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Wednesday
November 18, 1998

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WHEN: Tuesday, Nov. 24, 1998 at 9:00 am.

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RESERVATIONS: 202–523–4538

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

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

RIN 0584–ACO2

Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Implementation of WIC Mandates of Public Law 103–448, the Healthy Meals for Healthy Americans Act of 1994 and Public Law 103–227, the Pro-Children Act of 1994

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends regulations governing the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) to incorporate certain nondiscretionary provisions of the Healthy Meals for Healthy Americans Act of 1994, enacted on November 2,1994, the Pro-Children Act of 1994, enacted on August 31, 1994, the Cash Management Improvement Act of 1990, enacted on October 24, 1990, and the Personal Work Responsibility and Reconciliation Act of 1996, enacted on August 22, 1996. The provisions in this final rule include: prohibiting smoking in WIC facilities; increasing by one the family size of an otherwise income ineligible pregnant woman for purposes of determining WIC eligibility; allowing State agencies to deem income eligible pregnant women presumptively eligible (for a period not to exceed 60 days) without a determination of nutritional risk; increasing the national breastfeeding promotion and support expenditure; and providing WIC services at more Community and Migrant Health Centers and Indian Health Service facilities. These provisions are intended to strengthen services to participants, increase State agency flexibility and promote good health practices.

DATES: This rule is effective January 19, 1999.

FOR FURTHER INFORMATION CONTACT: Barbara Hallman, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 542, Alexandria, Virginia 22302, (703) 305–2730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Pursuant to that review, Shirley R. Watkins, Under Secretary for Food, Nutrition and Consumer Services, has certified that this rule will not have a significant economic impact on a substantial number of small entities. This rule provides State and local agencies with greater flexibility: (1) in a certification process, (2) in the use of funds recovered as a result of violations in the food delivery system, and (3) the administration of their infant formula rebate contracts and management of their food funds. However, the economic impact on program operations will not be significant.

Paperwork Reduction Act

This final rule imposes no new reporting or recordkeeping requirements that are subject to OMB for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). The information collection burden for this final rule was previously approved under OMB #0584–0043.

Executive Order 12372

The Special Supplemental Nutrition Program for Women, Infants and Children (WIC) is listed in the Catalog of Federal Domestic Assistance Programs under 10.557 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, and 48 FR 29114 June 24, 1983).

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions, or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the **DATES** paragraph of this preamble. Prior to any judicial challenge to the application of the provisions of this rule, all applicable administrative procedures must be exhausted.

Public Law 104–4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Food and Nutrition Service generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Food and Nutrition Service to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of $100 million or more in any one year. Thus today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Background

Section 204 of Public Law 103–448, the Healthy Meals for Healthy Americans Act of 1994, enacted on November 2, 1994, reauthorized the Special Supplemental Nutrition Program for Women, Infants and Children (WIC). The statutory authorities for a wide range of WIC Program functions in areas such as income eligibility determinations,

program outreach, referral and access, coordination, breastfeeding promotion, program operations, and cost containment were amended by section 204. In addition, section 1043 of Pub.L. 103–227, the Pro-Children Act of 1994, enacted on August 31, 1994, prohibits smoking within any indoor facility owned or leased or contracted for by an entity that receives Federal funds for the provision of regular or routine health care or day care, or early childhood development (Head Start) services. WIC Program clinics are included among the services covered by this legislation. These provisions serve the interests of the President and Congress by improving coordination among programs, promoting positive pregnancy outcomes and healthy babies, and reducing administrative burdens for State and local agencies. In addition, section 724(e)(1)(B)(i) of Pub.L. 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, made a further amendment regarding coordination with other programs and section 4 of Pub.L. 101–453, the Cash Management Improvement Act of 1990, made a change requiring States to pay the United States interest on advances of Federal funds. These provisions are all nondiscretionary. Further, State agencies have already been informed that these provisions may be implemented prior to the issuance of amendments to the program regulations. For these reasons, the Under Secretary for Food, Nutrition and Consumer Services has determined that, in accordance with 5 U.S.C. 553 prior notice and comment is unnecessary and contrary to the public interest. Since this rule merely codifies the cited statutory provisions, it also constitutes an interpretive rule for which notice and comment are not required by 5 U.S.C. 553.

1. Definition of Nutritional Risk—246.2

Section 204(a) of Public Law 103–448 amended section 17(b)(8)(B) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)(8)(B)) (CNA) to change the legislative categorization of alcoholism and drug abuse from predisposing nutritional risk conditions to conditions that directly affect the nutritional health of a person. This reclassification is consistent with new nutrition and health knowledge, and better represents the classification of these conditions currently used by States. As a result, homelessness and migrancy now become the only specific legislative examples of conditions that predispose persons to inadequate dietary patterns or nutritionally related medical conditions in the CNA. Accordingly, the definition of nutritional risk in Section 246.2 has been revised to reflect these changes.

2. Prohibition on Smoking in WIC Clinics Provision—246.6(b)(4)

Sections 1043 (b) and (d) of Pub. L. 103–227, the Pro-Children Act of 1994, require that after December 26, 1994, smoking shall not be permitted in any indoor facility, or portion thereof, that is owned, leased, or contracted for by any person that receives Federal funds for children's services funded under certain programs administered by the U.S. Department of Health and Human Services, the U.S. Department of Education, and the U.S. Department of Agriculture. Section 1042(2) of the Act defines ''children's services'' as: the provision on a routine or regular basis of health, day care, education, or library services; WIC clinics are specifically identified in the Act as ''children's services''. The definition of ''person'' includes State and local agencies as well as corporations and individuals. Additionally, fiscal year 1996, 1995 and 1994 appropriations acts for the WIC Program contained provisions prohibiting the use of appropriated funds to pay administrative expenses of WIC clinics that had no announced policy prohibiting smoking within the space used to carry out the Program. The no-smoking provision in Pub. L. 103–227 is intended to protect children under the age of 18 from exposure to environmental tobacco smoke while they are receiving education, library, day care, health care, and early childhood development services in indoor facilities. The Administration's goal in implementing this legislative requirement reflects a strong health protection policy regarding smoking and environmental tobacco smoke exposure.

In response to the legislative provisions contained in Pub. L. 103–227, section 246.6 is amended to require all local agency agreements to contain a provision prohibiting smoking in the space used to carry out the WIC Program during the time any aspect of WIC services are performed. The smoking prohibition applies to the portion of the facility used for WIC Program services. If that portion of the building is simultaneously used for other purposes, such as community activities or privately sponsored events, smoking must be prohibited at these other events as well. This change to the regulations merely formalizes the current policy directive, which all State agencies have been operating under since fiscal year 1994. That directive prohibits the allocation of nutrition service and administrative funds to any WIC clinic that does not prohibit smoking within the space used for WIC services during the time the services are being performed. This regulation therefore merely codifies the current policy, and places no additional burden on State or local agencies.

3. Service to Pregnant Women Provisions—246.7(d)(1)(iv), 246.7(d)(1)(v), 246.7(d)(2)(vii), 246.7(e)(1)(iii)

a. Family Size Provision

Section 204(c)(1) of Pub. L. 103–448 amended Section 17(d) of the CNA to add a new subparagraph section 17(d)(2)(C), which extends WIC eligibility for certain pregnant women. The provision stipulates that an income-ineligible pregnant woman satisfies income guidelines if the guidelines would be met by increasing the number of individuals in her family by one individual. Although the law states that the family size of the pregnant woman is to be increased by ''one,'' we do not believe, in cases where the pregnant woman is expecting multiple births, that Congress intended to totally preclude counting such multiple births. As such, section 246.7(d)(2)(vii) is amended to allow the family size of a pregnant woman to be increased by the number of embryos or fetuses in utero. This provision allows the WIC Program to use the same definition of family size currently used by the Department of Health and Human Services' (DHHS) Medicaid Bureau, thereby improving coordination between the WIC and Medicaid Programs. It also results in certain women having access to the health benefits of WIC during pregnancy who previously would have had to wait for the birth of their babies to be eligible.

The legislation does not specifically address whether the same income eligibility determination process can be used for the pregnant woman's other family members, who may also apply for WIC services. However, it is impractical and administratively burdensome to require two different income-screening procedures, based on categorical status, for one family. To do so forces a WIC local agency to activate the adjunctive eligibility process unnecessarily because the local agency would have to first refer the family members to the Medicaid Program for certification, and then ask the family members to return to the WIC Program so that they may be determined as adjunctively income eligible for WIC. Therefore, in situations where the family size has been increased for a

pregnant woman, the same increased family size may also be used for any of her categorically eligible family members.

In rare instances, the consideration of unborn children in this manner may conflict with an applicant's cultural, personal, or religious beliefs. In recognition of these issues, the regulation requires State agencies to allow such applicants to waive the automatic increase in family size.

b. Certification Prior to Documentation of Nutritional Risk

Program regulations permit categorically eligible applicants to be certified for WIC benefits only if, in addition to meeting residency and income requirements, they are determined to be at nutritional risk. In order to determine nutritional risk, height, weight, and bloodwork must be obtained. Many State agencies have expressed concerns regarding the availability of bloodwork data for pregnant women at the time of their application. In some cases, State or local agencies may not have the essential equipment or staff onsite to perform the bloodwork assessment. In these situations, the agencies usually have to contract out for that service, or refer the women to health centers and/or providers to obtain the necessary data. State agencies also reported that the bloodwork data requirement has resulted in barriers to participation for pregnant women. They also reported that this requirement could, in fact, be an impediment to enrollment of eligible pregnant women early in pregnancy. Early enrollment is an important program objective, as well as a legislative requirement.

In response to concerns related to improved and expedited access to program benefits for pregnant women, section 204(c)(2) of Pub.L. 103–448, amended section 17(d)(3)(B) of the CNA to allow State agencies to consider pregnant women who are income eligible for the WIC Program to be presumed to be nutritionally at risk and thus eligible to participate in the program. These women may be certified immediately without the results of a nutritional risk evaluation. The law requires that a nutritional risk evaluation be completed, however, not later than 60 days from the date the pregnant woman is certified for participation. The law stipulates that, if the subsequent assessment determines that the woman does not meet nutritional risk criteria, her certification terminate on the date of the determination. The joint statement of explanation accompanying S.1614 (Congressional Record, October 6, 1994, S14454) clarifies the positions of the Senate Committee on Agriculture, Nutrition and Forestry and the House Committee on Education and Labor on this provision concerning presumptive eligibility for pregnant women. The Committees expressed their view that the dietary risk assessment be performed before—or as soon as possible after—the presumptively eligible pregnant woman begins receiving WIC benefits. Local agencies thus should strive to complete the dietary assessment at certification. Ideally, local agencies should complete the full nutrition risk assessment at certification or at the earliest possible date thereafter. This allows the WIC staff to begin to offer appropriate counseling on program nutrition and diet, as well as complete, appropriate health care referrals at the earliest opportunity. This information also is invaluable in developing an appropriate food package.

While the law uses the word ''terminate'' in connection with the necessary action when a pregnant woman is later found not to meet the nutritional risk criteria, what is really happening is that the pregnant woman is being found ineligible for the program. Accordingly, this action will be treated like an initial determination. That is, while the pregnant woman must be given an opportunity to appeal the action, as required under section 246.7(j)(5), there is no requirement of 15 days notice of the action as for suspensions and most disqualifications (under section 246.7(j)(6)) and for the expiration of certification periods (under section 246.7(j)(8)). Nor will the pregnant woman be able to receive benefits while awaiting the fair hearing decision. Section 246.9(g) will continue to require benefits pending resolution of the fair hearing only for those participants who timely appeal an action under section 246.7(j)(6).

Further, if the nutritional risk evaluation is not completed within the 60-day timeframe, the pregnant woman's participation may not be extended beyond the initial 60-day certification period. However, as set forth in section 246.7(j)(8) for all cases of the expiration of a certification period, the pregnant woman must be notified not less than 15 days before the expiration of the period that the certification period is about to expire. Similarly, pregnant women who appeal the expiration of their certification may not receive WIC benefits while awaiting the fair hearing decision. The regulations are amended at section 246.7(e)(1)(iii) to reflect these legislative provisions.

4. Coordination of WIC and Medicaid Program Provisions—246.4(a)(8)

Section 204(e) of Pub.L. 103–448 amended section 17(f)(1)(C)(iii) of the CNA to require coordination between the WIC Program and State Medicaid Programs, including Medicaid programs that use coordinated care providers under a contract entered into under section 1903(m) or a waiver granted under section 1915 (b) of the Social Security Act (42 U.S.C. 1396 b(m) or 1396n(b)).

Soon after enactment of Pub.L. 103–448, section 729(e)(1)(B)(i) of Pub.L. 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub.L. 104–193), amended section 17(f)(1)(C)(iii) of the CNA to replace the listing of specific programs with which WIC must coordinate with a plan to coordinate WIC operations with other services or program that may benefit participants in, or applicants for, the program. As such, the State agency now determines which services or programs it will coordinate with to meet the specific needs of its participants and applicants. Section at 246.4(a)(8) is amended to reflect this later change. Although no longer required by law, the Department strongly encourages State agencies to continue to coordinate with Medicaid managed-care providers to ensure that WIC participants have access to medical benefits, thereby improving their health status.

5. WIC Services at Community and Migrant Health Centers—246.4(a)(8) and 246.7(b)(3)

Section 204(u) of Pub.L. 103–448 amended section 17(j) of the CNA to require that the Secretary of Agriculture and the Secretary of the Department of Health and Human Services establish and carry out an initiative to provide WIC services at substantially more community and migrant health centers. The legislation stipulates that the initiative shall include: (1) Activities to improve the coordination of WIC and health care services at facilities funded by the Indian Health Service (IHS); and (2) the development and implementation of strategies to ensure that, to the maximum extent feasible, new community and migrant health centers and other federally-supported health care facilities established in medically underserved areas provide WIC services. The law further stipulates that the initiative may also include: (1) Outreach and technical assistance for State and local agencies and the facilities named above; (2)

demonstration projects in selected States or local areas; and (3) other activities as the Secretaries find appropriate.

This mandate also reinforces opportunities for the WIC Program, community and migrant health centers and IHS facilities to further implement mutual objectives that are consistent with this legislation. The objectives are: (1) To increase coordination and co-location of WIC with Community and Migrant Health Centers and with IHS facilities; (2) to ensure that newly constructed, federally supported health facilities are coordinated with WIC State agencies to maximize service integration; improve access to health care for participants of all three programs, especially underserved, vulnerable, and hard-to-reach potential eligibles; and (3) to enlist the support of primary care personnel at health centers and IHS clinics and WIC personnel to reinforce health messages such as breastfeeding promotion, immunization screening and delivery, drug abuse education and referrals. The WIC Program will benefit from this initiative through improved access to health care for WIC participants as well as by expansion of opportunities for newly co-located clinic sites to accommodate rapidly increasing WIC participation levels. Projected participation levels are more likely to be met with increased facility infrastructure capacity for WIC. In addition, community and migrant health centers and IHS facilities may benefit from increased co-location and coordination with WIC by enhancing service utilization by clients seeking a one-stop, health care shopping opportunity. In compliance with this legislative provision, this rule amends section 246.7(b)(3) to require that, where feasible, State agencies provide WIC services at community and migrant health centers, Indian Health Services facilities, and other federally supported health care facilities established in medically underserved areas.

These changes are intended to improve access to health care for WIC participants, and will make WIC more accessible to high-risk populations served at community and migrant health centers, IHS facilities and other federally supported health care facilities established in medically underserved areas provide supplemental foods and nutrition education under the special supplemental nutrition program. The Department will supplement these regulatory requirements with numerous other promotional activities designed to facilitate increased co-location and coordination between WIC and these service providers. These efforts include a cataloging of site locations, the development of a best practices guide, and continued provision of infrastructure and other funding and support that facilitate improved WIC access to eligible persons also being served in IHS facilities, community and migrant health centers, and other federally health care supported facilities established in medically underserved areas provide supplemental foods and nutrition education under the special supplemental nutrition program.

6. Income Eligibility Guidelines Provision Section—246.7(d)(1)(iii)

Section 204(g) of Pub.L. 103–448 amended Section 17(f)(18) of the CNA to allow State agencies to implement annual WIC income eligibility guidelines concurrently with the implementation of annual income eligibility guidelines under the Medicaid Program established under Title XIX of the Social Security Act (42 U.S.C. 1396 et seq.). Section 17(f)(18) was subsequently redesignated as section 17(f)(17) by section 729(e)(10) of Pub.L. 104–193. Congress' purpose in allowing this concurrent implementation is to facilitate closer coordination between the programs and ease Program access for applicants. Section 246.7(d)(1)(iii) is amended accordingly. State agencies that choose not to coordinate implementation with the Medicaid guidelines must implement the amended WIC income eligibility guidelines not later than July 1 of each year.

7. Priority Consideration for Migrant Populations—246.7(f)(2)(iii)(A)

Section 204(f) of Pub.L. 103–448 amended section 17(f)(3) of the CNA to require State agencies to ensure local agencies provide priority consideration to serving migrant participants who are residing in the State for a limited period of time. Current WIC regulations already address this legislative change at section 246.7(f)(2)(iii)(A).

8. Breastfeeding Promotion and Support Activities—246.14(c)(1)

Section 123(a)(6) of Pub.L. 101–147 amended section 17(h)(3) of the CNA to earmark $8 million annually in State agency Nutrition Services and Administration (NSA) grants for the promotion and support of breastfeeding among WIC mothers. Section 204(l) of Pub.L. 103–448 further amended section 17(h)(3) to establish a new formula for determining the minimum national breastfeeding promotion and support expenditure. The new formula increased the national annual minimum expenditure from $8 million to an amount equal to $21 per pregnant and breastfeeding woman participating in the WIC Program nationwide, based on the average number of pregnant women and breastfeeding women participating during the last three months for which the Department has final data. Beginning on October 1, 1996, and each October 1 thereafter, this per participant amount will be adjusted for inflation using the same index that is used for NSA funds. The Department applauds Congress' support for breastfeeding as the optimal method of infant feeding.

To ease transition in fiscal year 1995, section 17(h)(3)(F) provided that State agencies could spend the same amount it expended for breastfeeding promotion and support expenditures in fiscal year 1994, in lieu of meeting the $21 per pregnant and breastfeeding woman minimum. This provision allowed those State agencies that were unable to meet the $21 per pregnant and breastfeeding woman target immediately to gradually move in that direction.

Section 17(h)(3)(G) provided a similar allowance for fiscal year 1996, except that the State agency must expend more than the amount expended in fiscal year 1995 for breastfeeding promotion and support and must have the Secretary's approval. All State agencies were required to expend the minimum $21 per pregnant and breastfeeding woman for breastfeeding promotion and support expenditure beginning in fiscal year 1997. Because the transition period is now past and the new formula is mandatory, this final rule only reflects the new formula and not the transition period exceptions for fiscal years 1995 and 1996. This rule amends section 246.14(c)(1) to reflect the new formula.

9. Standards for the Collection of Breastfeeding Data—246.25(b)(3)

Section 204(m) of Pub.L. 103–448 and section 729(g)(1)(A) of Pub.L. 104–193 amended section 17(h)(4) of the CNA to require the development of standards for the collection of breastfeeding data. The legislation requires that not later than 1 year after the date of enactment, the Secretary must develop uniform requirements for collection of data regarding the incidence and duration of breastfeeding among participants in the program. The Department, after consulting with the National Association of WIC Directors, has developed the breastfeeding data specifications. This information will be collected as part of the biennial reporting in section 246.25(b)(3).

10. Use of Recovered Program Funds in Year Collected—246.14(e)

Section 246.14(e) of the WIC regulations allows the State agency to retain funds collected through (a) the recovery of claims assessed against food vendors or (b) funds not paid to food vendors as a result of reviews of food instruments prior to payment. However, Federal guidelines on refunds limited State agencies in their use and retention of vendor collections (Title 7, section 5.4.B.1., of the General Accounting Office's Manual for the Guidance of Federal Agencies). This guidance provides that ''unless otherwise authorized by law, refunds should be deposited to the credit of the appropriation account initially charged with the overpayment.'' This prohibition from using vendor collections to offset food costs in a year other than the year of the initial obligation was problematic. State agencies reported that they frequently did not receive funds collected from vendors until after closeout of the year in which the initial obligation of funds occurred. As a result, they were required to remit most of their vendor collections to FNS for reallocation rather than receiving the opportunity to use these funds to offset their own WIC Program's food costs. Section 204(h) of Pub.L. 103–448 amended section 17(f) of the CNA of 1966 to provide that ''a State agency may use funds recovered as a result of violations in the food delivery system in the year in which the funds are collected for the purpose of carrying out the program.'' This legislative provision overrides the General Accounting Office's guidance, and permits State agencies to use vendor collections received after the source fiscal year is closed out to offset program expenditures from the year in which collected. In addition, the legislation expands the purposes for which vendor collections may be used to include any program cost, rather than being restricted to food costs. Regulations at 246.14(e) are amended to reflect these legislative changes.

11. Prohibition on Interest Liability to Federal Government on Rebate Funds—246.15(a)

Section 4 of the Cash Management Improvement Act of 1990 (CMIA) (Pub.L. 101–453) amended 31 U.S.C. 6503(c) to require States to pay the United States interest on advances of Federal funds. This change became effective November 1992. Section 6503(d) of Title 31 of the U.S. Code and implementing regulations at 31 CFR Part 205 require an annual reconciliation of interest earned by States on advances of Federal funds and interest lost to States as a result of being forced to use their own funds in anticipation of receiving Federal funds. Congress, through Pub.L. 103–448, has provided an exception to this requirement, however, for receipts earned by WIC State agencies for rebates from infant formula and other foods. Section 204(p) of Pub.L. 103–448 amended section 17(h)(8)(J) of the CNA to stipulate that State agencies shall not incur any interest liability to the Federal government on rebate funds from infant formula and other foods, provided that all interest earned by the State is used for program purposes. Section 246.15(a) is revised to conform with the applicable provisions of the CMIA, and the specific WIC exemptions of the Pub.L. 103–448.

12. Funds for Technical Assistance and Research Evaluation Projects—246.16(a)(6)

Section 17(g)(5) of the CNA, as reflected at section 246.16(a)(6) of the WIC regulations, states that up to one-half of 1 percent of the sums appropriated for each fiscal year, not to exceed $5,000,000, shall be available to the Secretary for evaluating program performance, evaluating health benefits, providing technical assistance to improve State agency administrative systems, preparing the biennial Participation Report to Congress described in section 246.25(b)(3), and administering pilot projects, including projects designed to meet the special needs of migrants, Indians, and rural populations. Section 204(k) of Pub.L. 103–448 amended 17(g)(5) of the CNA to expand the purposes to include technical assistance and research projects of the programs under section 17. The effect of adding the reference to ''programs under this section'' was to extend the permissible use of these funds to listed activities as they relate to the WIC Farmers' Market Nutrition Program authorized under section 17(m) of the CNA. Section 246.16(a)(6) is amended accordingly to reflect this legislative change.

13. Spendback Funds—246.16(b)(3)(i)

Section 246.16(b)(3)(i) of the WIC regulations reflects the provision in section 17(i)(3)(A)(i) of the CNA that not more than 1 percent of the funds allocated to a State agency for food costs incurred in any fiscal year may be expended by the State agency for food costs incurred in the preceding fiscal year. Section 204(s) of Pub.L. 103–448 amended sections 17(i)(3)(A)(i) and 17(i)(3)(H) of the CNA to increase the maximum spendback authority from 1 percent of the total food funds to 3 percent of the total food funds, with the Secretary's approval. A State agency may be permitted to expend not more than 3 percent of the amount of funds allocated to a State for supplemental foods for a fiscal year for expenses incurred for supplemental foods during the preceding fiscal year, if the Secretary determines that there was a significant reduction in the State's infant formula cost containment savings that resulted in the State not being able to at least maintain its level of participation. Section 246.16(b)(3)(i) is amended to reflect the increase in the percentage of spendback authority as per this provision.

List of Subjects in 7 CFR Part 246

Administrative practice and procedure, Civil rights, Food assistance programs, Food donations, Grant programs—health, Grant programs—social programs, Indians, Infants and children, Maternal and child health, Nutrition, Nutrition education, Penalties, Public assistance programs, Reporting and recordkeeping requirements, WIC, Women.

For reasons set forth in the preamble, 7 CFR part 246 is amended as follows:

PART 246—SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN

1. The authority citation for Part 246 continues to read as follows:

Authority: 42 U.S.C. 1786.

2. In § 246.2, the definition of *Nutritional risk* is revised to read as follows:

§ 246.2 Definitions.

* * * * *

Nutritional risk means:

(a) Detrimental or abnormal nutritional conditions detectable by biochemical or anthropometric measurements;

(b) Other documented nutritionally related medical conditions;

(c) Dietary deficiencies that impair or endanger health;

(d) Conditions that directly affect the nutritional health of a person, including alcoholism or drug abuse; or

(e) Conditions that predispose persons to inadequate nutritional patterns or nutritionally related medical conditions, including, but not limited to, homelessness and migrancy.

* * * * *

3. In § 246.4, paragraph (a)(8) is revised to read as follows:

§ 246.4 State Plan.

(a) * * *

(8) A description of how the State agency plans to coordinate program operations with other services or programs that may benefit participants in, or applicants for, the program.

* * * * *

4. In § 246.6, paragraphs (b)(4) through (b)(9) are redesignated as (b)(5) through (b)(10). A new paragraph (b)(4) is added to read as follows:

§ 246.6 Agreements with local agencies.

* * * * *

(b) * * *

(4) Prohibits smoking in the space used to carry out the WIC Program during the time any aspect of WIC services are performed.

* * * * *

5. In § 246.7:

a. Paragraphs (b)(3) through (b)(5) are redesignated as paragraphs (b)(4) through (b)(6), and a new paragraph (b)(3) is added;

b. Paragraph (d)(1)(iii) is revised;

c. Paragraphs (d)(2)(vii) and (d)(2)(viii) are redesignated as paragraphs (d)(2)(viii) and (d)(2)(ix), and a new paragraph (d)(2)(vii) is added;

d. Paragraph (e)(1)(iii) is redesignated as paragraph (e)(1)(iv), and a new paragraph (e)(1)(iii) is added.

The revisions and additions read as follows:

§ 246.7 Certification of participants.

* * * * *

(b) * * *

(3) State agencies shall provide WIC services at community and migrant health centers, Indian Health Services facilities, and other federally health care supported facilities established in medically underserved areas to the extent feasible.

* * * * *

(d) * * *

(1) * * *

(iii) *Implementation of the income guidelines.* On or before July 1 each year, each State agency shall announce and transmit to each local agency the State agency's family size income guidelines, unless changes in the poverty income guidelines issued by the Department of Health and Human Services do not necessitate changes in the State or local agency's income guidelines. The State agency may implement revised guidelines concurrently with the implementation of income guidelines under the Medicaid program established under Title XIX of the Social Security Act (42 U.S.C. 1396 of *et seq.*). The State agency shall ensure that conforming adjustments are made, if necessary, in local agency income guidelines. The local agency shall implement (revised) guidelines not later than July 1 of each year for which such guidelines are issued by the State.

(2) * * *

(vii) *Income eligibility of pregnant women.* A pregnant woman who is ineligible for participation in the program because she does not meet income guidelines shall be considered to have satisfied the income guidelines if the guidelines would be met by increasing the number of individuals in her family by the number of embryos or fetuses in utero. The same increased family size may also be used for any of the pregnant woman's categorically eligible family members. The State agency shall allow applicants to waive this increase in family size.

* * * * *

(e) * * *

(1) * * *

(iii) A pregnant woman who meets income eligibility standards may be considered presumptively eligible to participate in the program, and may be certified immediately without an evaluation of nutritional risk for a period up to 60 days. A nutritional risk evaluation of such woman shall be completed not later than 60 days after the woman is certified for participation. Under this subsequent determination process, if the woman does not meet nutritional risk criteria, the woman shall be determined ineligible and may not participate in the program after the date of the determination. Notification of the ineligibility determination shall be given in accordance with paragraph (j)(5) of this section. In addition, if the nutritional risk evaluation is not completed within the 60 day timeframe, the woman's participation shall end when her initial certification period expires. As set forth in paragraph (j)(8) of this section, notification must be given prior to any expiration of the certification period.

* * * * *

6. In § 246.14:

a. The second through the fifth sentences of the introductory text of paragraph (c)(1) are revised, the sixth through the ninth sentences are removed, and a new sixth sentence is added;

b. Paragraph (e) is revised.

The revisions read as follows:

§ 246.14 Program costs.

* * * * *

(c) * * *

(1) * * * During each fiscal year, each State agency shall expend, for nutrition education activities and breastfeeding promotion and support activities, an aggregate amount that is not less than the sum of one-sixth of the amount expended by the State agency for costs of NSA and an amount equal to its proportionate share of the national minimum expenditure for breastfeeding promotion and support activities. The amount to be spent on nutrition education shall be computed by taking one-sixth of the total fiscal year NSA expenditures. The amount to be spent by a State agency on breastfeeding promotion and support activities shall be an amount that is equal to at least its proportionate share of the national minimum breastfeeding promotion expenditure as specified in paragraph (c)(1) of this section. The national minimum expenditure for breastfeeding promotion and support activities shall be equal to $21 multiplied by the number of pregnant and breastfeeding women in the Program, based on the average of the last three months for which the Department has final data. On October 1, 1996 and each October 1 thereafter, the $21 will be adjusted annually using the same inflation percentage used to determine the national administrative grant per person. * * *

* * * * *

(e) *Recovery of vendor claims.* The State agency may retain funds collected through the recovery of claims assessed against food vendors or funds not paid to food vendors as a result of reviews of food instruments prior to payment. The State agency may use funds recovered from vendors for food and/or nutrition services and administration costs. Funds recovered as a result of violations in the food delivery system of the program may be used for costs incurred in the year in which the funds are collected, or in the year in which the initial obligation of funds incurred. The State agency shall not credit any vendor recoveries until after the vendor has had full opportunity to correct or justify the error or apparent overcharge in accordance with § 246.12(r)(5)(iii). The State agency shall report vendor collections to FNS through routine reporting procedures. The State agency shall maintain documentation to support the amount and use of funds retained under this paragraph by the State agency.

7. In § 246.15, paragraph (a) is revised to read as follows:

§ 246.15 Program income other than grants.

(a) *Interest earned on advances.* Interest earned on advances of Program funds at the State and local levels shall be treated in accordance with the provisions of 31 CFR Part 205, which

implement the requirements of the Cash Management Improvement Act of 1990. However, State agencies will not incur an interest liability to the Federal government on rebate funds for infant formula or other foods, *provided* that all interest earned on such funds is used for program purposes.

* * * * *

8. In § 246.16, paragraphs (a)(6) and (b)(3)(i) are revised to read as follows:

§ 246.16 Distribution of funds.

(a) * * *

(6) Up to one-half of 1 percent of the sums appropriated for each fiscal year, not to exceed $5,000,000 shall be available to the Secretary for the purpose of evaluating program performance, evaluating health benefits, providing technical assistance to improve State agency administrative systems preparing the biennial Participation Report to Congress described in § 246.25(b)(3), and administering pilot projects, including projects designed to meet the special needs of migrants, Indians, rural populations, and to carry out technical assistance and research evaluation projects of this program and the WIC Farmers' Market Nutrition Program.

(b) * * *

(3) * * *

(i) Not more than 1 percent of the amount of funds allocated to a State agency for supplemental foods for a fiscal year may be expended by the State agency for food costs incurred in the preceding fiscal year. FNS may authorize a State agency to expend not more than 3 percent of the amount of funds allocated to the State agency for supplemental foods for a fiscal year for expenses incurred for supplemental foods during the preceding fiscal year, if FNS determines that there has been a significant reduction in infant formula cost containment savings that affected the State agency's ability to at least maintain its participation level;

* * * * *

Dated: November 14, 1998.

Shirley R. Watkins,

Under Secretary for Food, Nutrition, and Consumer Services.

[FR Doc. 98–30753 Filed 11–17–98; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–141–AD; Amendment 39–10888; AD 98–24–01]

RIN 2120–AA64

Airworthiness Directives; British Aerospace (Jetstream) Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace (Jetstream) Model 4101 airplanes, that requires repetitive detailed visual inspections to detect cracking or other damage of certain diaphragm support structures of the forward equipment compartment; and repair, if necessary. This amendment is prompted by the issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to detect and correct failure of the two diaphragms that support the upper structure of the forward equipment compartment, which could accelerate fatigue damage in adjacent structure and result in reduced structural integrity of the airframe.

DATES: Effective December 23, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 23, 1998.

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

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain British Aerospace (Jetstream) Model 4101 airplanes was published in the **Federal Register** on January 8, 1998 (63 FR 1074). That action proposed to require repetitive detailed visual inspections to detect cracking or other damage of certain diaphragm support structures of the forward equipment compartment; and repair, if necessary.

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

Request To Allow Flight With Known Cracks

One commenter, the manufacturer, requests that the proposed AD be revised to allow operators to continue operation of an unrepaired airplane for up to 300 flight cycles following detection of cracking of certain diaphragm support structures of the forward equipment compartment. The commenter states that, during full-scale fatigue testing, failure of both diaphragms occurred, and the test continued for another 24,000 flight cycles before either of the diaphragms was replaced. The commenter further states that, during the period between detection of the cracking and replacement of the diaphragms, no damage was detected that would cause concern regarding the structural integrity of the airplane. In light of these fatigue testing data, the commenter notes that the compliance time of 300 flight cycles after detection of cracking, as specified in the service bulletin, is already a very conservative threshold.

The FAA does not concur. It is the FAA's policy to require repair of known cracks prior to further flight, except in certain cases of unusual need, as discussed below.

This policy is based on the fact that such damaged airplanes do not conform to the FAA-certificated type design and, therefore, are not airworthy until a properly approved repair is incorporated. The FAA's policy regarding flight with known cracks does allow deferral of repairs in certain cases, if there is an unusual need for a temporary deferral. Unusual needs include such circumstances as legitimate difficulty in acquiring parts to accomplish repairs. Because the FAA is not aware of any unusual need for repair deferral in regard to this AD, the FAA has determined that any subject diaphragm that is found to be cracked must be repaired prior to further flight in accordance with a method approved by the FAA. However, operators may request approval of an alternative method of compliance if data are

provided to substantiate that such a method would provide an acceptable level of safety.

Request To Remove Requirement for Repetitive Inspections After Repair

One commenter, the manufacturer, requests that the requirement to continue the repetitive inspections following the installation of an improved diaphragm be removed from the proposal. The commenter states that, during full-scale fatigue testing, no new cracking of the diaphragms was detected following repair of the diaphragms until 65,700 total flight cycles. Based on these data, the commenter states that an inspection threshold of 20,000 landings after installation of a new diaphragm, and a repetitive inspection interval thereafter of 6,000 landings, would be adequate to ensure that any cracking would be detected in a timely manner. The commenter further states that such an inspection threshold and repetitive interval will be added to the Airworthiness Limitations specified in Chapter 5 of the Jetstream 4100 Airplane Maintenance Manual (AMM).

The FAA does not concur with the commenter's request to remove the requirement for repetitive inspections of the diaphragm following replacement. First, the commenter implies that an improved diaphragm is available; however, the FAA is not aware of any such improved part. Further, the lack of specific data in the service bulletin regarding the repair prevents the FAA from determining whether elimination of the repetitive inspection requirement is warranted. Also, though the FAA acknowledges the manufacturer's intent to incorporate a program of repetitive inspections into the Airworthiness Limitations specified in Chapter 5 of the AMM, the FAA would have to engage in further rulemaking in order to require such an inspection program.

Although the FAA does not concur with the request to remove the repetitive inspection requirement following accomplishment of a repair, paragraph (b) of this AD contains a provision for requesting approval of an alternative method of compliance to address operators' unique circumstances. In accordance with paragraph (b) of this AD, an operator may submit a repair method, along with a proposed repetitive inspection program or data to support elimination of the repetitive inspection requirement, for consideration by the FAA. No change to the final rule is necessary.

Conclusion

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

Interim Action

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

Cost Impact

The FAA estimates that 55 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $3,300, or $60 per airplane, per inspection cycle.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–24–01 British Aerospace Regional Aircraft [Formerly Jetstream Aircraft Limited British Aerospace (Commercial Aircraft) Limited]: Amendment 39–10888. Docket 97–NM–141–AD.

Applicability: Jetstream Model 4101 airplanes, constructors numbers 41004 through 41098 inclusive; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To detect and correct failure of the two diaphragms that support the upper structure of the forward equipment compartment, which could accelerate fatigue damage in adjacent structure and result in reduced structural integrity of the airframe, accomplish the following:

(a) Prior to the accumulation of 4,500 total landings, or within 300 landings after the effective date of this AD, whichever occurs later: Perform a detailed visual inspection to detect cracking or other damage of the diaphragms installed between station 4 and station 8 of the forward fuselage, in accordance with Jetstream Alert Service Bulletin J41–A53–023, dated December 2, 1996.

(1) If no cracking or other damage is detected, repeat the inspection thereafter at intervals not to exceed 3,000 landings.

(2) If any cracking or other damage is detected, prior to further flight, repair the diaphragm in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Thereafter, repeat the inspection at intervals not to exceed 3,000 landings.

(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. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

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

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

(d) The inspections shall be done in accordance with Jetstream Alert Service Bulletin J41–A53–023, dated December 2, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in British airworthiness directive 007–12–96.

(e) This amendment becomes effective on December 23, 1998.

Issued in Renton, Washington, on November 9, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–30536 Filed 11–17–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AWP–21]

Revision of Class D Airspace; San Diego-Gillespie Field, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises the Class D airspace area at San Diego-Gillespie Field, CA by lowering the ceiling from 2,900 feet Mean Sea Level (MSL) to 2,400 feet MSL. The proposed modification of the San Diego, CA, Class B airspace area would create a narrow 300 foot corridor northeast of Gillespie Field. This corridor would reduce the available airspace for aircraft that are approaching or overflying Gillespie Field from the northeast. Lowering the Gillespie Field Class D airspace ceiling will create an 800 foot corridor along this same route, thereby increasing navigable airspace for aircraft operating under Visual Flight Rules (VFR).

EFFECTIVE DATE: The direct final rule published at 63 FR 50140 is effective 0901 UTC, December 31, 1998.

ADDRESSES: Send comments on the direct final rule confirmation date in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace Branch, AWP–520, Docket No. 98–AWP–21, 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: On September 21, 1998, the FAA published in the **Federal Register** a direct final rule; request for comments, which revised the Class D airspace at San Diego-Gillespie Field, CA by lowering the ceiling of the Class D from 2,900 feet Mean Sea Level (MSL) to 2,400 feet MSL. (FR Document 98–25208, 63 FR 50140, Airspace Docket No. 98–AWP–21). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on December 31, 1998. No adverse comments were received; therefore this document confirms that this direct final rule will become effective on that date.

Issued in Los Angeles, California, on October 30, 1998.

John G. Clancy,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 98–30792 Filed 11–17–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AWP–20]

Revision of Class E Airspace, San Diego, North Island NAS, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises the Class E airspace area at San Diego North Island NAS, (NZY), CA.

DATES: The direct final rule published in 63 FR 46166 is effective at 0901 UTC, December 3, 1998.

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

SUPPLEMENTARY INFORMATION: On August 31, 1998, the FAA published in the **Federal Register** a direct final rule; request for comments, which revised the Class E airspace area at NZY, CA. (FR Document 98–23367, 63 FR 46166, Airspace Docket No. 98–AWP–20). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on December 3, 1998. No adverse comments were received, therefore this document confirms that this direct final rule will become effective on that date.

Issued in Los Angeles, California on October 27, 1998.

John G. Clancy,

Manager, Air Traffic Division, Western Pacific Region.

[FR Doc. 98–30790 Filed 11–17–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 10

[Docket No. 98N–0361]

Administrative Practices and Procedures; Internal Review of Decisions

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations governing the internal review of agency decisions by inserting a statement that sponsors, applicants, or manufacturers of drugs (including human drugs, animal drugs, and human biologics) or devices may request review of a scientific controversy by an appropriate scientific advisory panel, or advisory committee. This amendment implements the ''Dispute Resolution'' provision of the Food and Drug Administration Modernization Act (FDAMA). This document is intended to clarify that sponsors, applicants, or manufacturers of drugs, or devices may request review of scientific controversies by an appropriate scientific advisory panel or advisory committee.

EFFECTIVE DATE: December 18, 1998.

FOR FURTHER INFORMATION CONTACT:

For information regarding this final rule: Suzanne M. O'Shea, Office of the Chief Mediator and Ombudsman (HF–7), Food and Drug Administration, 5600 Fishers Lane, rm. 14–105, Rockville, MD 20857, 301–827–3390.

For information about requesting section 404 of FDAMA (21 U.S.C. 360bbb-1) reviews in the Center for Biologics Evaluation and Research: Rebecca A. Devine, Associate Director for Policy, Center for Biologics Evaluation and Research (HFM–001), Food and Drug Administration, 1401 Rockville Pike, suite 200 North, Rockville, MD 20852–1448, 301–827–0373, or

For information about requesting section 404 reviews in the Center for Devices and Radiological Health: James G. Norman, Senior Policy Analyst-Acting Ombudsman, Center for Devices and Radiological Health (HFZ–001), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–4690, or

For information about requesting section 404 reviews in the Center for Drug Evaluation and Research: Murray M. Lumpkin, Deputy Director for Review Management, Center for Drug Evaluation and Research (HFD–002), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5400, or

For information about requesting section 404 reviews in the Center for Veterinary Medicine: Marcia K. Larkins, Ombudsman, Center for Veterinary Medicine (HFV–230), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0137.

SUPPLEMENTARY INFORMATION:

I. Background

On November 21, 1997, President Clinton signed into law FDAMA (Pub. L. 105–115). Section 404 of FDAMA amends the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et seq.*) by adding a new provision, Dispute Resolution (section 562 of the act (21 U.S.C. 360bbb-1)). The dispute resolution provision states that:

> If, regarding an obligation concerning drugs or devices under this Act or section 351 of the Public Health Service Act, there is a scientific controversy between the Secretary and a person who is a sponsor, applicant, or manufacturer and no specific provision of the Act involved, including a regulation promulgated under such Act, provides a right of review of the matter in controversy, the Secretary shall, by regulation, establish a procedure under which such sponsor, applicant, or manufacturer may request a review of such controversy, including a review by an appropriate scientific advisory panel described in section 505(n) or an advisory committee described in section 515(g)(2)(B). Any such review shall take place in a timely manner. The Secretary shall promulgate such regulations within 1 year after the date of the enactment of the Food and Drug Administration Modernization Act of 1997.

Section 404 of FDAMA requires FDA to create a procedure to resolve scientific controversies if no other mechanism for resolving the dispute is contained in the act or regulations issued under the act. The act and agency regulations currently set forth many varied processes that regulated industry may use to resolve disputes under certain specified circumstances. In addition to these specific processes, § 10.75 (21 CFR 10.75) provides that any interested person may obtain review of any agency decision by raising the matter with the supervisor of the employee who made the decision. If the issue is not resolved at the supervisor's level, the interested person may request that the matter be reviewed at the next higher supervisory level. This process may continue through the agency's entire supervisory chain of command through the Centers to the Deputy Commissioner for Operations, and then to the Commissioner of Food and Drugs (the Commissioner).

FDA's formal processes are supplemented by several ombudsman offices to facilitate the resolution of disputes informally. The Office of the Chief Mediator and Ombudsman has been established within the Commissioner's Office to resolve intercenter disputes, disputes that have gone through the Center Directors but are still at issue, or other disputes where the complainant has concerns about raising the issue with a Center. Several FDA Centers have established Center Ombudsman's offices to resolve disputes most appropriately handled at the Center level. For further information about any FDA ombudsman office, contact the information contact persons listed previously.

In the **Federal Register** of June 16, 1998 (63 FR 32733 and 32772), FDA published a direct final rule and a companion proposed rule amending § 10.75 to add another method of resolving scientific controversies in light of section 404 of FDAMA. This amendment stated that sponsors, applicants, or manufacturers of drugs (including human drugs, animal drugs, and human biologics), or devices may request review of scientific controversies by an appropriate scientific advisory panel or advisory committee. (Hereafter in this document, the term advisory committee includes scientific advisory panels.) By this amendment, FDA clarified that sponsors, applicants, and manufacturers of drugs, biologics, and devices are not limited solely to requesting internal supervisory review, but also have the right to request review of scientific controversies by appropriate advisory committees. FDA believes that in appropriate circumstances, advisory committees can provide the agency with useful insight and advice about the resolution of scientific controversies.

