reasons set forth in the preamble, the Federal Trade Commission proposes to amend Title 16, Chapter I, Subchapter A of the Code of Federal Regulations as follows:

PART 4—MISCELLANEOUS RULES

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

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46.

2. Section 4.8 is amended by revising paragraphs (b)(4) and (b)(6) to read as follows:

§ 4.8 Costs for obtaining Commission records.

* * * * *

(b) * * *

(4) *Waiver of small charges.* Notwithstanding the provisions of paragraphs (b)(1), (2), and (3) of this section, charges will be waived if the total chargeable fees for a request do not exceed $14.00.

* * * * *

(6) *Schedule of direct costs.* The following uniform schedule of fees applies to records held by all constituent units of the Commission.

PAPER FEES	
Paper copy (up to 8.5″ x 14″).	
Reproduced by Commission	$0.14 per page.
Reproduced by Requester	0.05 per page.
MICROFICHE FEES	
Film Copy—Paper to 16mm film	0.04 per frame.
Fiche Copy—Paper to 105mm fiche	0.08 per frame.
Film Copy—Duplication of existing 100 ft. roll of 16mm film	9.50 per roll.
Fiche Copy—Duplication of existing 105mm fiche	0.26 per fiche.
Paper Copy—Converting existing 16mm film to paper (Conversion by Commission Staff)	0.26 per page.
Paper Copy—Converting existing 105mm fiche to paper (Conversion by Commission Staff)	0.23 per page.
Film Cassettes	2.00 per cassette.
ELECTRONIC SERVICES	
Converting paper into electronic format (scanning)	2.50 per page.
Computer programming	8.00 per qtr. hour.
OTHER FEES	
Computer Tape	18.50 each.
Certification	10.35 each.
Express Mail	3.50 for first pound and 3.67 for each additional pound (up to 15.00)

Search and Review Fees

Agency staff is divided into three categories: clerical, attorney/economist, and other professional. Fees for search and review are assessed on a quarter-hourly basis, and are determined by identifying the category into which the staff member(s) conducting the search or review belong(s), determining the average quarter-hourly wages of all staff

members within that category, and adding 16 percent to reflect the cost of additional benefits accorded to government employees. The exact fees are calculated and announced periodically and are available from the Consumer Response Center, Federal Trade Commission, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580; (202) 326–2222.

* * * * *

3. Section 4.11 is amended by redesignating paragraphs (a)(1)(i)(E) and (a)(1)(iii)(D) as new paragraphs (a)(1)(i)(F) and (a)(1)(iii)(E), respectively; by adding new paragraphs (a)(1)(i)(E) and (a)(1)(iii)(D); and by revising paragraphs (a)(1)(i)(B), (a)(1)(iii)(A), (a)(2)(i)(A), (a)(2)(i)(B), and (a)(2)(ii)(A) to read as follows:

§ 4.11 Disclosure requests.

(a) * * *

(1) * * *

(i) * * *

(B) Failure to mark the envelope and the request in accordance with paragraph (a)(1)(i)(A) of this section, or the filing of a request for expedited treatment under paragraph (a)(1)(i)(E) of this section, will result in the request (or requests, if expedited treatment has been requested) being treated as received on the date that the processing unit in the Office of General Counsel actually receives the request(s).

* * * * *

(E) *Expedited treatment.* Requests may include an application for expedited treatment. Where such an application is not included with an initial request for access to records under paragraph (a)(1) of this section, the application may be included in any appeal of that request filed under paragraph (a)(2). Such application, which shall be certified by the requester to be true and correct to the best of such person's knowledge and belief, shall describe the compelling need for expedited treatment, including an explanation as to why a failure to obtain the requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual, or, with respect to a request made by a person primarily engaged in disseminating information, an explanation of the urgency to inform the public concerning actual or alleged Federal Government activity. The Assistant General Counsel for Legal Counsel (Management & Access) or his or her designee will, within 10 calendar days of receipt of a request for expedited treatment, notify the requester, in writing, of the decision to either grant or deny the request for expedited treatment, and, if the request is denied, advise the requester that this determination may be appealed to the General Counsel.