FDA initially used the direct final rule approach to rulemaking because it believed the amendment to § 10.75 was noncontroversial and in accord with FDAMA. In accordance with FDA's procedures for direct final rulemaking, the direct final rule stated that if FDA received no significant adverse comments, the direct final rule would go into effect on October 29, 1998. The direct final rule stated further that if FDA received any significant adverse comments, it would withdraw the direct final rule and consider all comments received on the companion proposed rule in the development of a final rule

using the usual notice and comment rulemaking procedures. The comment period for the companion proposed rule ended on August 31, 1998. FDA received significant adverse comments in response to the direct final rule and the companion proposed rule. Therefore, in the **Federal Register** of September 23, 1998 (63 FR 50757), FDA withdrew the direct final rule.

The essence of the significant adverse comments was that the amendment to § 10.75 failed to provide a procedure that sponsors, applicants, and manufacturers could follow to request section 404 reviews. The comments suggested that the regulation called for by section 404 of FDAMA contain information such as the process for selecting members of an advisory committee convened to conduct a section 404 review, the timeframes for conducting the reviews, the standards for granting or denying a section 404 review, and the weight to be given to advisory committee recommendations.

FDA acknowledges the usefulness of much of this kind of information, but concludes that it should not be included in § 10.75. Because of the significant differences among FDA Centers in applicable laws, existing appeal and dispute resolution mechanisms, and approaches to advisory committee management, FDA is adopting a Center-based approach to the implementation of section 404 of FDAMA. Each affected Center is responsible for developing and administering its own processes for handling requests for section 404 reviews and is issuing a guidance document containing specific information of the type suggested by the comments. The substantive differences in the programs in the affected Centers, and the different matters that could be the subject of a request for advisory committee review, preclude inclusion of this type of information in § 10.75.

In this final rule, information that is applicable to all requests for section 404 review has been added to the language amending § 10.75. It is expected that Centers will fully evaluate each request for section 404 review, and will not unreasonably deny a sponsor, applicant, or manufacturer such review. The amendment to § 10.75 now provides that if a Center denies a request for section 404 review, the reason(s) for such denial will be set forth in writing to the requester. A Center's decision to deny section 404 review may be reviewed through the agency's supervisory chain of command, to the Deputy Commissioner for Operations, then to the Commissioner. Persons should ordinarily exhaust Center mechanisms for appealing denials of section 404 review before seeking review by the Deputy Commissioner. Denial of a request for section 404 review is not final agency action subject to judicial review.

Section 10.75 provides that requests for reviews of Center denials be submitted to the Chief Mediator and Ombudsman who shall, by informal means, facilitate the review of the denial on behalf of the Deputy Commissioner for Operations. The role of the Chief Mediator and Ombudsman in the review of a Center's denial of a request for section 404 review is to ensure that all appropriate means of informally resolving the dispute have been used before review by the Deputy Commissioner. The Chief Mediator and Ombudsman will not make an independent determination of whether a section 404 review should be granted, but will work informally with the Center and the person denied section 404 review, to develop a mutually acceptable approach, taking into account all relevant factors.

II. Response to Comments

FDA received five comments on the proposed rule; two from trade associations, one from a private company, one from a university medical clinic, and one from an FDA employee.

1. One comment objected to FDA's conclusion that it was required to issue a regulation establishing a procedure for requesting review of scientific controversies only if procedures to request review of scientific controversies do not otherwise exist. According to the comment, section 404 of FDAMA requires FDA to establish a procedure to be used when there are no other specific provisions for requesting review of the particular type of scientific controversy at issue.

FDA disagrees with this interpretation. Section 404 of FDAMA states ''If * * * there is a scientific controversy * * * and no specific provision of the Act * * * including a regulation * * * provides a right of review of the matter in controversy, the Secretary shall, by regulation, establish a procedure * * *.'' The plain language of section 404 of FDAMA is that FDA must establish a procedure if scientific controversies could arise for which the act or regulations currently provide no right of review. In light of § 10.75, which permits any interested person to obtain review of any FDA decision, FDA concludes that no additional procedure is required.

However, as explained in the proposed rule, notwithstanding the existence of this universal dispute resolution provision, FDA recognizes that in appropriate circumstances, review by an advisory committee can provide the agency with useful insight and advice about the resolution of a scientific controversy. For this reason, FDA is amending § 10.75 to indicate that sponsors, applicants, or manufacturers seeking review of scientific controversies are not limited to internal supervisory review, but may also request review by an advisory committee.

2. One comment asserted that Congress' intent in enacting section 404 of FDAMA was to provide a procedure for resolving disputes by expert committees who are not part of FDA's normal administrative processes. The comment also suggested that the procedure should solicit nominees from the public and FDA for inclusion on an advisory committee roster. According to the comment, the procedure should require prompt conflict of interest checks and periodic updates, in order to assure the timely disposition of controversies. In order to simplify the creation of a panel as much as possible, the comment suggested that the number of persons participating on each panel should be limited to three.

FDA disagrees with this comment. The comment did not identify any specific language in section 404 of FDAMA suggesting that a procedure must be developed to use committees outside FDA's normal advisory committee processes. In fact, section 404 of FDAMA suggests the opposite, by its references to sections 505(n) and 515(g)(2)(B) of the act (21 U.S.C. 355(n) and 360e(g)(2)(B)), the statutory provisions covering FDA's existing drug and device advisory committees.

As noted previously, FDA implementation of section 404 of FDAMA is Center-based. The Centers' existing advisory committee structures and processes for managing advisory committees provide significant flexibility. Each Center may tailor its current processes as necessary to ensure that section 404 reviews are conducted in a timely way by persons with appropriate qualifications.

3. Two comments suggested specific timeframes for conducting section 404 reviews, and a third comment requested additional information about the timeframe for section 404 review. One suggested timeframe would require that a committee be constituted within 10 days of a written request for review, and the request be immediately forwarded to the committee. Also within 10 days of the request, FDA would be required to state its agreement with or opposition to the substantive points in the request, and forward its response to the

committee. Within 20 days of the committee's receipt of FDA's response, a 21 CFR part 14 informal hearing would be convened, unless the parties agree to have the committee decide on the papers. If a hearing occurs, the committee would provide its written decision to the parties within 20 days after the end of the hearing. If there is no hearing, the committee's decision would be required no later than 20 days after the committee receives FDA's response to the request for review.

The second suggested timeframe would require FDA to respond to requests for section 404 review within 30 days. When review is granted, the issue would be presented to the committee within 60 days. FDA would be required to resolve the matter within 90 days of receiving the advisory committee's conclusions and recommendations.

FDA recognizes that section 404 of FDAMA requires that reviews take place in a timely manner, but concludes that specific timeframes should not be included in a regulation of general applicability. For example, the second suggested timeframe outlined previously appears to be based on the timeframes established in section 120 of FDAMA and performance goals associated with the reauthorization of the Prescription Drug User Fee Act (21 U.S.C. 379g *et seq.*), both of which apply only to human drugs and biologics. It would be inappropriate to develop general timeframes based on requirements and commitments that do not apply to all affected FDA Centers. Each Center's section 404 processes incorporate timeframes as appropriate, taking into account applicable statutory and regulatory provisions, existing appeal and dispute resolution mechanisms, and approaches to advisory committee management.

4. One comment suggested that representatives of the Office of the Chief Mediator and Ombudsman serve as executive secretaries of advisory committees convened to conduct section 404 reviews.

FDA disagrees with this suggestion. The efficiency of the Center-based approach to implementation of section 404 of FDAMA could be diminished by appointment of an executive secretary who is not an employee of the Center. Efficiency will be best promoted by using executive secretaries who are fully familiar with the advisory committee procedures. Center employees are most likely to have that expertise. The staff within the Office of the Chief Mediator and Ombudsman will continue to serve as an additional informal dispute resolution resource apart from the Centers.

5. A comment suggested that the advisory committee's conclusions should be accepted as binding unless FDA determines that the weight of record evidence does not support the decision, that the committee applied incorrect legal standards or that the committee otherwise acted inconsistently with the law.

FDA rejects this comment. Nothing in the language of section 404 of FDAMA, section 505(n) of the act, or section 515(g)(2)(B) of the act suggests that it would be appropriate to treat advisory committee recommendations as binding. Section 505(n) of the act contemplates convening advisory committees to provide ''expert scientific advice and recommendations * * *.'' When FDA receives a recommendation from an advisory committee convened under section 515(g)(2)(B) of the act, the agency is to affirm or reverse the order referred to the committee and state the reasons therefore. FDA accords the recommendations of all advisory committees significant weight, but believes it would be an unauthorized delegation of FDA authority to treat advisory committee recommendations as binding. FDA action on section 404 advisory committee recommendations is not final agency action subject to judicial review, unless otherwise required by law.

6. A comment suggested that FDA must grant advisory committee review unless the committee itself declines to review the issue. Another comment seemed to assume that all requests for section 404 reviews will be granted.

FDA disagrees with these comments. The plain language of section 404 of FDAMA provides sponsors, applicants, and manufacturers only the right to *request* review of a scientific controversy by an advisory committee. FDA believes that the agency, not a particular advisory committee, is in the best position to evaluate whether individual requests for section 404 review present appropriate issues to be raised before an advisory committee.

Furthermore, although FDA endorses section 404's goal of facilitating the resolution of disputes by expanding access to the independent experts who serve on advisory committees, it concludes that § 10.75 should include only those aspects of the process for obtaining section 404 reviews that are applicable to all affected Centers. Therefore, § 10.75 includes a general mandate that requests for section 404 reviews shall not be unreasonably denied, and provides information about the process to be followed if requests are denied.

To implement the rule's overall mandate that requests for section 404 reviews shall not be unreasonably denied, the Center guidance documents provide information about granting or denying requests. Although Centers differ with respect to applicable laws, existing appeal and dispute resolution mechanisms, and approaches to advisory committee management, there are some situations in which all Centers would be likely to conclude that a section 404 review would not be appropriate. For example, the nature of the dispute may not be amenable to advisory committee review, the controversy might be more quickly and easily resolved in some other manner, or the issue may not be material to FDA's ultimate decision. Additionally, a section 404 review would be appropriate only if the matter relates to agency action on the requesting sponsor's own product. For example, a section 404 review would not be appropriate if it were requested for anti-competitive purposes, such as to prolong the review of a competitor's product. Furthermore, some issues are reviewed by advisory committees under regulatory processes that already provide for advisory committee review, and so section 404 review may be inappropriate given the preceding, or subsequent, regulatory processes.

7. A comment suggested that the term ''scientific controversy'' be defined as ''one involving issues related to matters of technical expertise requiring some specialized education, training, or experience to understand and resolve.''

FDA concludes that a definition of scientific controversy is not necessary in § 10.75. The Center guidance documents may define a scientific controversy if the Centers conclude that a definition would be useful to its specific processes.

8. A comment suggested that § 10.75 outline the steps an applicant, sponsor, or manufacturer must take to request a section 404 review. Another comment also requested information about how the review will take place and the general content and required number of copies of requests.

FDA concludes that this information should not be included in § 10.75. Under the Center-based approach FDA has selected to implement section 404 of FDAMA, each Center is providing information about the steps an applicant, sponsor, or manufacturer must take to request a section 404 review in guidance documents. The Centers' processes are tailored to take into account their applicable statutory

and regulatory provisions, existing appeal and dispute resolution mechanisms, and approaches to advisory committee management. It would not be feasible to incorporate all these particulars in one regulation of general applicability.

9. One of the comments interpreted the proposed amendment to § 10.75 to require applicants, sponsors, and manufacturers to seek review through the supervisory chain before submitting a request for a section 404 review.

FDA concludes that this issue is most appropriately addressed in Center-guidance documents rather than § 10.75. The points at which it is appropriate to request a section 404 review will vary depending on the scientific issue presented, the regulatory mechanism involved, and the relevant Center's organizational structure. Both the applicant, sponsor, or manufacturer and the agency have an interest in resolving scientific controversies at the earliest appropriate time.

10. Two comments suggested that persons other than sponsors, manufacturers, and applicants be given the right to request a review of a scientific controversy under section 404 of FDAMA. According to one comment, physicians, pharmacists, and/or their professional organizations should be permitted to request section 404 reviews. The comment identified compounding and unlabeled indications as potential sources of scientific controversy that might benefit from review under section 404 of FDAMA. The other comment requested that FDA employees be permitted to request review of disputes by advisory committees. According to this comment, advisory committee reviews would enable FDA to resolve issues with greater public input and on a more timely basis.

FDA disagrees with the suggestions that persons other than sponsors, manufacturers, and applicants be given the right to request a review of a scientific controversy under section 404 of FDAMA. By limiting the right to request a section 404 review to sponsors, applicants, and manufacturers, Congress indicated the kind of scientific controversies it had in mind: Those arising within the context of FDA's regulation of a specific product. Thus, a section 404 review would not be available to resolve broad public health controversies unrelated to the regulation of a specific product, or to resolve FDA's policy issues. The agency will continue to use 21 CFR part 15 hearings, public meetings, and advisory committee meetings to help resolve general scientific and policy issues.

Moreover, FDA regulations provide persons other than sponsors, applicants, and manufacturers other processes for seeking review of FDA decisions. Citizen petitions may be submitted by any person. A citizen petition may request the Commissioner to issue, amend, or revoke any regulation or order, or to take or refrain from taking any other form of administrative action. (See 21 CFR 10.30.) Any person may request reconsideration of part or all of a decision made by the Commissioner in response to any type of administrative petition. (See 21 CFR 10.33 and 10.25.) Finally, as noted in the proposed rule, any person may request review of any decision made by an FDA employee, other than the Commissioner, on any matter. (See § 10.75.)

11. Two comments expressed concern that FDA could retaliate against persons who request section 404 reviews, and for this reason suggested that persons be permitted to request section 404 reviews on behalf of sponsors, manufacturers and applicants, or that persons be permitted to request section 404 reviews anonymously.

Although FDA takes concerns about retaliation very seriously, it disagrees with the comment because, as explained in the previous response, the comments' proposed changes have the potential to significantly change the kinds of controversies reviewed under section 404.

FDA reiterates and reaffirms its commitment to an environment in which challenges to agency decisions can be raised without fear of adverse consequences. By memo dated June 29, 1995, Commissioner Kessler reminded all FDA employees that companies are free to vigorously challenge agency positions and requirements, and to freely voice their views. By letter of the same date, Commissioner Kessler assured members of Congress that any act or threat of retaliation by any FDA employee is totally unacceptable and will not be tolerated. Anyone who believes retaliation has occurred, or is likely to occur, is urged to contact the Center Ombudsmen, Center Management, or the Office of the Chief Mediator and Ombudsman. If merited, specific allegations of retaliation will be forwarded to FDA's Office of Internal Affairs which investigates allegations of employee misconduct in cooperation with the Department's Inspector General's Office. FDA believes that its employees are highly sensitive to the need to avoid even the appearance of impropriety, and strive to make complex clinical, scientific, legal, and factual decisions fairly and even-handedly. Accordingly, FDA believes that sponsors, manufacturers, and applicants will not be dissuaded from requesting review of issues under section 404 of FDAMA.

III. Agency Guidance

As explained previously, each FDA Center is providing detailed information in guidance documents about the implementation of section 404 of FDAMA. For further information, see the **FOR FURTHER INFORMATION CONTACT** section of this document.

IV. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Pub. L. 104–121)) and the Unfunded Mandate Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this rule does not impose any requirements on the regulated industry, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

VI. Paperwork Reduction Act of 1995

The final rule contains no new collections of information. Therefore,

clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

List of Subjects in 21 CFR Part 10

Administrative practice and procedure, News media.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and authority delegated to the Commissioner of Food and Drugs, 21 CFR part 10 is amended as follows:

PART 10—ADMINISTRATIVE PRACTICES AND PROCEDURES

1. The authority citation for 21 CFR part 10 continues to read as follows:

Authority: 5 U.S.C. 551–558, 701–706; 15 U.S.C. 1451–1461; 21 U.S.C. 141–149, 321–397, 467f, 679, 821, 1034; 28 U.S.C. 2112; 42 U.S.C. 201, 262, 263b, 264.

2. Section 10.75 is amended by redesignating paragraph (b) as paragraph (b)(1) and by adding paragraph (b)(2) to read as follows:

§ 10.75 Internal agency review of decisions.

* * * * *

(b)(1) * * *

(2) A sponsor, applicant, or manufacturer of a drug or device regulated under the act or the Public Health Service Act (42 U.S.C. 262), may request review of a scientific controversy by an appropriate scientific advisory panel as described in section 505(n) of the act, or an advisory committee as described in section 515(g)(2)(B) of the act. The reason(s) for any denial of a request for such review shall be briefly set forth in writing to the requester. Persons who receive a Center denial of their request under this section may submit a request for review of the denial. The request should be sent to the Chief Mediator and Ombudsman.

Dated: November 12, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–30812 Filed 11–17–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 97N–0524]

RIN 0910–AA43

Food Labeling: Warning and Notice Statement: Labeling of Juice Products; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration is correcting a final rule that appeared in the **Federal Register** of July 8, 1998 (63 FR 37030). The final rule revised the food labeling regulations to require a warning statement on fruit and vegetable juice products that have not been processed to prevent, reduce, or eliminate pathogenic microorganisms that may be present. The document was published with several inadvertent editorial errors. This document corrects those errors.

DATES: The regulation is effective September 8, 1998; however, compliance for juice other than apple juice and apple cider is not required until November 5, 1998.

FOR FURTHER INFORMATION CONTACT: Geraldine A. June, Center for Food Safety and Applied Nutrition (HFS–158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5099.

In FR Doc. No. 98–18287, appearing in the **Federal Register** of Wednesday, July 8, 1998, the following corrections are made:

1. On page 37038, in the third column, in the fourth full paragraph, in the sixth line, ''(Ref. 9)'' is corrected to read ''(Ref. 7)''.

2. On page 37040, in the first column, in the last line of the first full paragraph, ''(Ref. 10)'' is corrected to read ''(Ref. 8)''.

3. On page 37040, in the third column, in the second full paragraph, in the eleventh line, ''(Ref. 11)'' is corrected to read ''(Ref. 9)'' and in that same paragraph, in the fifteenth and eighteenth lines, ''(Ref. 12)'' is corrected to read ''(Ref. 10)''.

5. On page 37041, in the last line of the third column, ''(Ref. 13)'' is corrected to read ''(Ref. 11)''.

6. On page 37044, in the third column, in the fourth paragraph, in the twenty-fifth line, ''(Ref. 14)'' is corrected to read ''(Ref. 12)''.

7. On page 37047, in the second column, in the second full paragraph, in the twentieth line, ''(Ref. 15)'' is corrected to read ''(Ref. 13)''.

§ 101.17 [Corrected]

8. On page 37056, in the third column, in § 101.17(g)(7)(i)(B), beginning in the fourth line, ''Hazard Analysis Critical Control Points'' is corrected to read ''Hazard Analysis and Critical Control Point''.

Dated: November 10, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–30814 Filed 11–17–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Fenbendazole Suspension; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulation concerning veterinary prescription use of Hoechst Roussel Vet's fenbendazole suspension for cattle. The amendment clarifies the oral dose of fenbendazole suspension used as a dewormer in cattle.

EFFECTIVE DATE: November 18, 1998.

FOR FURTHER INFORMATION CONTACT: Estella Z. Jones, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7575.

SUPPLEMENTARY INFORMATION: Hoechst Roussel Vet, 30 Independence Blvd., P.O. Box 4915, Warren, NJ 07059, is sponsor of new animal drug application (NADA) 128–620 that provides for oral, veterinary prescription use of Panacur® (fenbendazole) 10 percent suspension. The drug is used as a dewormer in cattle, including dairy cattle of breeding age at 5 milligrams per kilogram (mg/kg) of body weight, and only in beef cattle at 10 mg/kg of body weight. The regulations are amended in 21 CFR 520.905a to clarify the approval.

The amendments clarify the drug dose used to treat various classes of animals and insert certain technical revisions. No additional safety or effectiveness data were required. A revised freedom

of information summary is provided to reflect the clarification.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

The authority citation for 21 CFR part 520 continues to read as follows:

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

2. Section 520.905a is amended by removing paragraph (a); by redesignating paragraphs (b) and (c) as paragraphs (a) and (b); by adding paragraph (c); by revising the heading of paragraph (d)(2); by redesignating paragraph (d)(3) as paragraph (d)(4); by redesignating paragraphs (d)(2)(ii), (d)(2)(ii)(A), and (d)(2)(ii)(B) as paragraphs (d)(3)(i), (d)(3)(ii), and (d)(3)(iii); by adding a heading for newly redesignated paragraph (d)(3); by redesignating paragraphs (d)(2)(i)(A) and (d)(2)(i)(B) as paragraphs (d)(2)(ii) and (d)(2)(iii) to read as follows:

§ 520.905a Fenbendazole suspension.

* * * * *

(c) *Related tolerances.* See § 556.275 of this chapter.

(d) * * *

(2) *Cattle including dairy cows of breeding age*—* * *

* * * * *

(3) *Beef cattle*—* * *

* * * * *

Dated: November 9, 1998.

Andrew J. Beaulieu,

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

[FR Doc. 98–30750 Filed 11–17–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 806

[Docket No. 98N–0439]

Medical Devices: Reports of Corrections and Removals; Delay of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule; delay of effective date.

SUMMARY: The Food and Drug Administration (FDA) published in the **Federal Register** of August 7, 1998 (63 FR 42229), a direct final rule. The direct final rule notified the public of FDA's intention to amend the regulations that govern reports of corrections and removals of medical devices to eliminate the requirement for distributors to make such reports. This document delays the effective date of the direct final rule.

EFFECTIVE DATE: The effective date of the direct final published at 63 FR 42229 rule is delayed until February 22, 1999.

FOR FURTHER INFORMATION CONTACT: Rosa M. Gilmore, Center for Devices and Radiological Health (HFZ–215), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20857, 301–827–2970.

SUPPLEMENTARY INFORMATION: FDA solicited comments concerning the direct final rule for a 75-day period ending October 21, 1998. FDA stated that the effective date of the direct final rule would be on December 21, 1998, 60 days after the end of the comment period, unless any significant adverse comment was submitted to FDA during the comment period. FDA did not receive any significant adverse comment.

However, FDA has not yet received approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) of the information collection requirements in this rule. Therefore, FDA is revising the effective date of this rule to February 22, 1999. By that date, FDA expects to have received clearance from the Office of Management and Budget (OMB) for the information collection requirements in the rule. This document delays the effective date of the direct final rule.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, notice is given that no objections or requests for a hearing were filed in response to the August 7, 1998, final rule. Accordingly, the amendments issued thereby are effective February 22, 1999.

Dated: November 10, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–30876 Filed 11–17–98; 8:45 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AK 15–1703a; FRL–6188–7]

Approval and Promulgation of State Implementation Plans; Alaska

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Environmental Protection Agency (EPA) is approving in part and disapproving in part portions of the revisions to the State of Alaska Implementation Plan which were submitted to EPA by the Director of the Alaska Department of Environmental Conservation (ADEC) on January 8, 1997 and March 17, 1998. These revisions consist of certain changes to the ADEC rules for air quality control (18 AAC 50), updated Alaska statutes related to air pollution, and the ''In Situ Burning Guideline for Alaska (revised 5/94).'' These revisions were submitted in accordance with the requirements of section 110 and Part D of the Clean Air Act (hereinafter the Act).

DATES: This action is effective on January 19, 1999.

ADDRESSES: Copies of the State's request and other information supporting this proposed action are available for inspection during normal business hours at the following locations: EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101, and State of Alaska, Department of Environmental Conservation, 410 Willoughby Avenue, Juneau, Alaska, 99801. Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, EPA, 401 M Street, SW, Washington, D.C. 20460, as well as the above addresses.

FOR FURTHER INFORMATION CONTACT: David C. Bray, Senior Air Pollution Scientist, Office of Air Quality (OAQ–107), EPA, Seattle, Washington, (206) 553–4253.

SUPPLEMENTARY INFORMATION:

I. Background

The Clean Air Act Amendments of 1990, Title V, require States to develop operating permit programs for most stationary sources. While Title V operating permit programs are not approved as part of the state implementation plan (SIP) under section 110 of the Act, many provisions of the SIP will interact closely with the Title V operating permit program. As

such, many States will be revising provisions of their SIPs to facilitate and improve the relationship between their SIP and their Title V operating permit program. The ADEC amended numerous provisions of its current rules for air pollution sources and submitted them to EPA on January 8, 1997, and March 17, 1998, as revisions to the Alaska SIP. ADEC also submitted updated Alaska statutes related to air pollution (specifically, the 1993 Alaska Act (Chapter 74 State Legislative Act 1993)), and the ''In Situ Burning Guideline for Alaska (revised 5/94).''

On August 18, 1998 (63 FR 44208), EPA proposed to approve portions of the rules submitted by ADEC, along with portions of the updated Alaska statutes and the ''In Situ Burning Guideline for Alaska (revised 5/94).'' In that proposal, EPA indicated that it was taking no action at that time on the provisions relating to the permitting of stationary sources, including the construction of new and modified stationary sources, Part D new source review, and prevention of significant deterioration (PSD) permitting, but would propose action on those provisions in a separate notice. In addition, EPA indicated that it was taking no action on a number of provisions which are unrelated to the purposes of the implementation plan. See the August 18, 1998 **Federal Register** for complete descriptions of the portions of the ADEC submittals which were proposed for approval, the portions which will be acted on at a later date, and the portions which will not be acted upon. The August 18, 1998 **Federal Register** also contains a discussion of EPA's review of the ADEC submittals and its findings with regard to the portions of the submittals which EPA proposed for approval.

II. Response to Comments

EPA received comments from three entities on its proposed approval of portions of the ADEC submittal. One commentor (an Alaskan industry) supported EPA's proposed approval and encouraged EPA to complete its action on the provisions relating to the permitting of new and modified stationary sources. One commentor (the ADEC) supported EPA's proposed approval, but pointed out that EPA had proposed to approve AS 46.14.110(e) and (g), which had been repealed by the Alaska Legislature and was no longer in effect. EPA agrees with the commentor that it cannot approve a repealed statutory provision and is correcting its error in this final action.

One commentor (representing three environmental organizations) opposed EPA's proposed approval of the ADEC's request to remove 18 AAC 50.110 ''Air Pollution Prohibited'' from the federally-approved Alaska SIP. The commentor disagreed with EPA's characterization of this section as a general nuisance provision that is not relied upon to meet any requirement of the Clean Air Act or EPA regulations. The commentor indicated that 18 AAC 50.110 in fact provides a mechanism for regulating pollutants that are not otherwise regulated by ambient air quality standards and/or permitting requirements and equipment-specific standards, and cited examples of where this provision had been used in the past to regulate sources of criteria pollutants. The commentor also pointed out that neither ADEC nor EPA had provided an adequate justification for removing this section from the EPA-approved SIP.

EPA has considered the comments regarding its proposed approval of the removal of 18 AAC 50.110 from the SIP and has reevaluated the documentation submitted by ADEC in support of its request. In light of the information provided by the commentor and the lack of documentation submitted by ADEC, EPA finds the request for removal of 18 AAC 50.110 to be unapprovable. Specifically, ADEC has not demonstrated that the removal of 18 AAC 50.110 would comply with the requirements for SIP revisions set forth in sections 110(l) and 193 of the Act. EPA is therefore disapproving the ADEC request to remove 18 AAC 50.110 from the Alaska SIP. Note that EPA is not making any determination regarding whether 18 AAC 50.110 could be removed from the SIP, but only that ADEC has not submitted the necessary demonstrations required by the Act and EPA regulations for EPA to approve this specific SIP submittal.

III. Final Action

EPA is approving in part and disapproving in part portions of the rules submitted by ADEC, and is approving portions of the updated Alaska statutes and the ''In Situ Burning Guideline for Alaska (revised 5/94).'' Specifically, EPA is approving the following provisions of 18 AAC 50 as adopted by ADEC and effective on January 18, 1997: Section 005; Section 010, except for subsections (7) and (8); Section 025; Section 030; Section 035; Section 045; Section 050; Section 055, except for paragraph (d)(2)(B) (note that paragraph (a)(9) was not submitted by ADEC); Section 060; Section 065; Section 070; Section 075; Section 200; Section 201; Section 205; Section 220; Section 240; Section 245; Section 400, paragraphs (a), (b)(1), and (c); Section 420; Section 430; Section 900; and Section 990, subsections (2), (3), (4), (5), (6), (8), (9), (10), (11), (14), (15), (16), (17), (19), (20), (23), (24), (25), (26), (29), (31), (32), (33), (34), (35), (37), (39), (40), (42), (43), (45), (47), (48), (50), (51), (53), (58), (59), (60), (61), (62), (63), (65), (66), (67), (69), (70), (71), (72), (74), (75), (78), (79), (80), (81), (83), (84), (85), (86), (89), (90), (91), (92), (93), (94), (95), (96), (97), (99), and (100). (Note that 18 AAC 50, Sections 700 through 735 were already approved by EPA on September 27, 1995 (60 FR 49765).) EPA is also approving the requested revocation of 18 AAC 50: Section 010 ''Applicability of Local Government Regulations;'' Section 070 ''Motor Vehicle Emissions;'' and Section 900 ''Definitions,'' subsections (19) ''emission allowance,'' (27) ''maximum combustion efficiency,'' (30) ''opacity,'' (45) ''ug/m3,'' (46) ''regional supervisor,'' and (48) ''wood smoke control area.'' EPA is approving as federally enforceable provisions of the SIP, the following provisions of the Alaska Statutes: AS 46.14.510(b); AS 46.14.550; AS 46.14.560; AS 46.14.990(1), (2), (3), (6), (7), (8), (10), (13), (15), (16), (17), (18), (22), (24), and (25); and AS 45.45.400(a) (enacted 1993). Finally, EPA is approving the ''In Situ Burning Guidelines for Alaska (revised 5/94).''

EPA is disapproving the ADEC request to remove 18 AAC 50.110 ''Air Pollution Prohibited'' (effective 5/26/72) from the EPA-approved SIP.

EPA is taking no action at this time on the following provisions of 18 AAC 50 which relate to the permitting of new and modified stationary sources: Section 015; Section 020; Section 100; Section 210; Section 215; Section 225; Section 230; Section 250; Section 300; Section 305; Section 310; Section 315; Section 320; Section 400, paragraphs (b)(2) through (b)(5); Section 910; and Section 990, subsections (1), (7), (13), (21), (22), (27), (28), (30), (36), (38), (41), (44), (46), (49), (52), (54), (55), (56), (57), (64), (68), (73), (76), (77), (82), and (98). Additionally, EPA is taking no action at this time on the revocation of Section 520 ''Emission and Ambient Monitoring'' (effective 7/21/91) and Section 900 ''Definitions,'' subsections (52) and (54) (effective 4/23/94). Finally, EPA is taking no action at this time on the following provisions of the Alaska Statutes which relate to the permitting of new and modified stationary sources: AS 46.14.120(a); AS 46.14.130(a); AS 46.14.240(a); AS 46.14.250(a); and AS 46.14.990(4), (5), (9), (11), (12), (14), (19), (20), (21), and (23) (enacted 1993).

EPA is taking no action on the following provisions of 18 AAC 50 which do not relate to the purposes of

the SIP under section 110 of the Act, or which implement other provisions of the Clean Air Act (e.g., NSPS, NESHAP, Title V): Section 010, subsections (7) and (8); Section 040; Section 055, paragraph (d)(2)(B); Section 080; Section 235; Section 300, paragraphs (f) and (h)(10); Section 310, paragraph (h); Section 315, paragraph (e)(6); Section 322; Sections 325 through 380; Section 400, paragraphs (b)(6) through (b)(10); Section 410; and Section 990, subsections (12), (18), (87), and (88) .

IV. Administrative Requirements

A. Executive Order 12866 and 13045

The Office of Management and Budget (OMB) has exempted this regulatory action from review under E.O. 12866, entitled, ''Regulatory Planning and Review'' 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. Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. 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, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to 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 officials 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.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

D. 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).

EPA's disapproval of a portion of the State request under Section 110 and subchapter I, part D of the CAA 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 its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements and impose any new Federal requirements.

E. Unfunded Mandates

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

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

F. 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).

G. 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 January 19, 1999. 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).)

H. Alaska's Audit Law

Nothing in this action should be construed as making any determination or expressing any position regarding Alaska's audit privilege and penalty immunity law (Alaska Audit Act, AS 09.25.450 et seq., enacted in 1997) or its impact upon any approved provision in the SIP, including the revision at issue here. The action taken herein does not express or imply any viewpoint on the question of whether there are legal deficiencies in this or any other Clean Air Act program resulting from the effect of Alaska's audit privilege and penalty immunity law. A state audit privilege and immunity law can affect only state enforcement and cannot have any impact on federal enforcement authorities. EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by a state audit privilege or immunity law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: November 5, 1998.

Chuck Findley,

Acting Regional Administrator, Region X.

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

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 C—Alaska

2. Section 52.70 is amended by adding paragraph (c)(28) to read as follows:

§ 52.70 Identification of plan.

* * * * *

(c) * * *

(28) On January 8, 1997, the Director of the Alaska Department of Environmental Conservation submitted the Alaska air quality regulations, 18 Alaska Administrative Code (AAC) 50 (with the exception of 18 AAC 50.055(a)(9), 50.085, 50.090, 50.110, 50.300(g), and 50.310(l) which were not submitted), as effective on January 18, 1997. On March 17, 1998, the Director of the Alaska Department of Environmental Conservation resubmitted 18 AAC 50.055(a)(3) and (b)(6). EPA has approved the following provisions of 18 AAC 50, as effective on January 18, 1997: Section 005; Section 010, except for subsections (7) and (8); Section 025; Section 030; Section 035; Section 045; Section 050; Section 055, except for paragraph (d)(2)(B) and (a)(9); Section 060; Section 065; Section 070; Section 075; Section 200; Section 201; Section 205; Section 220; Section 240; Section 245; Section 400, paragraphs (a), (b)(1), and (c); Section 420; Section 430; Section 900; and Section 990, subsections (2), (3), (4), (5), (6), (8), (9), (10), (11), (14), (15), (16), (17), (19), (20), (23), (24), (25), (26), (29), (31), (32), (33), (34), (35), (37), (39), (40), (42), (43), (45), (47), (48), (50), (51), (53), (58), (59), (60), (61), (62), (63), (65), (66), (67), (69), (70), (71), (72), (74), (75), (78), (79), (80), (81), (83), (84), (85), (86), (89), (90), (91), (92), (93), (94), (95), (96), (97), (99), and (100). On January 8, 1997, the Director of the Alaska Department of Environmental Conservation submitted the current Alaska Statutes for air pollution control, specifically the 1993 Alaska Act (Chapter 74 State Legislative Act 1993). EPA has approved as federally enforceable provisions of the SIP, the following provisions of the Alaska Statutes, as effective June 25, 1993: AS 46.14.510(b); AS 46.14.550; AS 46.14.560; AS 46.14.990(1), (2), (3), (6), (7), (8), (10), (13), (15), (16), (17), (18), (22), (24), and (25); and AS 45.45.400(a). On January 8, 1997, the Director of the Alaska Department of Conservation submitted the ''In Situ Burning Guidelines for Alaska (revised 5/94).''

(i) Incorporation by reference.

(A) 18 AAC 50.005; 18 AAC 50.010, except for subsections (7) and (8); 18 AAC 50.025; 18 AAC 50.030; 18 AAC 50.035; 18 AAC 50.045; 18 AAC 50.050; 18 AAC 50.055, except for paragraphs (d)(2)(B) and (a)(9); 18 AAC 50.060; 18 AAC 50.065; 18 AAC 50.070; 18 AAC 50.075; 18 AAC 50.200; 18 AAC 50.201; 18 AAC 50.205; 18 AAC 50.220; 18 AAC 50.240; 18 AAC 50.245; 18 AAC 50.400, paragraphs (a), (b)(1), and (c); 18 AAC 50.420; 18 AAC 50.430; 18 AAC 50.900; and 18 AAC 50.990, subsections (2), (3), (4), (5), (6), (8), (9), (10), (11), (14), (15), (16), (17), (19), (20), (23), (24), (25), (26), (29), (31), (32), (33), (34), (35), (37), (39), (40), (42), (43), (45), (47), (48), (50), (51), (53), (58), (59), (60), (61), (62), (63), (65), (66), (67), (69), (70), (71), (72), (74), (75), (78), (79), (80), (81), (83), (84), (85), (86), (89), (90), (91), (92), (93), (94), (95), (96), (97), (99), and (100); as effective on January 18, 1997.

(B) AS 46.14.510(b); AS 46.14.550; AS 46.14.560; AS 46.14.990(1), (2), (3), (6), (7), (8), (10), (13), (15), (16), (17), (18), (22), (24), and (25); and AS 45.45.400(a); as effective on June 25, 1993.

(C) Remove the following provisions of 18 AAC 50, as effective on June 2, 1988, from the current incorporation by reference: 18 AAC 50.010; 18 AAC 50.070; 18 AAC 50.900, subsections (19), (27), (30), (45), (46), and (48).

[FR Doc. 98–30721 Filed 11–17–98; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA #1–10–98; FRL–6189–4]

Availability of Federally-Enforceable State Implementation Plans for All States

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: Section 110(h) of the Clean Air Act, as amended in 1990 (the ''Act''), requires EPA by November 15, 1995, and every three years thereafter, to identify the Federally-enforceable State Implementation Plans (SIPs) in each

State and to publish notice in the **Federal Register** of the availability of such documents. This notice of availability fulfills the three-year requirement of making these SIP compilations for each State available for public inspection. The original notice of availability was published on November 1, 1995 (60 FR 55459).

EFFECTIVE DATE: November 18, 1998.

ADDRESSES: You may contact the regional offices regarding requirements of applicable implementation plans for their States. The SIP compilations are available for public inspection during normal business hours at the appropriate EPA regional office listed below. If you want to view these documents, you should make an appointment with the appropriate EPA office and arrange for a mutually agreeable time.

Region 1: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont

Regional Contact: Donald Cooks (617/565–3508)
EPA, Office of Ecosystem Protection, John F. Kennedy Federal Building, One Congress Street, Boston, MA 02203–2211

Region 2: New Jersey, New York, Puerto Rico, and Virgin Islands

Regional Contacts: Paul Truchan (212/637–4249)
EPA, Air Programs Branch, 290 Broadway, New York, NY 10007–1866

Region 3: Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia

Regional Contact: Harold A. Frankford (215/814–2108)
EPA, Office of Air Programs (3AP20), Air Protection Division, 1650 Arch Street, Philadelphia, PA 19103. See also: www.epa.gov/reg3artd/index.htm

Region 4: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee

Regional Contact: Dick Schutt (404/562–9033)
EPA, Air Planning Branch, 61 Forsyth Street, S.W., Atlanta, GA 30303

Region 5: Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin

Regional Contacts: Madelin Rucker for the States of Michigan, Minnesota and Wisconsin (312/886–0661); Ryan Bahr (312/353–4366) for the States of Illinois, Indiana, and Ohio
EPA, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, IL 60604–3507. See also http://www.epa.gov/ARD–R5/sips/

Region 6: Arkansas, Louisiana, New Mexico, Oklahoma, and Texas

Regional Contact: Bill Deese (214/665–7253)
EPA, Multimedia Planning and Permitting Division, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 700, Dallas, TX 75202–2733. See also: http://www.epa.gov/earth1r6/6pd/air/sip/sip.htm

Region 7: Iowa, Kansas, Missouri, and Nebraska

Regional Contact: Ed West (913–551–7330)
EPA, Air and Toxics Division, Air Branch, 726 Minnesota Avenue, Kansas City, KS 66101. See also: http://www.epa.gov/region07/

Region 8: Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming

Regional Contact: Laurie Ostrand (303/312–6437)
EPA, Air & Radiation Program, Air Quality Planning and Management Unit, 999 18th Street, Suite 500, Denver, CO 80202–2466

Region 9: Arizona, California, Hawaii, Nevada, American Samoa, and Guam

Regional Contacts: Julie Rose (415/744–1184) and Cynthia Allen (415/744–1189)
EPA, Air Division, AIR–4, 75 Hawthorne Street, San Francisco, CA 94105

Region 10: Alaska, Idaho, Oregon, and Washington

Regional Contact: Montel Livingston (206/553–0180)
EPA, Office of Air Quality (OAQ 107), 1200 6th Avenue, Seattle, WA 98101. See also: hhtp://www.epa.gov/r10earth/

FOR FURTHER INFORMATION CONTACT: Julie Rose, (415) 744–1184.

SUPPLEMENTARY INFORMATION: National ambient air quality standards (NAAQS) are set for criteria pollutants, which are widespread common pollutants known to be harmful to human health and welfare. The present criteria pollutants are: Carbon monoxide, Lead, Nitrogen dioxide, Ozone, Particulate matter, and Sulfur oxides. See 40 CFR Part 50 for a technical description of how the levels of these standards are measured and attained. SIPs provide for implementation, maintenance, and enforcement of the standard in each state. Areas within each state that are designated nonattainment are subject to additional planning and control requirements. Accordingly, different regulations or programs in the SIP will apply to different areas. EPA lists the designation of each area at 40 CFR part 81.

States are required to develop SIPs containing strategies for controlling emissions from pollution sources. See CAA title I; 40 CFR Part 51—Requirements for Preparation, Adoption, and Submittal of Implementation Plans. SIPs are legal documents, formally adopted, committing States to carry out their air pollution control strategies and including regulations, which are both specific and enforceable, for sources of air pollution. These control strategies and regulations are submitted in accordance with the Act and, upon approval by EPA, become part of the Federally-enforceable SIP. (See 40 CFR Part 52—Approval and Promulgation of Implementation Plans (with Subparts presenting the status for each State and territory). The first section in the Subpart for each State is the ''Identification of plan'' section which provides chronological development of the State SIP. The identification of plan section identifies the State-submitted rules and plan elements which have been Federally approved. The goal of the State-by-State SIP compilation is to identify those rules under the ''Identification of plan'' section which are currently Federally enforceable. In addition, some of the SIP compilations may include control strategies, such as transportation control measures, local ordinances, State statutes, and emission inventories, or may include regulations provided in other sections of the State-specific subpart of part 52. Some of the SIP compilations may not identify these other Federally enforceable elements.

In some cases, further information on the content of approved SIPs is available from the Internet. For those regions where such information is available, an address for this information is provided in the regional contacts list above.

You should note that, when States have submitted their most current State regulations for inclusion into Federally-enforceable SIPs, EPA will begin its review process of submittals as soon as possible. Until EPA approves a submittal, State-submitted regulations will be State-enforceable only; therefore, State-enforceable SIPs may exist which differ from Federally-enforceable SIPs. As EPA approves these State-submitted regulations, the regional offices will continue to update the SIP compilations to include these applicable requirements.

This notice identifies the appropriate EPA regional offices to which you may

address questions of SIP availability and SIP requirements. In response to the 110(h) requirement, the original notice of availability was published in the **Federal Register** on November 1, 1995 at 60 FR 55459.

Dated: November 10, 1998.

Carol M. Browner,

U.S. EPA Administrator.

[FR Doc. 98–30743 Filed 11–17–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[AL–048–1–9901a; FRL–6188–9]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Alabama

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The United States Environmental Protection Agency (EPA) is approving the sections 111(d)/129 State Plan submitted by the Alabama Department of Environmental Management (ADEM) for the State of Alabama on September 11, 1998, for implementing and enforcing the Emissions Guidelines (EG) applicable to existing Municipal Waste Combustors (MWCs) with capacity to combust more than 250 tons per day of municipal solid waste (MSW). *See* 40 CFR part 60, subpart Cb.

DATES: This direct final rule is effective January 19, 1999 without further notice, unless EPA receives adverse comments by December 18, 1998. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to: Kimberly Bingham, EPA Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104.

Copies of materials submitted to EPA may be examined during normal business hours at the following locations: EPA Region 4, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104; and at the Alabama Department of Environmental Management, Air Division, 1751 Congressman W.L. Dickinson Drive, Montgomery, Alabama 36109.

FOR FURTHER INFORMATION CONTACT: Kimberly Bingham at (404) 562–9038 or Scott Davis at (404) 562–9127.

SUPPLEMENTARY INFORMATION:

I. Background

On December 19, 1995, pursuant to sections 111 and 129 of the Clean Air Act (Act), EPA promulgated new source performance standards (NSPS) applicable to new MWCs and EG applicable to existing MWCs. The NSPS and EG are codified at 40 CFR part 60, Subparts Eb and Cb, respectively. *See* 60 FR 65387. Subparts Cb and Eb regulate the following: Particulate matter, opacity, sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxins and dibenzofurans.

On April 8, 1997, the United States Court of Appeals for the District of Columbia Circuit vacated subparts Cb and Eb as they apply to MWC units with capacity to combust less than or equal to 250 tons per day of MSW (small MWCs), consistent with their opinion in *Davis County Solid Waste Management and Recovery District* v. *EPA,* 101 F.3d 1395 (D.C. Cir. 1996), *as amended,* 108 F.3d 1454 (D.C. Cir. 1997). As a result, subparts Cb and Eb apply only to MWC units with individual capacity to combust more than 250 tons per day of MSW (large MWC units).

Section 129(b)(2) of the Act requires States to submit to EPA for approval State Plans that implement and enforce the EG. State Plans must be at least as protective as the EG, and become Federally enforceable upon approval by EPA. The procedures for adoption and submittal of State Plans are codified in 40 CFR part 60, subpart B. EPA originally promulgated the subpart B provisions on November 17, 1975. EPA amended subpart B on December 19, 1995, to allow the subparts developed under section 129 to include specifications that supersede the general provisions in subpart B regarding the schedule for submittal of State Plans, the stringency of the emission limitations, and the compliance schedules. *See* 60 FR 65414.

This action approves the State Plan submitted by ADEM for the State of Alabama to implement and enforce subpart Cb, as it applies to large MWC units only.

II. Discussion

ADEM submitted to EPA on September 11, 1998, the following in their 111(d)/129 State Plan for implementing and enforcing the EG for existing MWCs under their direct jurisdiction in the State of Alabama: Public Participation Demonstration That the Public Had Adequate Notice and Opportunity to Submit Written Comments and Attend the Public Hearing; Legal Authority; Emission Limits and Standards; Compliance Schedule; Inventory of MWC Plant/Units; MWC Emissions Inventory; Source Surveillance, Compliance Assurance, and Enforcement Procedures; Submittal of Progress Reports to EPA; Federally Enforceable State Operating Permit (FESOP) for the Solid Waste Disposal Authority of the City of Huntsville MWC facility; and applicable State of Alabama statutes and rules of the ADEM. ADEM submitted its Plan after the Court of Appeals vacated subpart Cb as it applies to small MWC units. Thus, the Alabama State Plan covers only large MWC units. As a result of the *Davis* decision and subsequent vacatur order, there are no EG promulgated under sections 111 and 129 that apply to small MWC units. Accordingly, EPA's review and approval of the Alabama State Plan for MWCs addresses only those parts of the Alabama State Plan which affect large MWC units. Small units are not subject to the requirements of the Federal Rule and not part of this approval. Until EPA again promulgates EG for small MWC units, EPA has no authority under section 129(b)(2) of the Act to review and approve State Plans applying state rules to small MWC units.

The approval of the Alabama State Plan is based on finding that: (1) ADEM provided adequate public notice of public hearings for the proposed plan and FESOP which allow ADEM to implement and enforce the EG for large MWCs, and (2) ADEM also demonstrated legal authority to adopt emission standards and compliance schedules applicable to the designated facility; enforce applicable laws, regulations, standards, and compliance schedules; seek injunctive relief; obtain information necessary to determine compliance; require recordkeeping; conduct inspections and tests; require the use of monitors; require emission reports of owners and operators; and make emission data publicly available.

In part F and attachment C of the Plan, ADEM cites the following references for the legal authority: Opinion of the Region 4 Administrator in response to the Governor of the State of Alabama; The Alabama Environmental Management Act, section 22–22A, *Code of Alabama* 1975, as amended; The Alabama Air Pollution Control Act, section 22–28, *Code of Alabama* 1975, as amended; The ADEM Administrative Code, Rule 335–3–1–.04. These statutes and regulations are contained in appendix C. On the basis of these statutes and rules of the State of Alabama, the State Plan and FESOP are approved as being at least as

protective as the Federal requirements for existing large MWC units.

ADEM cites all emission standards and limitations for the major pollutant categories as conditions in the FESOP for the City of Huntsville MWC, the only designated facility in the State of Alabama subject to these standards and limitations (in appendix B of the Plan). These standards and limitations in the FESOP have been approved as being at least as protective as the Federal requirements contained in subpart Cb for existing large MWC units.

ADEM submitted the compliance schedule for the City of Huntsville MWC, the only large MWC under their direct jurisdiction in the State of Alabama. Part G of the Plan and the FESOP contain conditions consistent with 40 CFR part 60, subparts B and Cb, specifications for compliance schedules. This portion of the Plan and FESOP have been reviewed and approved as being at least as protective as Federal requirements for existing large MWC units.

In part G of the Plan, ADEM submitted an emissions inventory of all designated pollutants for the City of Huntsville MWC, the only large MWC under their direct jurisdiction in the State of Alabama. This portion of the Plan has been reviewed and approved as meeting the Federal requirements for existing large MWC units.

ADEM includes its legal authority to require owners and operators of designated facilities to maintain records and report to their Agency the nature and amount of emissions and any other information that may be necessary to enable their Agency to judge the compliance status of the facilities in part G of the State Plan and as conditions in the FESOP for the City of Huntsville MWC. In part G, the ADEM also cites its legal authority to provide for periodic inspection and testing and provisions for making reports of MWC emissions data, correlated with emission standards that apply, available to the general public. Part G of the State Plan outlines the authority to meet the requirements of monitoring, recordkeeping, reporting, and compliance assurance. These referenced State of Alabama rules are contained in appendix C of the Plan. This portion of the Plan and FESOP have been reviewed and approved as being at least as protective as the Federal requirements for existing large MWC units.

As stated in part G of the Plan, ADEM will provide progress reports of Plan implementation updates to the EPA on an annual basis. These progress reports will include the required items pursuant to 40 CFR part 60, subpart B. This portion of the Plan has been reviewed and approved as meeting the Federal requirement for State Plan reporting.

This action approves the State Plan submitted by ADEM for the State of Alabama to implement and enforce subpart Cb, as it applies to large MWC units only.

III. Final Action

This action approves the State Plan submitted by ADEM for the State of Alabama to implement and enforce Subpart Cb, as it applies to large MWC units only. The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal 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 comments be filed. This rule will be effective January 19, 1999 without further notice unless the Agency receives adverse comments by December 18, 1998.

If the EPA receives such comments, then EPA will publish a document withdrawing the 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. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on January 19, 1999 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 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 effects 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.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects 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 EPA complies by consulting, E.O. 13084 requires EPA to 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.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. 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).

F. 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.

G. 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).

H. 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 January 19, 1999. 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 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Municipal waste combustors, Reporting and recordkeeping requirements.

Dated: November 4, 1998.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR part 62 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart B—Alabama

2. Part 62.100 is amended by adding paragraphs (b)(4) and (c)(4) to read as follows:

§ 62.100 Identification of plan.

* * * * *

(b) * * *

(4) State of Alabama Plan for Implementation of 40 CFR part 60, Subpart Cb, For Existing Municipal Waste Combustors, submitted on September 11, 1998, by the Alabama Department of Environmental Management.

(c) * * *

(4) Existing municipal waste combustors.

3. Subpart B is amended by adding a new § 62.104 and a new undesignated center heading to read as follows:

Metals, Acid Gases, Organic Compounds and Nitrogen Oxide Emissions From Existing Municipal Waste Combustors With the Capacity To Combust Greater Than 250 Tons Per Day of Municipal Solid Waste

§ 62.104 Identification of sources.

The plan applies to existing facilities with a municipal waste combustor (MWC) unit capacity greater than 250 tons per day of municipal solid waste (MSW) at the following MWC sites:

(a) Solid Waste Disposal Authority of the City of Huntsville MWC, Huntsville, Alabama.

(b) [Reserved]

[FR Doc. 98–30602 Filed 11–17–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–6175–2]

Delegation of National Emission Standards for Hazardous Air Pollutants for Source Categories; State of Arizona; Pinal County Air Quality Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to delegate the authority to implement and enforce specific national

emission standards for hazardous air pollutants (NESHAPs) to the Pinal County Air Quality Control District (PCAQCD) in Arizona. The preamble outlines the process that PCAQCD will use to receive delegation of any future NESHAP, and identifies the NESHAP categories to be delegated by today's action. EPA has reviewed PCAQCD's request for delegation and has found that this request satisfies all of the requirements necessary to qualify for approval. Thus, EPA is hereby granting PCAQCD the authority to implement and enforce the unchanged NESHAP categories listed in this rule.

DATES: This rule is effective on January 19, 1999 without further notice, unless EPA receives adverse comments by December 18, 1998. If EPA receives such comment, it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments must be submitted to Andrew Steckel at the Region IX office listed below. Copies of the request for delegation and other supporting documentation are available for public inspection (docket number A–96–25) at the following location: U.S. Environmental Protection Agency, Region IX, Rulemaking Office (AIR–4), Air Division, 75 Hawthorne Street, San Francisco, California 94105–3901.

FOR FURTHER INFORMATION CONTACT: Mae Wang, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901, (415) 744–1200.

SUPPLEMENTARY INFORMATION:

I. Background

Section 112(l) of the Clean Air Act, as amended in 1990 (CAA), authorizes EPA to delegate to state or local air pollution control agencies the authority to implement and enforce the standards set out in 40 CFR Part 63, National Emission Standards for Hazardous Air Pollutants for Source Categories. On November 26, 1993, EPA promulgated regulations, codified at 40 CFR Part 63, Subpart E (hereinafter referred to as ''Subpart E''), establishing procedures for EPA's approval of state rules or programs under section 112(l) (*see* 58 FR 62262).

Any request for approval under CAA section 112(l) must meet the approval criteria in 112(l)(5) and 40 CFR Part 63, Subpart E. To streamline the approval process for future applications, a state or local agency may submit a one-time demonstration that it has adequate authorities and resources to implement and enforce any CAA section 112 standards. If such demonstration is approved, then the state or local agency would no longer need to resubmit a demonstration of these same authorities and resources for every subsequent request for delegation of CAA section 112 standards. However, EPA maintains the authority to withdraw its approval if the State does not adequately implement or enforce an approved rule or program.

On October 30, 1996, EPA approved the Pinal County Air Quality Control District's (PCAQCD's) program for accepting delegation of section 112 standards that are unchanged from Federal standards as promulgated (*see* 61 FR 55910). The approved program reflects an adequate demonstration by PCAQCD of general resources and authorities to implement and enforce section 112 standards. However, formal delegation for an individual standard does not occur until PCAQCD obtains the necessary regulatory authority to implement and enforce that particular standard, and EPA approves PCAQCD's formal delegation request for that standard.

PCAQCD informed EPA that it intends to obtain the regulatory authority necessary to accept delegation of section 112 standards by incorporating section 112 standards into the Pinal County Air Quality Control District Code of Regulations. The details of this delegation mechanism are set forth in a Memorandum of Agreement (MOA) between PCAQCD and EPA, and are available for public inspection at the U.S. EPA Region IX office (docket No. A–96–25).

On August 18, 1998, PCAQCD requested delegation for several individual section 112 standards that have been incorporated by reference into the Pinal County Air Quality Control District Code of Regulations. The standards that are being delegated by today's action are listed in a table at the end of this rule.

II. EPA Action

A. Delegation for Specific Standards

After reviewing PCAQCD's request for delegation of various national emissions standards for hazardous air pollutants (NESHAPs), EPA has determined that this request meets all the requirements necessary to qualify for approval under CAA section 112(l) and 40 CFR 63.91. Accordingly, PCAQCD is granted the authority to implement and enforce the requested NESHAPs. These delegations will be effective on January 19, 1999. A table of the NESHAP categories that will be delegated to PCAQCD is shown at the end of this rule. Although PCAQCD will have primary implementation and enforcement responsibility, EPA retains the right, pursuant to CAA section 112(l)(7), to enforce any applicable emission standard or requirement under CAA section 112. In addition, EPA does not delegate any authorities that require implementation through rulemaking in the **Federal Register**, or where Federal overview is the only way to ensure national consistency in the application of the standards or requirements of CAA section 112.

After a state or local agency has been delegated the authority to implement and enforce a NESHAP, the delegated agency becomes the primary point of contact with respect to that NESHAP. Pursuant to 40 CFR sections 63.9(a)(4)(ii) and 63.10(a)(4)(ii), EPA Region IX waives the requirement that notifications and reports for delegated standards be submitted to EPA as well as to PCAQCD.

In its August 18, 1998 request, PCAQCD included a request for delegation of the regulations implementing CAA section 112(i)(5), codified at 40 CFR Part 63, Subpart D. These requirements apply to state or local agencies that have a permit program approved under title V of the Act (see 40 CFR 63.70). PCAQCD received final interim approval of its title V operating permits program on October 30, 1996 (see 61 FR 55910). State or local agencies implementing the requirements under Subpart D do not need approval under section 112(l). Therefore, EPA is not taking action to delegate 40 CFR Part 63, Subpart D to PCAQCD.

PCAQCD also included a request for delegation of the regulations implementing CAA sections 112(g) and 112(j), codified at 40 CFR Part 63, Subpart B. These requirements apply to major sources only, and need not be delegated under the section 112(l) approval process. When promulgating the regulations implementing section 112(g), EPA stated its view that ''the Act directly confers on the permitting authority the obligation to implement section 112(g) and to adopt a program which conforms to the requirements of this rule. Therefore, the permitting authority need not apply for approval under section 112(l) in order to use its own program to implement section 112(g)'' (*see* 61 FR 68397). Similarly, when promulgating the regulations implementing section 112(j), EPA stated its belief that ''section 112(l) approvals do not have a great deal of overlap with the section 112(j) provision, because section 112(j) is designed to use the title V permit process as the primary vehicle for establishing requirements'' (*see* 59

FR 26447). Therefore, state or local agencies implementing the requirements under sections 112(g) and 112(j) do not need approval under section 112(l). As a result, EPA is not taking action to delegate 40 CFR Part 63, Subpart B to PCAQCD.

B. Delegation Mechanism for Future Standards

Today's document serves to notify the public of the details of PCAQCD's procedure for receiving delegation of future NESHAPs. As set forth in the MOA, PCAQCD intends to incorporate by reference, into the Pinal County Air Quality Control District Code of Regulations, each newly promulgated NESHAP for which it intends to seek delegation. PCAQCD will then submit a letter to EPA Region IX, along with proof of regulatory authority, requesting delegation for each individual NESHAP. Region IX will respond in writing that delegation is either granted or denied. If a request is approved, the delegation of authorities will be considered effective upon the date of the response letter from Region IX. Periodically, EPA will publish in the **Federal Register** a listing of the standards that have been delegated. Although EPA reserves its right, pursuant to 40 CFR section 63.96, to review the appropriateness of any future delegation request, EPA will not institute any additional comment periods on these future delegation actions. Any parties interested in commenting on this procedure for delegating future unchanged NESHAPs should do so at this time.

C. Opportunity for Public Comment

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial action 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 for this action should adverse comments be filed. This rule will be effective January 19, 1999 without further notice unless the Agency receives adverse comments by December 18, 1998.

If EPA receives such comments, then EPA will publish a timely withdrawal in the **Federal Register** 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. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on January 19, 1999 and no further action will be taken on the proposed rule.

III. Administrative Requirements

A. Executive Orders 12866 and 13045

The Office of Management and Budget has exempted this regulatory action from Executive Order (E.O.) 12866, entitled ''Regulatory Planning and Review.''

This 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

The Regulatory Flexibility Act 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 delegations of authority to implement and enforce unchanged Federal standards under section 112(l) of the Clean Air Act do not create any new requirements but simply transfer primary implementation authorities to the State. Therefore, because this action does not impose any new requirements, I certify that this action will not have a significant impact on a substantial number of small entities.

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 a 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 delegation 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 Federal 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 January 19, 1999. 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 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of Section 112 of the Clean Air Act, as amended, 42 U.S.C. Section 7412.

Date Signed: September 28, 1998.

David P. Howekamp,

Director, Air Division, Region IX.

Title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

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

Subpart E—Approval of State Programs and Delegation of Federal Authorities

2. Section 63.99 is amended by revising paragraph (a)(3) to read as follows:

§ 63.99 Delegated Federal authorities.

(a) * * *

(3) *Arizona.* The following table lists the specific Part 63 standards that have been delegated unchanged to the air pollution control agencies in the State of Arizona. The (X) symbol is used to indicate each category that has been delegated.

DELEGATION STATUS FOR PART 63 STANDARDS—ARIZONA

Subpart	Description	ADEQ [1]	MCESD [2]	PDEQ [3]	PCAQCD [4]
A	General Provisions	X			X
F	Synthetic Organic Chemical Manufacturing Industry	X			X
G	Synthetic Organic Chemical Manufacturing Industry: Process Vents, Storage Vessels, Transfer Operations, and Wastewater.	X			X
H	Organic Hazardous Air Pollutants: Equipment Leaks	X			X
I	Organic Hazardous Air Pollutants: Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.	X			X
L	Coke Oven Batteries	X			X
M	Perchloroethylene Dry Cleaning	X			X
N	Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks.	X			X
O	Ethylene Oxide Sterilization Facilities	X			X
Q	Industrial Process Cooling Towers	X			X
R	Gasoline Distribution Facilities	X			X
T	Halogenated Solvent Cleaning	X			X
U	Group I Polymers and Resins	X			X
W	Epoxy Resins Production and Non-Nylon Polyamides Production	X			X
X	Secondary Lead Smelting	X			X
CC	Petroleum Refineries	X			X
DD	Off-Site Waste and Recovery Operations	X			X
EE	Magnetic Tape Manufacturing Operations	X			X
GG	Aerospace Manufacturing and Rework Facilities	X			X
JJ	Wood Furniture Manufacturing Operations	X			X
KK	Printing and Publishing Industry	X			X
OO	Tanks—Level 1	X			X
PP	Containers	X			X
QQ	Surface Impoundments	X			X
RR	Individual Drain Systems	X			X
VV	Oil-Water Separators and Organic-Water Separators	X			X
JJJ	Group IV Polymers and Resins	X			X

[1] Arizona Department of Environmental Quality.
[2] Maricopa County Environmental Services Department.
[3] Pima County Department of Environmental Quality.
[4] Pinal County Air Quality Control District.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 36, 54 and 69

[CC Docket Nos. 96–45 and 97–160; FCC 98–279]

Federal-State Joint Board on Universal Service, Forward-Looking Mechanism for High Cost Support for Non-Rural Local Exchange Carriers

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this Order, we select a platform for the federal mechanism to estimate non-rural carriers' forward-looking cost to provide the supported services. The model platform we adopt combines the best elements from each of the three models currently in the record. The model platform we adopt will allow the Commission to estimate the cost of building a telephone network to serve subscribers in their actual geographic locations, to the extent known. To the extent that telephone companies cannot supply the actual geographic location of the customer, the model platform assumes that those customers are located near roads. The model also allows the Commission to adjust engineering assumptions to reflect any evolution in the definition of supported services, and to assure that the model assumes a network architecture that will not impede rural Americans' ability to use the internet and other advanced telecommunications and information services. As such, we believe the federal model platform we adopt will serve as a solid foundation for further decisions that will determine the amount of universal service support to be provided to non-rural eligible telecommunications carriers.

EFFECTIVE DATE: November 18, 1998.

FOR FURTHER INFORMATION CONTACT: Chuck Keller, Common Carrier Bureau, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Fifth Report and Order in CC Docket Nos. 96–45 and 97–160, adopted October 22, 1998 and released October 28, 1998. The full text is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M St., N.W., Washington, DC.

Summary of Fifth Report and Order in CC Docket Nos. 96–45 and 97–160

I. Overview

1. Since well before passage of the 1996 Act, the Commission has had in place policies to ensure the availability of telephone service in rural and high cost areas, as well as support mechanisms for low income consumers. Traditionally, consumers in high cost and rural areas of the nation have received universal service support through implicit subsidies in interstate and intrastate rates. Universal service has helped ensure that consumers in all parts of the country, even the most remote and sparsely populated areas, are not forced to bear prohibitively high rates in order to obtain phone service. Universal service also has been designed to ensure that low-income consumers have access to local phone service at reasonable rates. Long distance rates and rates for certain intrastate services have been priced above cost in many instances, in order to keep local telephone rates at affordable levels throughout the country. The universal service program has benefited all telephone subscribers throughout the country by helping to ensure that all Americans are connected to the network, and therefore telephonically accessible to one another. Universal service support has increased subscribership levels by ensuring that residents in rural and high cost areas are not prevented from receiving phone service because of prohibitively high local telephone rates. As of today, approximately 94 percent of the households in the United States subscribe to telephone service, a subscribership rate that is among the best in the world.

2. In the 1996 Act, Congress established a ''pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening up all telecommunications markets to competition.'' One of the principal goals of the telephony provisions of the 1996 Act is reforming universal service support so that the universal service objectives set forth in the 1996 Act continue to be met as local exchange and exchange access markets move from monopoly to competition. In the 1996 Act, Congress codified the Commission's long-standing commitment to ensuring universal service and directed that ''[c]onsumers * * * in rural, insular, and high cost areas should have access to telecommunications and information services * * * that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to [those] in urban areas.'' The 1996 Act also directed the Commission to reform universal service support mechanisms to ensure that they are compatible with the pro-competitive goals of the 1996 Act. In requiring incumbents to open their local markets to competitive entry, Congress rendered unsustainable the existing universal service support system, which is based on a complex system of implicit and explicit subsidies. Rate structures that contain implicit support flows, such as artificially inflated interstate access charges and business rates, are sustainable in a monopoly environment but not in a competitive environment. Absent restructuring of the universal service system, competitors would enter markets where rates are artificially high relative to costs, and would not enter markets where rates are kept artificially low. Moreover, absent rate restructuring, such systematic market entry strategies would threaten to erode altogether the system of universal service. Incumbents would continue to have to serve the high cost customers without the offsetting benefit of the high-profit revenue streams that previously subsidized serving these high cost areas.

3. In order to sustain universal service in a competitive environment, Congress found: (1) that universal service support should be explicit; (2) that all carriers (rather than only interexchange carriers) that provide telecommunications service should contribute to universal service on a competitively neutral, equitable, and non-discriminatory basis; and (3) that, as a general matter, any carrier (rather than only the incumbent local exchange carrier) should be eligible to receive, on a competitively neutral, equitable, and non-discriminatory basis, the appropriate level of support for serving a customer in a high cost area.

4. In the *Universal Service Order,* 62 FR 32862 (June 17, 1997), the Commission adopted its plan to implement a system of universal service support for rural, insular, and high cost areas to replace the existing high cost programs and the implicit federal subsidies with explicit, competitively neutral federal universal service support mechanisms. The first steps were implemented on January 1, 1998. For instance, as of that date the new universal service rules require equitable and non-discriminatory contributions from all providers of interstate telecommunications service rather than exclusively from interstate long distance providers. Also, as of January 1, 1998, competitive eligible telecommunications carriers are also eligible to receive federal universal service support for serving customers in high cost, rural, and insular areas. This order, which adopts the platform of a federal mechanism that would allow support amounts to be determined based on forward-looking cost, is the first step towards further revisions of federal support mechanisms. This estimate will be used to determine the level of support provided to eligible non-rural telecommunications carriers, beginning July 1, 1999.

5. In the *Universal Service Order,* the Commission also agreed with the Joint Board that the appropriate level of federal universal service high cost support should be based on forward-looking economic cost rather than embedded cost. The Joint Board found that, for purposes of administering a federal high cost support system based on forward-looking cost, a forward-looking cost model would be an essential part of determining support levels in an efficient way. The Joint Board also found that determining costs with a cost model would provide other benefits, such as the ability to determine costs at smaller geographic levels than would be practical using the existing cost accounting system. By using a cost model, universal service support can be targeted to support the high cost customers within a carrier's service area. Moreover, a forward-looking economic cost mechanism eliminates incentives to invest inefficiently. Also, because all eligible carriers will receive the same level of support when they win a customer and because the level of support is not based on the specific technology that the carrier used to deliver the supported service, the new universal service mechanism will be competitively and technologically neutral. Finally, the use of a forward-looking cost model allows the Commission to ensure that universal service support amounts are based on a network that will provide the supported services and not impede the provision of advanced services. In contrast, a support system based on the existing network, which is in some cases of lower quality, would not provide sufficient support for necessary upgrades. Basing support on the forward-looking cost of a network that is capable of providing the supported services will ensure that universal service support is based on a network with the capacity to ensure service

quality and access to advanced services in rural areas.

6. In determining the appropriate level of high cost support, the Commission is committed to ensuring that ''[q]uality services [are] available at just, reasonable, and affordable rates,'' and that ''[c]onsumers * * * in rural, insular, and high cost areas, should have access to telecommunications and information services * * * that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charges for similar services in urban areas,'' as required by the statute. In agreeing with the Joint Board that forward-looking economic cost will provide sufficient support for an efficient carrier to provide the supported services for a particular geographic area, the Commission specifically rejected arguments that support should be based on a carrier's embedded cost. As the Joint Board recognized, providing support based on embedded cost provides the wrong signals to potential market entrants. If embedded costs exceed forward-looking costs, such support would encourage inefficient entry. In contrast, providing support based on embedded costs that are below forward-looking economic costs would dissuade market entry even where such competition would be economically efficient. The Commission concurred with the Joint Board's finding that the use of forward-looking economic costs as the basis for determining support will send the correct signals for entry, investment, and innovation. The Commission found that a forward-looking economic cost methodology creates the incentive for carriers to operate efficiently and tends not to give carriers an incentive to inflate their costs or to refrain from efficient cost-cutting.

7. As noted above, our process of estimating forward-looking costs is proceeding in two stages. Consistent with the Joint Board's recommendation, the Commission in the *Universal Service Order* concluded that it would need to estimate costs based on a careful analysis of efficient network design, engineering practices, available technologies, and current technology costs. That is, to estimate forward-looking costs accurately, the Commission decided to look at all of the costs and cost-causative factors that go into building a network. The Commission decided to do this in two stages: first, it would look at the network design, engineering, and technology issues relevant to constructing a network to provide the supported services. Second, the Commission said that it would look at the costs of the components of the network, such as cabling and switch costs, and various capital cost parameters, such as debt-equity ratios and depreciation rates (''input values'').

8. This Order includes our conclusions as to the platform selection, the first of the two stages. In the *Universal Service Order*, the Commission concluded that two industry-proposed cost models should continue to be considered and developed further and stated that it might also consider models or model components submitted by other parties or developed by Commission staff. Both of the industry-proposed models have improved in significant ways since the *Universal Service Order* was adopted, and Commission staff has developed a separate model. Below we adopt a synthesis of the best aspects of each of the three models before us in this proceeding. We recognize that, of necessity, models estimate the forward-looking cost of providing the supported services. Such analysis is, however, the only practicable method that presently exists for determining forward-looking costs on a widescale basis, and we expect that the synthesis model will generate accurate estimates of the forward-looking of providing the supported services. The federal mechanism that we select in this Order to estimate forward-looking cost will serve as the foundation for determining the final universal service support requirements. The Commission intends to issue Orders on the input values to be used in the selected mechanism and the further recommendations of the Joint Board in time to implement the federal mechanism for non-rural carriers by July 1, 1999. Because inputs are critical to determining the cost of providing the supported services, the Order we adopt today does not identify the amount of high cost support that will be provided to non-rural carriers beginning July 1, 1999. The selected platform alone is not dispositive of the cost calculations generated by the mechanism. That determination also depends upon the selection of input values and the resolution of the issues recently referred back to the Joint Board, such as benchmark levels. Moreover, we note that the selection of the synthesis platform is based solely on our evaluation of its performance for determining non-rural carriers' forward-looking costs for universal service purposes. We have not evaluated it for any other purpose.

9. We recognize that the task of establishing a model to estimate forward-looking costs is a dynamic process that will need to be reviewed and adjusted periodically. We must balance the needs to provide predictability and certainty with the need to account for changes that inevitably will occur over time, such as technological advances. For example, a party recently submitted data in support of basing support on the use of wireless technologies in some instances. The Commission therefore intends, before the end of this year, to begin more detailed consideration of possible future modification of the model to reflect new technologies. Among other things, the Commission may consider how the model should be updated in the future to account for changes in material prices, technology, and other circumstances. We also will address issues related to the administration of high cost support, including the transition by which routine use of the model and updating of model data will be provided by the administrator of universal service support mechanisms, subject to Commission oversight. In addition, we expect that, both before we implement the model for non-rural carriers on July 1, 1999, and on an ongoing basis, we will find opportunities to make technical improvements. In such cases, we delegate to the Common Carrier Bureau the authority to make changes or direct that changes be made as necessary and appropriate to ensure that the platform of the federal mechanism operates as described in this Order.

II. Procedural History

A. Universal Service Order

10. Prior to the 1996 Act, three explicit universal service programs were in place to provide assistance to small incumbent local exchange carriers (LECs) and LECs that served rural and high cost areas: high cost loop support, dial equipment minutes (DEM) weighting, and the Long-Term Support program. Other mechanisms also have historically contributed to maintaining affordable rates in rural areas, including subsidies implicit in intrastate rates and interstate access charges. Section 254 required the Commission to institute a Federal-State Joint Board on universal service and implement the recommendations from the Joint Board by May 8, 1997. After receiving the recommendations of the Joint Board, the Commission adopted the *Universal Service Order.*

11. In the *Universal Service Order*, the Commission adopted a forward-looking economic cost methodology for non-rural carriers that will calculate support in four steps. First, a forward-looking

economic cost mechanism selected by the Commission, in consultation with the Joint Board (federal mechanism), would be used to calculate non-rural carriers' forward-looking economic cost of providing the supported services in high cost areas. Second, the Commission would establish a nationwide benchmark that represents the revenue that carriers receive as a result of providing service. Third, the Commission would calculate the difference between the forward-looking economic cost and the benchmark. Fourth, federal support would be 25 percent of that difference, corresponding to the percentage of loop costs that historically has been allocated to the interstate jurisdiction. In the *Universal Service Order,* the Commission stated that, once states have taken steps to identify the subsidies implicit in intrastate rates, the Commission may reassess the amount of federal support that is necessary to achieve the Act's goals. In response to issues raised by commenters and the state Joint Board members, the Commission referred back to the Joint Board questions related to how federal support should be determined. For example, the Joint Board is reviewing how best to determine the support amount, given the forward-looking cost of providing the supported services in an area, and the appropriate share to be provided by the federal mechanism. Although many of the proposals under consideration by the Joint Board and pending before the Commission on reconsideration might alter some of those four steps, the proposals would generally still require the Commission to adopt a mechanism for determining the forward-looking cost of providing the supported services.

12. In the *Universal Service Order,* the Commission concluded that two industry-proposed models, the HAI Model and the Benchmark Cost Proxy Model, that had been submitted for consideration in the proceeding that led up to the *Order* were not sufficiently accurate for adoption as the federal cost mechanism, but that the two models should continue to be considered and developed further.

13. The Commission stated that it might consider, for the federal mechanism, alternative algorithms and approaches submitted by parties other than the model sponsors or that could be generated internally by Commission staff. The Commission noted that one possible outcome of this approach would be development of a hybrid or synthesis model that combines selected components of different models with additional components and algorithms drawn from other sources. The Commission presently has three models before it: (1) the Benchmark Cost Proxy Model, Version 3.0 (BCPM); (2) the HAI Model, Version 5.0a (HAI); and (3) the Hybrid Cost Proxy Model, Version 2.5 (HCPM).

B. Further Notice and the Model Development Process

14. In a July 18, 1997 *Further Notice of Proposed Rulemaking (Further Notice),* 62 FR 42457 (August 7, 1997), the Commission established a multi-phase plan to develop a federal mechanism that would send the correct signals for entry, investment, and innovation. The *Further Notice* divided questions related to the cost models into ''platform design'' issues and ''input value'' issues. The *Further Notice* subdivided the platform issues into four topic groups, and sought comment on each group separately in order to develop a focused dialogue among interested parties. The four groups were: (1) customer location platform issues; (2) outside plant design platform issues; (3) switching and interoffice platform issues; and (4) general support facilities, expenses, and all inputs issues.

15. In the *Further Notice,* we also requested that parties provide information about the platform design and input values that would allow the mechanism developed in this proceeding to estimate the forward-looking cost of non-rural carriers in Alaska and insular areas. In addition, the Commission indicated in the *Further Notice* that, in selecting a federal mechanism, we might consider alternative approaches to BCPM and HAI, such as the development of a hybrid model that combines components of BCPM or HAI with each other or with algorithms drawn from other sources. After reviewing the comments received in response to the *Further Notice,* the Common Carrier Bureau released two public notices as guidance to parties wishing to submit cost models for consideration as the federal mechanism. The Bureau's guidance provided recommendations on the platform design of the customer location, outside plant, switching, and transport components of a cost model.

16. During the course of the model development process, proponents of BCPM and HAI submitted a series of revisions to model components and intermediate output data. In a *Public Notice* released on November 13, 1997, the Bureau requested that model proponents by December 11, 1997 submit versions of their model platforms that incorporated the Bureau's guidance. The Bureau stated its expectation that the Commission would evaluate the models submitted at that time to select the platform for the federal mechanism. Updated versions of BCPM, HAI, and HCPM were filed with the Commission on December 11, 1997. On August 7, 1998, HCPM released a clustering algorithm to group customers into serving areas. The Bureau has continued to receive minor refinements to all three models.

C. Design of a Forward-Looking Wireline Local Telephone Network

17. To understand the assumptions made in the models, it is necessary to understand the layout of the current wireline local telephone network. In general, a telephone network must allow any customer to connect to any other customer. In order to accomplish this, a telephone network must connect customer premises to a switching facility, ensure that adequate capacity exists in that switching facility to process all customers' calls that are expected to be made at peak periods, and then interconnect that switching facility with other switching facilities which routes the call to its destination. A ''wire center'' is the location of a switching facility, and there are geographic boundaries that define the area in which all customers are connected to a given wire center. By requiring the models to use existing incumbent LEC wire center locations, the *Universal Service Order* imposed some uniformity in the models' network design.

18. Within the boundaries of each wire center, the wires and other equipment that connect the central office to the customers' premises are known as *outside plant.* Outside plant can consist of either copper cable or optical fiber cable or a combination of optical fiber and copper cable, as well as associated electronic equipment. Copper cable generally carries an analog signal that is compatible with most customers' telephone equipment, but thicker, more expensive cables must be used to carry signals over greater distances. Optical fiber cable carries a digital signal that is incompatible with most customers' telephone equipment, but the quality of the signal degrades significantly less with distance compared to a signal carried on copper wire. Generally, when a neighborhood is located too far from the wire center to be served with copper cables alone, an optical fiber cable will be deployed to a point within the neighborhood, where a piece of equipment will be placed that converts the digital signal carried on optical fiber cable to an analog, electrical signal that is compatible with

customers' telephones. This equipment is known as a digital loop carrier remote terminal, or DLC. Because of the cost of DLCs, the models are designed so that a single DLC is shared among a number of customers. From the DLC, copper cables of varying gauge extend to all of the customer premises in the neighborhood. Where the neighborhood is close enough to the wire center to serve entirely on copper cables, a copper trunk connects the wire center to a central point in the serving area, called the serving area interface (SAI), and copper cables will then connect the SAI to the customers in the serving area. The portion of the loop plant that connects the central office with the SAI or DLC is known as the *''feeder'' plant,* and the portion that runs from the DLC or SAI throughout the neighborhood is known as the *''distribution'' plant.*

19. A model's estimate of the cost of serving the customers located within a given wire center's boundaries includes the model's calculation of switch size, the lengths, gauge, and number of copper and fiber cables, and the number of DLCs required. These factors depend, in turn, on how many customers the wire center serves, where the customers are located within the wire center boundaries, and how they are distributed within neighborhoods. Particularly in rural areas, some customers may not be located in neighborhoods at all but, instead, may be scattered throughout outlying areas. In general, the models divide the area served by the wire center into smaller areas that will be served from a single DLC, known as *''serving areas.''* All cable within a serving area, with the exception of that which connects a DLC to a central office, is considered distribution plant.

20. The model proponents agree that forward-looking design requires that wire centers be interconnected with one another using optical fiber networks known as Synchronous Optical Network (SONET) rings. The infrastructure to interconnect the wire centers is known as the ''interoffice'' network, and the carriage of traffic among wire centers is known as *''transport.''* In cases where a number of wire centers with relatively few people within their boundaries are located in close proximity to one another, it may be more economical to use the switching capacity of a single switch to process the calls of the customers in the boundaries of all the wire centers. In that case, a full-capacity switch (known as a ''host'') is placed in one of the wire centers and less expensive, more limited-capacity switches (known as ''remotes'') are placed in the other wire centers. The remotes are then connected to the host with interoffice facilities. Switches that are located in wire centers with enough customers within their boundaries to merit their own full-capacity switches and that do not serve as hosts to any other wire centers are called ''stand-alone'' switches.

21. The models under consideration in this proceeding differ in several important ways in estimating the forward-looking cost of designing a telephone network. For example, the three models in this proceeding rely on different sets of data and assumptions to ascertain the number of customers in each wire center and the geographic location of those customers. The models also use different methods to calculate switch size, the size, type, and number of fiber and copper cables, and the routing of those cables.

III. Customer Location and Outside Plant Design

22. We first consider the customer location and outside plant algorithms of BCPM, HAI, and HCPM in light of the criteria identified in the *Universal Service Order.* As the Bureau pointed out in the *Outside Plant Public Notice,* the criteria suggest that the models ''should be considered both from an engineering perspective, to ensure that the network provides the type and quality of service specified in the *[Universal Service] Order,* and from an economic perspective, to ensure that the network design minimizes costs and maximizes efficiency.'' We conclude that the customer location and outside plant platform of the federal mechanism should consist of a synthesis of the best ideas presented by the model proponents, including HAI's use of geocoded customer location data, BCPM's use of the road network to estimate the locations of customers for whom no geocode data are available, HCPM's approach to identifying customer serving areas based on natural clusters of customers, and HCPM's ability to design plant to the precise customers locations within each serving area.

A. Discussion

23. In this section, we identify the combination of data and algorithms that locate customers and design outside plant to serve those customers in a way that best meets the criteria identified in the *Universal Service Order.* As an initial matter, we observe that all three models design a network that is capable of providing the supported services. We also conclude, as explained below, that each of the models meets a reasonable standard for ensuring that the network designed does not impede the provision of advanced services.

24. We identify five distinct aspects of the customer location and loop design portions of a cost model that can have a significant bearing on the model's ability to estimate the least-cost, most-efficient technology for serving a particular area. These include: (i) the extent to which the model uses actual customer location data to locate customers, (ii) the method of determining customer locations in the absence of actual data, (iii) the algorithms employed to group customers into serving areas, (iv) the model's ability to design plant directly to the customer locations within the serving area, and (v) adherence to sound engineering and cost minimization principles in both the design of distribution plant within each serving area and the design of feeder plant to connect each serving area to the associated central office.

1. Determining Customer Location

25. Each model has a method for determining where customers are located. The issues raised are whether to use actual geocode data, to the extent they are available, and what method to use for determining surrogate customer locations where geocode data are not available. We conclude that HAI's proposal to use actual geocode data, to the extent that they are available, is the preferred approach, and BCPM's proposal that we use road network information to determine customer location where actual data are not available, provides the most reasonable method for determining customer locations.

26. The starting point that all three models use in determining customer location is publicly available information from the Census Bureau, which provides the number of customers within each Census Block (CB). Thus, at a minimum, each model has information about the number of customers within a specified geographic area. In urban areas, CBs tend to be relatively small, and often contain only one city block. In rural areas, however, CBs typically are much larger. It is therefore important to have a reasonable method for determining customer locations more precisely within the CB.

27. *Use of Geocode Data.* Only HAI includes a specific proposal for using actual latitude and longitude data to identify customer locations. Many commenters from across the spectrum of the industry agree that geocode data that identify the actual geographic locations of customers are preferable to algorithms intended to estimate

customer locations based solely on such information as Census data. We agree with Ameritech that proxy techniques for estimating customer locations are unnecessary and inappropriate for companies that can identify the actual customer dispersion of their customers with geocode data. We conclude that a model is most likely to select the least-cost, most-efficient outside plant design if it uses the most accurate data for locating customers within wire centers, and that the most accurate data for locating customers within wire centers are precise latitude and longitude coordinates for those customers' locations.

28. Recent public comment demonstrates support for the use of accurate geocode data in the federal mechanism when available. At present, the only geocode data in the record of this proceeding are those prepared for the HAI model by the HAI sponsors' consultants, PNR Associates (PNR). Many commenters recognize that, in addition to the current sources of geocode data, more comprehensive geocode data are likely to be available in the future. Nevertheless, some commenters still question whether PNR's geocode data set should be used in the federal mechanism. We note that our conclusion that the model should use geocode data to the extent that they are available is not a determination of the accuracy or reliability of any particular source of that data. We anticipate, however, that a reasonable source of verifiable geocode data can be determined at the inputs stage of this proceeding. At a minimum, PNR's data is now available for review, and interested parties may comment upon and suggest improvements to the accuracy of that database. Thus, while we conclude that the federal mechanism should use geocode data to the extent available, we do not in this Order adopt a particular source of geocode data. The final choice of what source or sources of geocode data to use in determining customer location will be decided at the inputs phase of this proceeding.

29. We also conclude that the federal mechanism should not discard geocode data in favor of surrogating below some ''break point'' percentage in each CB. The BCPM sponsors contend that actual geocode data should be used in conjunction with surrogate data only when the percentage of customer locations in a given area for whom precise geocode data are known is above 80 percent. The BCPM sponsors suggest that the combined use of actual and surrogate customer locations below this threshold will lead to clusters with ''unnatural distributions.'' The BCPM sponsors have provided no concrete evidence or statistical support for their position that significant anomalies will result from mixing actual and surrogate geocode points, nor provided adequate justification for the proposed level of the break point. We find that actual geocode data, to the extent available, provide the most reliable customer location information. BCPM has not persuaded us that geocode data should be discarded simply because the available geocode data for a given area may be limited. We therefore decline to adopt BCPM's suggestion that the model use surrogate geocode data in instances where only low percentages of actual geocode data are available.

30. *Surrogate Location Methodology*. Where actual customer location information is unavailable, the models must use other means to identify customer locations. Each model has developed a method for determining the location of customers in the absence of geocoded customer location data.

31. In the absence of geocoded customer data, HAI distributes all ''surrogate'' customers uniformly around the boundaries of a CB. The HAI proponents contend that this distribution results in a conservative placement of customers because it assumes they are maximally separated from one another.

32. BCPM uses CB data and a grid approach that allocates customers to microgrids using road network data, based on the assumption that customers are located along roads. The BCPM proponents argue that many roads lie in the interior of CBs, not just along CB boundaries, and that customer location correlates with roads. Information about the correlation between ''road mileage'' and ''housing units'' presented by the BCPM proponents for the state of Kentucky suggests that customers tend to live near roads. BCPM also notes that most rights of way follow roads.

33. In the absence of geocode data, HCPM locates customers based on CB-level data by assuming that customers are distributed evenly across a square grid cell with the same area as the average size of a CB in the wire center.

34. Recent comments in this docket support the use of road network to place surrogate customer locations. We conclude that, in the absence of precise customer location data, BCPM's rationale of associating road networks and customer locations provides the most reasonable approach in determining customer locations. We find that BCPM's assumption that customers generally live along roads is reasonable. Moreover, we find that BCPM's method of associating customers with the distribution of roads is more likely to correlate to actual customer locations than uniformly distributing customers throughout the CB, as HCPM proposes, or uniformly distributing customers along the CB boundary, as HAI proposes. HCPM's surrogating method, for example, would be more likely than the other two models to locate customers in uninhabitable areas such as bodies of water or national parks. As BCPM notes, HAI's surrogating method might well associate customer locations in ditches, bodies of water, or other uninhabitable areas that may constitute CB boundaries. Moreover, HAI's method of placing surrogate locations along CB boundaries may result in the identification of false customer clusters, as surrogates from adjoining CBs are placed near one another along the common CB boundary. In addition, we note that BCPM has taken steps to identify and exclude certain types of roads or road segments that are unlikely to be associated with customer locations. We also note that the proponents of HAI have recently proposed a road surrogate methodology premised on the rationale that customers locations correspond to roads. Therefore, we adopt BCPM's proposal to use road network information as the basis for locating within a CB boundary customers whose precise locations are unknown.

35. We adopt BCPM's set of guidelines for excluding from the surrogating process the types of roads and road segments (such as interstate highways, bridges, and on- and off-ramps) that are unlikely to be associated with customer locations. Beyond these conclusions, we do not select a particular algorithm in this Order for placing surrogate points along roads. We conclude that the selection of a precise algorithm for placing road surrogates pursuant to these conclusions should be conducted in the inputs stage of this proceeding as part of the process of selecting a geocode data set for the federal mechanism.

2. Algorithms Employed to Group Customers Into Serving Areas

36. Once customer locations have been identified, each model must determine how to group and serve those customers in an efficient and technologically reasonable manner. A model will most fully comply with the criteria in the *Universal Service Order* if it uses customer location information to the full extent possible in determining how to serve multiple customers using a single set of electronics. Moreover, the model should strive to group customers

in a manner that will allow efficient service. As discussed below, we conclude that a clustering approach, as first proposed by HAI in this proceeding, is superior to a grid-based methodology in modeling customer serving areas accurately and efficiently. In addition, we conclude that the federal high cost mechanism should use the HCPM clustering module.