* * * * *

(iii) *Time limit for initial determination.* (A) The Assistant General Counsel for Legal Counsel (Management & Access) or his or her designee will, within 20 working days of the receipt of a request, either grant or deny, in whole or in part, such request, unless the request has been granted expedited treatment in accordance with this section, in which case the request will be processed as soon as practicable.

* * * * *

(D) If the Assistant General Counsel for Legal Counsel (Management & Access) or his or her designee reasonably believes that requests made by a requester, or a group of requesters acting in concert, actually constitute a single request that would otherwise involve unusual circumstances, as specified in paragraph (a)(1)(iii)(B) of this section, and the requests involve clearly related matters, those multiple requests may be aggregated.

* * * * *

(2) * * *

(i) * * *

(A)(*1*) If an initial request for expedited treatment is denied, the requester, at any time before the initial determination of the underlying request for records by the Assistant General Counsel for Legal Counsel (Management & Access) or his or her designee (or, if the request for expedited treatment was filed with any appeal filed under paragraph (a)(2)(i)(A)(2) of this section, at any time before the General Counsel's determination on such an appeal), may appeal the denial of expedited treatment to the General Counsel.

(*2*) If an initial request for records is denied in its entirety, the requester may, within 30 days of the date of the determination, appeal such denial to the General Counsel. If an initial request is denied in part, the time for appeal will not expire until 30 days after the date of the letter notifying the requester that all records to which access has been granted have been made available.

(*3*) The appeal shall be in writing and should include a copy of the initial request and a copy of the response to that initial request, if any. The appeal shall be addressed as follows:

Freedom of Information Act Appeal, Office of the General Counsel, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

(B) Failure to mark the envelope and the appeal in accordance with paragraph (a)(2)(i)(A) of this section will result in the appeal (and any request for expedited treatment filed with that appeal) being treated as received on the actual date of receipt by the Office of General Counsel.

* * * * *

(ii) * * *

(A) Regarding appeals from initial denials of a request for expedited treatment, the General Counsel will either grant or deny the appeal expeditiously; regarding appeals from initial denials of a request for records, the General Counsel will, within 20 working days of the receipt of such an appeal, either grant or deny it, in whole or in part, unless expedited treatment has been granted in accordance with this section, in which case the appeal will be processed as soon as practicable.

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 98–22632 Filed 8–25–98; 8:45 am]

BILLING CODE 6750–01–P

federal register

Wednesday
August 26, 1998

Part VIII

Department of Transportation

Federal Aviation Administration

14 CFR Part 91

Prohibition Against Certain Flights Within the Territory and Airspace of Sudan; (SFAR No. 82); Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 29317; SFAR 82]

RIN 2120–AG67

Prohibition Against Certain Flights Within the Territory and Airspace of Sudan

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action prohibits flight operations within the territory and airspace of Sudan by any United States air carrier and commercial operator, by any person exercising the privileges of an airman certificate issued by the FAA, or by an operator using an aircraft registered in the United States unless the operator of such aircraft is a foreign air carrier. This action is necessary to prevent an undue hazard to persons and aircraft engaged in such flight operations as a result of increased tensions due to the recent U.S. military strikes against terrorist and industrial facilities associated with Usama Bin Ladin in Sudan and Afghanistan.

DATES: This action is effective August 21, 1998, and shall remain in effect until further notice.

FOR FURTHER INFORMATION CONTACT: David Catey, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Telephone: (202) 267–8166.

SUPPLEMENTARY INFORMATION:

Availability of This Action

An electronic copy of this document may be downloaded, using a modem and suitable communications software, from the FAA regulations section of the Fedworld electronic bulletin board service ((703) 321–3339), the Government Printing Office's (GPO) electronic bulletin board service ((202) 512–1661), or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board service ((900) 322–2722 or (202) 267–5948). Internet users may reach the FAA's web page at http://www.faa.gov or the GPO web site a http://www.access.gpo/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Ave., SW, Washington, DC 20591, or by calling (202) 267–9677. Communications must identify the docket number of this action.