37. The model proponents have identified two methods—clustering and gridding—for grouping customers into serving areas. HAI identifies groups of customers based on their proximity to one another to create ''clusters'' of customers. HAI defines a ''serving area'' as a main cluster and those outlier clusters in close proximity. BCPM determines serving areas by means of a multi-step process that begins by placing grids over a map of CBs that make up a wire center. Once the grids are populated with customer location data, serving areas are determined based on technological limitations such as the number of lines that can be served from a single DLC. Although it originally proposed a gridding approach, HCPM subsequently developed a clustering algorithm.

38. To meet the *Universal Service Order's* criteria, a clustering algorithm should group customer locations into serving areas in an efficient manner to minimize costs while maintaining a specified level of network performance quality. This is consistent with actual, efficient network design. In other words, an efficient service provider would design its network using the most efficient method of grouping customers, in order to minimize costs.

39. The advantage of the clustering approach to creating serving areas is that it can identify natural groupings of customers. That is, because clustering does not impose arbitrary serving area boundaries, customers that are located near each other, or that it makes sense from a technological perspective to serve together, may be served by the same facilities. There are two main engineering constraints that must be accounted for in any clustering approach to grouping customers in service areas. Clustering algorithms attempt to group customers on the basis of both a distance constraint, so that no customer is farther from a DLC than is permitted by the maximum distance over which the supported services can be provided on copper wire, and on the basis of the maximum number of customers in a serving area, which depends on the maximum number of lines that can be connected to a DLC remote terminal.

40. In contrast, the chief advantage of the gridding approach is its simplicity. Placing a uniform grid over a populated area, and concluding that any customers that fall within a given grid cell will be served together, is simpler to program than an algorithm that identifies natural groupings of customers. The simplicity of the grid-based approach, however, can generate significant artificial costs. Because a simple grid cannot account for actual groupings of customers, grid boundaries may cut across natural population clusters. Serving areas based on grids may therefore require separate facilities to serve customers that are in close proximity, but that happen to fall in different grids. The worst-case scenario would involve a natural cluster of customers that, given distance and engineering constraints, could be served as a single serving area but that happened to be centered over the intersection of a set of grid lines. This would result in the division of the natural population cluster into four serving areas instead of one. As a result, a gridding approach cannot reflect the most cost-effective method of distributing customers into serving areas. In order best to meet the *Universal Service Order's* criteria, we conclude that the federal mechanism should use a clustering methodology, rather than a grid-based methodology, to determine serving areas.

41. Having determined that a clustering approach should be used, we must determine which clustering approach to adopt for use in the federal mechanism. Two types of clustering algorithms have been proposed in this proceeding, agglomerative and divisive. The HAI clustering algorithm is a ''nearest neighbor'' algorithm, a type of agglomerative approach, which forms clusters by joining customer locations to the nearest adjacent location in a sequential fashion. The HCPM sponsors have developed a divisive algorithm that they describe as tending ''to create the smallest number of clusters and is also by far the most efficient algorithm in terms of computer run-time.''

42. The agglomerative approaches to clustering, including the HAI nearest neighbor algorithm, work as follows. Initially, each location constitutes its own individual cluster. This initial state is modified by merging the two closest clusters together, reducing the total number of clusters by one. This modification is repeated until merging is no longer feasible from an engineering standpoint. In the HAI nearest-neighbor algorithm, distance is measured from the two customer locations that are closest together. The HAI nearest-neighbor method contains an additional constraint that no customer locations are joined if the distance between them is more than two miles.

43. In the divisive approach advocated by HCPM, all customer locations initially are grouped in a single cluster. If one or more engineering constraints are violated, the original cluster is divided into a new ''parent'' cluster and a ''child'' cluster. Customer locations are added to the child cluster until it is full, i.e., until no more locations can be added without violating the line count and maximum distance constraints. This process continues until the original cluster has been subdivided into a set of clusters that conform to the line count and maximum distance constraints.

44. The clustering module developed by the HCPM sponsors includes several optimization routines that seek to lower the cost of constructing distribution areas by reassigning certain customer locations to different clusters. One routine, called ''simple reassignment,'' reassigns a customer location to a different cluster if the location is closer to that cluster's center. The routine operates sequentially, taking account of both the maximum distance and line count constraints. After the reassignment, cluster centers are re-computed and the routine is repeated. The process continues until no more reassignments can be made. The second routine, called ''full optimization,'' considers customer locations one by one. It measures the effect each customer location has on the location of cluster centers, and moves a location from one cluster to another if the total distance from all customer locations to their cluster centers is reduced. The routine moves the customer location that gives the most distance reduction at each step. It continues until no more distance reduction is possible.

45. While some commenters express concern that the HCPM clustering algorithm has not undergone extensive review, most agree that the HCPM clustering algorithm introduces innovations and improvements over previous models. For example, Bell Atlantic notes that HCPM's ability to limit redistribution of customers from their geocoded locations by assigning them to small microgrids is a substantial improvement over the approaches of HAI and BCPM. GTE contends that the HCPM clustering algorithm is a significant improvement over the HAI clustering approach.

46. While we are cognizant of the concern expressed by commenters that the HCPM clustering algorithm has been available for review for a more limited time than the HAI clustering algorithm,

we note that the HCPM clustering algorithm and test data have been made available for public comment. Commission staff have met with and discussed issues relating to HCPM with the model sponsors and interested parties. The BCPM sponsors have performed an initial analysis of the HCPM clustering algorithm and while they suggest certain improvements to the HCPM clustering algorithm, no major flaw has been identified. Moreover, we observe that clustering algorithms, including in particular the divisive algorithm that HCPM employs, are a generally accepted and thoroughly tested part of statistical theory.

47. We find that the HCPM clustering algorithm provides the least-cost, most-efficient method of grouping customers into serving areas. The HCPM clustering algorithm tends to create the smallest number of clusters and is more efficient in terms of computer run-time. The divisive algorithm has greater ability to minimize costs while conforming to technological constraints and network quality standards. By considering at all times the most efficient assignment of a customer to a particular cluster, HCPM's divisive clustering algorithm ensures that customers will be served at the least cost possible. In establishing the least-cost, most-efficient method of grouping customers into serving areas, we note that fixed costs (i.e., those that do not vary with the number of lines) associated with DLC terminal devices in serving areas militate in favor of selecting an algorithm that generates a small number of large clusters rather than a larger number of small clusters. On the other hand, with a small number of clusters, the average distance of a customer from a central point of a cluster, and consequently the variable costs associated with cable and structures, tends to be greater than it would be if there were more clusters. In low-density rural areas, it is likely that fixed costs will be the most significant cost driver. Consequently, a clustering algorithm such as HCPM's that generates the smallest number of clusters should provide the least-cost, most-efficient method of determining customer serving areas in rural areas. In addition, a practical advantage of the divisive algorithm is that it runs in a small fraction of the time required for the agglomerative approaches. Hence it is more compatible with the criterion that the model platform be available for review. Therefore, we conclude that HCPM's clustering algorithm is superior to alternative algorithms designed to group customers into serving areas and adopt it for use in the federal mechanism.

3. Outside Plant Design

In designing outside plant, a model will most fully comply with the *Universal Service Order's* criteria if it designs a network that reflects as accurately as possible the available data on customer locations, adheres to sound engineering and forward-looking, cost-minimizing principles, and does not impede the provision of advanced services. We conclude that HCPM's outside plant design algorithms best meet the criteria developed in the *Universal Service Order*, including the requirement that the technology assumed in the model is the ''least-cost, most-efficient, and reasonable technology for providing the supported services.'' We therefore conclude that the federal mechanism should incorporate HCPM's outside plant design algorithm.

a. Designing Plant to Customer Locations

49. We first consider the manner in which each of the models designs outside plant once customer location and serving areas have been identified. After selecting a model that determines customer locations as accurately as possible and identifies efficient serving areas, it is important that the model design a network that takes the greatest advantage of that information. Thus, the model's method of designing outside plant should provide the best estimation of the design of outside plant to customer locations.

50. The HCPM loop design modules build loop plant directly to individual microgrids in which customers are located. The microgrids that HCPM is able to design closely reflect the underlying customer locations. If an accurate source of geocoded customer locations is used, the model is capable of building plant directly to every customer location with an error of no more than a few hundred feet for any individual customer.

51. By contrast, HAI and BCPM design outside plant by modifying the distribution areas so that they have square or rectangular dimensions and relocating customers so that they are distributed uniformly within the distribution area. In doing so, HAI and BCPM discard or distort customer location data. For example, although BCPM initially locates customers based on road network information, these customers are subsequently relocated into a square distribution area that is smaller than the quadrant in which the road network containing these customers is located. HAI's approach of designing plant to simplified customer locations within rectangularized serving areas, instead of to actual customer locations, could result in a systematic underestimation of outside plant costs. Sprint has observed that HAI's simplification of actual clusters to rectangles can result in an underestimation of plant costs. Sprint has shown that, under certain circumstances, HAI's conversion of actual clusters into rectangular distribution areas results in a shorter maximum cable length—and thus a lower cost of service—within the rectangularized cluster than in the actual, underlying cluster. Commission staff analysis has also revealed that HAI's approach to distributing customers evenly within its rectangularized serving areas can also result in a systematic underestimation in less dense areas when compared to the cost of constructing plant to serve the underlying customer locations within the clusters. BCPM's approach of designing plant to square customer serving areas that are significantly smaller than the areas over which the customers are actually distributed is likely to have similar infirmities.

52. The HAI model also sacrifices accuracy by assuming that customers are dispersed uniformly within its distribution areas. As a result, the boundaries of HAI's distribution areas are unlikely to correlate exactly with the boundaries of the clusters, so some customers located inside a cluster may be shifted beyond the boundaries of that cluster. Commenters have criticized this ''squaring up'' of cluster areas to create distribution areas, as well as the assumption that customers are uniformly distributed throughout the distribution area. We agree that inaccuracies may be introduced by modifying the geographical boundaries of distribution areas and the location of customers within those areas for purposes of constructing outside plant.

53. The models also have other elements that help ensure that an adequate amount of plant is constructed. For example, all three models categorize the terrain where plant is being built based on factors that affect the difficulty of building plant, such as soil type, depth to bedrock, and slope. HAI uses multipliers to reflect increased costs in areas with difficult terrain. BCPM uses separate structure cost tables for each of three terrain categories to reflect higher cost in more difficult areas. HCPM incorporates BCPM's approach. We find that the federal model should account for terrain factors in determining structure costs.

For the reasons stated elsewhere in this Order, we conclude that the federal platform should employ HCPM's outside plant algorithms, which take terrain factors into account in determining the cost of outside plant.

54. Thus, both BCPM and HAI, by relocating customers so as to distribute them uniformly in square or rectangular distribution areas, create an apparent systematic downward bias in the required amount of distribution plant that is constructed in less dense areas. In contrast, HCPM's outside plant design algorithm is capable of designing plant directly to, or very nearly to, precise customer locations and thus should generate estimates of distribution plant that are sufficient to reach actual customer locations. HCPM therefore has a significant advantage in estimating sufficient outside plant over HAI and BCPM in its ability to avoid the distortions associated with adjusting customer locations to establish square or rectangular distribution areas. This is particularly important for ensuring that the federal mechanism estimates the cost of a sufficient amount of plant. By designing plant to serve actual customer locations instead of simplified representations of customer locations, HCPM is substantially more likely to estimate the correct amount of plant necessary for providing the supported services. As a result, HCPM's outside plant cost estimates are likely to reflect more accurately the forward-looking cost of providing the supported services and thus comport more fully with the *Universal Service Order's* criteria.

b. Cost Minimization Principles

55. We conclude that the outside plant module should be able to perform optimization routines through the use of sound network engineering design to use the most cost-effective forward-looking technology under a variety of circumstances, such as varying terrain and density. Each of the three model proponents has made some effort to consider alternative plant designs and select the most economical approach, or to place limits on investment in certain circumstances in order to control costs. The ability of a model to perform optimization routines is a significant factor in its ability to estimate the least-cost, most-efficient technology under a variety of conditions, as the first criterion in the *Universal Service Order* requires. For example, assuming that the price of fiber cable or DLC electronics continues to drop, an optimizing model might shift the mix of fiber and analog copper towards fiber and away from copper.

56. HAI and BCPM have made efforts to incorporate cost minimization principles into their respective approaches. Both models permit main feeder routes to be angled towards areas of population concentration in order to reduce feeder costs. BCPM also economizes the cost of DLC equipment in the central office by connecting multiple DLC remote terminals with a single central office terminal where possible, and limits distribution investment by limiting total distribution plant within a distribution area to the total road distance in the area. In HAI, for feeder plant that is less than 9,000 feet in length, the model chooses between fiber or copper cable technologies based on life-cycle cost minimization. In determining plant mix, HAI also can choose between aerial and buried plant based in part on the alternative with the lower life-cycle cost. We have concerns, however, that the effectiveness of these cost minimization principles are tempered by their practicality in actual use. For example, the angling of feeder routes toward population centers without regard to considerations such as rights of way may lead to significantly lower cost estimates than are practicable in reality. More importantly, however, neither HAI nor BCPM would recompute the type of technology deployed in response to a change in relative input prices, a key feature of ensuring that costs are minimized, subject to technological and service quality constraints.

57. In contrast, HCPM selects the optimal type, number, and placement of DLCs, which are sized based on the number of lines served. For example, in a distribution area with 400 lines, HCPM would determine, based on input values for equipment prices, whether it is more economical to place one DLC with a maximum capacity of 500 lines or two DLCs each with a maximum capacity of 250 lines. HCPM also considers the relative costs of placing various feeder technologies (fiber or T–1 on copper) and selects the most economical technology. HCPM further selects the lowest relative cost of different feeder routings.

58. HCPM uses an algorithm developed for network planning purposes in both its feeder and distribution segments. This algorithm selects a feeder or distribution routing network by weighing the relative benefits of minimizing total route distance (and therefore structure costs) and minimizing total cable distance (and therefore cable investment and maintenance costs.) HCPM also selects technologies (e.g., fiber vs. copper, aerial vs. buried) on the basis of annual cost factors that account for both operating expenses and capital expenses over the expected life of the technology.

59. In reviewing the current models, we conclude that HCPM's explicit optimization routines are superior to those in BCPM and HAI. In addition, because the platform that we adopt for the federal mechanism may be in place for a significant time period during which relative costs may change, the impact of optimization may increase in importance over time.

60. We do not agree, as some parties have argued, that the models' outside plant design parameters should be verified by comparing the design of the model networks in specific locations to the design of incumbent LECs' existing plant in those locations in all cases. While we recognize that certain factors such as terrain, road networks, and customer locations are fixed, the design of the existing networks under these conditions may not represent the least-cost, most-efficient design in some cases. The Commission, in the *Universal Service Order,* adopted the Joint Board's recommendation that universal service support should be based on forward-looking economic costs. Existing incumbent LEC plant is not likely to reflect forward-looking technology or design choices. Instead, incumbent LECs' existing plant will tend to reflect choices made at a time when different technology options existed or when the relative cost of equipment to labor may have been different than it is today. Incumbent LECs' existing plant also was designed and built in a monopoly environment, and therefore may not reflect the economic choices faced by an efficient provider in a competitive market. Although we do not believe that a forward-looking platform can meaningfully be verified by comparing its network to an embedded network, we note that the platform is only one of many considerations used to set actual levels of support.

c. Service Quality

61. The *Universal Service Order's* first criterion specifies that a model should not ''impede the provision of advanced services.'' In the *Universal Service Order,* the Commission disallowed a model's use of loading coils because their use may impede high-speed data transmission. During the model development process, the Bureau recommended that model proponents ''demonstrate how their models permit standard customer premises equipment (CPE) available to consumers today, such as 28.8 Kbps or 56 Kbps modems, to perform at speeds at least as fast as

the same CPE can perform on the typical existing network of a non-rural carrier.'' The BCPM proponents propose that testing a model network's capability to support data transmission over a 28.8 Kbps modem is a ''conservative approach'' to identifying whether a model may impede advanced services because network access at 28.8 Kbps is ''widely available today in urban areas'' and ''modem speeds of 33.6 Kbps and even 56 Kbps are becoming more and more common.'' We agree that a reasonable standard for ensuring that a model's network does not impede the provision of advanced services would ensure the reasonable performance of 28.8 Kbps modems. We find that proponents of the BCPM, HAI, and HCPM have demonstrated that their models allow 28.8 modems to work at reasonable rates, which will permit all customers to have access to high-speed data transmission.

4. Maximum Copper Loop Length

62. We now turn to the issue of the maximum loop length that the federal mechanism should permit. We note that, in making this determination, we must examine whether the models use the least-cost, most efficient, and reasonable technology while not impeding the provision of advanced services. HAI and BCPM proponents disagree on the maximum loop length over which a copper loop will carry a signal of appropriate quality, without the use of expensive electronics. The HCPM sponsors state that an 18,000 foot copper loop is capable of meeting current Bellcore standards, but they otherwise take no position on the appropriate length of copper loops. The maximum copper loop length will affect the model's cost estimates because a longer loop length will permit more customers to be served from a single DLC. As noted above, reducing the number of DLCs tends to reduce the overall cost. In the models, the ''fiber-copper cross-over point'' determines when carriers will use fiber cable instead of copper cable. BCPM asserts that Bell Labs standards call for loops not to exceed 12,000 feet. The proponents of BCPM further assert that copper loops longer than 13,600 feet will require the use of an expensive extended-range line card in the DLC to provide advanced services, the additional cost of which will outweigh the cost savings from using longer loops. Taking into consideration loading and resistance, the BCPM default provides that loop lengths that exceed 12,000 feet will be fiber cables. HAI contends that copper lengths may extend to 18,000 feet using only a slightly more expensive line card in the DLC.

63. The Commission sought comment on this issue in the *Further Notice* and a *Public Notice Requesting Further Comment.* A few commenters contend that use of the HAI standard would impede access to advanced services and violate Carrier Serving Area (CSA) design standards. The HAI proponents disagree, and contend that there is no support for the claim that a 18,000 foot copper loop is too long to support advanced services such as ISDN and Asymmetric Digital Subscriber Line (ADSL). The HAI proponents note that there are two ADSL standards, ADSL1 and ADSL2. The HAI proponents contend that no commenter alleges that the facilities modeled by HAI are unable to support ADSL1. Although the HAI proponents admit that their plant design cannot support ADSL2 using a loop length of 18,000 feet, they argue that the higher speed of ADSL2 is not a component of basic service supported by universal service.

64. We conclude that the federal mechanism should assume a maximum copper loop length of 18,000 feet. The record supports the finding that a platform that uses 18,000 foot loop-lengths will support at appropriate quality levels the services eligible for universal service support. Although BCPM has presented evidence that the provision of some, high-bandwidth advanced services may be impaired over 18,000-foot loops, we conclude that the BCPM sponsors have not presented credible evidence that the 18,000-foot limit will not provide service at an appropriate level, absent the use of expensive DLC line cards. We also disagree with BCPM's interpretation of the Bell Labs standards manual. The publication states, in pertinent part, that ''[d]emands for sophisticated services are requiring the outside plant network to support services ranging from low-bit rate transmission to high-bit rates. To meet this demand, a digital subscriber carrier is being placed into the network starting at 12,000 feet from the serving [wire center].'' The document is referring to the design of digital loop carrier systems and related outside plant that will ''accommodate a wide range of transmission applications including voice, data, video, sensor control, and many others.'' This design standard seems to exceed the service quality standards for universal service. We find that the public interest would not be served by burdening the federal universal service support mechanism with the additional cost necessary to support a network that is capable of delivering very advanced services, to which only a small portion of customers currently subscribe. Accordingly, we conclude that the federal mechanism should assume a maximum copper loop length of 18,000 feet.

IV. Switching and Interoffice Facilities

A. Discussion

65. We conclude that the federal universal service mechanism should incorporate, with certain modifications, the HAI 5.0 switching and interoffice facilities module. We find that HAI's module satisfies the relevant criteria set forth in the *Universal Service Order* and would be simpler to implement than BCPM's module. In our evaluation of the switching modules in this proceeding, we note that, for universal service purposes, where cost differences caused by differing loop lengths are the most significant cost factor, switching costs are less significant than they would be in, for example, a cost model to determine unbundled network element switching and transport costs.

66. We find that both models meet the *Universal Service Order's* requirement that a model assume the least-cost, most-efficient and reasonable technology to provide the supported services. Both models assume the use of modern, high-capacity digital switches, and interconnect switching facilities with state-of-the-art SONET rings. The *Further Notice* recommended that the federal mechanism should be capable of separately identifying host, remote, and stand-alone switches and of distributing the savings associated with lower-cost remote switches among all lines in a given host-remote relationship. In the *Further Notice,* we requested ''engineering and cost data to demonstrate the most cost-effective deployment of switches in general and host-remote switching arrangements in particular,'' and sought comment on ''how to design an algorithm to predict this deployment pattern.'' No party has developed an algorithm that will determine whether a wire center should house a stand-alone, host, or remote switch. As noted above, however, both models can incorporate either a single blended cost curve that assumes a mix of host, remote, and stand-along switches, or use the Bellcore Local Exchange Routing Guide (LERG) to assume the existing deployment of switches and host-remote relationships. In the inputs stage of this proceeding we will weigh the benefits and costs of using the LERG database to determine switch type and will consider alternative approaches by which the selected model can incorporate the efficiencies gained through the

deployment of host-remote configurations.

67. Both models also permit a significant amount of flexibility to ensure the allocation of a reasonable portion of the joint and common costs of the switching and interoffice functions to the cost of providing the supported services. As discussed below, however, BCPM's allocation methodology would introduce an additional degree of complexity to the inputs stage of this proceeding that we conclude is not administratively justified in light of the potential marginal gains in accuracy. We find that HAI's switching and interoffice modules satisfy the *Universal Service Order's* requirements to associate and allocate the costs of the network elements and functionalities necessary to provide the supported services, and do so in a less complex manner than BCPM's module, while still providing a degree of detail that is sufficient for the accurate computation of costs for federal universal service purposes.

68. We also find that HAI's switching module more fully satisfies the requirement that data, computations, and assumptions be available for review and comment. HAI's modules use a spreadsheet program that reveals all computations and formulas, allows the user to vary input costs, and provides a simple, user-adjustable allocation factor. BCPM also uses a spreadsheet program that reveals its computations and formulas, but its default costs and allocation factors are based on results from the proprietary Switching Cost Information System (SCIS) and Switching Cost Model (SCM) models, and the defaults used to generate the results that BCPM uses in its modules have not been placed on the record in this proceeding. To minimize concerns regarding BCPM's use of proprietary data, the Commission could, in the inputs stage of the proceeding, substitute other inputs in place of the SCIS and SCM results for the cost amounts and allocation factors. Because the SCIS and SCM generate such detailed results, however, the process of trying to determine input values to replace the SCIS and SCM results would inject a significant degree of complexity into the inputs phase of this proceeding. We conclude that this additional complexity in the inputs phase is not justified by potential gains in accuracy. As noted above, we find that HAI's modules compute and allocate switching and interoffice costs with a degree of accuracy that is sufficient for the computation of federal universal service costs and in a manner that more readily provides for public review.

69. We find that both models generally satisfy the requirement that each network function and element necessary to provide switching and interoffice transport is associated with a particular cost, though HAI satisfies the criterion more thoroughly than BCPM. AT&T contends that the BCPM 3.0 signaling network calculations indicate no explicit modeling of signaling costs. In BCPM, signaling costs used to develop per-line investments are provided through a user input table that its proponents assert reflects the cost of building a modern SS7 network. The signaling cost for a wire center is based on a weighted average of residence and business lines associated with that wire center. Users have the option of using the provided default values or entering their own values. In contrast to HAI, which explicitly models the cost of signaling, BCPM 3.0 simply adds on a signaling cost to the cost of switching based upon an input table of costs. Although this technically satisfies the criterion that any network function or element necessary to produce supported services must have an associated cost, we find that it is not likely to produce results that are as accurate as an estimate obtained through the explicit cost estimation used in HAI. The HAI 5.0 Switching and Interoffice Module computes signaling link investment to end office or tandem links between segments connecting different networks. HAI always equips at least two signaling links per switch and computes the required SS7 message traffic according to call type and traffic assumptions. We therefore conclude that HAI employs a more reliable method of assigning an associated cost to the network functions or elements, such as switching and signaling, that are necessary to produce supported services.

70. Thus, although we conclude that either model's switching and interoffice modules could be used to adequately model universal service costs for these functionalities, we conclude that the federal mechanism should incorporate the HAI modules. Moreover, parties recently have identified certain aspects of HAI's interoffice module with respect to which the progress of state proceedings has shown a need for minor changes in the model's coding. These changes were identified too late in the proceeding to be included in this Order. Because general agreement exists among the parties as to the need to make them, however, we delegate to the Common Carrier Bureau the authority to make these changes.

V. Expenses and General Support Facilities

71. We now consider the algorithms of HAI and BCPM for calculating expenses and general support facilities (GSF) costs in light of the criteria identified in the *Universal Service Order.* The most relevant of the criteria to expense and GSF issues is the ninth, which requires that the models make a reasonable allocation of joint and common costs. With this criterion, the Commission intended to ''ensure that the forward-looking economic cost [calculated by the federal mechanism] does not include an unreasonable share of the joint and common costs for non-supported services.'' Therefore, the platform of the federal mechanism must permit the reasonable allocation of joint and common costs for such non-network related costs as GSF, corporate overhead, and customer operations. In addition, the criterion requires that ''[t]he cost study or model must include the capability to examine and modify the critical assumptions and engineering principles.'' Therefore, it is important that the platform's method of calculating expenses and GSF costs must be sufficiently flexible. It is also important that we select model components that are compatible with one another to compute cost estimates in a reasonable time. In light of these considerations, we conclude that the platform for the federal mechanism should consist of HAI's algorithm for calculating expenses and GSF costs, as modified to provide some additional flexibility in calculating expenses offered by BCPM.

Discussion

72. Although we sought comment on alternative measures for estimating forward-looking GSF investment and other expenses, most commenters only address which expenses should be calculated on a per-line basis and which expenses should be calculated as a percentage of investment. We agree that the majority of expenses can be estimated accurately on the basis of either lines or investment. Other commenters argue, however, that GSF investment and other expenses should be based on ARMIS data for individual companies to ensure accuracy. GTE argues that, without empirical evidence, neither calculating expenses on a per-line nor a per-investment basis is entirely satisfactory. GTE proposes a time-series forecasting model, which it attaches to its comments. While we find that most expenses can be estimated accurately based on either number of lines or investment, we agree that

neither investment ratios nor per-line calculations may be entirely satisfactory for estimating the forward-looking costs of certain expenses. Further, we observe that many of the input questions regarding how best to calculate expenses will be resolved in the input selection stage of this proceeding, and find that the platform of the federal mechanism must be sufficiently flexible to allow for the correct resolution of these issues. In this way, we can best ensure that the model will correctly allocate joint and common costs and includes sufficient flexibility to allow the modification and examination of critical assumptions.

73. The Florida Public Service Commission agrees with our tentative conclusion that the cost of land, which comprises a large portion of GSF, should vary by state in order to reflect differing land values. In addition, the Florida Commission argues that, because of varying labor costs, state-specific expense-to-investment percentages should be used to estimate plant-specific operating expenses and state-specific per-line values should be used to estimate plant non-specific expenses. We note that there may be other variables, in addition to land values and labor costs, that may vary by state, and find that the model should allow GSF and expense calculations to vary by state. Both models allow the user to make different assumptions by state, thus both models provide the same degree of flexibility in this regard.

74. Because BCPM permits users to estimate all operating expenses (including GSF expenses) either as a per-line amount or as a percentage of investment and to adjust these amounts easily, it is somewhat more flexible than HAI in this regard. Because the federal mechanism must be sufficiently flexible to accommodate the decisions we will be making in the input selection phase of this proceeding, the HAI developers have made minor changes in their model so that expenses can be calculated on a per-line or percentage-of-investment basis. As noted above, many of the issues regarding the appropriate method of calculating forward-looking expenses will be resolved when we determine the input values that should be used in the federal mechanism.

75. We adopt our tentative conclusions in the *Further Notice* with respect to GSF investment and other expenses and conclude that the federal mechanism should: (1) be capable of calculating GSF investment and expenses by state; (2) provide the user with the capability to calculate each category of expense based either on line count or investment ratios; and (3) permit users to use different ratios or per-line amounts to calculate expenses for different size companies. We also conclude that the combination of model components that the Commission selects in this Order should be capable of generating cost estimates for the supported services within a reasonable time. The model will not be used to make final support calculations until next year, but it is important that the Commission and the Universal Service Joint Board can use the selected platform in the near term in connection with the issues that the Joint Board is considering in light of the *Referral Order.*

76. We find that the HAI and BCPM modules for computing expenses and GSF are roughly comparable, and conclude that the federal mechanism should incorporate the HAI module. Although, as noted above, the BCPM module may be somewhat more flexible, and therefore create the possibility for somewhat more fine-tuning at the inputs stage, we have thoroughly tested HAI's module and conclude that it generates accurate results. We also observe that expenses and GSF represent a small percentage of the total cost of providing the supported services. We therefore conclude that the practical benefits of using the HAI module outweigh those of using the BCPM module and that, in the interest of administrative efficiency, the federal mechanism should incorporate HAI's expense and GSF module.

VI. Conclusion

77. In this Order, we select a platform for the federal mechanism to estimate non-rural carriers' forward-looking cost to provide the supported services. To generate the most accurate estimates possible, we have selected the best components from the three models on the record. The model components selected are all generally available to the parties, and a software interface to merge the selected components is also available on the Commission's World Wide Web site. Thus, the federal platform is available for use by states, other interested policymakers, and the public. Pursuant to the plan established in the *Further Notice of Proposed Rulemaking,* we will continue to evaluate model input values with the intention of selecting inputs for the federal platform at a later date. Once input values have been selected, the federal platform will be used to generate cost estimates.

VII. Procedural Matters and Ordering Clauses

A. Final Regulatory Flexibility Act Certification

78. The Regulatory Flexibility Act (RFA) requires a Final Regulatory Flexibility Analysis (FRFA) in rulemaking proceedings, unless we certify that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' It further requires that the FRFA describe the impact of the rule on small entities. The RFA generally defines ''small entity'' as having the same meaning as the term ''small business concern'' under the Small Business Act, 15 USC 632. The Small Business Administration (SBA) defines a ''small business concern'' as one that ''(1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the SBA. Section 121.201 of the SBA regulations defines a small telecommunications entity in SIC code 4813 (Telephone Companies Except Radio Telephone) as any entity with 1,500 or fewer employees at the holding company level. In the *Further Notice of Proposed Rulemaking (Further Notice)* released July 18, 1997, the Commission considered regulatory flexibility issues relating to the selection of a mechanism to determine the forward-looking economic costs of non-rural LECs for providing supported services, but certified that there was no significant economic impact on a substantial number of small entities. The Commission found that non-rural LECs do not meet the criteria established by the SBA to be designated as a ''small business concern.'' Non-rural LECs are not small business concerns pursuant to the SBA guidelines because they are generally large corporations, affiliates of such corporations, or dominate in their field of operation. No comments were filed in response to the certification.

79. We therefore certify, pursuant to section 605(b) of the RFA, that this Report and Order will not have a significant economic impact on a substantial number of small entities. The Office of Public Affairs, Reference Operations Division, will send a copy of this Certification, along with this Report and Order, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 USC 801(a)(1)(A), and to the Chief Counsel for Advocacy of the Small Business Administration, 5 USC 605(b). A copy of this final certification will also be published in the **Federal Register**.

B. Ordering Clauses

80. Accordingly, it is ordered, pursuant to sections 1, 4(i) and (j), and 254 of the Communications Act as amended, 47 USC 151, 154(i), 154(j), and 254, that the Fifth Report & Order in CC Docket Nos. 96–45 and 97–160, FCC 98–279, is adopted, effective 30 days after publication of a summary in the **Federal Register**.

81. It is further ordered that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Report and Order, including the Final Regulatory Flexibility Certifications, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 36

Reporting and recordkeeping requirements and Telephone.

47 CFR Part 54

Universal service.

47 CFR Part 69

Communications common carriers.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–30687 Filed 11–17–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[I.D. 110498A]

Fraser River Sockeye and Pink Salmon Fisheries; Inseason Orders

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

ACTION: Inseason orders.

SUMMARY: NMFS publishes the Fraser River salmon inseason orders regulating fisheries in U.S. waters. The orders were issued by the Fraser River Panel (Panel) of the Pacific Salmon Commission (Commission) and subsequently approved and issued by NMFS during the 1998 sockeye and pink salmon fisheries within the Fraser River Panel Area (U.S.). These orders established fishing times, areas, and types of gear for U.S. treaty Indian and all-citizen fisheries during the period the Commission exercised jurisdiction over these fisheries. Due to the frequency with which inseason orders are issued, publication of individual orders is impracticable. The 1998 orders are therefore being published in this document to avoid fragmentation.

DATES: Each of the following inseason orders was effective when issued and upon announcement on telephone hotline numbers as specified at 50 CFR 300.97(b)(1) (See **SUPPLEMENTARY INFORMATION**).

ADDRESSES: Comments may be mailed to William Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE., BIN C15700-Bldg. 1, Seattle, WA 98115-0070.

FOR FURTHER INFORMATION CONTACT: William L. Robinson, 206-526-6140.

SUPPLEMENTARY INFORMATION: The Treaty between the Government of the United States of America and the Government of Canada Concerning Pacific Salmon was signed at Ottawa on January 28, 1985, and subsequently was given effect in the United States by the Pacific Salmon Treaty Act (Act) at 16 U.S.C. 3631–3644.

Under authority of the Act, Federal regulations at 50 CFR part 300, subpart F, provide a framework for implementation of certain regulations of the Commission and inseason orders of the Commission's Panel for sockeye and pink salmon fisheries in the Fraser River Panel Area (U.S.). Each year these regulations apply to fisheries for sockeye and pink salmon in the Fraser River Panel Area (U.S.) during the period when the Commission exercises jurisdiction over these fisheries.

Under past agreements, the regulations close the Fraser River Panel Area (U.S.) to sockeye and pink salmon fishing unless opened by Panel regulations or by NMFS' inseason orders that give effect to Panel orders. The Commission's agreement for 1998 Fraser fisheries provided for set open and closed periods for U.S. Fraser fisheries and the Panel restricted these open periods as required to meet agreed to conservation and allocation objectives. During the fishing season, NMFS may issue orders that establish fishing times and areas consistent with the annual Commission regime and inseason orders of the Panel. Such orders must be consistent with domestic legal obligations. The Regional Administrator, Northwest Region, NMFS, issues the inseason orders. Official notice of these inseason actions of NMFS is provided by two telephone hotline numbers described at 50 CFR 300.97(b)(1). Inseason orders must be published in the **Federal Register** as soon as practicable after they are issued. Due to the frequency with which inseason orders are issued, publication of individual orders is impractical. The 1998 orders are, therefore, being published in this document to avoid fragmentation.

The initial Commission regulations for U.S. Fraser fisheries were as follows:

1. U.S. gill net and purse seine fisheries in Areas 6, 7, and 7A will be open Monday through Friday of each week during the period July 27 through August 21, and will remain closed at all other times during the Panel control period.

2. U.S. reef net fishery in Areas 7 and 7A will be open Saturdays and Sundays, July 25 through August 23, and will remain closed at all other times during the Panel control period.

3. The treaty Indian fishery in Areas 4B, 5, and 6C will be open noon Sundays through noon Fridays, July 26 through August 21, and will remain closed at all other times during the Panel control period.

The above regulations were modified by the following inseason orders which were adopted by the Panel and issued for U.S. fisheries by NMFS during the 1998 fishing season. The times listed are local times, and the areas designated are Puget Sound Management and Catch Reporting Areas as defined in the Washington State Administrative Code at Chapter 220–22.

Order No. 1998–1: Issued 3:00 p.m., July 24, 1998.

Treaty Indian Fishery

Areas 4B, 5 and 6C: Open for drift gillnets from 12:00 noon, July 26 to 12:00 noon, July 31.

All-citizen Fishery

Areas 7, 7A: During the period from 12:01 a.m., July 25 through 11:59 p.m., July 26, the reef net fishery will be open only from 5:00 a.m. to 9:00 p.m. on July 25 and from 5:00 a.m. to 9:00 p.m. on July 26.

Order No. 1998–2: Issued 5:00 p.m., July 24, 1998.

Treaty Indian Fishery

Areas 6, 7, and 7A: Net fishing closed from 12:01 a.m., July 27 to 4:00 a.m., July 28. Open from 4:00 a.m. July 28 to 7:00 a.m., July 29. Closed from 7:00 a.m., July 29 to 11:59 p.m., July 31.

All-citizen Fishery

Area 6: Closed to net fishing from 12:01 a.m., July 27 to 11:59 p.m., July 31.

Area 7 and 7A drift gillnet fishery: Closed from 12:01 a.m., July 27 to 7:10 a.m., July 29. Open from 7:10 a.m. to 11:59 p.m., July 29. Closed from 12:01 a.m., July 30, to 11:59 p.m., July 31.

Area 7 and 7A purse seine fishery: Closed from 12:01 a.m., July 27 to 5:00 a.m., July 30. Open from 5:00 a.m. to 9:00 p.m., July 30. Closed from 9:00 p.m., July 30 to 11:59 p.m., July 31.

Order No. 1998–3: Issued 5:00 p.m., Friday, July 31, 1998.

Treaty Indian Fishery

Areas 4B, 5, and 6C: Open for drift gillnets from 12:00 noon, August 2 to 12:00 noon, August 7.

Areas 6, 7, and 7A: Open to net fishing from 12:01 a.m., August 3 to 5:00 a.m., August 6. Closed from 5:00 a.m., August 6 to 11:59 p.m., August 7.

All-citizen Fishery

Area 6: Closed to net fishing from 12:01 a.m., August 3 to 11:59 p.m., August 7.

Areas 7 and 7A: During the period from 12:01 a.m., August 1 to 11:59 p.m., August 2, the reef net fishery will only be open from 5:00 a.m. to 9:00 p.m. on August 1 and from 5:00 a.m. to 9:00 p.m. on August 2.

Drift gillnet fishery: Closed from 12:01 a.m., August 3 to 7:20 a.m., August 6. Open from 7:20 a.m. to 11:59 p.m., August 6. Closed from 12:01 a.m. to 7:20 a.m., August 7. Open from 7:20 a.m. to 11:59 p.m., August 7.

Purse seine fishery: Closed from 12:01 a.m., August 3 to 5:00 a.m., August 6. Open from 5:00 a.m. to 9:00 p.m., August 6. Closed from 9:00 p.m., August 6 to 5:00 a.m., August 7. Open from 5:00 a.m. to 9:00 p.m., August 7. Closed from 9:00 p.m. to 11:59 p.m., August 7.

Order No. 1998–4: Issued 5:00 p.m., August 7, 1998.

Treaty Indian Fishery

Areas 4B, 5, and 6C: Open for drift gillnets from 12:00 noon, August 9 to 12:00 noon, August 14.

Areas 6, 7, and 7A: Closed to net fishing from 12:01 a.m., to 11:59 p.m., August 10.

All-Citizen Fishery

Area 6: Closed to net fishing from 12:01 a.m., August 10 to 11:59 p.m., August 14.

Area 7 and 7A: During the period from 12:01 a.m., August 8 to 11:59 p.m., August 9, the reef net fishery will be open from 5:00 a.m. to 9:00 p.m. on August 8 and from 5:00 a.m. to 9:00 p.m. on August 9.

Drift gillnet and purse seine fishing: Closed from 12:01 a.m. to 11:59 p.m., August 10.

Order No. 1998–5: Issued 5:00 p.m., August 10, 1998

Treaty Indian Fishery

Areas 6, 7, and 7A: Net fishing open 12:01 a.m., August 11 to 5:00 a.m., August 12. Closed from 5:00 a.m., August 12 to 11:59 p.m., August 13.

All-citizen Fishery

Areas 7, 7A: Gillnets closed from 12:01 a.m., August 11 to 7:30 a.m., August 12. Open from 7:30 a.m. to 11:59 p.m., August 12. Closed from 12:01 a.m. to 7:30 a.m., August 13. Open from 7:30 a.m. to 11:59 p.m., August 13.

Purse seines: Closed from 12:01 a.m., August 11 to 5:00 a.m., August 12. Open from 5:00 a.m. to 9:00 p.m., August 12. Closed from 9:00 p.m., August 12 to 5:00 a.m., August 13. Open from 5:00 a.m. to 9:00 p.m., August 13. Closed from 9:00 p.m., August 13 to 11:59 p.m., August 13.

Order No. 1998–6: Issued at 5:00 p.m., August 13, 1998.

Treaty Indian Fishery

Areas 6, 7, and 7A: Closed to net fishing from 12:01 a.m., August 14 to 11:59 p.m., August 14.

All-citizen Fishery

Areas 7 and 7A: Drift gillnets closed from 12:01 a.m., August 14 to 7:30 a.m., August 14. Open from 7:30 a.m. to 11:59 p.m., August 14.

Purse seines: Closed from 12:01 a.m., August 14 to 5:00 a.m., August 14. Open from 5:00 a.m. to 9:00 p.m., August 14. Closed from 9:00 p.m. to 11:59 p.m., August 14.

Order No. 1998–7: Issued 5:00 p.m., August 14, 1998.

Treaty Indian Fishery

Areas 4B, 5, and 6C: Open for drift gillnets from 12:00 noon, August 16 to 12:00 noon, August 21.

Areas 6, 7, and 7A: Closed to net fishing from 12:01 a.m., to 11:59 p.m., August 17. Open from 12:01 a.m., August 18 to 11:59 p.m., August 21.

All-citizen Fishery

Area 6: Closed to net fishing from 12:01 a.m., August 17 to 11:59 p.m., August 21.

Areas 7 and 7A: During the period from 12:01 a.m., August 15 to 11:59 p.m., August 16, the reefnet fishery will be open only from 5:00 a.m. to 9:00 p.m., on August 15 and from 5:00 a.m. to 9:00 p.m., on August 16.

Drift gillnets: Closed from 12:01 a.m. to 7:35 a.m., August 17. Open from 7:35 a.m. to 11:59 p.m., August 17. Closed from 12:01 a.m., August 18 to 5:00 a.m., August 20.

Purse seines: Closed from 12:01 a.m. to 5:00 a.m., August 17. Open from 5:00 a.m. to 9:00 p.m., August 17. Closed from 9:00 p.m., August 17 to 5:00 a.m., August 20.

Order No. 1998–8: Issued 5:00 p.m., August 19, 1998.

Treaty Indian Fishery

Areas 6, 7, and 7A: Closed to net fishing from 5:00 a.m. to 11:59 p.m., August 21.

All-citizen Fishery:

Areas 7 and 7A: Drift gillnets closed from 5:00 a.m., August 20 to 7:35 a.m., August 21. Open from 7:35 a.m. to 11:59 p.m., August 21.

Purse seines: Closed from 5:00 a.m., August 20 to 5:00 a.m., August 21. Open from 5:00 a.m. to 9:00 p.m., August 21. Closed from 9:00 p.m. to 11:59 p.m., August 21.

Order No. 1998–9: Issued 5:00 p.m., August 21, 1998.

All-citizen Fishery

Areas 7 and 7A: Closed to reef net fishing from 12:01 a.m., August 22 to 11:59 p.m., August 23.

Classification

This action is authorized by 50 CFR 300.97, and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 3636(b).

Dated: November 12, 1998.

Gary C. Matlock,

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

[FR Doc. 98–30834 Filed 11–17–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 971015246–7293–02; I.D. 110998G]

Fisheries of the Northeastern United States; Summer Flounder Fishery; Commercial Quota Harvested for Maryland

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

ACTION: Commercial quota harvest.

SUMMARY: NMFS announces that the summer flounder commercial quota available to the State of Maryland has been harvested. Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may not land summer flounder in Maryland for the remainder of calendar year 1998, unless additional quota becomes available through a transfer. Regulations governing the summer flounder fishery require publication of this notification

to advise the State of Maryland that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no commercial quota is available for landing summer flounder in Maryland.

DATES: Effective 0001 hours November 13, 1998, through December 31, 1998.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, (978) 281–9273.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.100.

The initial total commercial quota for summer flounder for the 1998 calendar year was set equal to 11,105,636 lb (5,037,432 kg) (62 FR 66304, December 18, 1997). The percent allocated to vessels landing summer flounder in Maryland is 2.03910 percent, or 226,570 lb (102,770 kg).

Section 648.100(e)(4) stipulates that any overages of commercial quota landed in any state be deducted from that state's annual quota for the following year. In the calendar year 1997, a total of 214,948 lb (97,499 kg) were landed in Maryland, creating a 26,694 lb (12,108 kg) overage that was deducted from the amount allocated for landings in the state during 1998 (63 FR 23227, April 28, 1998). The resulting quota for Maryland was 199,876 lb (90,662 kg).

Section 648.101(b) requires the Administrator, Northeast Region, NMFS (Regional Administrator), to monitor state commercial quotas and to determine when a state's commercial quota is harvested. The Regional Administrator is further required to publish a notice in the **Federal Register** advising a state and notifying Federal vessel and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing summer flounder in that state. The Regional Administrator has determined, based upon dealer reports and other available information, that the State of Maryland has attained its quota for 1998.

The regulations at § 648.4(b) provide that Federal permit holders agree as a condition of the permit not to land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 0001 hours November 13, 1998, further landings of summer flounder in Maryland by vessels holding commercial Federal fisheries permits are prohibited for the remainder of the 1998 calendar year, unless additional quota becomes available through a transfer and is announced in the **Federal Register**. Effective November 13, 1998, federally permitted dealers are also advised that they may not purchase summer flounder from federally permitted vessels that land in Maryland for the remainder of the calendar year, or until additional quota becomes available through a transfer.

Classification

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12866.

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

Dated: November 12, 1998.

Gary C. Matlock,

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

[FR Doc. 98–30794 Filed 11–13–98; 11:42 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 63, No. 222
Wednesday, November 18, 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 PERSONNEL MANAGEMENT

5 CFR Part 316

RIN 3206 AI45

Temporary and Term Employment

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) proposes to revise its regulations to provide the possibility for promotion of employees appointed as worker-trainees under TAPER appointments through grade GS–4, WG–5, or equivalent grades in the Federal Wage System.

DATES: Written comments will be considered if received on or before December 18, 1998.

ADDRESSES: Send or deliver written comments to Mary Lou Lindholm, Associate Director for Employment, U.S. Office of Personnel Management, 1900 E Street, NW., Room 6500, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Diane Tyrrell, 202–606–0830, FAX 202–606–0390, or TDD 202–606–0023.

SUPPLEMENTARY INFORMATION: In striving to meet the goals under the President's welfare to work initiative, Federal agencies have used the TAPER (temporary appointment pending the establishment of a register) authority as their primary appointing authority to appoint employees into the worker trainee program. Using this authority, the current regulations do not allow for promotion beyond the GS–3, WG–4 and equivalent level. Based on the success to date with the use of this authority, agencies would like more flexibility to be able to advance employees beyond the current limits. Currently, these employees must compete for other opportunities or remain at this grade level until completion of the three year period under the program. Agencies have voiced concern regarding the undue restriction of this grade level limitation.

Program Background

The worker-trainee program was initiated in 1968 and was developed and used, at that time, extensively as a vehicle to competitively hire unskilled, disadvantaged workers. By 1979, activity under this program became very limited and as a result too costly for the Office of Personnel Management (OPM) to maintain registers. Rather than completely eliminate the program, OPM retained the worker trainee as an option under the TAPER authority. Today, it is once again being used widely in connection with the welfare to work program.

Incentive For Change

Agencies have had positive experiences in the recruitment of individuals from the welfare rolls. Currently, employees who are eager and show an ability to excel beyond the current grade level limits of GS–3, WG–4 and equivalent, are forced to remain at this level. In an effort to provide maximum opportunity to those hired into the worker-trainee program, while remaining consistent with the intent of the program, agencies have expressed interest in providing promotion opportunity beyond the current program limits. This enhancement would allow promotion beyond the GS–3, WG–4 levels when appropriate, and would further the overall goals of the welfare to work program.

Justification for New Limit

While there is a need to recognize employee performance and provide advancement opportunity, OPM must balance this with the original intent of the program to provide opportunity for ''trainees'' to acquire or improve basic skills. This program was designed and continues to function as a ''trainee'' program for those individuals who are newly hired into government service. Based on classification standards, the highest grade level to which employees would be expected to advance under this program would be to the GS–4, WG–5 or equivalent. We therefore find this to be an appropriate level at which to limit advancement in the worker-trainee program.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only certain Federal employees.

List of Subjects in 5 CFR Part 316

Government employees.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is proposing to amend part 316 of title 5, Code of Federal Regulations, as follows:

PART 316—TEMPORARY AND TERM EMPLOYMENT

1. The authority citation for part 316 continues to read as follows:

Authority: 5 U.S.C. 3301, 3302: E.O. 10577, 3 CFR 1954–1958 Comp., p. 218.

Subpart B—TAPER Employment

2. Section § 316.201 paragraph (b) is revised to read as follows:

§ 316.201 Purpose and duration.

* * * * *

(b) *Specific authority for Worker-Trainee positions.* Agencies may make TAPER appointments to positions at GS–1, WG–1 and WG–2 and may reassign or promote the appointees to other positions through grade GS–4, WG–5, or equivalent grades in the Federal Wage System consistent with § 330.501 of this chapter. Agencies are authorized to reassign or promote Worker-Trainees under this authority.

[FR Doc. 98–30842 Filed 11–17–98; 8:45 am]
BILLING CODE 6325–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. FV98–930–1 PR]

Tart Cherries Grown in the States of Michigan, et al.; Final Free and Restricted Percentages for the 1998–99 Crop Year for Tart Cherries

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal invites comments on the establishment of final free and restricted percentages for the 1998–99 crop year. The percentages are 60 percent free and 40 percent restricted. The percentages would establish the proportion of cherries from the 1998 crop which may be handled in normal commercial outlets and are intended to stabilize supplies and prices, and strengthen market conditions. The percentages were recommended by the Cherry Industry Administrative Board (Board), the body which locally administers the marketing order. The marketing order regulates the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin.

DATES: Comments must be received by December 3, 1998.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698 or E-mail: moabdocket__clerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491. Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491; Fax: (202) 205–6632, or E-mail: Jay__N__Guerber@usda.gov. You may also view the marketing agreements and orders small business compliance guide at the following website:

http://www.ams.usda.gov/fv/moab.html.

SUPPLEMENTARY INFORMATION: This proposal is issued under marketing agreement and Order No. 930 (7 CFR part 930), regulating the handling of tart cherries produced in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order provisions now in effect, final free and restricted percentages may be established for tart cherries handled by handlers during the crop year. This rule would establish final free and restricted percentages for tart cherries for the 1998–99 crop year, beginning July 1, 1998, through June 30, 1999. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempt therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The order prescribes procedures for computing an optimum supply and preliminary and final percentages that establish the amount of tart cherries that can be marketed throughout the season. The regulations apply to all handlers of tart cherries that are in the regulated districts. Tart cherries in the free percentage category may be shipped immediately to any market, while restricted percentage tart cherries must be held by handlers in a primary or secondary reserve, or be diverted in accordance with § 930.59 of the order and § 930.159 of the regulations, or used for exempt purposes (and obtaining diversion credit) under § 930.62 of the order and § 930.162 of the regulations. The regulated Districts for this season are: District one—Northern Michigan; District two—Central Michigan; District three—Southwest Michigan; District four—New York; and District seven—Utah. Districts five, six, eight and nine (Oregon, Pennsylvania, Washington, and Wisconsin, respectively) would not be regulated for the 1998–99 season.

The order prescribes under § 930.52 that upon adoption of the order, those districts to be regulated shall be those districts in which the average annual production of cherries over the prior three years has exceeded 15 million pounds. A district not meeting the 15 million pound requirement shall not be regulated in such crop year. Therefore, for this season, handlers in the districts of Oregon, Pennsylvania, Washington, and Wisconsin would not be subject to volume regulation. They were also not subject to volume regulation during the last season.

Section 930.50(a) of the order describes procedures for computing an optimum supply for each crop year. The Board must meet on or about July 1 of each crop year, to review sales data, inventory data, current crop forecasts and market conditions. The optimum supply volume shall be calculated as 100 percent of the average sales of the prior three years to which is added a desirable carryout inventory not to exceed 20 million pounds or such other amount as may be established with the approval of the Secretary. The optimum supply represents the desirable volume of tart cherries that should be available for sale in the coming crop year.

The order also provides that on or about July 1 of each crop year, the Board is required to establish preliminary free and restricted percentages. These percentages are computed by deducting the carryin inventory from the optimum supply figure (adjusted to raw product equivalent—the actual weight of cherries handled to process into cherry products) and dividing that figure by the current year's USDA crop forecast. The carryin inventory figure reflects the amount of cherries that handlers actually have in inventory. If the resulting quotient is 100 percent or more, the Board should establish a preliminary free market tonnage percentage of 100 percent. If the quotient is less than 100 percent, the Board should establish a preliminary free market tonnage percentage equivalent to the quotient, rounded to the nearest whole percent, with the complement being the preliminary restricted percentage.

The Board met on June 18–19, 1998, and computed, for the 1998–99 crop year, an optimum supply of 287.4 million pounds. The Board recommended that the carryout figure be zero pounds. Carryout is the amount

of fruit required to be carried into the succeeding crop year and is set by the Board after considering market circumstances and needs. This figure can range from zero to a maximum of 20 million pounds. The Board calculated preliminary free and restricted percentages as follows: The USDA estimate of the crop was 292.5 million pounds; a 46 million pound carryin added to that equaled a total available supply of 338.5 million pounds. The carryin figure reflects the amount of cherries that handlers actually have in inventory. The optimum supply was subtracted from the total estimated available supply resulting in a surplus of 51.1 million pounds of tart cherries. An adjustment for changed economic conditions of 37.0 million pounds was added to the surplus, pursuant to section 930.50 of the order. This adjustment is discussed later in this document. After the adjustment, the resulting total surplus is 125.1 million pounds of tart cherries. The surplus was divided by the production in the regulated districts (258 million pounds) and resulted in 66 percent free and 34 percent restricted for the 1998–99 crop year. The Board recommended these percentages by a 15 to 2 vote, with one abstention. Those Board members voting against the recommendation disagreed with the computation of the carryin figure because they thought that the figure should also include the amount in the inventory reserve. Record evidence received during the promulgation of the order indicated that the carryin figure reflects the amount of cherries that handlers actually have in inventory (not in the primary or secondary reserve). The Board recommended the percentages and announced them to the industry as required by the order.

The preliminary percentages were based on the USDA production estimate and the following supply and demand information for the 1998–99 crop year:

	In millions of pounds
Optimum Supply Formula:	
(1) Average sales of the prior three years	287.4
(2) Less carryout	0
(3) Optimum Supply calculated by the Board at the June meeting	287.4
Preliminary Percentages:	
(4) Less carryin as of July 1, 1998	46.0
(5) Tonnage requirement for current crop year	241.4
(6) USDA crop estimate	292.5
(7) Surplus (item 6 minus item 5)	51.1
(8) Economic adjustment to surplus	37.0
(9) Adjusted surplus (item 7 plus item 8)	88.1
(10) USDA crop estimate for regulated districts	258.0

Percentages	Free	Restricted
(11) Preliminary percentages (item 9 divided by item 10) x 100	66	34

Between July 1 and September 15 of each crop year, the Board may modify the preliminary free and restricted percentages by announcing interim free and restricted percentages to adjust to the actual pack occurring in the industry.

Section 930.50(d) of the order requires the Board to meet no later than September 15 to recommend final free and restricted percentages to the Secretary for approval. The Board met on September 10–11, 1998, and recommended final free and restricted percentages of 60 and 40, respectively. The Board recommended that the interim percentages and final percentages be the same percentages. At that time, the Board had available actual production amounts to review and made the necessary adjustments to the percentages.

The Secretary establishes final free and restricted percentages through an informal rulemaking process. These percentages would make available the tart cherries necessary to achieve the optimum supply figure calculated earlier by the industry. The difference between any final free market tonnage percentage designated by the Secretary and 100 percent is the final restricted percentage.

The Board used a revised optimum supply figure for its final free and restricted percentage calculations. The figure is 288.6 million pounds instead of the 287.4 million pound figure used in June. This is because the 3-year average sales figure used at the June meeting by necessity required an estimate of June 1998 sales. The 3-year average sales figure used in the final calculations reflects actual sales through the 1997–98 crop year.

The optimum supply, therefore is 288.6 million pounds. The actual production recorded by the Board was 339.9 million pounds, which is a 47.4 million pound increase from the USDA crop estimate of 292.5 million pounds. The increase in the crop is due to very favorable growing conditions in portions of the State of Michigan this season. For the current crop year, 305.3 million pounds of tart cherries were produced in the regulated districts.

A 38.8 million pound carryin (actual carryin as opposed to the 46 million pounds originally estimated) was subtracted from the optimum supply of 288.6 million pounds, which yields a tonnage requirement for the current crop year of 249.8 million pounds. Subtracted from the actual production in all districts of 339.9 million pounds reported by the Board is the tonnage required for the current crop year (249.8 million pounds) which results in a 90.1 million pound surplus. An adjustment for changed economic conditions of 31.4 million pounds was added to the surplus, pursuant to section 930.50 of the order. This adjustment is discussed later in this document. After the adjustment, the resulting total surplus is 121.5 million pounds of tart cherries. The total surplus of 121.5 million pounds is divided by the 305.3 million pound volume of tart cherries produced in the regulated districts. This results in a 40 percent restricted percentage and a corresponding 60 percent free percentage for the regulated districts.

The final percentages are based on the Board's reported production figures and the following supply and demand information for the 1998–99 crop year:

	In millions of pounds
Optimum Supply Formula:	
(1) Average sales of the prior three years	288.6
(2) Less carryout	0
(3) Optimum Supply calculated by the Board at the September meeting	288.6
Final Percentages:	
(4) Less carryin as of July 1, 1998	38.8
(5) Tonnage required current crop year	249.8
(6) Board reported production	339.9
(7) Surplus (item 6 minus item 5)	90.1
(8) Economic adjustment to surplus	31.4
(9) Adjusted surplus (item 7 plus item 8)	121.5
(10) Production in regulated districts	305.3

Percentages	Free	Restricted
(11) Final Percentages (item 9 divided by item 10) x 100	60	40

As previously mentioned, the Board recommended an economic adjustment be made in computing both the

preliminary and final percentages for the 1998–99 crop year. This is authorized under § 930.50. These subsections provide that in its deliberations of volume regulation recommendations, the Board consider, among other things, the expected demand conditions for cherries in different market segments and an analysis of economic factors having bearing on the marketing cherries. Based on these considerations, the Board may modify its marketing policy calculations to reflect changes in economic conditions.

The order provides that the 3-year average of all sales be used in determining the optimum supply of cherries. In recent seasons, however, sales to export markets have risen dramatically. In 1997, export sales of 61.1 million pounds were 379 percent of 1994 sales (16.1 million pounds). The increase in export sales to those destinations exempt from volume regulation (countries other than Canada, Japan, and Mexico) was even greater, rising from 12.2 million pounds to 48.7 million pounds. Export sales to countries other than Canada, Japan and Mexico were exempt from volume regulations as a way for the tart cherry industry to find and expand new markets for their products. Including this volume of sales in the optimum supply formula, however, results in an overestimate of the volume of tart cherries that can be profitably marketed in unrestricted markets. Thus, the Board recommended adjusting its estimate of surplus cherries by adding exempt export sales.

By recommending this marketing policy modification, the Board believes that it will provide stability to the marketplace and the industry will be in a better situation for future years since new markets will have been developed. Board members were of the opinion that, if this adjustment is not made, growers could be paid less than their production costs, because handlers would suffer financial losses that would probably be passed on. Handlers would have to meet their reserve obligations by other means. In addition, the value of cherries already in inventory could be depressed due to the overabundant supply of available cherries, a result inconsistent with the intent of the order and the Act.

The Department's ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' specify that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. This goal would be met by the establishment of a preliminary percentage which releases 100 percent of the optimum supply and the additional release of tart cherries provided under § 930.50(g). This release of tonnage, equal to 10 percent of the average sales of the prior three years sales, is made available to handlers each season. The Board recommended that such release shall be made available to handlers the first week of December and the first week of May. Handlers can decide how much of the 10 percent release they would like to receive during the December and May release dates. Once released, such cherries are released for free use by such handler. Approximately 29 million pounds would be made available to handlers this season in accordance with Department Guidelines. This release would be made available to every handler and released to such handler in proportion to its percentage of the total regulated crop handled. If such handler does not take such handler's proportionate amount, such amount shall remain in the inventory reserve.

The Regulatory Flexibility Act and Effects on Small Businesses

The Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities and has prepared this initial regulatory flexibility analysis. The Regulatory Flexibility Act (RFA) would allow AMS to certify that regulations do not have a significant economic impact on a substantial number of small entities. However, as a matter of general policy, AMS' Fruit and Vegetable Programs (Programs) no longer opt for such certification, but rather perform regulatory flexibility analyses for any rulemaking that would generate the interest of a significant number of small entities. Performing such analyses shifts the Programs' efforts from determining whether regulatory flexibility analyses are required to the consideration of regulatory options and economic or regulatory impacts.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 40 handlers of tart cherries who are subject to regulation under the tart cherry marketing order and approximately 1,400 producers of tart cherries in the regulated area. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000.

Board and subcommittee meetings are widely publicized in advance and are held in a location central to the production area. The meetings are open to all industry members (including small business entities) and other interested persons—who are encouraged to participate in the deliberations and voice their opinions on topics under discussion. Thus, Board recommendations can be considered to represent the interests of small business entities in the industry.

The principal demand for tart cherries is in the form of processed products. Tart cherries are dried, frozen, canned, juiced and pureed. During the period 1993/94 through 1997/98, approximately 89 percent of the U.S. tart cherry crop, or 281.1 million pounds, was processed annually. Of the 281.1 million pounds of tart cherries processed, 63 percent was frozen, 25 percent canned and 4 percent utilized for juice. The remaining 8 percent was dried or assembled into juice packs.

Based on National Agricultural Statistics Service data, acreage in the United States devoted to tart cherry production has been trending downward. In the ten-year period, 1987/88 through 1997/98, tart cherry area decreased from 50,050 acres, to less than 40,000 acres. In 1997/98, approximately 88 percent of domestic tart cherry acreage is located in four States: Michigan, New York, Utah and Wisconsin. Michigan leads the nation in tart cherry acreage with 67 percent of the total. Michigan produces about 78 percent of the U.S. tart cherry crop each year. In 1997/98, tart cherry acreage in Michigan decreased to 26,800 from 27,300 in the previous year.

In crop years 1987/88 through 1997/98, tart cherry production ranged from a high of 359 million pounds in 1987/88 to a low of 189.9 million pounds in 1991/92. The price per pound to tart cherry growers ranged from a low of 7.3 cents in 1987 to a high of 46.4 cents in 1991. These problems of wide supply and price fluctuation in the tart cherry industry are national in scope and impact. Growers testified during the order promulgation process that the prices which they received often did not come close to covering the costs of production. They also testified that production costs for most growers range

between 20 and 22 cents per pound, which is well above average prices received during 1993–1995.

The industry has demonstrated a need for an order during the promulgation process of the marketing order because large variations in annual tart cherry supplies tend to lead to fluctuations in prices and disorderly marketing. As a result of these fluctuations in supply and price, growers realize less income. The industry chose a volume control marketing order to even out these wide variations in supply and improve returns to growers. During the promulgation process, proponents testified that small growers and processors would have the most to gain from implementation of a marketing order because many such growers and handlers had been going out of business due to low tart cherry prices. They also testified that, since an order would help increase grower returns, this should increase the buffer between business success and failure because small growers and handlers tend to be less capitalized than larger growers and handlers.

In discussing the possibility of marketing percentages for the 1998–99 crop year, the Board considered the following factors contained in the marketing policy: (1) The estimated total production of tart cherries; (2) the estimated size of the crop to be handled; (3) the expected general quality of such cherry production; (4) the expected carryover as of July 1 of canned and frozen cherries and other cherry products; (5) the expected demand conditions for cherries in different market segments; (6) supplies of competing commodities; (7) an analysis of economic factors having a bearing on the marketing of cherries; (8) the estimated tonnage held by handlers in primary or secondary inventory reserves; and (9) any estimated release of primary or secondary inventory reserve cherries during the crop year.

The Board's review of the factors resulted in the computation and announcement in June 1998 of preliminary free and restricted percentages and in the final and free and restricted percentages proposed in this rule (60 percent free and 40 percent restricted).

The Board discussed the demand for tart cherries is inelastic at high and low levels of production. At the extremes, different factors become operational. The order's promulgation record stated that in very short crops there is limited but sufficient exclusive demand for cherries that can cause processor prices to double and grower prices to triple. In the event of large crops, there seems to be no price low enough to expand tart cherry sales in the marketplace sufficient to market the crops.

In considering alternatives, the Board discussed not having volume regulation this season. Board members stated that no volume regulation would be detrimental to the tart cherry industry. Returns to growers would not even cover their production costs for this season. Growers would continue to go out of business since many would not receive any money for their crop.

The Board discussed the fact that the general quality of the crop for this season is fair to good. Alternative products used by food processing and preparation establishments instead of cherries are apples and blueberries which can be substituted for cherries if cherries cannot be sold at consistent prices.

As mentioned earlier, the Department's ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' specify that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. The quantity available under this rule is 110 percent of the quantity shipped in the prior three years.

The free and restricted percentages proposed to be established by this rule release the optimum supply and apply uniformly to all regulated handlers in the industry, regardless of size. There are no known additional costs incurred by small handlers that are not incurred by large handlers. The stabilizing effects of the percentages impact all handlers positively by helping them maintain and expand markets, despite seasonal supply fluctuations. Likewise, price stability positively impacts all producers by allowing them to better anticipate the revenues their tart cherries will generate.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this regulation.

While the level of benefits of this rulemaking is difficult to quantify, the stabilizing effects of the volume regulations impact both small and large handlers positively by helping them maintain markets even though tart cherry supplies fluctuate widely from season to season.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the information collection and recordkeeping requirements have been previously approved by OMB and assigned OMB Number 0581–0177.

There are some reporting, recordkeeping and other compliance requirements under the marketing order. The reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. As with other, similar marketing order programs, reports and forms are periodically studied to reduce or eliminate duplicate information collection burdens by industry and public sector agencies. This rule does not change those requirements.

A 15-day comment period is provided to allow interested persons to respond to this proposal. Fifteen days is deemed appropriate because this rule needs to be in place as soon as possible to achieve its intended purpose of making the optimum supply quantity computed by the Board available to handlers marketing 1998–99 crop year cherries. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

For the reasons set forth in the preamble, 7 CFR part 930 is proposed to be amended as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Subpart—Supplementary Regulations is added, consisting of § 930.251, to read as follows:

Subpart—Supplementary Regulations

Note: This section will not appear in the annual Code of Federal Regulations.

§ 930.251 Final free and restricted percentages for the 1998–99 crop year.

The final percentages for tart cherries handled by handlers during the crop year beginning on July 1, 1998, which shall be free and restricted, respectively, are designated as follows: Free percentage, 60 percent and restricted percentage, 40 percent.

Dated: November 9, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–30672 Filed 11–17–98; 8:45 am]

BILLING CODE 3410–02–P

FARM CREDIT ADMINISTRATION

12 CFR Ch. VI

RIN 3052–AB85

Statement on Regulatory Burden

AGENCY: Farm Credit Administration.

ACTION: Notice of intent; comment period extension.

SUMMARY: The Farm Credit Administration (FCA) Board extends the comment period on the Regulatory Burden Notice for 60 more days so interested parties have additional time to identify those regulations and policies that impose unnecessary burdens on Farm Credit System (FCS) institutions.

DATES: Please send your comments to us on or before January 19, 1999.

ADDRESSES: You may mail or deliver comments to Patricia W. DiMuzio, Director, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090 or send them by facsimile transmission to (703) 734–5784. You may also submit comments via electronic mail to ''reg-comm@fca.gov'' or through the Pending Regulations section of the FCA's interactive website at ''www.fca.gov.'' Copies of all communications received will be available for review by interested parties in the Office of Policy and Analysis, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

S. Robert Coleman, Senior Policy Analyst, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498,

or

Richard A. Katz, Senior Attorney, Regulatory Enforcement Division, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: On August 18, 1998, we published a notice in the **Federal Register** seeking information and guidance about how to reduce regulatory burdens on FCS institutions. The comment period will expire on November 20, 1998. *See* 63 FR 44176, August 18, 1998. In response to a request, we now extend the comment period until January 19, 1999, so you will have more time to respond.

Dated: November 12, 1998.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 98–30810 Filed 11–17–98; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–251–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –300, –400, and –500 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 all Boeing Model 737–100, –200, –300, –400, and –500 series airplanes. This proposal would require a one-time inspection of the main landing gear (MLG) wheel assemblies to determine whether certain parts are installed, and follow-on corrective actions, if necessary. For certain airplanes, this proposal also would require eventual modification of MLG wheel assemblies, which would terminate the requirements of this AD. This proposal is prompted by incidents of multiple tie bolt failures on certain BFGoodrich wheel assemblies. The actions specified by the proposed AD are intended to prevent failure of multiple tie bolts of MLG wheel assemblies, which could result in failure of the wheel rim, rapid release of tire pressure, and possible consequent damage to the airplane and injury to passengers and flightcrew.

DATES: Comments must be received by January 4, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–251–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 BFGoodrich Aerospace, Aircraft Wheels and Brakes, P.O. Box 340, Troy, Ohio 45373. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Don Kurle, Senior Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2798; fax (425) 227–1181.

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–251–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–251–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that tie bolts have failed on certain BFGoodrich wheel assemblies that are installed on the main landing gear (MLG) of Boeing Model 737–100, –200, –300, –400, and –500 series airplanes. Most of the incidents of

failure of multiple tie bolts (that is, failure of more than one bolt on a single wheel) resulted only in flat tires. However, since 1989, there have been several incidents that resulted in high-energy release of the wheel rim and consequent damage to the airplane. In one incident, failure of both tires on the left MLG resulted in a rejected takeoff (RTO). Failure of the wheel tie bolts has been attributed to fatigue, which may be caused by improper torquing of the tie bolts. Although the specific cause of failure has not been identified on a few wheel tie bolts, other causes of failure have been identified as improper maintenance, wear, corrosion, or a combination of several factors. Failure of multiple wheel tie bolts, if not corrected, could result in failure of the wheel rim, rapid release of tire pressure, and possible consequent damage to the airplane and injury to passengers and flightcrew.

Explanation of Relevant Service Information

The FAA has reviewed and approved BFGoodrich Aerospace Service Bulletins 3–1439–32–13 and 3–1398–32–16, both dated August 20, 1993. The service bulletins describe procedures for corrective actions if certain wheel assemblies are installed on the MLG. The corrective actions include modification of the wheel assembly by replacement of existing tie bolts, nuts, and washers with new, improved Inconel tie bolts and nuts, and new, thicker washers. The service bulletins also describe new torque values, procedures for inspecting the new tie bolts to ensure that they did not crack during torquing, and a procedure for stamping a new part number on the wheel assembly once it has been modified. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require a one-time visual inspection of the MLG wheel assemblies to determine whether certain part numbers are installed on the airplane, and follow-on corrective actions, if necessary.

If certain part numbers are installed, the proposed AD would require repetitive replacement of all tie bolts, nuts, and washers of the MLG wheel assembly with new parts; or repetitive visual inspections to detect fractures of the tie bolts of the MLG wheel assembly, and replacement of discrepant parts with new parts. Alternatively, the proposed AD would require revisions to the FAA-approved maintenance program to require one of those actions. If those certain part numbers are installed, the proposed AD also would require eventual accomplishment of corrective actions specified in the service bulletins described previously, except as discussed below. Accomplishment of these corrective actions would terminate the requirements of this AD.

Differences Between Proposed Rule and Service Bulletins

Operators should note that the service bulletins specify replacement of wheel tie bolts with new parts only when broken wheel tie bolts have been found. This proposed AD would require, at every fifth tire change, replacement of the existing wheel tie bolts, washers, and nuts with parts having the same part number, or repetitive visual inspections at intervals not to exceed 100 flight cycles; or alternatively, revisions to the FAA-approved maintenance program to require one of these actions.

The service bulletins also specify that existing parts can continue to be used if there are no discrepancies in those parts. This proposed AD would require eventual modification of affected wheel assemblies by replacement of existing wheel tie bolts, washers, and nuts with new, improved parts, which would constitute terminating action for the requirements of this AD. The FAA has determined that long-term continued operational safety would be better assured by design changes to remove the source of the problem, rather than by repetitive inspections. Long-term inspections may not provide 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 is in consonance with these conditions.

Explanation of the Applicability of the Rule

The FAA notes that its general policy is that, when an unsafe condition results from the installation of an appliance or other item that is installed in only one particular make and model of airplane, an AD is issued so that it is applicable to the airplane, rather than the item. The reason for this is simple: making the AD applicable to the airplane model on which the item is installed ensures that operators of those airplanes will be notified directly of the unsafe condition and the action required to correct it. While it is assumed that an operator will know the models of airplanes that it operates, there is a potential that the operator will not know or be aware of specific items that are installed on its airplanes. Therefore, calling out the airplane model as the subject of the AD prevents ''unknowing non-compliance'' on the part of the operator.

Cost Impact

There are approximately 460 airplanes of the affected design in the worldwide fleet. The FAA estimates that 118 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the proposed one-time inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the one-time inspection proposed by this AD on U.S. operators is estimated to be $7,080, 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.

Should an operator elect to accomplish the repetitive visual inspection, it 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 repetitive inspections, if accomplished, is estimated to be $60 per airplane, per inspection cycle.

Should an operator elect to accomplish the replacement, such replacement would require no additional work hours if accomplished during a regularly scheduled tire change. Required parts would cost $2,840 per airplane ($710 per wheel). Based on these figures, the cost impact of the replacement, if accomplished, is estimated to be $2,840 per airplane, per replacement cycle.

Should an operator elect to accomplish the revisions to the FAA-approved maintenance program, it 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 maintenance program revision, if accomplished, is estimated to be $60 per airplane.

Should an operator be required to accomplish the necessary modification of the wheel assembly, it would require no additional work hours per airplane,

if the modification is accomplished during a regularly scheduled tire change. Required parts would cost $4,848 per airplane ($1,212 per wheel). Based on these figures, the cost impact of any necessary modification is estimated to be $4,848 per airplane.

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:

Boeing: Docket 98–NM–251–AD.

Applicability: All Model 737–100, –200, –300, –400, and –500 series airplanes; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of multiple tie bolts of main landing gear (MLG) wheel assemblies, which could result in failure of the wheel rim, rapid release of tire pressure, and possible consequent damage to the airplane and injury to passengers and flightcrew, accomplish the following:

(a) Within 60 days after the effective date of this AD, perform a one-time visual inspection of the MLG wheel assemblies to determine the part number (P/N) of each assembly. If no wheel assembly manufactured by BFGoodrich Aerospace and having P/N 3–1398–1, 3–1439–2, or 3–1439–3 is installed on the airplane, no further action is required by this AD.

(b) Except as provided by paragraph (d) of this AD, if any MLG wheel assembly manufactured by BFGoodrich Aerospace and having P/N 3–1398–1, 3–1439–2, or 3–1439–3 is installed on the airplane, within 60 days after the effective date of this AD, accomplish the actions specified by paragraph (b)(1) or (b)(2) of this AD.

(1) Accomplish the actions specified by (b)(1)(i) or (b)(1)(ii) of this AD.

(i) Replace all tie bolts, nuts, and washers of the MLG wheel assembly with parts having the same P/N's, in accordance with the BFGoodrich component maintenance manual. Thereafter, repeat the replacement of tie bolts, nuts, and washers, at intervals not to exceed 5 tire changes, until the actions specified by paragraph (b)(2) or paragraph (c) of this AD have been accomplished. Or

(ii) Perform a visual inspection to detect fractures of any of the 16 tie bolts on each MLG wheel assembly, in accordance with the Boeing 737 airplane maintenance manual. Thereafter, repeat the inspection at intervals not to exceed 100 flight cycles until the actions specified by paragraph (b)(2) or paragraph (c) of this AD have been accomplished. If any fracture of any tie bolt is found during any inspection performed in accordance with this requirement, prior to further flight, replace the tie bolt, nut, and washer, in accordance with the BFGoodrich component maintenance manual, with new parts having the same P/N's.

(2) Revise the FAA-approved maintenance program as specified in paragraph (b)(2)(i) or (b)(2)(ii) of this AD.

(i) Revise the FAA-approved maintenance program to require replacement of all tie bolts, nuts, and washers of the MLG wheel assembly with parts having the same P/N's, in accordance with the BFGoodrich component maintenance manual, at intervals not to exceed 5 tire changes. Or

(ii) Revise the FAA-approved maintenance program to require a visual inspection to detect fractures of any of the 16 tie bolts on each MLG wheel assembly, in accordance with the Boeing 737 airplane maintenance manual, at intervals not to exceed 100 flight cycles. If any fracture of any tie bolt is found during any inspection performed in accordance with this requirement, prior to further flight, replace the tie bolt, nut, and washer, in accordance with the BFGoodrich component maintenance manual, with new parts having the same P/N's.

Note 2: After the maintenance program has been revised to include the procedures specified in paragraph (b)(2)(i) or (b)(2)(ii) of this AD, operators are not required to subsequently record AD compliance each time the replacement or inspection is performed.

(c) If any MLG wheel assembly manufactured by BFGoodrich Aerospace and having P/N 3–1398–1, 3–1439–2, or 3–1439–3 is installed on the airplane: Except as provided by paragraph (d) of this AD, within 2 years after the effective date of this AD, modify any BFGoodrich Aerospace wheel assembly, having P/N 3–1398–1, 3–1439–2, or 3–1439–3; by replacing all existing tie bolts, nuts, and washers, with new, improved parts; and by converting the P/N of the MLG wheel assembly to 3–1398–2 (for BFGoodrich wheel assemblies having the old P/N 3–1398–1), 3–1439–5 (for BFGoodrich wheel assemblies having the old P/N 3–1439–2), or 3–1439–6 (for BFGoodrich wheel assemblies having the old P/N 3–1439–3), as applicable; in accordance with BFGoodrich Aerospace Service Bulletin 3–1439–32–13, or BFGoodrich Aerospace Service Bulletin 3–1398–32–16, both dated August 20, 1993, as applicable. Such modification constitutes terminating action for the requirements of this AD, and the FAA-approved maintenance program procedures specified by paragraph (b)(2) of this AD may be removed following accomplishment of the requirements of this paragraph.

(d) Airplanes on which the modification required by paragraph (c) of this AD is accomplished within the compliance time specified in paragraph (b) of this AD are not required to accomplish the actions required by paragraph (b).

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), 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, Seattle ACO.

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

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

Issued in Renton, Washington, on November 10, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–30767 Filed 11–17–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AWA–2]

RIN 2120–AA66

Proposed Modification of the Tampa Class B Airspace Area; FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify the Tampa, FL, Class B airspace area. Specifically, this action proposes to rename two existing subareas, reconfigure the boundaries of three subareas, and create an additional subarea within the Tampa Class B airspace area. The FAA is proposing this action to efficiently align the Tampa Class B airspace area as a result of a reduction in flying operations at MacDill Air Force Base (AFB), to enhance safety, and to manage aircraft operations in the Tampa, FL, terminal area.

DATES: Comments must be received on or before January 19, 1999.

ADDRESSES: Send comments on the proposal in triplicate to the Federal Aviation Administration, Office of Chief Counsel, Attention: Rules Docket, AGC–200, Airspace Docket No. 97–AWA–2, 800 Independence Avenue, SW; Washington, DC 20591. Comments may also be sent electronically to the following Internet address: 9-nprm-cmts@faa.dot.gov. The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 97–AWA–2.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be avaiable for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will also be filed in the docket.

Availability of NPRM's

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) or the **Federal Register**'s electronic bulletin board service (telephone: 202–512–1661).

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.

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should call the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, that describes the application procedure.

Related Rulemaking Actions

On May 21, 1970, the FAA published the Designation of Federal Airways, Controlled Airspace, and Reporting Points Final Rule (35 FR 7782). This rule provided for the establishment of Terminal Control Airspace (TCA) areas (now known as Class B airspace areas).

The TCA area program was developed to reduce the potential for midair collision in the congested airspace surrounding airports with high density air traffic by providing an area wherein all aircraft are subject to certain operating rules and equipment requirements.

The density of traffic and the type of operations being conducted in the airspace surrounding major terminals increases the probability of midair collisions. In 1970, an extensive study found that the majority of midair collisions occurred between a general aviation (GA) aircraft and an air carrier or military aircraft, or another GA aircraft. The basic causal factor common to these conflicts was the mix of aircraft operating under visual flight rules (VFR) and aircraft operating under instrument flight rules (IFR). Class B airspace areas provide a method to accommodate the increasing number of IFR and VFR operations. The regulatory requirements of these airspace areas afford the greatest protection for the greatest number of people by giving air traffic control increased capability to provide aircraft separation service, thereby minimizing the mix of controlled and uncontrolled aircraft.

The standard configuration of these airspace areas contains three concentric circles centered on the primary airport extending to 10, 20, and 30 nautical miles (NM), respectively. The standard vertical limit of these airspace areas normally should not exceed 10,000 feet mean seal level (MSL), with the floor established at the surface in the inner area and at levels appropriate to the containment of operations in the outer areas. Variations of these criteria may be utilized contingent on the terrain, adjacent regulatory airspace, and factors unique to the terminal area.

On June 21, 1988, the FAA published the Transponder With Automatic Altitude Reporting Capability Requirement Final Rule (53 FR 23356). This rule requires all aircraft to have an altitude encoding transponder when

operating within 30 NM of any designated TCA (now known as Class B airspace areas) primary airport from the surface up to 10,000 feet MSL. This rule excluded those aircraft that were not originally certificated with an engine-driven electrical system (or those that have not subsequently been certified with such a system), balloons, or gliders.

On October 14, 1988, the FAA published the Terminal Control Area Classification and Terminal Control Area Pilot and Navigation Equipment Requirements Final Rule (53 FR 40318). This rule, in part, requires the pilot-in-command of a civil aircraft operating within a Class B airspace area to hold at least a private pilot certificate, except for a student pilot who has received certain documented training.

On December 17, 1991, the FAA published the Airspace Reclassification Final Rule (56 FR 65638). This rule discontinued the use of the term ''Terminal Control Area'' and replaced it with the designation ''Class B airspace area.'' This change in terminology is reflected in the remainder of the NPRM.

Background

In April 1991, the Defense Base Realignment and Closure Commission recommended the termination of all flight operations at MacDill AFB (situated within the Tampa Class B airspace area) by September 1993. However, in 1995, the Commission amended its findings and recommended that the base continue to have an active flying mission. As a result of the 1995 change, an Air Force unit consisting of 12 KC–135 aircraft was transferred to MacDill AFB. Notwithstanding the return of an active Air Force flying mission and the basing of National Oceanic and Atmospheric Administration aircraft, the level of aircraft operations at MacDill AFB remains significantly lower than the level existing previously. Based on the reduction in the number of operations at MacDill AFB and the FAA's periodic review of Class B airspace areas, in 1992, an ad hoc committee, consisting of representatives from local user groups, was formed to develop recommendations for modifying the Tampa Class B airspace area.

Pre-NPRM Public Input

As announced in the **Federal Register** on January 4, 1993 (58 FR 120), two pre-NPRM informal airspace meetings were held on February 16 and 17, 1993, in Tampa and St. Petersburg, FL, to allow local interested airspace users an opportunity to present input on the design of the proposed alteration of the Tampa Class B airspace area. The response to the proposed Class B airspace area modification from all participants was favorable. One written comment was received during the 60-day comment period, which supported the proposal. Except for the addition of a new subarea C in the vicinity of MacDill AFB, there have been no changes to the proposal since the informal airspace meetings were held in 1993.

Other Public Meetings

Due to the fact that this informal airspace meeting was held in 1993, the FAA will be conducting further meetings on this proposal. The dates and times of these proposed meetings will be announced in the **Federal Register**.

The coordinates for this airspace docket area based on North American Datum 83. Class B airspace areas are published in paragraph 3000 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR section 71.1. The Class B airspace area listed in this document would be published subsequently in the Order.

The Proposal

The FAA proposes to amend 14 CFR part 71 by modifying the Tampa, FL, Class B airspace area. Specifically, this action (depicted on the attached chart) proposes to amend one point in the legal description of Area A; reduce the size of Area B; establish a new Area C in the vicinity of MacDill AFB; realign the boundaries and rename the current Area C as Area D; and realign the boundaries and rename the current Area D as Area E. These modifications would provide additional airspace for nonparticipating aircraft operating below the floor of the Tampa Class B airspace area, and enhance the flow of air traffic in the Tampa terminal area.

Area A would be unchanged except for amending the coordinates of the Tampa airport surveillance radar (ASR) to reflect the position of the new ASR–9 radar installed at Tampa.

Area B, which encompasses that Class B airspace extending upward from 1,200 feet MSL to and including 10,000 feet MSL, would be reduced in size. The modified Area B would be bounded by Interstate 75 (I–75) on the east, a new subarea C (with a floor of 1,700 feet MSL) in the vicinity of MacDill AFB to the south, and by the Tampa 10 NM arc. The remaining section of the current Area B (i.e., that portion located to the south of MacDill AFB, east of Albert Whitted Airport, and southward to the 10 NM arc of the Sarasota-Bradenton Class C airspace area), would be removed from Area B and incorporated into the modified Area D and the modified Area E. This proposed change would raise the floor of Class B airspace in the realigned segment from the current 1,200 feet MSL. The floor of Class B airspace was originally set at 1,200 feet MSL in that area to accommodate the extensive high performance, low altitude jet traffic transiting between MacDill AFB and the offshore training areas. With the termination of the fighter training mission at MacDill AFB, there is no longer a requirement to retain Class B airspace below 3,000 feet MSL over that portion of Tampa Bay extending from MacDill AFB southward to the 10 NM arc of the Sarasota-Bradenton Class C airspace area, as exists in the current configuration. The proposed higher floor of the Class B airspace area would result in more efficient use of the airspace and provide additional altitudes for use by GA aircraft transitioning over Tampa Bay between the Orlando/Lakeland area, and Albert Whitted and St. Petersburg-Clearwater Airports. Further, this change would reduce the amount of air traffic transitioning over Tampa International Airport and lessen air traffic congestion around the St. Petersburg Very High Frequency Omnidirectional Range/Tactical Air Navigation station.

The FAA proposes to create a new Area C, extending upward from 1,700 feet MSL to and including 10,000 feet MSL, in the vicinity of MacDill AFB. The new Area C would allow for nonparticipating aircraft operations in the MacDill AFB traffic pattern, below the floor of the Tampa Class B airspace area.

The current Area C, consisting of that airspace extending upward from 3,000 feet MSL to and including 10,000 feet MSL, would be renamed Area D. As described above, the modified Area D would absorb most of the airspace over Tampa Bay to the south of MacDill AFB that is currently part of Area B. This action would raise the floor of the Class B airspace in that area from 1,200 feet MSL to 3,000 feet MSL.

The current Area D, consisting of that airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL, would be renamed Area E. The modified Area E would generally retain the same lateral dimensions of the current Area D, except that the segment of the existing boundary line, which runs northward from Anna Maria Island to lat. 27°40′42″N., long. 82°44′21″W., would be moved to the east and realigned along the Skyway Bridge/I–275. As described above, this

modification would merge a portion of the current Area B airspace into the renamed Area E. The effect of this modification would be to raise the floor of the Class B airspace between Skyway Bridge and Anna Maria Island from the current 1,200 feet MSL, to 6,000 feet MSL. This change would benefit aircraft navigating along the coastline and transiting that airspace located between Egmont Key and the Skyway Bridge. Class B airspace clearance would no longer be required for aircraft operating below 6,000 feet MSL in that area. This proposal to modify the Tampa Class B airspace area would enhance safety and improve the flow of air traffic in the Tampa Class B airspace area. Further, the proposal would benefit nonparticipating VFR operations by providing higher altitudes for use by aircraft transitioning over Tampa Bay.

Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic 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 requires agencies to analyze the economic effect of regulatory changes on small businesses and other small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this proposed rule: (1) Would generate benefits that justify its minimal costs and is not a ''significant regulatory action'' as defined in the Executive Order; (2) is not significant as defined in the Department of Transportation's Regulatory Policies and Procedures; (3) would not have a significant impact on a substantial number of small entities; (4) would not constitute a barrier to international trade; and (5) would not contain any Federal intergovernmental or private sector mandate. These analyses are summarized here in the preamble and the full Regulatory Evaluation is in the docket.

The FAA has determined that modification of the Tampa Class B airspace area would increase the operational efficiency of the Class B airspace while maintaining aviation safety in the terminal area. Also, clearer boundary definition and changes to lateral limits of the subareas would leave more available airspace for transitioning VFR aircraft. The proposed rule would impose only negligible costs on some airspace users and would potentially reduce circumnavigation costs to some operators. The proposed rule would not impose additional administrative costs on the FAA, since any potential increased operations workload could be absorbed by current personnel and equipment. Changes to aeronautical charts would occur during the chart cycle and would cause no additional costs beyond normal updates of charts.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), there are no requirements for information collection associated with this proposed rule.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principal, the Act requires agencies to solicit and consider flexible regualtory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule would have a significant economic impact on a substantial nuber of small entities. If the determination is that it would, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This proposed rule may impose some negligible circumnavigation costs only upon individuals operating in the Tampa Class B airspace. Therefore, the FAA does not anticipate any adverse impacts to occur as a result of the modified Class B airspace area.