Persons interested in being placed on the mailing list for future rules should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which described the application procedure.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness of 1996 (SBREFA) requires the FAA to report inquiries from small entities concerning information on, and advice about, compliance with statutes and regulations within the FAA's jurisdiction, including interpretation and application of the law to specific sets of facts supplied by a small entity.

If you are a small entity and have a question, contact your local FAA official. If you do not know how to contact your local FAA official, you may contact Charlene Brown, Program Analyst Staff, Office of Rulemaking, ARM–27, Federal Aviation Administration, 800 Independence Ave., SW, Washington, DC 20591, 1–888–551–1594. Internet users can find additional information on SBREFA in the ''Quick Jump'' section of the FAA's web page at http://www.faa.gov and may send electronic inquiries to the following Internet address: 9–AWA–SBREFA@faa.dot.gov.

Background

On August 20, 1998, the U.S. military conducted strikes against terrorist and industrial facilities associated with Usama Bin Ladin in Sudan and Afghanistan. As a result, there could be a hostile reaction from armed elements in Sudan. Therefore, the Federal Aviation Administration has determined that the safe overflight of Sudanese territory can not be guaranteed.

Prohibition Against Certain Flights Within the Territory and Airspace of Sudan

On the basis of the above information, and in furtherance of my responsibilities to promote the safety of flight of civil aircraft in air commerce, I have determined that action by the FAA is necessary to prevent the injury to U.S. operators or the loss of certain U.S.-registered aircraft conducting flights in the territory and airspace of Sudan. I find that increased tensions resulting from the recent U.S. military strikes in Sudan present an immediate hazard to the operation of U.S. civil aircraft, operators, and airmen within Sudanese territory and airspace. Accordingly, I am ordering a prohibition on all flight operations within the territory and airspace of Sudan by any United States air carrier and commercial operator, by any person exercising the privileges of an airman certificate issued by the FAA, or by an operator registered in the United States unless the operator of such aircraft is a foreign air carrier. This action is necessary to prevent an undue hazard to aircraft and to protect persons and property on board those aircraft. SFAR 82 shall remain in effect until further notice.

Because the circumstances described herein warrant immediate action by the FAA to maintain the safety of flight by the aforementioned persons within the territory and airspace of Sudan, I find that notice and public comment under 5 U.S.C. 553(b) are impracticable and contrary to the public interest. Further I find good cause exists for making this rule effective immediately upon issuance. I also find that this action is fully consistent with the obligations under section 40105 of Title 49, United States Code to ensure that I exercise my duties consistently with the obligations of the United States under international agreements.

Regulatory Analyses

This rulemaking action is determined to be taken under an emergency situation within the meaning of Section 6(a)(3)(d) of Executive Order 12866, Regulatory Planning and Review. It also is considered an emergency regulation under Para. 11g of the Department of Transportation (DOT) Regulatory Policies and Procedures. In addition, it is not a significant rule within the meaning of either the Executive Order or DOT's policies and procedures. Accordingly, no regulatory analysis or evaluation accompanies the rule. The FAA certifies that this rule will not have a substantial impact on a substantial number of small entities as defined in the Regulatory Flexibility Act of 1980, as amended. It also will have no impact on international trade and creates no unfunded mandate on any entity.

The Amendment

For the reasons set forth above, the Federal Aviation Administration is amending 14 CFR Part 92 as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44101, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315,

46316, 46502, 46504, 46506, 47122, 47508, 47528–47531.