The FAA conducted the required review of this proposal and determined that it would not have a significant economic impact on a substantial number of small entities. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. The FAA solicits comments from affected entities with respect to this finding and determination.

International Trade Impact Assessment

The proposed rule would not constitute a barrier to international trade, including the export of U.S. goods and services to foreign countries or the import of foreign goods and services into 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 of $100 million or more (when adjusted annually for inflation) in any one year by State, local, and tribal governments in the aggregate, or by the private sector. 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 mandates.'' A ''significant intergovernmental mandate'' under the Act is any provision in a Federal agency regulation that would 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 plan, among other things, must provide 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 proposed rule does not contain any Federal intergovernmental or private sector mandates. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Conclusion

In view of the minimal or zero cost of compliance of the proposed rule and the

enhancements to operational efficiency that do not reduce aviation safety, the FAA has determined that the proposed rule would be cost-beneficial.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation for reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 3000—Subpart B—Class B Airspace

* * * * *

ASO FL B Tampa, FL [Revised]

Tampa International Airport (Primary Airport)
(Lat. 27°58′32″N., long. 82°32′00″W.)
Tampa ASR (lat. 27°59′16″N., long. 82°32′42″W.)
MacDill AFB (MCF) (lat. 27°51′00″N., long. 82°31′18″W.)
St. Petersburg VORTAC (PIE)
(Lat. 27°54′28″N., long. 82°41′04″W.)
Saratoga-Bradenton International Airport
(Lat. 27°23′43″N., long. 82°33′14″.)

Boundaries

Area A. That airspace extending upward from the surface to and including 10,000 feet MSL bounded by an area beginning at lat. 27°54′30″N., long. 82°30′56″W., then clockwise along the 5-mile arc of the Tampa ASR to lat. 27°57′44″N., long. 82°27′17″W., to the point of beginning.

Area B. That airspace extending upward from 1,200 feet MSL to and including 10,000 feet MSL beginning at the intersection of the Tampa ASR 10-mile arc and the PIE VORTAC 132° radial, then clockwise along the Tampa ASR 10-mile arc to US Highway 301, then south along US Highway 301 to Interstate 75, then south along Interstate 75 to the Tampa ASR 12.5-mile arc, then clockwise along the Tampa ASR 12.5-mile arc to the PIE VORTAC 132° radial, then northwest via the PIE VORTAC 132° radial to the point of beginning.

Area C. That airspace extending upward from 1,700 feet MSL to and including 10,000 feet MSL bounded by a line beginning at the intersection of the Tampa ASR 10-mile arc and the PIE VORTAC 132° radial, then northeast along the line 1.5 miles from the parallel to Runway 04/22 at MCF AFB until intercepting the 4.5-mile arc from the MCF AFB airport reference point, then direct to the intersection of Interstate 75 and the Tampa ASR 12.5-mile arc, then clockwise along the Tampa ASR 12.5-mile arc until intercepting the PIE VORTAC 132° radial, then northwest via the PIE VORTAC 132° radial to the point of beginning.

Area. D. That airspace extending upward from 3,000 feet MSL up to and including 10,000 feet MSL bounded by a line beginning at the shoreline due west of and to the intersection of Highway 19 and Highway 52, at Hudson, FL, then east along Highway 52 to Interstate 75, then south along the eastern edge of Interstate 75 to Highway 54, then east along Highway 54 to Highway 39–301 at Zephyrhills, FL, then south on Highway 39 to Highway 60, then west on Highway 60 to lat. 27°56′16″N., long. 82°10′59″W., then south along the railroad to Highway 301 at Parrish, FL, then southwest along Highway 301 to the 10-mile arc of the Sarasota-Bradenton, FL, Class C airspace area, then counterclockwise along the 10-mile arc of the Sarasota-Bradenton Class C airspace area to U.S. Route 19, then northwest along U.S. Route 19 to Interstate 275, then north along Interstate 275 to lat. 27°42′26″N., long. 82°40′45″W. (the north end of the Skyway Bridge), then north along the mainland shoreline to the point of beginning.

Area E. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at the intersection of U.S. Route 19 and the 10-mile arc of the Sarasota-Bradenton Class C airspace area, then counterclockwise along the 10-mile arc of the Sarasota-Bradenton Class C airspace area to intercept the 30-mile arc of the Tampa ASR, then clockwise along the Tampa ASR 30-mile arc to long. 82°59′59″W., then north along long. 82°59′59″W., to the 30-mile arc to the Tampa ASR, then clockwise along the Tampa ASR 30-mile arc to intercept Highway 39–301, then south on Highway 39–301 to Highway 54 at Zephyrhills, Fl.; and that airspace bounded by a line beginning at Highway 60 and Highway 39, then south along Highway 39 to the Tampa ASR 30-mile arc, then clockwise along the Tampa ASR 30-mile arc to the 10-mile arc of the Sarasota-Bradenton Class C airspace area, then counterclockwise along the 10-mile arc of the Sarasota-Bradenton Class C airspace area to intercept Highway 301.

* * * * *

Issued in Washington, DC, on October 30, 1998.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

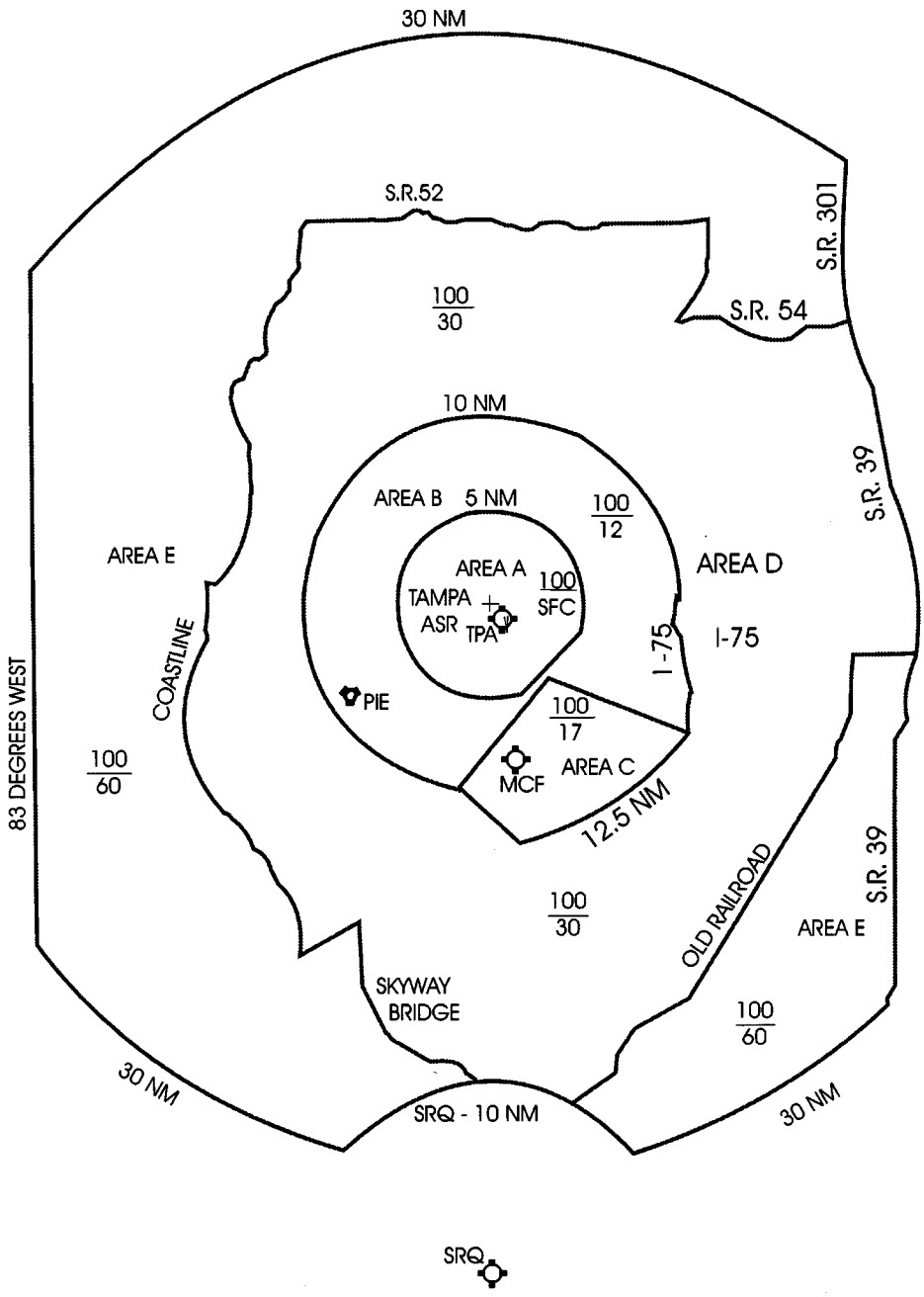
Note: This Appendix will not appear in the Code of Federal Regulations.

Appendix—Tampa, FL, Class B Airspace Area

BILLING CODE 4910–13–M

TAMPA, FL CLASS B

(Not to be used for navigation)



Prepared by the
FEDERAL AVIATION ADMINISTRATION
Air Traffic Publications
ATA-10

[FR Doc. 98–30092 Filed 11–17–98; 8:45 am]
BILLING CODE 4910–13–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ANM–16]

Proposed Removal of Class E airspace; Anaconda, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This proposal would remove the Class E airspace at Anaconda, MT, which is no longer necessary because of recent airspace amendments to adjacent airspace areas.

DATES: Comments must be received on or before January 4, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, ANM–520, Federal Aviation Administration, Docket No. 98–ANM–16, 1601 Lind Avenue SW, Renton, Washington 98055–4056.

The official docket may be examined in the office of the Assistant Chief Counsel for the Northwest Mountain Region at the same address.

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

FOR FURTHER INFORMATION CONTACT: Dennis Ripley, ANM–520.6, Federal Aviation Administration, Docket No. 98–ANM–16, 1601 Lind Avenue SW, Renton, Washington 98055–4056; telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 98–ANM–16.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Airspace Branch, ANM–520, 1601 Lind Avenue SW, Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) to remove Class E airspace at Anaconda, MT. This amendment would remove airspace no longer necessary because of an airspace amendment at Bert Mooney Airport, Butte, MT (final rule document 98–14169, 63 FR 29103, Thursday, May 26, 1998). The Butte, MT, Class E airspace fully encompasses all of the operations necessary for Bowman Field, Anaconda, MT. The intended effect of this proposal is designed to provide efficient use of the navigable airspace.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth, are published in Paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involve an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (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, when promulgated, 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).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

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

* * * * *

ANM MT E5 Anaconda, MT [Removed]

* * * * *

Issued in Seattle, Washington, on October 26, 1998.

Helen Fabian Parke,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 98–30789 Filed 11–17–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–98–053]

RIN 2115–AE47

Drawbridge Operation Regulation; Chef Menteur Pass, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes a change to the regulation governing the operation of the U.S. Highway 90 swing span bridge across Chef Menteur Pass, mile 2.8 at Lake Catherine, Orleans Parish, Louisiana. The proposal would permit the draw to remain closed to navigation from 5:30 a.m. to 7:30 a.m., Monday through Friday, except Federal holidays.

Vehicular traffic has become congested during peak traffic hours by commuters who work in the Almonaster Development District in Orleans Parish. This change in drawbridge operating regulations will provide for the uninterrupted flow of vehicular traffic for commuters en route to work during this period, while still providing for the reasonable needs of navigation.

DATES: Comments must be received on or before January 19, 1999.

ADDRESSES: You may mail comments to Commander (ob), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana 70130–3396, or deliver them to room 1313 at the same address between 7 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

The Commander, Eighth Coast Guard District Bridge Administration Branch maintains the public docket for this rulemaking. Comments and documents as indicated in this preamble will become part of this docket and will be available for inspection or copying at the address given above, between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Phil Johnson, Bridge Administration Branch, at the address given above, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION:

Requests for Comments

The Coast Guard encourages interested parties to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 08–98–053) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger that 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. This proposed rule may be changed in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Eight Coast Guard District at the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If it is determined that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Discussion of Proposed Rule

The U.S. Highway 90 bridge is a swing structure which provides a vertical clearance of 11 feet above mean high water in the closed-to-navigation position and unlimited in the open-to-navigation position and a horizontal clearance of 97 feet between fenders. Navigation on the waterway consists of tugs with tows, commercial fishing vessels and recreational craft. Vehicular traffic crossing the bridge during peak rush hour traffic periods has increased significantly during recent years. This is the only route available for motorists, who live in the Lake Catherine area who commute to work at the Almonaster Development District, without a long detour for more than 25 miles by backtracking north to State Route 433, thence south via Interstate 10 to U.S. 11, thence south and return to U.S. 90.

The Coast Guard is considering changing the regulation governing the operation of the drawbridge to permit the draw to remain closed to navigation from 5:30 a.m. to 7:30 a.m., Monday through Friday, except Federal holidays. The proposed regulation would allow for the fee flow of vehicular traffic, while still serving the reasonable needs of navigational interests.

Data provided by the Louisiana Department of Transportation and Development shows that from July 6, 1998 through July 20, 1998, from 5:30 a.m. to 7:30 a.m. weekdays, excluding Federal holidays the average number of vehicles which crossed the bridge was 150. Of those vehicles, an average of 127 were west bound and 23 were eastbound. This indicates that the majority of the vehicular traffic is westbound from the Lake Catherine area toward the Almonaster Development District during this time frame. Information taken from bridge tender logs shows that from July 1997 through June 1998, the number of vessels that passed the bridge and required openings of the draw averaged one vessel daily, during the proposed 5:30 a.m. to 7:30 a.m. closure period on weekdays, excluding Federal holidays.

This proposed rule will necessitate the redesignation of § 117.435 as § 117.434; § 117.436 as § 117.435; and a new § 117.436 to be added as Chef Menteur Pass. All redesignations are administrative in nature and will not substantively affect existing operating regulations.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential cost and benefits under section 6(a)(3) of that order. It has not been reviewed 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 proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This is because the number of vessels impaired during the proposed closed-to-navigation period is minimal. Commercial fishing vessels still have ample opportunity to transit this waterway before and after the peak vehicular traffic periods.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. ''Small entities'' may include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields and governmental jurisdictions with populations of less than 50,000.

The proposed rule considers the needs of local commercial fishing vessels, as the study of vessels passing the bridge included such commercial vessels. These local commercial fishing vessels will continue to be able to pass the bridge in the early morning, prior to 5:30 a.m. and at any time during the day after 7:30 p.m., as well as 24 hours per day on weekends and Federal holidays.

Additionally, an alternate route is available by transiting Rigolets Pass, approximately 20 miles east of Chef Menteur Pass, via the Intracoastal Waterway. Thus, the economic impact is expected to be minimal. There is no indication that other waterway users would suffer any type of economic hardship if they are precluded from transiting the waterway during the two hours per day that the draw is scheduled to remain in the closed-to-navigation position. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities

Collection of Information

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

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The authority to regulate the permits of bridges over the navigable waters of the U.S. belongs to the Coast Guard by Federal statutes.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under Figure 2–1, paragraph 32(e) of Commandant Instruction M16475.1C, this proposal is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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.

§§ 117.435 and 117.436 [Redesignated]

2. § 117.435 is redesignated as § 117.434; § 117.436 is redesignated as § 117.435; and a new § 117.436 is added to read as follows:

§ 117.436 Chef Menteur Pass.

The draw of the U.S. Highway 90 bridge, mile 2.8, at Lake Catherine, shall open on signal; except that, from 5:30 a.m. to 7:30 a.m. Monday through Friday except Federal holidays, the draw need not be opened for passage of vessels. The draw shall open at any time for a vessel in distress.

Dated: October 2, 1998.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 98–30595 Filed 11–17–98; 8:45 am]

BILLING CODE 4910–15–M

PRESIDIO TRUST

36 CFR Parts 1001, 1002, 1003, 1004, 1005, and 1006

RIN 3212–AA01

Management of the Presidio

AGENCY: The Presidio Trust.

ACTION: Proposed rule; partial extension of public comment period.

SUMMARY: This action extends until January 8, 1999 the period for public comment on a portion of the proposed rule published in the **Federal Register** (63 FR 50024–50055) on September 18, 1998 concerning management of the area under the administrative jurisdiction of the Presidio Trust (proposed 36 CFR Parts 1001, 1002, 1003, 1004, 1005 and 1006). The period for public comment on the remaining portion of this proposed rule (proposed 36 CFR Parts 1007, 1008, and 1009) closed on November 17, 1998.

DATES: Comments on Parts 1001, 1002, 1003, 1004, 1005 and 1006 of the proposed rule must be received by January 8, 1999.

ADDRESSES: Written comments on Parts 1001, 1002, 1003, 1004, 1005 and 1006 of the proposed rule must be sent to Karen A. Cook, General Counsel, The Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, CA 94129–0052.

FOR FURTHER INFORMATION CONTACT: Karen A. Cook, General Counsel, The Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, CA 94129–0052. Telephone: 415–561–5300.

SUPPLEMENTARY INFORMATION: By publication in the **Federal Register** on September 18, 1998 (63 FR 50024–50055), the Presidio Trust proposed regulations for management of the Presidio and for exercising its authorities in the following nine parts:

Part 1001—General provisions
Part 1002—Resource protection, public use and recreation
Part 1003—Vehicles and traffic safety
Part 1004—Commercial and private operations
Part 1005—Rights-of-way
Part 1006—Presidio Trust symbols
Part 1007—Requests under the Freedom of Information Act
Part 1008—Requests under the Privacy Act
Part 1009—Administrative claims under the Federal Tort Claims Act

The area under the administrative jurisdiction of the Presidio Trust was formerly under the administrative jurisdiction of the National Park Service (NPS) and is adjacent to an area that continues to be under the administrative jurisdiction of the NPS. At the request of the NPS, the Presidio Trust is extending the public comment period on Parts 1001, 1002, 1003, 1004, 1005 and 1006 of the proposed regulations from the original deadline of November 17, 1998 to January 8, 1999. In the meantime, the Presidio Trust's final interim regulations at 36 CFR Parts 1001, 1002, 1004, and 1005, which were adopted by the Presidio Trust and published in the **Federal Register** on June 30, 1998 (63 FR 35694), will remain in effect.

The comment period on Parts 1007, 1008, and 1009 of the proposed regulations closed on November 17, 1998, and the Trust expects to issue final regulations on these topics following consideration of comments received.

Authority: Pub. L. 104–333, 110 Stat. 4097 (16 U.S.C. 460bb note).

Dated: November 12, 1998.

Karen A. Cook,

General Counsel.

[FR Doc. 98–30786 Filed 11–17–98; 8:45 am]

BILLING CODE 4310–4R–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[AL–048–1–9901b; FRL–6188–8]

Approval and Promulgation of State Plans For Designated Facilities and Pollutants: Alabama

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the section 111(d)/129 State Plan submitted by the Alabama Department of Environmental Management (ADEM) for

the State of Alabama on September 11, 1998, for implementing and enforcing the Emissions Guidelines applicable to existing Municipal Waste Combustors with capacity to combust more than 250 tons per day of municipal solid waste. The Plan was submitted by the ADEM to satisfy certain Federal Clean Air Act requirements. In the final rules section of this **Federal Register**, the EPA is approving the Alabama State Implementation Plan revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to the direct final rule, no further activity is contemplated in relation to this proposed 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. The EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time.

DATES: Comments must be received in writing by December 18, 1998.

ADDRESSES: Written comments should be addressed to Kimberly Bingham at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the day of the visit.

Environmental Protection Agency, Region 4, Air, Pesticides and Toxics Management Division, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104.

Alabama Department of Environmental Management, Air Division, 1751 Congressman W.L. Dickinson Drive, Montgomery, Alabama 36109.

FOR FURTHER INFORMATION CONTACT: Kimberly Bingham at (404) 562-9038 or Scott Davis at (404) 562–9127.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: November 4, 1998.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 98–30603 Filed 11–17–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–6175–3]

Delegation of National Emission Standards for Hazardous Air Pollutants for Source Categories; State of Arizona; Pinal County Air Quality Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to section 112(l) of the 1990 Clean Air Act (CAA), the Pinal County Air Quality Control District (PCAQCD) requested delegation of specific national emission standards for hazardous air pollutants (NESHAPs). In the Rules section of this **Federal Register**, EPA is granting PCAQCD the authority to implement and enforce specified NESHAPs. The direct final rule also explains the procedure for future delegation of NESHAPs to PCAQCD. EPA is taking direct final action without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received, no further activity is contemplated. 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. The EPA will not institute a second comment period. Any parties interested in commenting should do so at this time.

DATES: Written comments must be received by December 18, 1998.

ADDRESSES: Written comments should be addressed to: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the submitted requests are available for public inspection at EPA's Region IX office during normal business hours (docket number A–96–25).

FOR FURTHER INFORMATION CONTACT: Mae Wang, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1200.

SUPPLEMENTARY INFORMATION: This document concerns delegation of unchanged NESHAPs to the Pinal County Air Quality Control District. For further information, please see the information provided in the direct final action which is located in the Rules section of this **Federal Register**.

Authority: This action is issued under the authority of Section 112 of the Clean Air Act, as amended, 42 U.S.C. Section 7412.

Dated: September 28, 1998.

David P. Howekamp,

Director, Air Division, Region IX.

[FR Doc. 98–30723 Filed 11–17–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF ENERGY

48 CFR Part 970

RIN 1991–AB02

Acquisition Regulation: Financial Management Clauses for Management and Operating (M&O) Contracts

AGENCY: Department of Energy.

ACTION: Proposed rule.

SUMMARY: The Department of Energy (DOE) proposes to amend its Acquisition Regulation to designate certain Department of Energy Acquisition Regulation (DEAR) M&O contract clauses and Federal Acquisition Regulation (FAR) clauses as Standard Financial Management Clauses to be included in M&O contracts unless the Chief Financial Officer (CFO) concurs in a deviation. Additionally, this proposed rule will revise selected existing financial management clauses and add financial management related clauses.

DATES: Written comments must be submitted no later than January 19, 1999.

ADDRESSES: Comments should be addressed to: Michael L. Righi, Office of Policy (HR–51), Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Michael L. Righi (202–586–8175) at the address above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Detailed List of Changes
III. Public Comments
IV. Procedural Requirements
A. Review Under Executive Order 12866
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C. Review Under the Regulatory Flexibility Act
D. Review Under the Paperwork Reduction Act
E. Review Under Executive Order 12612
F. Review Under the National Environmental Policy Act
G. Review Under Small Business Regulation Enforcement Fairness Act of 1996

I. Background

On November 15, 1990, Congress enacted the Chief Financial Officers Act of 1990 (the Act), Pub. L. 101–576. The Act requires that each Federal agency implement improvements in its systems of accounting, financial management, and internal controls. DOE has since developed and tested various policies, practices, and procedures in its efforts to implement the mandates contained in the Act. These efforts have included a review of the Department's financial relationship with, and data received from, its M&O contractors. Today's proposed rule would include new policies and changes to existing policy in the Department's acquisition regulations.

II. Detailed List of Changes

1. The authority citation for Part 970 would be restated.

2. Section 970.3201 would be revised by replacing the word ''bank'' in the first sentence with the words ''financial institution.'' This would permit DOE to utilize a financial institution, other than a bank, to provide services with regard to a special account. The second sentence would be deleted and its requirements incorporated into Section 970.3202.

3. Section 970.3202 would be amended by revising paragraphs (b) and (c). Paragraph (b) would be revised by replacing the word ''bank'' with the words ''financial institution'' and adding the words ''or, at the option of the Government, by direct payment or other payment mechanism to the contractor'' at the end of the sentence. Also, the term ''letter-of-credit'' would be changed to ''payments cleared financing arrangement'' in order to implement the Automatic Standard Application for Payment (ASAP) that has replaced letter-of-credit. These changes would be consistent with similar changes to Section 970.5204–16 with regard to a special financial institution account, payments cleared financing arrangement, and the use of other payment mechanisms.

Paragraph (c) would be revised by replacing the word ''bank'' with the words ''financial institution'' throughout the paragraph to be consistent with similar revisions as previously stated. In the second sentence the word ''revenues'' would be replaced with the word ''collections'' to include any type of collection. Also, a provision would be added to require that the agreement among DOE, the contractor, and the financial institution incorporate all applicable requirements, as determined by the Office of CFO.

4. Section 970.3270 would be revised by establishing a section entitled Standard Financial Management Clauses, which requires that certain clauses be included in all M&O contracts, and requires that deviations have the approval of the Head of the Contracting Activity and the written concurrence of the Department's CFO.

5. Section 970.3271 would be removed and these requirements would be incorporated into Section 970.3202.

6. Section 970.5204–9 would be revised. Specifically, paragraph (a) would be revised by replacing the word ''revenues'' in the first sentence with the words ''collections accruing to the contractor in connection with the work under this contract'' to require accounting for any type of collection accruing to the contractor under the contract, and by deleting the word ''fixed.''

Paragraph (b) would be revised by adding language to allow for inspection and audit of accounts and records by DOE's designees, in accordance with provisions of the clause, Access to and ownership of records.

Paragraph (d) would be revised by identifying other types of information as property of the Government. In addition, the word ''revenues'' would be replaced with the words ''collections accruing to the contractor in connection with the work under this contract'' and the words ''and fee accruals'' would be added. Also, a reference to the Access to and ownership of records clause would be added for clarity.

Paragraph (f) would be revised by making a minor editorial change, adding the word ''and'' between the words ''time'' and ''in.''

7. Section 970.5204–13 would be amended by revising paragraph (d)(15) by replacing the word ''bank'' in the first sentence with the words ''financial institution'' to be consistent with similar changes to other sections regarding a financial institution account and by adding in the second sentence the words ''to employees'' to clarify that payments as described in this sentence are to employees.

8. Section 970.5204–15 would be revised. Specifically, paragraph (a) would be revised by replacing the words ''revenues and receipts'' with the word ''collections'' to include any type of collection. The fourth sentence would be revised to require that collections are processed and accounted for in accordance with applicable requirements imposed by the contracting officer pursuant to the Laws, regulations, and DOE directives clause of the contract.

Paragraph (b) would be revised by deleting the word ''fixed'' in the first sentence to include any type of fee. In the second sentence the words ''revenues and receipts'' would be replaced with the words ''collections accruing to the contractor in connection with the work under this contract * * *'' to include any type of collection. The second sentence would also be revised to require the processing of and accounting for such collections in accordance with applicable requirements imposed by the contracting officer pursuant to the Laws, regulations, and DOE directives clause of the contract.

Paragraph (c) would be revised by replacing the words ''revenues and receipts'' with the word ''collections'' to include any type of collection and by deleting the word ''fixed'' to include any type of fee. The word ''commitments'' would be replaced with the word ''encumbrances'' throughout the paragraph because appropriations are encumbered rather than committed at the contractor level. Also, the word ''available'' would be added throughout the paragraph where reference is made to ''funds'' and ''collections'' for clarity and consistency with the first sentence of the paragraph. In the second sentence the words ''either'' and ''or is equal to zero'' would be deleted to clarify when notice should be given to DOE in regard to the requirements of this paragraph. Additionally, for consistency with other references to the clause entitled ''Termination,'' the word ''article'' in the last sentence would be replaced with the word ''clause.''

Paragraph (d) would be revised by replacing the word ''commitment(s)'' with the word ''encumbrance(s)'' throughout the paragraph. The words ''such as Approved Funding Programs'' would be added in the first sentence between the words ''plans'' and ''or'' to reflect the current terminology used for financial plans. In the second sentence the word ''instruction'' would be replaced with the word ''directives'' for consistency with the first sentence. In the third sentence the words ''to use its best efforts'' would be deleted to require contractor compliance with other requirements of such plans and directives. Also, the words ''the authorized financial levels of'' would be replaced with the words ''that any limitation on'' to state more clearly that such financial plans contain cost and encumbrance limitations. A typographical error would be corrected and a minor editorial change would be made in the third sentence. The word ''directives'' would replace the word ''directive'' and the word ''promptly''

would be deleted between the words ''to'' and ''notify'' and inserted between the words ''DOE'' and ''in.'' A typographical error would also be corrected in the note to paragraph (d) by replacing the word ''provided'' with the word ''provide.'' Also, in the note the word ''article'' would be replaced with the word ''clause'' for consistency with other revised paragraphs of this section.

Paragraph (e) would be revised by replacing the word ''article'' with the word ''clause'' for consistency with other references to the clause entitled ''Termination.''

9. Section 970.5204–16 would be revised. Specifically, paragraph (a) would be revised by changing the language to require payment of the fixed-fee in accordance with a schedule determined by the contracting officer. The term ''letter-of-credit'' would be changed to ''payments cleared financing arrangement'' in order to implement the ASAP that has replaced letter-of-credit. In paragraph (a) of Note 2 the term ''letter-of-credit'' also would be changed to ''payments cleared financing arrangement.''

Paragraph (c) would be revised by replacing the words ''special bank account'' with the words ''special financial institution account'' throughout the paragraph. This change would permit DOE to utilize a financial institution, other than a bank, to provide services with regard to a special account. In the first sentence, the term ''letter-of-credit'' would be replaced with ''payments cleared financing arrangement prescribed by DOE'' as described in paragraph (a) above and the language would be revised to allow payment of funds, at the option of the Government, by direct payment or other payment mechanism to the contractor. Since collections are processed and accounted for in accordance with applicable requirements imposed by the contracting officer pursuant to the Laws, regulations, and DOE directives clause of the contract, the second sentence of this paragraph would be deleted. In the third sentence the words ''and, if applicable, fees earned'' would be inserted between the words ''allowable'' and ''under'' since payment of fees earned may or may not be made from the special financial institution account. Also, an editorial correction would be made in the third sentence by replacing the word ''mingled'' with the word ''commingled.'' Additionally, a typographical error would be corrected in the fourth sentence by replacing the word ''on'' with the word ''of.''

Paragraph (d) would be revised by replacing the words ''special bank account'' with the words ''special financial institution account'' throughout the paragraph to be consistent with similar revisions as previously stated.

Paragraph (e) would be revised to include penalty provisions for unallowable costs as stated in sections 306 (b) and (i) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 256), as amended. Also, the word ''voucher'' would be replaced with ''Statement of Costs Incurred and Claimed.'' Note 4 would be revised to require the inclusion of an alternative paragraph (e) in contracts with nonintegrated contractors which also includes such penalty provisions.

Paragraph (f) would be revised by deleting the word ''fixed'' in the first sentence. The requirement for an assignment of the contractor's rights to any ''collections accruing to the contractor in connection with the work under this contract'' would be added with regard to the payment by the Government to the contractor of the unpaid balance of allowable costs and fee. Under exception (B), minor changes would be made to the last sentence—''should'' would change to ''shall,'' the clause title referenced would be updated, and the last word, ''and,'' would be deleted. Exception (D), ''Claims recognizable under the clause entitled, Nuclear Hazards Indemnity Agreement,'' would be added to the exceptions to the requirement that contractors provide a release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under the contract. In addition, in the last sentence of paragraph (f) the words ''financial institution'' would replace the word ''bank'' to be consistent with similar revisions as previously stated.

Paragraph (i) would be revised by replacing the word ''revenues'' with the word ''collections'' in the title as well as the text of the paragraph. Also, the language would be changed to require collections, exclusive of the contractor's fee and other specified collections, not the property of the Government, to be processed and accounted for in accordance with applicable requirements imposed by the contracting officer pursuant to the Laws, regulations, and DOE directives clause of the contract and, to the extent consistent with those requirements, to be deposited in the special financial institution account or otherwise made available for payment of allowable costs under the contract, unless otherwise directed by the contracting officer. In addition, the words ''financial institution'' would replace the word ''bank'' to be consistent with similar revisions as previously stated.

10. Section 970.5204–20 would be amended by revising the introductory statement and paragraph (a). In the second sentence the words ''theft'' and ''fraud'' would be deleted and the words ''loss,'' ''mismanagement,'' and ''misappropriation'' would be added. Also, in the fourth and fifth sentences of paragraph (a) the word ''internal'' would be deleted before the word ''controls.'' These changes would be incorporated for consistency. Also, in the second sentence the word ''obligations'' would be replaced with the word ''encumbrances'' and the words ''and fees that are earned'' would be added. The contractor cannot obligate Federal funds. It can only encumber such funds. Therefore, contractor management controls should be adopted that reasonably ensure that all encumbrances and costs incurred and fees earned under the contract are in compliance with applicable clauses, and other current terms, conditions, and intended purposes. In the second sentence the word ''revenues'' would be replaced with the words ''collections accruing to the contractor in connection with the work under this contract'' to ensure all collections are properly recorded, managed, and reported. Additionally, an editorial correction would be made by replacing the word ''system'' with the word ''systems'' in the last sentence of the paragraph.

11. Section 970.5204–XX, ''Financial Management System,'' would be added: to require compliance with DOE policies for maintaining and administering a financial management system; to require the contractor to submit to DOE for written approval an annual plan for new financial management systems and/or subsystems and major enhancements and/or upgrades to the currently existing financial systems and/or subsystems; to require the contractor to notify DOE thirty (30) days in advance of any planned implementation of any substantial deviation from the approved plan; and, as requested by the contracting officer, to require the contractor to submit any such deviation to DOE for written approval.

12. Section 970.5204–XX, ''Integrated Accounting,'' would be added to require compliance with DOE procedures if an integrated accounting system is used.

13. Section 970.5402–XX, ''Liability with respect to Cost Accounting Standards,'' would be added to address M&O contractor liability for increased costs resulting from noncompliance with provisions set forth in FAR 52.230–2, ''Cost Accounting Standards,''

and FAR 52.230–6, ''Administration of Cost Accounting Standards.''

14. Section 970.5204–XX, ''Work for others funding authorization,'' would be added to ensure that the Government is not liable for costs incurred by a contractor performing work for others utilizing its own funding.

III. Public Comments

Interested persons are invited to participate by submitting data, views, or arguments with respect to the DEAR amendments set forth in this proposed rule. Three copies of written comments should be submitted to the address indicated in the **ADDRESSES** section of this notice. All comments received will be available for public inspection in the DOE Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. All written comments received on or before the date specified in the beginning of this notice and all other relevant information will be considered by DOE before taking final action. Comments received after that date will be considered to the extent that time allows. Any person submitting information which that person believes to be confidential and which may be exempt from public disclosure should submit one complete copy, as well as an additional copy from which the information claimed to be confidential has been deleted. DOE reserves the right to determine the confidential status of the information or data and to treat it according to its determination. The Department's generally applicable procedures for handling information which has been submitted in a document and may be exempt from public disclosure are set forth in 10 CFR 1004.11.

IV. Procedural Requirements

A. Review Under Executive Order 12866

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

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity: (2) write regulations to minimize litigation: and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction: (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftmenship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed regulations meet the relevant standards of Executive Order 12988.

C. Review Under the Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have a significant economic impact on a substantial number of small entities. This proposed rule would only apply to M&O contractors, which are all large entities. DOE certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

D. Review Under the Paperwork Reduction Act

No new information collection requirements subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, are imposed by today's regulatory action.

E. Review Under Executive Order 12612

Executive Order 12612, entitled ''Federalism,'' 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the Federal Government and the States, or in the distribution of power and responsibilities among various levels of Government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. This proposed rule will not affect States.

F. Review Under the National Environmental Policy Act

Pursuant to the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), the Department of Energy has established guidelines for its compliance with the provisions of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). Pursuant to appendix A of subpart D of 10 CFR part 1021, National Environmental Policy Act Implementing Procedures (57 FR 15122, 15152, April 24, 1992) (Categorical Exclusion A6), the Department of Energy has determined that this rule is categorically excluded from the need to prepare an environmental impact statement or environmental assessment.

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

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

List of Subjects in 48 CFR Part 970

Government procurement.

Issued in Washington, DC on November 9, 1998.

Richard H. Hopf,

Director of Procurement and Assistance Management.

For the reasons set out in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

1. The authority citation for Part 970 continues to read as follows:

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

2. Section 970.3201 is revised to read as follows:

970.3201 General.

It is the policy of the DOE to finance management and operating contracts through advance payments and the use of special financial institution accounts.

3. Section 970.3202 is amended by revising paragraphs (b) and (c) to read as follows:

970.3202 Advance payments.

* * * * *

(b) Advance payments shall be made under a payments cleared financing arrangement for deposit in a special financial institution account or, at the option of the Government, by direct payment or other payment mechanism to the contractor.

(c) Prior to providing any advance payments, the contracting officer shall enter into an agreement with the contractor and a financial institution regarding a special financial institution account where the advanced funds will be deposited by the Government. Such agreement shall:

(1) Provide that DOE shall retain title to the unexpended balance of funds in the special financial institution account including collections, if any, deposited by the contractor;

(2) Provide that the title in paragraph (c)(1) of this section shall be superior to any claim or lien of the financial institution of deposit or others; and

(3) Incorporate all applicable requirements, as determined by the Office of Chief Financial Officer.

* * * * *

4. Section 970.3270 is revised to read as follows:

970.3270 Standard financial management clauses.

(a) The following DEAR and FAR clauses are standard financial management clauses that shall be included in both integrated and nonintegrated management and operating contracts: DEAR 970.5204–9, Accounts, records, and inspection; DEAR 970.5204–15, Obligation of funds; DEAR 970.5204–16, Payments and advances; DEAR 970.5204–20, Management controls; DEAR 970.5204–XX, Liability with respect to Cost Accounting Standards; DEAR 970.5204–XX, Work for others funding authorization; FAR 52.230–2, Cost Accounting Standards; and FAR 52.230–6, Administration of Cost Accounting Standards.

(b) The following clauses are standard financial management clauses that shall be included in integrated management and operating contracts: DEAR 970.5204–XX, Financial management system; and DEAR 970.5204–XX, Integrated accounting.

(c) Any deviations from the standard financial management clauses specified in paragraphs (a) and (b) of this section require the approval of the Head of the Contracting Activity and the written concurrence of the Department's Chief Financial Officer.

5. Section 970.3271 is removed.

6. In section 970.5204–9 revise the introductory paragraph; clause title; and paragraphs (a) (including the note), (b), (d), and (f) to read as follows:

970.5204–9 Accounts, records, and inspection.

As prescribed in 970.0407 and 970.3270, insert the following clause.

Accounts, Records, and Inspection (Month and Year TBE)

(a) *Accounts.* The contractor shall maintain a separate and distinct set of accounts, records, documents, and other evidence showing and supporting: all allowable costs incurred; collections accruing to the contractor in connection with the work under this contract, other applicable credits, and fee accruals under this contract; and the receipt, use, and disposition of all Government property coming into the possession of the contractor under this contract. The system of accounts employed by the contractor shall be satisfactory to DOE and in accordance with generally accepted accounting principles consistently applied.

Note: *If the contract includes the clause for ''Price Reduction for Defective Cost or Pricing Data'' set forth at FAR 52.215–22, paragraph (a) above should be modified by adding the words ''or anticipated to be incurred'' after the words ''allowable costs incurred.''*

(b) *Inspection and audit of accounts and records.* All books of account and records relating to this contract shall be subject to inspection and audit by DOE or its designees in accordance with the provisions of Clause ____, Access to and ownership of records, at all reasonable times, before and during the period of retention provided for in paragraph (d) of this clause, and the contractor shall afford DOE proper facilities for such inspection and audit.

* * * * *

(d) *Disposition of records.* Except as agreed upon by the Government and the contractor, all financial and cost reports, books of account and supporting documents, system files, data bases, and other data evidencing costs allowable, collections accruing to the contractor in connection with the work under this contract, other applicable credits, and fee accruals under this contract, shall be the property of the Government, and shall be delivered to the Government or otherwise disposed of by the contractor either as the contracting officer may from time to time direct during the progress of the work or, in any event, as the contracting officer shall direct upon completion or termination of this contract and final audit of accounts hereunder. Except as otherwise provided in this contract, including provisions of Clause ____, Access to and ownership of records, all other records in the possession of the contractor relating to this contract shall be preserved by the contractor for a period of three years after final payment under this contract or otherwise disposed of in such manner as may be agreed upon by the Government and the contractor.

* * * * *

(f) *Inspections.* The DOE shall have the right to inspect the work and activities of the contractor under this contract at such time and in such manner as it shall deem appropriate.

* * * * *

7. Section 970.5204–13 is amended by revising paragraph (d)(15) to read as follows (note following paragraph (d)(15) remains unchanged):

970.5204–13 Allowable costs and fixed-fee (management and operating contracts).

* * * * *

Allowable Costs and Fixed-Fee (Management and Operating Contracts) (June 1997)

* * * * *

(d) * * *

(15) Establishment and maintenance of financial institution accounts in connection with the work hereunder, including, but not limited to, service charges, the cost of disbursing cash, necessary guards, cashiers, and paymasters. If payments to employees are made by check, facilities and arrangements for cashing checks may be provided without expense to the employees, subject to the approval of the contracting officer.

* * * * *

8. Section 970.5204–15 is revised to read as follows:

970.5204–15 Obligation of funds.

As prescribed in 970.1508(c), insert the following clause.

Obligation of Funds (Month and Year TBE)

(a) *Obligation of funds.* The amount presently obligated by the Government with respect to this contract is _____ dollars ($_____). Such amount may be increased unilaterally by DOE by written notice to the contractor and may be increased or decreased by written agreement of the parties (whether or not by formal modification of this contract). Estimated collections from others for work and services to be performed under this contract are not included in the amount presently obligated. Such collections, to the extent actually received by the contractor, shall be processed and accounted for in accordance with applicable requirements imposed by the contracting officer pursuant to the Laws, regulations, and DOE directives clause of this contract. Nothing in this paragraph (a) is to be construed as authorizing the contractor to exceed limitations stated in financial plans established by DOE and furnished to the contractor from time to time under this contract.

(b) *Limitation on payment by the Government.* Except as otherwise provided in this contract and except for costs which may be incurred by the contractor pursuant to the clause entitled ''Termination,'' or costs of

claims allowable under the contract occurring after completion or termination and not released by the contractor at the time of financial settlement of the contract in accordance with the clause entitled ''Payments and Advances,'' payment by the Government under this contract on account of allowable costs shall not, in the aggregate, exceed the amount obligated with respect to this contract, less the contractor's fee. Unless expressly negated in this contract, payment on account of those costs excepted in the preceding sentence which are in excess of the amount obligated with respect to this contract shall be subject to the availability of

(1) Collections accruing to the contractor in connection with the work under this contract and processed and accounted for in accordance with applicable requirements imposed by the contracting officer pursuant to the Laws, regulations, and DOE directives clause of this contract, and

(2) Other funds which DOE may legally use for such purpose, provided DOE will use its best efforts to obtain the appropriation of funds for this purpose if not otherwise available.

(c) *Notices—Contractor excused from further performance.* The contractor shall notify DOE in writing whenever the unexpended balance of available funds (including collections available under paragraph (a) of this clause, plus the contractor's best estimate of collections to be received and available during the ____ day period hereinafter specified, is in the contractor's best judgment sufficient to continue contract operations at the programmed rate for only _____ days and to cover the contractor's unpaid fee, and outstanding encumbrances and liabilities on account of costs allowable under the contract at the end of such period. Whenever the unexpended balance of available funds (including collections available under paragraph (a) of this clause, less the amount of the contractor's fee then earned but not paid, is in the contractor's best judgment sufficient only to liquidate outstanding encumbrances and liabilities on account of costs allowable under this contract, the contractor shall immediately notify DOE and shall make no further encumbrances or expenditures (except to liquidate existing encumbrances and liabilities), and, unless the parties otherwise agree, the contractor shall be excused from further performance (except such performance as may become necessary in connection with termination by the Government) and the performance of all work hereunder will be deemed to have been terminated for the convenience of the Government in accordance with the provisions of the clause entitled ''Termination.''

(d) *Financial plans; cost and encumbrance limitations.* In addition to the limitations provided for elsewhere in this contract, DOE may, through financial plans, such as Approved Funding Programs, or other directives issued to the contractor, establish controls on the costs to be incurred and encumbrances to be made in the performance of the contract work. Such plans and directives may be amended or supplemented from time to time by DOE. The contractor hereby agrees

(1) To comply with the specific limitations (ceilings) on costs and encumbrances set forth in such plans and directives,

(2) To comply with other requirements of such plans and directives, and

(3) To notify DOE promptly, in writing, whenever it has reason to believe that any limitation on costs and encumbrances will be exceeded or substantially underrun.

Note: *This paragraph (d) may be omitted in contracts which expressly or otherwise provide a contractual basis for equivalent controls in a separate clause.*

(e) *Government's right to terminate not affected.* The giving of any notice under this clause shall not be construed to waive or impair any right of the Government to terminate the contract under the provisions of the clause entitled ''Termination.''

9. Section 970.5204–16 is amended by: revising the introductory paragraph; clause title; clause paragraphs (a) (notes remain unchanged); last sentence of alternate paragraph (a); (c); (d) (including note 3); (e) (including note 4); adding alternate paragraph (e); revising paragraphs (f), and (i) to read as follows:

970.5204–16 Payments and advances.

As prescribed in 970.3270, insert the following clause.

Payments and Advances (Month and Year TBE)

(a) *Installments of fixed-fee.* The fixed-fee payable under this contract shall become due and payable in periodic installments in accordance with a schedule determined by the contracting officer. Fixed-fee payments shall be made by direct payment or withdrawn from funds advanced or available under this contract, as determined by the contracting officer. The contracting officer may offset against any such fee payment the amounts owed to the Government by the contractor, including any amounts owed for disallowed costs under this contract. No fixed-fee payment may be withdrawn against the payments cleared financing arrangement without prior written approval of the contracting officer.

* * * * *

(a) * * * No base fee or award fee pool amount earned payment may be withdrawn against the payments cleared financing arrangement without prior written approval of the contracting officer.

* * * * *

(c) *Special financial institution account—use.* All advances of Government funds shall be withdrawn pursuant to a payments cleared financing arrangement prescribed by DOE in favor of the financial institution or, at the option of the Government, shall be made by direct payment or other payment mechanism to the contractor, and shall be deposited only in the special financial institution account referred to in the Special Financial Institution Account Agreement, which is incorporated into this contract as Appendix ____. No part of the funds in the special financial institution account shall be commingled with any funds of the contractor or used for a purpose other than that of making payments for costs allowable and, if applicable, fees earned under this contract or payments for other items specifically approved in writing by the contracting officer. If the contracting officer determines that the balance of such special financial institution account exceeds the contractor's current needs, the contractor shall promptly make such disposition of the excess as the contracting officer may direct.

(d) *Title to funds advanced.* Title to the unexpended balance of any funds advanced and of any special financial institution account established pursuant to this clause shall remain in the Government and be superior to any claim or lien of the financial institution of deposit or others. It is understood that an advance to the contractor hereunder is not a loan to the contractor, and will not require the payment of interest by the contractor, and that the contractor acquires no right, title or interest in or to such advance other than the right to make expenditures therefrom, as provided in this clause.

Note 3: *The following paragraph (e) shall be included in management and operating contracts with integrated contractors.*

(e) *Review and approval of costs incurred.* The contractor shall prepare and submit annually as of September 30, a ''Statement of Costs Incurred and Claimed'' (Cost Statement) for the total of net expenditures accrued (i.e., net costs incurred) for the period covered by the Cost Statement. The contractor shall certify the Cost Statement subject to the penalty provisions for unallowable costs as stated in sections 306(b) and (i) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 256), as amended. DOE, after audit and appropriate adjustment, will approve such Cost Statement. This approval by DOE will constitute an acknowledgment by DOE that the net costs incurred are allowable under the contract and that they have been recorded in the accounts maintained by the contractor in accordance with DOE accounting policies, but will not relieve the contractor of responsibility for DOE's assets in its care, for appropriate subsequent adjustments, or for errors later becoming known to DOE.

Note 4: *The following paragraph (e) shall be included in management and operating contracts with nonintegrated contractors.*

(e) *Certification and penalties.* The contractor shall prepare and submit a ''Statement of Costs Incurred and Claimed'' (Cost Statement) for the total of net expenditures incurred for the period covered by the Cost Statement. It is anticipated that this will be an annual submission unless otherwise agreed to by the contracting officer. The contractor shall certify the Cost Statement subject to the penalty provisions for unallowable costs as stated in sections 306(b) and (i) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 256), as amended.

(f) *Financial settlement.* The Government shall promptly pay to the contractor the unpaid balance of allowable costs and fee upon termination of the work, expiration of

the term of the contract, or completion of the work and its acceptance by the Government after:

(1) Compliance by the contractor with DOE's patent clearance requirements, and

(2) The furnishing by the contractor of:

(i) An assignment of the contractor's rights to any refunds, rebates, allowances, accounts receivable, collections accruing to the contractor in connection with the work under this contract, or other credits applicable to allowable costs under the contract;

(ii) A closing financial statement;

(iii) The accounting for Government-owned property required by the clause entitled ''Property''; and

(iv) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract subject only to the following exceptions:

(A) Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible to exact statement by the contractor;

(B) Claims, together with reasonable expenses incidental thereto, based upon liabilities of the contractor to third parties arising out of the performance of this contract; provided that such claims are not known to the contractor on the date of the execution of the release; and provided further that the contractor gives notice of such claims in writing to the contracting officer promptly, but not more than one (1) year after the contractor's right of action first accrues. In addition, the contractor shall provide prompt notice to the contracting officer of all potential claims under this clause, whether in litigation or not (see also Contract Clause ____, DEAR 970.5204–31, ''Insurance—Litigation and Claims'');

(C) Claims for reimbursement of costs (other than expenses of the contractor by reason of any indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the contractor under the provisions of this contract relating to patents; and

(D) Claims recognizable under the clause entitled, Nuclear Hazards Indemnity Agreement.

(3) In arriving at the amount due the contractor under this clause, there shall be deducted, (i) any claim which the Government may have against the contractor in connection with this contract, and (ii) deductions due under the terms of this contract, and not otherwise recovered by or credited to the Government. The unliquidated balance of the special financial institution account may be applied to the amount due and any balance shall be returned to the Government forthwith.

* * * * *

(i) *Collections.* All collections accruing to the contractor in connection with the work under this contract, except for the contractor's fee and royalties or other income accruing to the contractor from technology transfer activities in accordance with this contract, shall be Government property and shall be processed and accounted for in accordance with applicable requirements imposed by the contracting officer pursuant to the Laws, regulations, and DOE directives clause of this contract and, to the extent consistent with those requirements, shall be deposited in the special financial institution account or otherwise made available for payment of allowable costs under this contract, unless otherwise directed by the contracting officer.

* * * * *

10. Section 970.5204–20 is amended by revising the introductory statement and paragraph (a) to read as follows:

970.5204–20 Management controls.

In accordance with 970.0901 and as prescribed in 970.3270, the following clause shall be used in management and operating contracts:

Management Controls (Month and Year TBE)

(a) The contractor shall be responsible for maintaining, as an integral part of its organization, effective systems of management controls for both administrative and programmatic functions. Management controls comprise the plan of organization, methods, and procedures adopted by management to reasonably ensure that: the mission and functions assigned to the contractor are properly executed; efficient and effective operations are promoted; resources are safeguarded against waste, loss, mismanagement, unauthorized use, or misappropriation; all encumbrances and costs that are incurred under the contract and fees that are earned are in compliance with applicable clauses and other current terms, conditions, and intended purposes; all collections accruing to the contractor in connection with the work under this contract, expenditures, and all other transactions and assets are properly recorded, managed, and reported; and financial, statistical, and other reports necessary to maintain accountability and managerial control are accurate, reliable, and timely. The systems of controls employed by the contractor shall be documented and satisfactory to DOE. Such systems shall be an integral part of the contractor's management functions, including defining specific roles and responsibilities for each level of management, and holding employees accountable for the adequacy of the management systems and controls in their areas of assigned responsibility. The contractor shall, as part of the internal audit program required elsewhere in this contract, periodically review the management systems and controls employed in programs and administrative areas to ensure that they are adequate to provide reasonable assurance that the objectives of the systems are being accomplished and that these systems and controls are working effectively.

* * * * *

11. Section 970.5204–XX is added to read as follows:

970.5204–XX Financial management system.

As prescribed in 970.3270, insert the following clause.

Financial Management System (Month and Year TBE)

The contractor shall maintain and administer a financial management system that includes the currently existing integrated accounting system and is suitable to provide proper accounting in accordance with DOE requirements for assets, liabilities, collections accruing to the contractor in connection with the work under this contract, expenditures, costs, and encumbrances; permits the preparation of accounts and accurate, reliable financial and statistical reports; and assures that accountability for the assets can be maintained. The contractor shall submit to DOE for written approval an annual plan for new financial management systems and/or subsystems and major enhancements and/or upgrades to the currently existing financial systems and/or subsystems. The contractor shall notify DOE thirty (30) days in advance of any planned implementation of any substantial deviation from this plan and, as requested by the contracting officer, shall submit any such deviation to DOE for written approval before implementation.

12. Section 970.5204–XX is added to read as follows:

970.5204–XX Integrated accounting.

As prescribed in 970.3270, insert the following clause.

Integrated Accounting (Month and Year TBE)

Integrated accounting procedures are required for use under this contract. The contractor's financial management system shall include an integrated accounting system that is linked to DOE's accounts through the use of reciprocal accounts and that has electronic capability to transmit monthly and year-end self-balancing trial balances to the Department's Primary Accounting System for reporting financial activity under this contract in accordance with requirements imposed by the contracting officer pursuant to the Laws, regulations, and DOE directives clause of this contract.

13. Section 970.5204–XX is added to read as follows:

970.5204–XX Liability with respect to Cost Accounting Standards.

As prescribed in 970.3270, insert the following clause.

Liability With Respect to Cost Accounting Standards (Month and Year TBE)

(a) The contractor is not liable to the Government for increased costs or interest resulting from its failure to comply with the clauses of this contract entitled, ''Cost Accounting Standards,'' and ''Administration of Cost Accounting Standards,'' if its failure to comply with the clauses is caused by the contractor's compliance with published DOE financial management policies and procedures or other requirements established by the Department's Chief Financial Officer or Procurement Executive.

(b) The contractor is not liable to the Government for increased costs or interest resulting from its subcontractors' failure to comply with the clauses at FAR 52.230–2,

''Cost Accounting Standards,'' and FAR 52.230–6, ''Administration of Cost Accounting Standards,'' if the contractor includes in each covered subcontract a clause making the subcontractor liable to the Government for increased costs or interest resulting from the subcontractor's failure to comply with the clauses; and the contractor seeks the subcontract price adjustment and cooperates with the Government in the Government's attempts to recover from the subcontractor.

14. Section 970.5204–XX is added to read as follows:

970.5204–XX Work for others funding authorization.

As prescribed in 970.3270, insert the following clause.

Work for Others Funding Authorization (Month and Year TBE)

Any uncollectible receivables resulting from the contractor utilizing contractor corporate funding for reimbursable work shall be the responsibility of the contractor, and the United States Government shall have no liability to the contractor therefor. The contractor is permitted to provide advance payment utilizing contractor corporate funds for reimbursable work to be performed by the contractor for a non-Federal entity in instances where advance payment from that entity is required under the Laws, regulations, and DOE directives clause of this contract and such advance cannot be obtained. The contractor is also permitted to provide advance payment utilizing contractor corporate funds to continue reimbursable work to be performed by the contractor for a Federal entity when the term or the funds on a Federal interagency agreement required under the Laws, regulations, and DOE directives clause of this contract have elapsed. The contractor's utilization of contractor corporate funds does not relieve the contractor of its responsibility to comply with all requirements for Work for Others applicable to this contract.

[FR Doc. 98–30386 Filed 11–17–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[I.D. 110998B]

Pacific Tuna Fisheries; Public Hearing

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

ACTION: Notice of public hearing.

SUMMARY: NMFS will convene a public hearing on proposed regulations necessary to implement recommendations of the Inter-American Tropical Tuna Commission (IATTC) according to the provisions of the Tuna Conventions Act of 1950.

DATES: The public hearing will be held on December 1, 1998.

ADDRESSES: The hearing will be held at the Embassy Suites Hotel located at 601 Pacific Highway, San Diego, California 92101. Copies of proposed regulations and associated material will be available from Dr. William Hogarth, Regional Administrator, Southwest Region, NMFS, 501 Ocean Boulevard, Suite 4200, Long Beach, California 90802–4213.

FOR FURTHER INFORMATION CONTACT: Mr. Svein Fougner, Assistant Administrator for Sustainable Fisheries, Southwest Region, NMFS, 562–980–4030.

SUPPLEMENTARY INFORMATION: At its 61st meeting in June 1998, the IATTC acted to set a 1998 quota on yellowfin tuna in its regulatory area, set a quota on bigeye tuna to be implemented by prohibiting sets on floating objects once the quota is reached, prohibit the use of vessels that tend fishery aggregating devices, and prohibit at-sea transhipments of fish caught by purse seines. NMFS is requesting public comments on regulations implementing the recommendations of the IATTC, which will soon be published in the **Federal Register** with a 30-day period for public comment.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Svein Fougner at the number above at least 5 days prior to the meeting date.

Dated: November 12, 1998.

Gary C. Matlock,

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

[FR Doc. 98–30838 Filed 11–17–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 981109280–8280–01; I.D. 101498F]

RIN 0648–AM03

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic States; Recreational-for-hire Fisheries; Control Date

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

ACTION: Advance notice of proposed rulemaking; consideration of a control date.

SUMMARY: This notice announces that the Gulf of Mexico Fishery Management Council (Council) is considering whether there is a need to impose additional management measures limiting entry into the recreational-for-hire (i.e., charter vessel and headboat) fisheries for reef fish and coastal migratory pelagic fish in the exclusive economic zone (EEZ) of the Gulf of Mexico and, if there is a need, what management measures should be imposed. If the Council determines that there is a need to impose additional management measures, it may initiate a rulemaking to do so. Possible measures include the establishment of a limited entry program to control participation or effort in the recreational-for-hire fisheries for reef fish and coastal migratory pelagics. If a limited entry program is established, the Council is considering November 18, 1998, as a possible control date. Consideration of a control date is intended to discourage new entry into the fisheries based on economic speculation during the Council's deliberation on the issues.

DATES: Comments must be submitted by December 18, 1998.

ADDRESSES: Comments should be directed to the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619–2266; Fax: 813–225–7015.

FOR FURTHER INFORMATION CONTACT: Mark Godcharles or Robert Sadler, 727–570–5305.

SUPPLEMENTARY INFORMATION: The recreational-for-hire fisheries for reef fish and coastal migratory pelagic fish in the EEZ of the Gulf of Mexico are

managed respectively under the Fishery Management Plans for the Reef Fish Resources of the Gulf of Mexico (Gulf) and the Coastal Migratory Pelagic Resources of the Gulf and South Atlantic (FMPs). The FMP for the Gulf of Mexico reef fish resources was prepared by the Council; the FMP for coastal migratory pelagic resources was prepared jointly by the Council and the South Atlantic Fishery Management Council. Both FMPs were implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act by regulations at 50 CFR part 622. The FMPs regulate these two recreational-for-hire fisheries and require permits for charter and headboat vessels participating in them. Landings of the vessels are regulated through bag, possession, and size limits. There also is a recreational quota for red snapper.

In both the red snapper and king mackerel fisheries, the recreational sector, including recreational-for-hire vessels, has frequently exceeded the allocations set for that sector when total allowable catch (TAC) is set annually. To prevent the recreational sector from exceeding its allocation, the Council must either reduce the bag limits or take some other action to reduce the effort and/or landings (e.g., seasonal closures, increased size limits). Reduction of the bag limits is the most effective way to control landings, but such reductions have adverse economic impacts on the recreational-for-hire vessels. When the bag limit is reduced to a lower level, some of the clientele of these vessels cease to fish and to pay for fishing trips. The Council is, therefore, considering limited entry or other effort limitation programs for recreational-for-hire vessels.

Implementation of an effort limitation program for these recreational-for-hire fisheries in the EEZ would require preparation of amendments to the FMPs by the Council and publication of proposed implementing rules with a public comment period. NMFS' approval of the amendments and issuance of final implementing rules also would be required.

As the Council considers management options, including limited entry or access-controlled regimes, some fishermen who do not currently participate in the recreational-for-hire fisheries, and have never done so, may decide to enter the fisheries for the sole purpose of establishing a record of landings. When management authorities begin to consider use of a limited access management regime, this kind of speculative entry often is responsible for a rapid increase in fishing effort in fisheries that are already fully developed or overdeveloped. The original fishery problems, such as overcapitalization or overfishing, may be exacerbated by the entry of new participants.

In order to avoid this problem, if management measures to limit participation or effort in the fisheries are determined to be necessary, the Council is considering November 18, 1998, as the control date. After that date, anyone entering these recreational-for-hire fisheries may not be assured of future participation in the fisheries if a management regime is developed and implemented limiting the number of fishery participants.

The Council previously established a control date of October 16, 1995, (60 FR 53576, October 16, 1995) for the recreational-for-hire fishery for Gulf king mackerel. It is the Council's intent that the November 18, 1998 control date established by this advance notice of proposed rulemaking supersede the October 15, 1995, control date for that sector of the fishery.

Consideration of a control date does not commit the Council or NMFS to any particular management regime or criteria for entry into the recreational-for-hire fisheries. Fishermen are not guaranteed future participation in these fisheries, regardless of their entry date or intensity of participation in the fisheries before or after the control date under consideration. The Council subsequently may choose a different control date or it may choose a management regime that does not make use of such a date. The Council may choose to give variably weighted consideration to fishermen active in the fisheries before and after the control date. Other qualifying criteria, such as documentation of landings and sales, may be applied for entry. The Council also may choose to take no further action to control entry or access to the fisheries, in which case the control date may be rescinded.

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

Dated: November 12, 1998.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 98–30835 Filed 11–17–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 110998F]

RIN 0648–AJ33

Fisheries of the Northeastern United States; Amendment 7 to the Atlantic Sea Scallop Fishery Management Plan; Amendments to Address the Sustainable Fisheries Act Requirements and Other Measures

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

ACTION: Notice of availability of an amendment to a fishery management plan; request for comments.

SUMMARY: NMFS announces that the New England Fishery Management Council (Council) has submitted Amendment 7 to the Atlantic Sea Scallop Fishery Management Plan (Amendment 7) for Secretarial review and is requesting comments from the public. Included in Amendment 7 are the new Sustainable Fisheries Act requirements for Atlantic sea scallops.

DATES: Comments must be received on or before January 19, 1999.

ADDRESSES: Comments on the proposed amendment should be sent to Jon C. Rittgers, Acting Regional Administrator, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, ''Comments on Amendment 7 to the Atlantic Sea Scallop FMP.''

Copies of Amendment 7, its regulatory impact review, initial regulatory flexibility analysis, the final supplemental environmental impact statement, and the supporting documents for Amendment 7 are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1036.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, 978–281–9273.

SUPPLEMENTARY INFORMATION: Amendment 7 proposes to: (1) Establish a 10-year stock rebuilding schedule; (2) initiate a new overfishing definition and rebuilding target for Atlantic sea scallops; (3) revise the specification of optimum yield; (4) continue the Mid-Atlantic closed areas, with a sunset date of March 1, 2001; (5) implement a system for closing and opening areas to improve yield per recruit; (6) establish an annual monitoring and adjustment

system to ensure stock rebuilding; and (7) add measures to those that the Council may implement through the framework adjustment process.

A proposed rule that would implement Amendment 7 may be published in the **Federal Register** for public comment, following NMFS' evaluation of the proposed rule under the procedures of the Magnuson-Stevens Fishery Conservation and Management Act. Public comments on the proposed rule must be received by the end of the comment period on Amendment 7 to be considered in the approval/disapproval decision on the FMP amendment. All comments received by January 19, 1999, whether specifically directed to the FMP amendment or the proposed rule, will be considered in the approval/disapproval decision. Comments received after that date will not be considered in the approval/disapproval decision on the FMP amendment.

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

Dated: November 12, 1998.

Gary C. Matlock,

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

[FR Doc. 98–30836 Filed 11–17–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D. 110698B]

RIN 0648–AK21

Fisheries off West Coast States and in the Western Pacific; Bottomfish and Seamount Groundfish Fisheries; Amendment 5

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

ACTION: Notice of availability of a fishery management plan amendment; request for comments.

SUMMARY: NMFS announces that the Western Pacific Fishery Management Council (Council) has submitted Amendment 5 to the Fishery Management Plan for Bottomfish and Seamount Groundfish of the Western Pacific Region (FMP) for Secretarial review. Amendment 5 would establish a limited access program for the Mau Zone bottomfish fishery in the eastern portion of the Northwestern Hawaiian Islands (NWHI). The Mau Zone, which is one of two bottomfish management subareas in the NWHI, encompasses an area between 161°20′ and 165° 00′ W. longitude in the U.S. exclusive economic zone around the Hawaiian Islands. This action is intended to conserve and support the long-term productivity of the bottomfish stocks by preventing the potential for excessive harvest capacity and to improve the low economic returns in the fishery.

DATES: Written comments on the amendment must be received on or before January 19, 1999.

ADDRESSES: Written comments should be sent to Charles Karnella, Administrator, Pacific Islands Area Office, NMFS, 2570 Dole Street, Room 106, Honolulu, HI 96822–2396. Copies of Amendment 5, including its Regulatory Impact Review and Environmental Assessment, are available from Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Alvin Katekaru, Fishery Management Specialist, Pacific Islands Area Office, NMFS at (808) 973–2985 or Kitty Simonds at (808) 522–8220.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each Regional Fishery Management Council submit any amendment to a fishery management plan it has prepared to NMFS for review, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an amendment, immediately publish a notice that the amendment is available for public review and comment. NMFS will consider all public comments received during the comment period in determining whether to approve the amendment for implementation.

Amendment 5 would (1) restrict participation in the Mau Zone bottomfish fishery to vessel owners who hold limited access permits; (2) adopt, based on biological and economic factors, a long-term target number of 10 vessels that would be allowed to fish for bottomfish in the Mau Zone; (3) establish qualifying criteria for allocating initial limited access permits based on historic participation in the fishery (December 17, 1991, control date) and landings of bottomfish from the Mau Zone up to December 31, 1996; (4) prohibit the transfer, lease, charter, or sale of permits to reduce the number of vessels in the fishery in order to achieve the target number; (5) revoke limited access permits issued to partnerships or corporations upon a change in more than 50 percent ownership in the permitted vessel or its replacement; (6) limit the amount of time a permit holder may register a limited access permit for use with a leased or chartered vessel; (7) limit the length of replacement vessels to 60 ft (18.3 m); (8) require permit holders to make a minimum of five landings of at least 500 lb (227 kg) each of bottomfish management unit species each year from the Mau Zone to qualify for permit renewal; (9) require the Council to undertake a 5-year comprehensive review of the limited access program to determine its effectiveness in meeting the objectives of the FMP; (10) have the Council develop criteria to allow new entry into the Mau Zone when the number of permitted vessels falls below 10; and (11) reserve 20 percent of the long-term target number of limited access permits, i.e., two permits, for a Western Pacific Community Development Program that may be developed by the Council and approved by the Secretary of Commerce. Amendment 5 describes the above measures in detail, including such other requirements as establishing a fee for processing Mau Zone permits, specifying an appeals process for permit actions, and prohibiting the retention of incidentally caught bottomfish in the Mau Zone without a limited access permit.

Public comments on Amendment 5 must be received by January 19, 1999 to be considered by NMFS in the decision to approve/disapprove Amendment 5. A proposed rule to implement Amendment 5 has been submitted for Secretarial review and approval. NMFS expects to publish the proposed rule and request public comment on the proposed regulations in the near future.

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

Dated: November 13, 1998.

Bruce C. Morehead,

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

[FR Doc. 98–30839 Filed 11–17–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 101498C]

RIN 0648–AJ50

Fisheries of the Exclusive Economic Zone off Alaska; Amendment 56 to the Fishery Management Plan for Groundfish of the Gulf of Alaska and Amendment 56 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area; Correction

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

ACTION: Correction to notice of availability.

SUMMARY: This document contains a correction to the notice of availability pertaining to Fisheries of the Exclusive Economic Zone published in the **Federal Register** on October 26, 1998 (63 FR 57094). That document erroneously used the symbol ''not equal to'' instead of the percent symbol when referring to fishing mortality rates.

FOR FURTHER INFORMATION CONTACT: James Hale, 907–586–7228.

Correction

In the notice of availability **Federal Register** document 98–28600, on page 57095, correct the not equal to symbol to read ''%'' in the following places:

a. In the first column, in the last paragraph, lines 3, 4, and 10.

b. In the second column, in the first incomplete paragraph, lines 1, 2, 5 (twice), 11, and 12.

Dated: November 12, 1998.

Gary C. Matlock,

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

[FR Doc. 98–30837 Filed 11–17–98; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 63, No. 222

Wednesday, November 18, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Research, Education, and Economics; Notice of Strategic Planning Task Force Meeting

AGENCY: Research, Education, and Economics, USDA.

ACTION: Notice of Meeting.

SUMMARY: The United States Department of Agriculture announces a meeting of the Strategic Planning Task Force on Research Facilities.

SUPPLEMENTARY INFORMATION: The Strategic Planning Task Force on Research Facilities, currently consisting of 14 members, is scheduled to meet for the sixth of eight planned meetings. The meeting is scheduled to be held at the National Agriculture Library, Beltsville, Maryland, beginning at 1 p.m. on December 1 and concluding at 3 p.m. on December 4. The meeting will be a review of the data collected by the Task Force and will begin discussion and plans for the development of the final report.

Times and dates: December 1, 1998, 1 p.m.–5 p.m.; December 2, 1998, 8 a.m.–5 p.m.; December 3, 1998, 8 a.m.–5 p.m.; and December 4, 1998, 8 a.m.–3 p.m.

Place: National Agricultural Library Conference Room, Beltsville, Maryland.

Type of meeting: Open to the public.

Comments: The public may file written comments before or after the meeting with the contact person listed below.

FOR FURTHER INFORMATION CONTACT: Mitch Geasler, Project Director, Strategic Planning Task Force on Research Facilities, Room 344–A Jamie L. Whitten Building, USDA, 1400 Independence Avenue SW., Washington, DC 20250–0113. Telephone 202–720–3803.

Done at Washington, DC, this 12th day of November, 1998.

I. Miley Gonzalez,

Under Secretary, Research, Education, and Economics.

[FR Doc. 98–30852 Filed 11–17–98; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Forest Service

Rocky Mountain Region; Supplemental Environmental Impact Statement for Sheep Flats Diversity Unit Timber Sales, Grand Mesa, Uncompahgre and Gunnison National Forest, Mesa County, Colorado

AGENCY: Forest Service, USDA.

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

Responsible Official: The Responsible Official for this Supplemental Environmental Impact Statement is Mr. Robert Storch, Forest Supervisor of the Grand Mesa, Uncompahgre and Gunnison National Forests, 2250 Highway 50, Delta, Colorado 81416.

SUMMARY: The Forest Service prepared and issued a final environmental impact statement in June 1998 about four (4) proposed timber sales: Valley View, Sheep Flats, Grove Creek, and Leon. These sales are located on the Grand Mesa National Forest, Collbran Ranger District. The Forest Service will supplement this environmental impact statement by developing and presenting additional information concerning soils and watershed resources. Errors and inconsistencies in the June 1998 EIS will also be corrected.

DATES: Publication of Draft Supplemental EIS: December 1998. Publication of Final Supplemental EIS: March 1999. Publication of Record of Decision: April 1999.

ADDRESSES: Send written comments to Mr. Robert Storch, Forest Supervisor of the Grand Mesa, Uncompahgre and Gunnison National Forests, 2250 Highway 50, Delta, Colorado 81416. Send electronic mail comments to Pam Bode, Project Leader at pam.bode/r2__gmug@fs.fed.us.

SUPPLEMENTARY INFORMATION: The Forest Supervisor will use this Supplemental Environmental Impact Statement to reconsider his decision concerning how to manage the timber resource within Sheep Flats Diversity Unit. The Forest Service is proposing to harvest four timber sales on this National Forest System land. Even-aged and uneven-aged silvicultural systems are considered in Engelmann spruce, subalpine fir, and aspen stands. These sales are scheduled to be offered within a five to ten year period after this analysis.

Initial scoping of interested parties identified three preliminary issues. These are: (1) Constructing roads and harvesting timber within areas that were identified as Salt Creek Roadless Area and Priest Mountain Roadless Area during the 1979 RARE II inventory, (2) harvesting old growth timber, and (3) cumulative impacts on ecosystems from logging operations in and around the sale areas.

Five alternatives were studied in the June 1998 EIS. Alternative 1 is No Action. Alternatives 2 and 4 harvest suited timber but do not enter the Salt Creek or Priest Mountain Roadless Area. Alternatives 3 and 5 enter both the Salt Creek and Priest Mountain Roadless Areas. Alternatives 2 and 3 emphasize maintenance of current old growth attributes and wildlife habitat networks while moderately improving timber structural diversity. Alternatives 4 and 5 emphasize improvement of timber structural diversity and production of wood fiber for timber industry. The selected action in the June 1998 Record of Decision was a combination of Alternatives 3 and 5. This action will be reconsidered when the Final Supplemental EIS is complete and a new decision will be published.

News releases were issued, field tours have been conducted, and public meetings have occurred over the past six years. No additional scoping is planned for this project. News releases will be issued to inform the public that a Supplemental EIS will be prepared. These releases will outline the analysis schedule, and identify the period of opportunity for comment. The comment period on the Draft Supplemental Environmental Impact Statement will be 45 days from the date the Environmental Protection Agency publishes the Notice of Availability in the **Federal Register**. The parties that expressed interest previously have been informed individually by mail that this analysis is continuing.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of supplemental environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft supplemental environmental impact stage but that are not raised until after completion of the final supplemental environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel, 803 F.2d 1016, 1022 (9th Cir. 1986)* and *Wisconsin Heritages, Inc.* v. *Harris, 490 F.Supp. 1334, 1338 (E.D. Wis. 1980).* Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final supplemental environmental impact statement.

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

Dated: November 9, 1998.

Robert L. Storch,

Forest Supervisor.

[FR Doc. 98–30859 Filed 11–17–98; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the District of Columbia Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the District of Columbia Advisory Committee to the Commission will convene at 9:30 a.m. and adjourn at 12:45 p.m. on December 4, 1998, at JC Penney, Government Relations Office (Suite 1015), 1156 15th St., N.W., Washington, D.C. 20036. The purpose of the meeting is to hear from lending industry representatives on the use of credit scoring methods in relationship to minority loan applicants, to receive updates from subcommittees, to review an outline for a memorandum to the Commission on recent developments in lending and discrimination issues, and continue planning future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Steven Sims, 202–862–4815, or Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 10, 1998.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 98–30757 Filed 11–17–98; 8:45 am]

BILLING CODE 6335–01–F

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Missouri Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Missouri Advisory Committee to the Commission will convene at 3 p.m. and adjourn at 5 p.m. on December 3, 1998, at the Holiday Inn, 102 South 3rd, St. Joseph MO 64501. The purpose of the meeting is to plan future activities and receive civil rights monitoring issues from members.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 913–551–1400 (TTD 913–551–1414). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 10, 1998.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 98–30758 Filed 11–17–98; 8:45 am]

BILLING CODE 6335–01–F

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

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 of 1995, Pub. L. 104–13.

Bureau: International Trade Administration.

Title: Internet Export Finance Matchmaker.

OMB Number: None.

Type of Request: Regular Submission.

Burden: 333 hours.

Number of Respondents: 1700.

Avg. Hours Per Response: Exporters, 10 minutes; Export Service Firms, 30 minutes.

Needs and Uses: The Office of Finance assists U.S. firms in identifying trade finance opportunities and promotes the competitiveness of U.S. financial services in international trade. The Office of Finance interacts with private financial institutions in insurance, banking, leasing, factoring, barter, and counter trade; U.S. financing agencies, such as the Export-Import Bank and the Overseas Private Investment Corporation; and multilateral development banks, such as the World Bank, Asian Development Bank, and others. To facilitate contact between exporters and financial institutions, the Office of Finance is developing an interactive Internet trade finance matchmaking program to link exporters seeking trade finance with banks and other financial institutions. The information collected from financial institutions regarding the trade finance products and services they offer will be compiled into a database. An exporter will be able to electronically submit a form identifying the potential export transaction and type of financing requested. This information will be electronically matched with the financial institution(s) that meet the requirements of the exporter. After a match has been made, a message will be electronically sent to both the exporter and the financial institution containing

the information about the match, and contact information for either party to initiate communication. This program is designed to implement the Department of Commerce's goal of improving access to trade financing for small business exporters.

Affected Public: Businesses or other for-profit.

Frequency: On Occasion.

Respondent's Obligation: Required to obtain or retain a benefit; voluntary.

OMB Desk Officer: David Rostker, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Departmental Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503 within 30 days of the publication of this notice in the **Federal Register**.

Dated: November 12, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Chief Information Officer.

[FR Doc. 98–30777 Filed 11–17–98; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

Submission for OMB Review: Comment Request

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 of 1995, Pub. L. 104–13.

Bureau: International Trade Administration.

Title: Mission/Exhibition Evaluation.

Agency Form Number: ITA–4075P.

OMB Number: 0625–0034.

Type of Request: Regular Submission.

Burden: 167 hours.

Number of Respondents: 2,000.

Avg. Hours Per Response: 5 minutes.

Needs and Uses: U.S. Department of Commerce (DOC) and DOC-certified trade missions and exhibitions are overseas events planned, organized and led by government and non-government export promotion agencies such as industry trade associations; agencies of federal, state and local governments; chambers of commerce; regional consortia; and other export oriented groups. This form is used to: (1) Evaluate the effectiveness of DOC or DOC-certified overseas trade events through the collection of information relating to required performance measures; (2) document the results of participation in DOC trade events; (3) evaluate results reported by small to mid-sized, new-to-exports/new-to-market U.S. companies; (4) document the successful completion of trade promotion activities conducted by overseas DOC offices; and (5) identify strengths and weaknesses of DOC trade promotion programs, in the interest of improving service to the U.S. business community. This request is being submitted to revise this information collection form to enable participants to quickly and clearly address whether or not their overall objective(s) were met by participating in a particular trade mission or exhibition.

Affected Public: Businesses or other for profit, not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit, voluntary.

OMB Desk Officer: David Rostker, (202) 395–7340.

Copies of the above information collection can be obtained by calling or writing Linda Engelmeier, Department 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 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503 within 30 days of the publication of this notice in the **Federal Register**.

Dated: November 12, 1998.

Linda Engelmeier,

Department Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–30779 Filed 11–17–98; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

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 of 1995, Pub. L. 104–13.

Bureau: International Trade Administration.

Title: Application for an Export Trade Certificate of Review.

Agency Form Number: ITA–4093P.

OMB Number: 0625–0125.

Type of Request: Regular Submission.

Burden: 960 hours.

Number of Respondents: 30.

Avg. Hours Per Response: 32 hours.

Needs and Uses: Title III of the Export Trading Company Act of 1982 (Pub. L. 97–290, 96 Stat. 1233–1247), requires the Department of Commerce to establish a program to evaluate applications for an Export Trade Certificates of Review (antitrust preclearance for joint export related activities), and with the concurrence of the Department of Justice, issue such certificates where the requirements of the Act are satisfied. The Act requires that Commerce and Justice conduct economic and legal antitrust analyses prior to the issuance of a certificate. The collection of information is necessary to conduct the required economic and legal antitrust analyses. Without the information, there could be no basis upon which a certificate could be issued.

In the Department of Commerce, the economic and legal analyses are performed by the Office of Export Trading Company Affairs and the Office of the General Counsel, respectively. The Department of Justice analyses will be conducted by its Antitrust Division. The purpose of such analyses is to make a determination as to whether or not to issue an Export Trade Certificate of Review.

A certificate provides its holder and the members named in the certificate (a) immunity from government actions under state and Federal antitrust laws for the export conduct specified in the certificate; (b) some protection from frivolous private suits by limiting their liability in private actions from treble to actual damages when the challenged activities are covered by an Export Certificate of Review. Title III was enacted to reduce uncertainty regarding application of U.S. antitrust laws to export activities—especially those involving actions by domestic competitors. Application for an export trade certificate of review is voluntary.

Affected Public: Businesses or other for-profit, not-for-profit institutions, state, local or tribal Government.

Frequency: On Occasion.

Respondent's Obligation: Required to obtain or retain a benefit, voluntary.

OMB Desk Officer: David Rostker, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Departmental Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503 within 30 days of the publication of this notice.

Dated: November 12, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–30780 Filed 11–17–98; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

Submission for OMB Review: Comment Request

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 of 1995, Public Law 104–13.

Bureau: International Trade Administration.

Title: Trade Fair Certification Program: Application.

Agency Form Number: ITA–4100P.

OMB Number: 0625–0130.

Type of Request: Regular Submission.

Burden: 700 hours.

Number of Respondents: 70.

Avg. Hours Per Response: 10 hours.

Needs and Uses: Private trade show organizers, trade associations, U.S. agents of foreign fair authorities, and other entities use this form to apply for certification of their ability to organize and manage a U.S. pavilion at a foreign trade show. The Department of Commerce uses information from the form to evaluate if both the show and the organizer meet the Department's high standards in areas such as recruiting, delivering show services, attracting small and medium size firms, booth pricing, and being an appropriate marketing venue for U.S. firms. The form asks organizers to respond to 23 questions ranging from simple name and address to pricing options to outlining their experience and marketing plans. Potential exhibitors look to trade fair certification to ensure they are participating in a viable show with a reliable organizer. The form also includes information on where to apply, procedures, and a commitment by the applicant to abide by the terms set forth for program participation.

Affected Public: Businesses or other for profit, not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit, voluntary.

OMB Desk Officer: David Rostker, (202) 395–7340.

Copies of the above information collection can be obtained by calling or writing Linda Engelmeier, Department Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20503 within 30 days of the publication of this notice.

Dated: November 12, 1998.

Linda Engelmeier,

Department Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–30781 Filed 11–17–98; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

Submission for OMB Review: Comment Request

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 of 1995, Public Law 104–13.

Bureau: International Trade Administration.

Title: Certified Trade Mission: Application for Status.

Agency Form Number: ITA–4127P.

OMB Number: 0625–0215.

Type of Request: Regular Submission.

Burden: 60 hours.

Number of Respondents: 60.

Avg. Hours Per Response: 1 hour.

Needs and Uses: Certified Trade Missions are overseas events that are planned, organized and led by both Federal and non-Federal government export promotion agencies such as industry trade associations, agencies of state and local governments, chambers of commerce, regional groups and other export-oriented groups. The Certified Trade Missions-Application for status form is the vehicle by which individual firms apply, and if accepted, agree to participate in the Department of Commerce's (DOC) trade promotion events program, identify the products or services they intend to sell or promote, and record their required participation fees. This submission only renews use of the form; no changes are being made. The form is used to (1) collect information about product/services that a company wishes to export; (2) modify several questions based on comments received from DOC trade event managers and participants.

Affected Public: Businesses or other for profit, not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit, voluntary.

OMB Desk Officer: David Rostker, (202) 395–7340.

Copies of the above information collection can be obtained by calling or writing Linda Engelmeier, Department Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230. Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20503 within 30 days after the publication of this notice.

Dated: November 12, 1998.

Linda Engelmeier,

Department Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–30782 Filed 11–17–98; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

Submission for OMB Review: Comment Request

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 of 1995, Public Law 104–13.

Bureau: International Trade Administration.

Title: Marketing Data Form.

Agency Form Number: ITA–466P.

OMB Number: 0625–0047.

Type of Request: Regular Submission.

Burden: 3,000 hours.

Number of Respondents: 4,000.

Avg. Hours Per Response: 45 minutes.

Needs and Uses: There is a necessity to have proper information about companies participating in U.S. exhibitions, Trade Missions, and Matchmakers and their products to publicize and promote participation in these export promotion events. The Marketing Data Form (MDF) provides information necessary to produce export promotion brochures and directories to arrange appointments and prospect calls on behalf of the participants with key prospective buyers, agents, distributors, or government officials. Specific information is also requested in terms of the participants objectives regarding agents, distributors, joint venture or licensing partners and any special requirements for prospective agents, for example, physical facilities, technical

capabilities, financial strength, staff, representation of complementary lines, etc.

Affected Public: Businesses or other for profit, not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit, voluntary.

OMB Desk Officer: David Rostker, (202) 395–7340.

Copies of the above information collection can be obtained by calling or writing Linda Engelmeier, Department Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20503 within 30 days of the publication of this notice.

Dated: November 12, 1998.

Linda Engelmeier,

Department Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–30783 Filed 11–17–98; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

Submission for OMB Review: Comment Request

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 of 1995, Public Law 104–13.

Bureau: International Trade Administration.

Title: Product Characteristics-Design Check-Off List.

Agency Form Number: ITA–426P.

OMB Number: 0625–0035.

Type of Request: Regular Submission.

Burden: 1,000 hours.

Number of Respondents: 2,000.

Avg. Hours Per Response: 30 minutes.

Needs and Uses: The International Trade Administration (ITA) sponsors up to 120 overseas trade fair events each fiscal year. In addition, there is a Matchmaker Program of approximately 20 events annually, which is a combination of multi-stop trade missions and small equipment presentations. Trade fairs involve U.S. firms exhibiting their goods and services at American pavilions at internationally recognized events worldwide. In the case of Matchmakers, ITA organizes U.S. Company missions, traveling to 2 or 3 foreign locations. Matchmakers combine exhibit booth/product presentation orientation and by-appointment only meetings in facilities capable of accommodating 20–40 U.S. firms.

The Product Characteristics-Design Check off list seeks from participating U.S. firms information on the physical nature, power (utility) and graphic requirements of the products and services to be displayed, and to ensure the availability of utilities active product demonstrations. This form also allows U.S. firms to identify special installation instructions that can be critical to the proper placement and hookup of their equipment and/or graphics. Without the timely and accurate submission of form ITA–426P, Product Characteristics-Design Check Off List, ITA would be unable to provide a pavilion facility that would effectively support the sales/marketing and presentation objectives of U.S. participants. The anticipated result would be diminished program productivity, then declining participation by U.S. firms. A second possible result would be reduced private sector funds and possibly the discontinuation of this type of U.S. international trade event program.

Affected Public: Businesses or other for profit, not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit, voluntary.

OMB Desk Officer: David Rostker, (202) 395–7340.

Copies of the above information collection can be obtained by calling or writing Linda Engelmeier, Department Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington D.C. 20503 within 30 days of the publication of this notice in the **Federal Register**.

Dated: November 12, 1998.

Linda Engelmeier,

Department Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–30784 Filed 11–17–98; 8:45 am]

BILLING CODE 3510–FP–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 Telecommunications and Information Administration.

Title: Telecommunications and Information Infrastructure Assistance Program Structured Reporting System.

Agency Form Number(s): None.

OMB Approval Number: None.

Type of Request: New collection.

Burden: 7,498 hours.

Number of Respondents: 46 (multiple responses).

Avg. Hours Per Response: Ranges between 8 and 40 hours depending on the requirement.

Needs and Uses: The purpose of the Telecommunications and Information Infrastructure Assistance Program is to promote the widespread and efficient use of advanced telecommunications in the public and nonprofit sectors to serve communities nationwide. It does this by providing matching funds to public and nonprofit sector organizations to use ''information infrastructure'' to provide community-wide information, health, life-long learning, public safety and other public services. In order to monitor and assess the impacts of the funded projects, certain reports are required. These reports are used to ensure that grant recipients are effectively promoting the efficient and widespread use of advanced telecommunications services to serve American communities and to comply with the Government Performance and Results Act.

Affected Public: Not-for-profit institutions, federal government, state, local or tribal government.

Frequency: Quarterly, annually.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Tim Fain, (202) 395–3561.

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 Tim Fain, OMB Desk Officer, Room 10236, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503.

Dated: November 10, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–30805 Filed 11–17–98; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–832]

Initiation of Antidumping Duty Investigation: Dynamic Random Access Memory Semiconductors From Taiwan

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

ACTION: Initiation of antidumping investigation.

EFFECTIVE DATE: November 18, 1998.

FOR FURTHER INFORMATION CONTACT: Alexander Amdur at (202) 482–5346, John Conniff at (202) 482–1009 or Ron Trentham at (202) 482–6320, Import Administration—Room B099, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Initiation of Investigation

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR Part 351 (1998).

The Petition

On October 22, 1998, the Department of Commerce (''the Department'') received a petition filed in proper form by Micron Technology, Inc. (''petitioner''). The Department received supplemental information to the petition on November 5, 1998. In accordance with section 732(b) of the Act, petitioner alleges that imports of dynamic random access memory semiconductors of one megabit and above (''DRAMs'') from Taiwan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, an industry in the United States. The Department finds that petitioner filed the petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act, and has demonstrated sufficient industry support with respect to the antidumping investigation it is requesting the Department to initiate. *See* Determination of Industry Support for the Petition below.

Scope of Investigation

The products covered by this investigation are DRAMs from Taiwan, whether assembled or unassembled. Assembled DRAMs include all package types. Unassembled DRAMs include processed wafers, uncut die, and cut die. Processed wafers fabricated in Taiwan, but packaged or assembled into finished semiconductors in a third country are included in the scope. Wafers fabricated in a third country and assembled or packaged in Taiwan are not included in the scope.

The scope of this investigation includes memory modules. A memory module is a collection of DRAMs, the sole function of which is memory. Modules include single in-line processing modules (''SIPS''), single in-line memory modules (''SIMMs''), dual in-line memory modules (''DIMMs''), memory cards or other collections of DRAMs whether mounted or unmounted on a circuit board. Modules that contain other parts that are needed to support the function of memory are covered. Only those modules that contain additional items that alter the function of the module to something other than memory, such as video graphics adapter (''VGA'') boards and cards, are not included in the scope. Modules containing DRAMs made from wafers fabricated in Taiwan, but either assembled or packaged into finished semiconductors in a third country, are also included in the scope.