2. Special Federal Aviation Regulation (SFAR) No. 82 is added to read as follows:

Special Federal Aviation Regulation No. 82—Prohibition Against Certain Flights Within the Territory and Airspace of Sudan

1. *Applicability.* This rule applies to all U.S. air carriers and commercial operators, all persons exercising the privileges of an airman certificate issued by the FAA, and all operators using aircraft registered in the United States except where the operator of such aircraft is a foreign air carrier.

2. *Flight prohibition.* Except as provided in paragraphs 3 and 4 of this SFAR, no person described in paragraph 1 may conduct flight operations within the territory and airspace of Sudan.

3. *Permitted operations.* This SFAR does not prohibit persons described in paragraph 1 from conducting flight operations within the territory and airspace of Sudan where such operations are authorized either by exemption issued by the Administrator or by another agency of the United States Government with the approval of the FAA.

4. *Emergency situations.* In an emergency that requires immediate decision and action for the safety of the flight, the pilot in command of an aircraft may deviate from this SFAR to the extent required by that emergency. Except for U.S. air carriers and commercial operators that are subject to the requirements of 14 CFR 121.557, 121.559, or 135.19, each person who deviates from this rule shall, within ten (10) days of the deviation, excluding Saturdays, Sundays, and Federal holidays, submit to the nearest FAA Flight Standards District Office a complete report of the operations of the aircraft involved in the deviation, including a description of the deviation and the reasons therefor.

5. *Expiration.* This Special Federal Aviation Regulation shall remain in effect until further notice.

Issued in Washington, DC, on August 21, 1998.

Jane F. Garvey,

Administrator.

[FR Doc. 98–22891 Filed 8–21–98; 2:39 pm]

BILLING CODE 4910–13–M

federal register

Wednesday
August 26, 1998

Part IX

Department of Transportation

Federal Aviation Administration

14 CFR Part 91

Prohibition Against Certain Flights Within the Territory and Airspace of Afghanistan; (SFAR No. 67); Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 27744; SFAR No. 67]

RIN 2120–AG56

Prohibition Against Certain Flights Within the Territory and Airspace of Afghanistan

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Special Federal Aviation Regulations (SFAR) 67 by expanding the prohibition on flight operations within the territory and airspace of Afghanistan by any United States air carrier and commercial operator, by any person exercising the privileges of an airman certificate issued by the FAA, or by an operator using an aircraft registered in the United States unless the operator of such aircraft is a foreign air carrier. The amendment prohibits flight operations by the aforementioned persons through the territory and airspace of Afghanistan. This action is necessary to prevent an undue hazard to persons and aircraft engaged in such flight operations as a result of increased tensions due to the recent U.S. military strikes against terrorist and industrial facilities associated with Usama Bin Ladin in Sudan and Afghanistan.

DATES: This action is effective August 21, 1998.

FOR FURTHER INFORMATION CONTACT: David Catey, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591. Telephone: (202) 267–8166.

SUPPLEMENTARY INFORMATION:

Availability of This Action

An electronic copy of this document may be downloaded, using a modem and suitable communications software, from the FAA regulations section of the Fedworld electronic bulletin board service ((703) 321–3339), the Government Printing Office's (GPO) electronic bulletin board service ((202) 512–1661), or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board Service ((800) 322–2722 or (202) 267–5948). Internet users may reach the FAA's web page at http://www.faa.gov or the GPO web page at http://www.access.gpo.gov/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Ave, SW, Washington, DC 20591, or by calling (202) 267–9677. Communications must identify the docket number of this action.

Persons interested in being placed on the mailing list for future rules should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires the FAA to report inquiries from small entities concerning information on, and advice about, compliance with statues and regulations within the FAA's jurisdiction, including interpretation and application of the law to specific sets of facts supplied by a small entity.

If you are a small entity and have a question, contact your local FAA official. If you do not know how to contact your local FAA official, you may contact Charlene Brown, Program Analyst Staff, Office of Rulemaking, ARM–27, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 1–888–551–1594. Internet users can find additional information on SBREFA in the ''Quick Jump'' section of the FAA's web page at http://www.faa.gov and may send electronic inquiries to the following Internet address: 9–AWA–SBREFA@faa.dot.gov.

Background

On August 20, 1998, the U.S. military conducted strikes against terrorist and industrial facilities associated with Usama Bin Ladin in Sudan and Afghanistan. As a result, there could be a hostile reaction from armed elements in Afghanistan. Therefore, the Federal Aviation Administration has determined that the safe overflight of Afghan territory can not be guaranteed.

Amendment of Prohibition Against Certain Flights Within the Territory and Airspace of Afghanistan

On the basis of the above information, and in furtherance of my responsibilities to promote the safety of flight of civil aircraft in air commerce, I have determined that action by the FAA is necessary to prevent the injury to U.S. operators or the loss of certain U.S.-registered aircraft conducting flights in the territory and airspace of Afghanistan. I find that increased tensions resulting from the recent U.S. military strikes in Afghanistan present an immediate hazard to the operation of U.S. civil aircraft, operators, and airmen within Afghan territory and airspace. Accordingly, by this amendment to SFAR 67, I am ordering a prohibition on all flight operations within the territory and airspace of Afghanistan by any United States air carrier and commercial operator, by any person exercising the privileges of an airman certificate issued by the FAA, or by an operator using an aircraft registered in the United States unless the operator of such aircraft is a foreign air carrier. This action is necessary to prevent an undue hazard to aircraft and to protect persons and property on board those aircraft. SFAR 67 currently expires on May 10, 2000; this action does not affect that expiration date.

Because the circumstances described herein warrant immediate action by the FAA to maintain the safety of flight by the aforementioned persons within the territory and airspace of Afghanistan, I find that notice and public comment under 5 U.S.C. 553(b) are impracticable and contrary to the public interest. Further I find that good cause exists for making this rule effective immediately upon issuance. I also find that this action is fully consistent with the obligations under section 40105 of Title 49, United States Code to ensure that I exercise my duties consistently with the obligations of the United States under international agreements.

Regulatory Analyses

This rulemaking action is determined to be taken under an emergency situation within the meaning of Section 6(a)(3)(d) of Executive Order 12866, Regulatory Planning and Review. It also is considered an emergency regulation under Para. 11g of the Department of Transportation (DOT) Regulatory Policies and Procedures. In addition, it is not a significant rule within the meaning of either the Executive Order or DOT's policies and procedures. Accordingly, no regulatory analysis or evaluation accompanies the rule. The FAA certifies that this rule will not have a substantial impact on a substantial number of small entities as defined in the Regulatory Flexibility Act of 1980, as amended. It also will have no impact on international trade and creates no unfunded mandate on any entity.

The Amendment

For the reasons set forth above, the Federal Aviation Administration is amending 14 CFR Part 91 as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44101, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46502, 46504, 46506, 47122, 47508, 47528–47531.

2. Paragraph 3 of SFAR 67 is revised to read as follows:

Special Federal Aviation Regulations No. 67—Prohibition Against Certain Flights Within the Territory and Airspace of Afghanistan

* * * * *

3. *Permitted operations.* This SFAR does not prohibit persons described in paragraph 1 from conducting flight operations within the territory and airspace of Afghanistan where such operations are authorized either by exemption issued by the Administrator or by another agency of the United States Government with the approval of the FAA.

* * * * *

Issued in Washington, DC, on August 21, 1998.

Jane F. Garvey,

Administrator.

[FR Doc. 98–22892 Filed 8–21–98; 2:39 pm]

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/su_docs/. Some laws may not yet be available.

H.R. 3824/P.L. 105–234

Amending the Fastener Quality Act to exempt from its coverage certain fasteners approved by the Federal Aviation Administration for use in aircraft. (Aug. 14, 1998; 112 Stat. 1536)

S.J. Res. 54/P.L. 105–235

Finding the Government of Iraq in unacceptable and material breach of its international obligations. (Aug. 14, 1998; 112 Stat. 1538)

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