The scope includes, but is not limited to, video RAM (''VRAM''), Windows RAM (''WRAM''), synchronous graphics RAM (''SGRAM''), as well as various types of DRAM, including fast page-mode (''FPM''), extended data-out (''EDO''), burst extended data-out (''BEDO''), synchronous dynamic RAM (''SDRAM''), and ''Rambus'' DRAM (''RDRAM''). The scope of this investigation also includes any future density, packaging or assembling of DRAMs. The scope of this investigation does not include DRAMs or memory modules that are reimported for repair or replacement.

The DRAMS subject to this investigation are currently classifiable under subheadings 8542.13.80.05, 8542.13.80.24 through 8542.13.80.34 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Also included in the scope are Taiwanese DRAM modules, described above, entered into the United States under subheading and 8473.30.10.90 of the HTSUS or possibly other HTSUS numbers. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

As we discussed in the preamble to the Department's regulations (62 FR 27323), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments by December 2, 1998. Comments should be addressed to Import Administration's Central Records Unit at Room 1874, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW, Washington, DC, 20230. This period of scope consultation is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determination.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that petitions be filed on behalf of a domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

Section 771(4)(A) of the Act defines the ''industry'' as the producers of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the Act directs the Department to look to producers and workers who account for production of the domestic like product. The International Trade Commission (''ITC''), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product to define the industry. However, while both the Department and the ITC must apply the same statutory definition of domestic like product, they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information.

Although this may result in different definitions of the domestic like product, such differences do not render the decision of either agency contrary to the law.[1]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation,'' *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition. As noted earlier, the scope of the petition is limited to DRAMs of one megabit and above. This is petitioner's sole proposed domestic like product. The Department has no basis on the record to find this domestic like product definition clearly inadequate. The Department has, therefore, adopted the domestic like product definition set forth in the petition.

In this case, the Department determined that the petition and supplemental information contained adequate evidence of sufficient industry support; therefore, polling was not necessary. *See* Initiation Checklist, dated November 12, 1998, (public document on file in the Central Records Unit of the Department of Commerce, Room B–099). Additionally, no person who would qualify as an interested party pursuant to section 771(9)(A),(C), or (D) of the Act has expressed opposition to this petition. Accordingly, the Department determines that this petition is filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

Less Than Fair Value Allegation

Petitioner identified the following Taiwanese producers/exporters in the petition: Mosel-Vitelic, Inc., Winbond Electronics, Acer Semiconductor Manufacturing Inc., Powerchip Semiconductor Corp., United Microelectronics Corporation, Taiwan Semiconductor Manufacturing Corporation, Macronix International Co., Ltd., Alliance Semiconductor Corporation, Etron Technology, Inc., Taiwan Memory Technology, Inc. and G-Link Technology Corp. Petitioner further identified Vanguard International Semiconductor Corporation (''Vanguard'') and Nan Ya Technology Corporation (''Nan Ya'') as two major producers/exporters of DRAMs from Taiwan. Petitioner based export price (''EP'') on price quotes obtained by petitioner's sales personnel in the ordinary course of business. These price quotes were for delivery of 4x4 16 Megabit EDO DRAMs. Petitioner explained that it is Micron's practice to receive verbal quotes without written documentation and supplied an affidavit signed by a Micron sales representative attesting to the validity of the price quotes. All U.S. market price quotes were denominated in dollars and petitioner made no adjustments to these price quotes.

With respect to normal value (''NV'') petitioner used prices, based on written price quotes for 4x4 16 megabit EDO DRAMs produced by Vanguard and Nan Ya. The price quotes were obtained by a private market research firm. Petitioner made no adjustment to these home market price quotes.

Petitioner alleged that sales of the foreign like product were made at prices below the cost of production within the meaning of section 773(b) of the Act and requested the Department to initiate a country-wide sales below cost investigation. To support this claim, petitioner compared the home market prices to each company's cost of production (''COP''). Petitioner calculated the COP for Vanguard and Nan Ya based on Micron's actual production experience with adjustments for known differences in costs incurred in Taiwan and the United States.

Petitioner determined the die sizes, mask levels, metal levels, and process technologies from examination of actual DRAM die from Vanguard and Nan Ya. For the purposes of the petition, the processing yields were assumed to be the same as those experienced by Micron. Petitioner derived labor rates from the Bureau of Labor Statistics. Because the most recent data available for Taiwan was from 1996, petitioner adjusted the labor rates for the 1997 inflation rate.

Petitioner adjusted utility expenses using the ratio of U.S. energy costs to Taiwanese energy costs, based on OECD energy price data. For Vanguard, petitioner derived general and administrative (''G&A'') expenses, interest expenses, and research and development (''R&D'') expenses from the company's financial statements for the six months ending June 30, 1998. *See* Exhibit 6 of the petition. Financial statements for the 1997 fiscal year were not available so these represent the most recent publicly available financial statements for Vanguard.

Petitioner was unable to obtain financial statements for Nan Ya and therefore based its G&A expenses and R&D expenses on Vanguard's financial statements. Interest expenses were calculated using the 1997 consolidated financial statements of Nan Ya's parent company, Nan Ya Plastics. *See* Exhibit 5 of the supplement to the petition.

Petitioner utilized Micron's intellectual property expenses, which reflect royalties paid to other companies for use of their technology in DRAM production. Again, petitioner believes that this estimate is conservative since Micron maintains a larger patent portfolio than either Vanguard or Nan Ya. By having a smaller patent portfolio, Vanguard and Nan Ya need more licensing agreements for DRAMs production.

Petitioner conservatively estimated a profit rate of zero for constructed value. Because the home market prices of Vanguard and Nan Ya were lower than the COP, normal value was based on CV for comparison to the U.S. prices. Petitioner used exchange rates as published by the Federal Reserve Bank of New York for currency conversions.

Based on comparisons of EP to NV, the petitioner estimated dumping margins from 48 to 69 percent.

Initiation of Cost Investigations

Pursuant to section 773(b) of the Act, petitioners provided information demonstrating reasonable grounds to believe or suspect that sales in the home market of Taiwan were made at prices below the COP and, accordingly, requested the Department to conduct a country-wide sales-below-COP investigation in connection with the requested antidumping investigation in Taiwan. The Statement of Administrative Action (''SAA''), accompanying the URAA, H.R. Doc. No. 103–316, vol. 1 at 833 (1994), states that an allegation of sales below COP need not be specific to individual exporters or producers. The SAA also states that ''Commerce will consider allegations of below-cost sales in the aggregate for a foreign country, just as Commerce currently considers allegations of sales at less than fair value on a country-wide basis for purposes of initiating an antidumping investigation.'' *Id.*

Further, the SAA provides that ''new section 773(b)(2)(A) retains the current requirement that Commerce have 'reasonable grounds to believe or suspect' that below-cost sales have occurred before initiating such an investigation.'' Reasonable grounds will ''exist when an interested party provides specific factual information on costs and prices, observed or

[1] *See Algoma Steel Corp., Ltd.* v. *United States*, 688 F. Supp. 639, 642–44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass Therefor from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380–81 (July 16, 1991).

constructed, indicating that sales in the foreign market in question are at below-cost prices.'' *Id*. Based upon the comparison of the prices from the petition for the representative foreign like products to its adjusted costs of production, in accordance with section 773(b)(2)(A)(i) of the Act, we find the existence of ''reasonable grounds to believe or suspect'' that sales of these foreign like products in Taiwan were made below their respective COP's. Accordingly, the Department is initiating the requested country-wide cost investigation.

Initiation of Antidumping Investigation

We have examined the petition on DRAMs from Taiwan and have found that it meets the requirements of section 732 of the Act, including the requirements concerning allegations of the material injury or threat of material injury to the domestic producers of a domestic like product by reason of the complained-of imports, allegedly sold at less than fair value. Therefore, we are initiating an antidumping duty investigation to determine whether imports of DRAMs from Taiwan are being, or are likely to be, sold in the United States at less than fair value. Unless extended, we will make our preliminary determination by April 1, 1999.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to the representatives of the authorities of Taiwan. We will attempt to provide a copy of the public version of the petition to each exporter named in the petition (as appropriate).

ITC Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will determine by December 7, 1998, whether there is a reasonable indication that imports of DRAMs from Taiwan are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination in the investigation will result in this investigation being terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 771 (i) of the Act.

Dated: November 12, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–30855 Filed 11–17–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–814]

Pure Magnesium From Canada; Notice of Extension of Time Limit for Administrative Review

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

ACTION: Notice of extension of time limit.

SUMMARY: The Department of Commerce is extending the time limit for the final results of the fifth review of the antidumping duty order on pure magnesium from Canada. The period of review is August 1, 1996 through July 31, 1997. This extension is made pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act.

EFFECTIVE DATE: November 18, 1998.

FOR FURTHER INFORMATION CONTACT: Zak Smith, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482–0189.

SUPPLEMENTARY INFORMATION: Because it is not practicable to complete this review within the time limit mandated by section 751(a)(3)(A) of the Tariff Act of 1930, as amended (*i.e.*, November 9, 1998), the Department of Commerce (''the Department'') is extending the time limit for completion of the final results to not later than March 8, 1999. *See* November 2, 1998 Memorandum from Deputy Assistant Secretary for AD/CVD Enforcement Richard W. Moreland to Assistant Secretary for Import Administration Robert LaRussa on file in the public file of the Central Records Unit, B–099 of the Department.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675 (a)(1)) and 19 CFR 351.213(h)(2).

Dated: November 4, 1998.

Susan Kuhbach,

Acting Deputy Assistant Secretary for AD/CVD Enforcement.

[FR Doc. 98–30854 Filed 11–17–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–829, A–533–814, A–588–844, A–580–830, A–469–808, A–583–829]

Notice of Preliminary Determinations of Sales at Less Than Fair Value and Postponement of Final Determinations—Stainless Steel Round Wire From Canada, India, Japan, Spain, and Taiwan; Preliminary Determination of Sales at Not Less Than Fair Value and Postponement of Final Determination—Stainless Steel Round Wire From Korea

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

EFFECTIVE DATE: November 18, 1998.

FOR FURTHER INFORMATION CONTACT: Thomas Schauer (Canada, Spain) at (202) 482–4852; Diane Krawczun (India) at (202) 482–0198; Jarrod Goldfeder (Japan), at (202) 482–1784; or Gabriel Adler (the Republic of Korea, Taiwan) at (202) 482–1442, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (Department) regulations refer to the regulations codified at 19 CFR part 351 (April 1998).

Preliminary Determinations

We preliminarily determine that stainless steel round wire from Canada, India, Japan, Spain, and Taiwan is being sold, or is likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. We also preliminarily determine that stainless steel round wire from the Republic of Korea (Korea) is not being sold, or is not likely to be sold, in the United States at less than fair value. The estimated margins are shown in the *Suspension of Liquidation* section of this notice.

Case History

These investigations were initiated on May 6, 1998. *See Initiation of Antidumping Duty Investigations: Stainless Steel Round Wire from Canada, India, Japan, the Republic of Korea, Spain, and Taiwan,* 63 FR 26150

(May 12, 1998) (*Initiation Notice*). Since the initiation of the investigations, the following events have occurred:

On May 19, 1998, the Department invited interested parties to submit comments regarding model matching.

On June 5, 1998, the United States International Trade Commission (the ITC) preliminarily determined that there is a reasonable indication that imports of the products under these investigations are materially injuring the United States industry.

On June 12, 1998, the Department selected the following companies as respondents in these investigations: Central Wire Industries Ltd. (Central Wire) and Greening Donald Co. Ltd. (Greening Donald) in the Canada proceeding; Raajratna Metal Industries Limited (Raajratna) in the India proceeding; Suzuki Metal Industries Co., Ltd. (Suzuki) and Nippon Seisen Co., Ltd. (Nippon Seisen), in the Japan proceeding; Korea Sangsa in the Korea proceeding; Inoxfil S.A. in the Spain proceeding; and Tien Tai and Rodex in the Taiwan proceeding (collectively ''respondents''). *See Selection of Respondents*, below. On June 15, 1998, the Department issued an antidumping questionnaire to each of the selected respondents.

The respondents submitted their initial responses to that questionnaire in July and August 1998. After analyzing these responses, we issued supplemental questionnaires to the respondents to clarify or correct the initial questionnaire responses. We also determined to treat Tien Tai and its affiliated producer Kuang Tai Metal Industrial Co., Ltd. (Kuang Tai), as a single entity (*i.e.*, to collapse the two producers) for purposes of the investigation of wire from Taiwan. *See* Memorandum to Richard W. Moreland, dated August 11, 1998. In addition, we determined to collapse Korea Sangsa with its affiliated producer Korea Welding Electrode Co., Ltd. (Koweld). *See* Memorandum to Richard W. Moreland, dated September 24, 1998. The Department required that both Tien Tai and Korea Sangsa resubmit their questionnaire responses, consolidating their sales and cost data with that of their respective affiliated parties.[1]

On August 24, 1998, the petitioners filed a timely request for a 50-day postponement of the preliminary determinations. We granted the request. *See Notice of Postponement of Preliminary Antidumping Determinations: Stainless Steel Round Wire from Canada, India, Japan, the Republic of Korea, Spain, and Taiwan*, 63 FR 46999 (September 3, 1998).

Postponement of Final Determinations and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise or, if in the event of a negative preliminary determination, a request for such postponement is made by the petitioners. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months.

We received requests from respondents for postponement of the final determinations in the Canada, India, Japan, Korea, Spain and Taiwan investigations. In their requests for an extension of the deadline for the final determinations, the respondents consented to the extension of provisional measures to no longer than six months. Because the preliminary determinations with respect to the Canada, India, Japan, Spain, and Taiwan investigations are affirmative, the respondents filing the requests account for a significant proportion of exports of the subject merchandise in their respective cases, and there is no compelling reason to deny the respondents' requests, we have extended the deadline for issuance of the final determinations for these cases until the 135th day after the date of publication of these preliminary determinations in the **Federal Register**.

We also received a request from the petitioners for a postponement of the final determination in the Korea investigation. Because the preliminary determination with respect to that investigation is negative and there is no compelling reason to deny the petitioners' request, we have extended the deadline for issuance of the final determination for this case until the 135th day after the date of publication of this preliminary determination in the **Federal Register**.

Period of Investigations

The period of the investigations (POI) is January 1, 1997 through December 31, 1997. This period corresponds to each respondent's four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, March 1998).

Scope of Investigation

The scope of these investigations covers stainless steel round wire (SSRW). SSRW is any cold-formed (*i.e.*, cold-drawn, cold-rolled) stainless steel product of a cylindrical contour, sold in coils or spools, and not over 0.703 inch (18 mm) in maximum solid cross-sectional dimension. SSRW is made of iron-based alloys containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. Metallic coatings, such as nickel and copper coatings, may be applied.

The merchandise subject to these investigations is classifiable under subheadings 7223.00.1015, 7223.00.1030, 7223.00.1045, 7223.00.1060, and 7223.00.1075 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

On June 1, 1998, two Canadian producers of SSRW, Greening Donald and Central Wire, submitted comments on the scope of the investigation of stainless steel round wire from Canada in response to our solicitation of such comments in the Initiation Notice. These respondents argued in their submission that, because the stainless steel wire rod input used in producing the SSRW is not produced in Canada and because cold-drawing does not constitute ''substantial transformation'' of the wire rod, the SSRW is not ''from Canada'' and should not be the subject of an antidumping investigation. On June 5, 1998, the petitioners submitted rebuttal comments to the Canadian producers' argument. We have analyzed the two Canadian producers' comments and concluded that the product in question is within the scope of this investigation. *See* Memorandum to Richard W. Moreland, dated November 12, 1998, for a full discussion and analysis of this issue.

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. However, section 777A(c)(2) of the Act gives the Department discretion, when faced with a large number of exporters/producers, to limit its examination to a reasonable number of such companies if it is not

[1] Unless otherwise specified, any references below to Tien Tai or Korea Sangsa should be understood to refer to the collapsed entities of Tien Tai/Kuang Tai and Korea Sangsa/Koweld, respectively.

practicable to examine all companies. Where it is not practicable to examine all known producers/exporters of subject merchandise, this provision permits the Department to investigate either: (1) a sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection, or (2) exporters and producers accounting for the largest volume of the subject merchandise that can reasonably be examined.

After consideration of the complexities expected to arise in these proceedings (including issues of model matching) and the resources available to the Department, we determined that it was not practicable in these investigations to examine all known producers/exporters of subject merchandise. Instead, we found that, given our resources, we would be able to investigate the nine producers/exporters with the greatest export volume, as identified above. These companies accounted more than 50 percent of all known exports of the subject merchandise during the POI from their respective countries. For a more detailed discussion of respondent selection in these investigations, see Respondent Selection Memorandum dated June 12, 1998.

Facts Available

Suzuki (Japan), Nippon Seisen (Japan), and Inoxfil (Spain) failed to respond to our questionnaire. Section 776(a)(2) of the Act provides that, if an interested party (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested subject to section 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination. Because these firms failed to respond to our questionnaire and because the relevant subsections of section 782 of the Act do not apply, we must use facts otherwise available to calculate the dumping margins for these companies.

Section 776(b) of the Act provides that adverse inferences may be used against a party that has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. *See also* Statement of Administrative Action accompanying the URAA, H.R. Rep. No. 316, Vol.1, 103d Cong., 2d Sess. 870 (1994) (SAA). The lack of response by Suzuki, Nippon Seisen, and Inoxfil to the Department's antidumping questionnaire constitutes a failure by these respondents to act to the best of their ability to comply with a request for information, within the meaning of section 776 of the Act. Thus, the Department has determined that, in selecting among the facts otherwise available, an adverse inference is warranted.

Because we were unable to calculate margins for the respondents in the Japan or Spain investigations, we assigned these respondents the highest margins in the respective petitions (recalculated by the Department, as appropriate). This approach is consistent with Department practice. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Germany*, 63 FR 10847 (March 5, 1998). The highest petition margins are 29.56 percent in the Japan investigation, and 35.80 percent in the Spain investigation.[2]

Section 776(b) states that an adverse inference may include reliance on information derived from the petition or any other information placed on the record. See also SAA at 829–831. Section 776(c) of the Act provides that, when the Department relies on secondary information (such as the petition) in using the facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.

During our pre-initiation analysis of the petition, we reviewed the adequacy and accuracy of the secondary information in the petition from which the margins were calculated, to the extent that appropriate information was available for this purpose. *See Initiation Notice* at 26151. However, with respect to certain data included in the margin calculations included in the petition (*e.g.*, gross U.S. and home market unit prices), the Department was provided no information by the respondents or other interested parties, and is aware of no other independent sources of information, that would enable it to further corroborate the remaining components of the margin calculation in the petition. The implementing regulation to section 776 of the Act, at 19 CFR 351.308(c), states ''[t]he fact that corroboration may not be practicable in a given circumstance will not prevent the Secretary from applying an adverse inference as appropriate and using the secondary information in question.'' Additionally, we note that the SAA at 870 specifically states that, where ''corroboration may not be practicable in a given circumstance'', the Department may nevertheless apply an adverse inference. We note further that the Department has used as the facts available margins developed in the petition that are based in part on foreign market research in other cases. *See, e.g., Stainless Steel Wire Rod From Germany*, and *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Melamine Institutional Dinnerware Products From Indonesia*, 61 FR 43333 (August 22, 1996). Finally, we note that the margins calculated for respondents in the other round wire investigations are in many instances of the same order of magnitude as the margins in the corresponding petitions, suggesting that the information contained in the round wire petitions is generally reliable.

Product Comparisons

We have relied on five criteria to match U.S. sales of subject merchandise to comparison-market sales of the foreign like product: grade, thickness, tensile strength, coating, and surface finish. A detailed description of the matching criteria, as well as our matching methodology, is contained in the Preliminary Determination Memorandum, dated November 12, 1998 (Preliminary Determination Memorandum).

Fair Value Comparisons

To determine whether sales of stainless steel round wire from Canada, India, the Republic of Korea, and Taiwan[3] were made in the United States at less than fair value, we compared the export price (EP) or constructed export

[2] We note that, at the time of initiation, we did not accept the U.S. and home market packing data set forth in the petition with respect to the Japan case, and we revised the dumping margins in that petition so as to not reflect any adjustment for packing. In reviewing the petition margin calculations for the preliminary determination in the Japan case, we noted that the denominator for the margins was erroneously based on home market price, rather than U.S. price. We have revised the margins accordingly. *See* memorandum from Jarrod Goldfeder to the file, dated November 12, 1998.

With respect to the Spain investigation, we note that, at the time of initiation, we revised petition margins based on price-to-price comparisons because the petitioners had not provided sufficient support for the home market freight figures used in their calculations. We made no additional revisions to the petition margins in reviewing those calculations for the preliminary determination in the Spanish case.

[3] As stated above, because the respondents in the Japan and Spain proceedings did not respond to our requests for information, we based the margins for these respondents on total adverse facts available. *See Facts Available* above. Thus, the discussion of price adjustments in this section does not apply to the respondents in those proceedings.

price (CEP) to the normal value, as described in the *Export Price and Constructed Export Price* and *Normal Value* sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs and CEPs for comparison to weighted-average normal values.

Export Price and Constructed Export Price

In accordance with section 772 of the Act, we calculated either an EP or a CEP, depending on the nature of each sale. Section 772(a) of the Act defines EP as the price at which the subject merchandise is first sold before the date of importation by the exporter or producer outside the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States. Section 772(b) of the Act defines CEP as the price at which the subject merchandise is first sold in the United States before or after the date of importation, by or for the account of the producer or exporter of the merchandise or by a seller affiliated with the producer or exporter, to an unaffiliated purchaser, as adjusted under sections 772(c) and (d) of the Act.

Consistent with these definitions, we have found that Central Wire, Greening Donald, Raajratna, Korea Sangsa, Rodex, and Tien Tai made EP sales during the POI. These sales are properly classified as EP sales because they were made by the exporter or producer outside the United States to unaffiliated customers in the United States prior to the date of importation.

We also found that Central Wire and Korea Sangsa made CEP sales during the POI because they made sales through an affiliated reseller in the United States after the date of importation.

For all respondents, we calculated EP and CEP, as appropriate, based on packed prices charged to the first unaffiliated customer in the United States. (Where sales were made through consignment sellers, we did not consider the consignment seller to be the customer; rather, the relevant customer was the consignment seller's customer.) For all respondents except Rodex, we based the date of sale on the date of the invoice issued to the U.S. customer. For Rodex, we based the date of sale on the date of Rodex's sales confirmation to its U.S. customer, because the terms of U.S. sales were firmly set on this date.

In accordance with section 772(c)(2) of the Act, we reduced the EP and CEP by movement expenses and export taxes and duties, where appropriate. Section 772(d)(1) of the Act provides for additional adjustments to the CEP. Generally, where sales were made through an unaffiliated consignment seller for the account of the exporter, we deducted commissions from the CEP. Where sales were made through an affiliated reseller, we deducted direct and indirect selling expenses that related to commercial activity in the United States, *in lieu* of the commission paid to the affiliated reseller.

Section 772(d)(3) of the Act requires that the CEP be adjusted for the profit allocated to the selling expenses of a producer/exporter's affiliated reseller. For Central Wire and Korea Sangsa, which made sales through affiliated resellers, we calculated a CEP-profit ratio following the methodology set forth in section 772(f) of the Act.

We made company-specific adjustments as follows:

Central Wire (Canada)

We based EP and CEP on delivered and FOB prices to unaffiliated customers in the United States. For both EP and CEP sales, we made deductions from the starting price, where appropriate, for movement expenses, including foreign inland freight from the factory to the customer or to the U.S. affiliate, U.S. brokerage and handling fees, and Customs duties. We also made deductions for post-sale price adjustments corresponding to claims and billing errors.

In addition, for CEP sales, we made deductions for U.S. inland freight to the customer, imputed credit, commissions, indirect selling expenses and inventory carrying costs associated with commercial activity in the United States, U.S. repacking costs, and the cost of further processing the merchandise in the United States.

Greening Donald (Canada)

We based EP sales on delivered prices to unaffiliated customers in the United States. We made deductions from the starting price, where appropriate, for movement expenses including foreign inland freight from factory to the customer, Customs duties, and U.S. brokerage and handling fees. We also increased the starting price by the amount of reported freight revenue.

Raajratna (India)

We based EP on delivered prices to unaffiliated customers in the United States. We made deductions from the starting price, where appropriate, for movement expenses including foreign inland freight from the factory to the customer, domestic brokerage and handling fees, international freight, and marine insurance. Although Raajratna reported duty drawback for its U.S. sales, we did not make an addition to EP for duty drawback because Raajratna failed to meet our two-pronged test for making such an adjustment.[4] *See* Raajratna Analysis Memorandum, dated November 12, 1998, for a full discussion of this issue.

Korea Sangsa (Korea)

We based EP and CEP on delivered and FOB prices to unaffiliated customers in the United States. For both EP and CEP sales, we made deductions from the starting price, where appropriate, for movement expenses including foreign brokerage and inland freight from the factory to the foreign port, and international freight. We also made adjustments for billing errors and early payment discounts, and we increased the starting price by the amount of duty drawback because it met our two-pronged test described above.

In addition, for CEP sales, we made deductions for U.S. movement expenses, including U.S. inland freight to the customer, U.S. warehousing, U.S. brokerage and handling fees, and Customs duties. We also made deductions for direct and indirect selling expenses associated with commercial activity in the United States, including imputed credit, warranty expenses, miscellaneous other direct selling expenses (such as bank charges), indirect selling expenses, and inventory carrying costs.

Rodex (Taiwan)

We based EP on delivered prices to unaffiliated customers in the United States. We made deductions from the starting price, where appropriate, for movement expenses including foreign inland freight from the factory to the customer, domestic brokerage and handling fees, international freight, and marine insurance. We also increased the starting price by the amount of duty drawback because it met our two-pronged test described above.

[4] Section 772(c)(1)(B) of the Act provides for an upward adjustment to U.S. price for duty drawback on import duties which have been rebated (or which have not been collected) by reason of the exportation of the subject merchandise to the United States. The Department applies a two-pronged test to determine whether a respondent has fulfilled the statutory requirements for a duty drawback adjustment. *See Steel Wire Rope from the Republic of Korea; Final Results of Antidumping Duty Administrative Review*, 61 FR 55965, 55968 (October 30, 1996). In accordance with this test, the Department grants a duty drawback adjustment if it finds that:

(1) import duties and rebates are directly linked to and are dependent upon one another, and

(2) the company claiming the adjustment can demonstrate that there are sufficient imports of raw materials to account for the duty drawback received on exports of the manufactured product.

Tien Tai (Taiwan)

We based EP on delivered prices to unaffiliated customers in the United States. We made deductions from the starting price, where appropriate, for movement expenses including foreign inland freight from the factory to the customer, domestic brokerage and handling fees, international freight, and marine insurance.

Normal Value

A. Selection of Comparison Markets

Section 773(a)(1) of the Act directs that normal value be based on the price at which the foreign like product is sold in the home market, provided that the merchandise is sold in sufficient quantities (or value, if quantity is inappropriate) and that there is no particular market situation that prevents a proper comparison with the EP or CEP. The statute contemplates that quantities (or value) will normally be considered insufficient if they are less than five percent of the aggregate quantity (or value) of sales of the subject merchandise to the United States.

All respondents had viable home markets of stainless steel round wire, and they reported home market sales data for purposes of the calculation of normal value. Although Raajratna reported its home market sales, it claimed that normal value should be based on third-country sales because, according to Raajratna, the merchandise sold to the United States is more similar to merchandise sold to third countries rather than merchandise sold in the home market. We disagreed with Raajratna because the merchandise sold in the home market provided an adequate basis for comparison, and, as discussed above, the Act directs us to base normal value on home market sales when possible. Therefore, we based normal value for Raajratna on home market sales. *See* Preliminary Determination Memorandum at 5.

Adjustments we made in deriving the normal values for each company are described in detail in *Calculation of Normal Value Based on Home-Market Prices* and *Calculation of Normal Value Based on Constructed Value,* below.

B. Cost of Production Analysis

Based on allegations contained in the petitions, and in accordance with section 773(b)(2)(A)(i) of the Act, we found reasonable grounds to believe or suspect that sales of stainless steel round wire made in Canada, India, the Republic of Korea, and Taiwan were made at prices below the cost of production (COP). *See Initiation Notice,* 63 FR at 26150, and Memorandum to Richard Moreland, dated May 6, 1998 (*Initiation Checklist*) at 7–14. As a result, the Department has conducted investigations to determine whether the respondents made sales in their respective home markets at prices below their respective COPs during the POI within the meaning of section 773(b) of the Act. We conducted the COP analysis described below.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP for stainless steel round wire, based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for the home-market general and administrative (G&A) expenses and packing costs. We relied on the COP data submitted by each respondent in its cost questionnaire response, except, as discussed below, in specific instances where the submitted costs were not appropriately quantified or valued.

Greening Donald

We disallowed certain offsets Greening Donald had made to its reported variable overhead expenses. We revised Greening Donald's fixed overhead expense to be on the same basis as its reported direct materials and variable overhead expenses. *See* Greening Donald Preliminary Determination Analysis Memorandum, dated November 12, 1998, for a more complete description of these changes.

Korea Sangsa

We revised the reported G&A by excluding dividend income, rental income, other miscellaneous income, and certain foreign exchange gains and losses. We also revised the reported net financing expense ratio to include net foreign exchange losses related to cash and borrowing.

Rodex

We increased Rodex's reported direct material costs (which are comprised exclusively of purchases of wire rod) to account for net foreign exchange losses during the POI. We made two adjustments to overhead costs: we increased Rodex's reported direct labor and fixed and variable overhead costs to account for a year-end auditor's adjustment, and we reclassified certain costs reported as variable overhead to fixed overhead, consistent with our examination of these costs at verification. We also increased the average per-kg. packing cost to account for an overstatement in the denominator (total weight of packed merchandise) used in the calculation of those costs.

Tien Tai

During the POI, respondent Kuang Tai (the collapsed affiliate of Tien Tai) became affiliated by virtue of stock ownership with a supplier of a major input in the production of round wire (*i.e.,* wire rod). In calculating cost of production, the respondent relied on the transfer price of the major input for all POI purchases. For purchases of wire rod from this supplier after the date on which Kuang Tai became an affiliate, we applied the major-input rule set forth in section 773(f)(3) of the Act and 19 CFR 351.407(b), and we relied on the greater of cost of production, transfer price, or market value.

In addition, we increased Tien Tai's reported G&A ratio to account for stock bonuses to employees.

2. Test of Home-Market Sales Prices

We compared the adjusted weighted-average COP for each respondent to the home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP within an extended period of time (*i.e.,* a period of one year) in substantial quantities [5] and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time.

On a model-specific basis, we compared the revised COP to the home market prices, less any applicable movement charges, taxes, rebates, commissions and other direct and indirect selling expenses.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in ''substantial quantities'' within an extended period of time in accordance with section 773(b)(2)(B) or the Act. In such cases, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

[5] In accordance with section 773(b)(2)(C)(i) of the Act, we determined that sales made below the COP were made in substantial quantities if the volume of such sales represented 20 percent or more of the volume of sales under consideration for the determination of normal value.

Therefore, we disregarded the below-cost sales. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product.

We found that, for certain models of SSRW, more than 20 percent of the home-market sales of Central Wire, Greening Donald, Raajratna, Korea Sangsa, Tien Tai, and Rodex were made within an extended period of time at prices less than the COP. Further, the prices did not provide for the recovery of costs within a reasonable period of time. We therefore disregarded the below-cost sales and used the remaining above-cost sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act. For those U.S. sales of SSRW for which there were no comparable home-market sales in the ordinary course of trade, we compared EPs or CEPs to CV in accordance with section 773(a)(4) of the Act. *See Calculation of Normal Value Based on Constructed Value,* below.

C. Calculation of Normal Value Based on Home-Market Prices

We performed price-to-price comparisons where there were sales of comparable merchandise in the home market that did not fail the cost test.

Central Wire

We calculated normal value based on delivered or FOB prices and made deductions from the starting price, where appropriate, for movement expenses including inland freight and insurance. We also adjusted the starting price for claims and billing errors. In addition, we made circumstance-of-sale (COS) adjustments for direct expenses, where appropriate, in accordance with section 773(a)(6)(C)(iii) of the Act. These included imputed credit expenses. In accordance with sections 773(a)(6)(A) and (B) of the Act, we deducted home market packing costs and added U.S. packing costs.

Central Wire claimed that a number of its sales were outside the ordinary course of trade and therefore not an appropriate basis for normal value. We examined Central Wire's claims and agreed that some of the home market sales were outside the ordinary course of trade. We therefore excluded these sales from our analysis. A full discussion of this issue requires reference to business-proprietary information; *see* Central Wire Preliminary Analysis Memorandum, dated November 12, 1998.

As discussed in the *Level of Trade/ CEP Offset* section of this notice below, we preliminarily determined that it was appropriate to make a CEP offset to normal value.

In a letter dated October 27, 1998, Central Wire argued that the Department should treat ''quantity bands'' as a matching criterion and, when comparing sales involving non-identical quantity bands, make a quantity adjustment. This proposal for an entirely new model-match criterion and quantity adjustment came too late in our preparations for these preliminary determinations. We may consider Central Wire's proposal in preparing our final determinations in these investigations.

Greening Donald

We calculated normal value based on delivered or FOB prices and made deductions from the starting price, where appropriate, for movement expenses including freight and freight revenue. We also adjusted the starting price for claims and billing errors. In addition, we made COS adjustments for direct expenses, where appropriate, in accordance with section 773(a)(6)(C)(iii) of the Act. These included imputed credit expenses. In accordance with sections 773(a)(6)(A) and (B) of the Act, we deducted home market packing costs and added U.S. packing costs.

Greening Donald claimed that a number of its sales were outside the ordinary course of trade and therefore not an appropriate basis for normal value. We examined Greening Donald's claims and agreed that certain home market sales were outside the ordinary course of trade. We therefore excluded these sales from our analysis. A full discussion of this issue requires reference to business-proprietary information; *see* Greening Donald Preliminary Analysis Memorandum, dated November 12, 1998.

Raajratna

We calculated normal value based on delivered, FOB or ex-factory prices and made deductions from the starting price, where appropriate, for inland freight. In addition, we made COS adjustments for direct expenses, where appropriate, in accordance with section 773(a)(6)(C)(iii) of the Act. These expenses included credit-insurance expenses and imputed credit expenses. In accordance with sections 773(a)(6)(A) and (B) of the Act, we deducted home market packing costs and added U.S. packing costs.

Korea Sangsa

We calculated normal value based on delivered or FOB prices, and we made deductions from the starting price, where appropriate, for movement expenses including inland freight and insurance. In addition, we made COS adjustments for direct expenses, where appropriate, in accordance with section 773(a)(6)(C)(iii) of the Act. These included bank charges, processing fees, and imputed credit expenses. In accordance with sections 773(a)(6)(A) and (B) of the Act, we deducted home market packing costs and added U.S. packing costs.

As discussed in the *Level of Trade/ CEP Offset* section of this notice below, we preliminarily determined that it was appropriate to make a CEP offset to normal value.

Rodex

We calculated normal value based on delivered prices. We made deductions from the starting price, where appropriate, for movement expenses including inland freight. We also adjusted the starting price for claims and billing errors. In addition, we made COS adjustments for direct expenses, where appropriate, in accordance with section 773(a)(6)(C)(iii) of the Act. These included imputed credit, bank charge, and warranty expenses. In accordance with sections 773(a)(6)(A) and (B) of the Act, we deducted home market packing costs and added U.S. packing costs.

Tien Tai

We calculated normal value based on delivered and FOB prices. We made deductions from the starting price, where appropriate, for movement expenses including inland freight and warehousing. We also adjusted the starting price for early payment discounts. In addition, we made COS adjustments for direct expenses, where appropriate, in accordance with section 773(a)(6)(C)(iii) of the Act. These included imputed credit expenses. In accordance with sections 773(a)(6)(A) and (B) of the Act, we deducted home market packing costs and added U.S. packing costs.

D. Calculation of Normal Value Based on Constructed Value

Section 773(a)(4) of the Act provides that, where normal value cannot be based on comparison-market sales, normal value may be based on constructed value. Accordingly, for those models of SSRW for which we could not determine the normal value based on comparison-market sales, either because there were no sales of a comparable product or all sales of the comparison products failed the COP test, we based normal value on constructed value.

Section 773(e)(1) of the Act provides that constructed value shall be based on the sum of the cost of materials and fabrication for the imported merchandise plus amounts for selling,

general, and administrative expenses (SG&A), profit, and U.S. packing costs. With the exception of Raajratna, we calculated the cost of materials and fabrication based on the methodology described in the *Calculation of COP* section of this notice, above. We based SG&A and profit for every respondent on the actual amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the comparison market, in accordance with section 773(e)(2)(A) of the Act.

Raajratna's direct materials costs reported on its constructed-value database did not correspond with its supporting documents included in Raajratna's response. Therefore, we revised Raajratna's reported direct materials costs for constructed value to agree with its supporting documentation. As a result, we also revised the cost of manufacture, general and administrative expenses, and interest expenses accordingly. These revisions are described in further detail in Raajratna's Preliminary Analysis Memorandum, dated November 12, 1998.

In addition, for each respondent we used U.S. packing costs as described in the *Export Price and Constructed Export Price* section of this notice, above.

We made adjustments to constructed value for differences in COS in accordance with section 773(a)(8) of the Act and 19 CFR 351.410. For comparisons to EP, we made COS adjustments by deducting direct selling expenses incurred on home market sales from and adding U.S. direct selling expenses to constructed value. For comparisons to CEP, we made COS adjustments by deducting direct selling expenses incurred on home market sales from constructed value.

Level of Trade/CEP Offset

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine normal value based on sales in the comparison market at the same level of trade as the EP or CEP transaction. The normal-value level of trade is that of the starting-price sales in the comparison market or, when normal value is based on constructed value, that of the sales from which we derive SG&A expenses and profit. For EP, the U.S. level of trade is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether normal-value sales are at a different level of trade than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different level of trade and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which normal value is based and comparison-market sales at the level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the normal-value level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between normal value and CEP affects price comparability, we adjust normal value under section 773(a)(7)(B) of the Act (the CEP-offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

In implementing these principles in these investigations, we obtained information from each respondent about the marketing stages involved in the reported U.S. and home market sales, including a description of the selling activities performed by the respondents for each channel of distribution. In identifying levels of trade for EP and home market sales we considered the selling functions reflected in the starting price before any adjustments. For CEP sales, we considered only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.

With respect to each respondent's EP sales, in these investigations we found a single level of trade in the United States, and a single, identical level of trade in the home market. It was thus unnecessary to make any level-of-trade adjustment for comparison of EP and home market prices. Two respondents, Central Wire and Korea Sangsa, also made CEP sales. For Central Wire, we found that (1) the adjusted CEP level of trade was significantly less advanced than the single home market level of trade, (2) a level-of-trade adjustment could not be quantified, and (3) a CEP offset was appropriate. For Korea Sangsa, we found that the adjusted CEP level of trade was essentially the same as that of the single home market level of trade, such that no level-of-trade adjustment or CEP offset was necessary. For a detailed level-of-trade analysis with respect to each respondent, *see* Preliminary Determination Memorandum, dated November 12, 1998.

Currency Conversions

We made currency conversions in accordance with section 773A of the Act. The Department's preferred source for daily exchange rates is the Federal Reserve Bank.

Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we generally substitute the benchmark rate for the daily rate, in accordance with established practice. (An exception to this rule is described below.) Further, section 773A(b) of the Act directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. A sustained movement is deemed to occur when the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks. (For an explanation of this method, *see* Policy Bulletin 96–1: Currency Conversions (61 FR 9434, March 8, 1996).) Such an adjustment period is required only when a foreign currency is appreciating against the U.S. dollar. Since the Korean won did not appreciate against the U.S. dollar in a sustained manner during the POI, no such adjustment period was required.

Our preliminary analysis of Federal Reserve U.S. dollar-Korean won exchange rate data shows that the won declined rapidly at the end of 1997, losing over 40% of its value between the beginning of November and the end of December. The decline was, in both speed and magnitude, many times more severe than any change in the dollar-won exchange rate during the previous eight years. Had the won rebounded quickly enough to recover all or almost all of the initial loss, the Department might have considered the won's decline at the end of 1997 as nothing more than a sudden but only momentary drop, despite the magnitude of that drop. As it was, however, there was no significant rebound. Therefore, we have preliminarily determined that the decline in the won at the end of 1997 was so precipitous and large that the dollar-won exchange rate cannot reasonably be viewed as having simply fluctuated during this time, *i.e.*, as having experienced only a momentary drop in value. Therefore, in making this

preliminary determination, the Department used daily rates exclusively for currency-conversion purposes for home market sales matched to U.S. sales occurring between November 1, 1997, and December 31, 1997.

The Department welcomes comments from interested parties on all aspects of the above methodology. For the purposes of the final determination, we will also analyze the implications, if any, of the decline in the won during 1997 for price averaging and whether multiple averages are warranted. The Department is also considering this issue in the LTFV investigation on *Mushrooms from Indonesia. See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Preserved Mushrooms from Indonesia,* 63 FR 41783 (August 5, 1998).

Verification

In accordance with section 782(i) of the Act, we intend to verify all information relied upon in making our final determinations.[6]

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all entries of stainless steel round wire from Canada, India, Japan, Spain, and Taiwan, except for subject merchandise produced and exported by Tien Tai (which has a *de minimis* weighted-average margin), that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We are also instructing the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds the EP or CEP, as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice.

The weighted-average dumping margins are provided below. We note that, while the margin for Korea Sangsa is included in this list, that margin is *de minimis*, and we are not suspending liquidation of entries of stainless steel round wire from Korea:

Exporter/Manufacturer	Weighted-average margin percentage
Canada:	
Central Wire	11.89
Greening Donald	5.30
All Others	10.23
India:	
Raajratna	18.97
All Others	18.97
Japan:	
Nippon Seisen	29.56
Suzuki	29.56
All Others	15.20
Korea:	
Korea Sangsa	[1] 1.33
All Others	0.00
Spain:	
Inoxfil	35.80
All Others	24.40
Taiwan:	
Rodex	3.95
Tien Tai	[1] 1.83
All Others	3.95

[1] De Minimis.

Section 733(b)(3) of the Act directs the Department to exclude all zero and *de minimis* weighted-average dumping margins, as well as dumping margins determined entirely under facts available under section 776 of the Act, from the calculation of the ''all others'' rate. Accordingly, we have excluded the *de minimis* dumping margin for Tien Tai from the calculation of the ''all others'' rate for the Taiwan investigation.

Section 735(c)(5)(B) of the Act provides that, where the estimated weighted-average dumping margins established for all exporters and producers individually investigated are zero or *de minimis* margins or are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated. This provision contemplates that we weight-average the facts-available margins to establish the all-others rate. Where the data do not permit weight-averaging of the facts-available rates, the SAA, at 873, provides that we may use other reasonable methods. Inasmuch as we do not have the data necessary to weight-average the respondents' facts-available rates, we have based the all-others rates for Japan and Spain on a simple average of the margins in the respective petitions, as we revised at the time of initiation of these investigations.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determinations. If our final antidumping determinations are affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. The deadline for that ITC determination would be the later of 120 days after the date of these preliminary determinations or 45 days after the date of our final determinations.

Public Comment

For all round wire investigations, case briefs must be submitted no later than 110 days after the publication of this notice in the **Federal Register**. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230. In the event that the Department receives requests for hearings from parties to several round wire cases, the Department may schedule a single hearing to encompass all those cases. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

If these investigations proceed normally, we will make our final determinations of these investigations no later than 135 days after the date of publication of this notice in the **Federal Register**.

These determinations are published pursuant to sections 733(f) and 777(i)(I) of the Act.

Dated: November 12, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–30857 Filed 11–17–98; 8:45 am]

BILLING CODE 3510–DS–P

[6] We were able to conduct sales and cost verifications of Rodex prior to the issuance of this preliminary determination. Our findings of verification with respect to Rodex are reflected in this determination.

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–063]

Certain Iron-Metal Castings From India; Final Results and Partial Rescission of Countervailing Duty Administrative Review

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

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On July 13, 1998, the Department of Commerce published in the **Federal Register** its preliminary results of administrative review of the countervailing duty order on certain iron-metal castings from India for the period January 1, 1996 through December 31, 1996 (63 FR 37534). The Department has now completed this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended. For information on the net subsidy for each reviewed company, and for all non-reviewed companies, see the *Final Results of Review* section of this notice. We will instruct the U.S. Customs Service to assess countervailing duties as detailed in the *Final Results of Review* section of this notice.

EFFECTIVE DATE: November 18, 1998.

FOR FURTHER INFORMATION CONTACT: Kristen Johnson or Christopher Cassel, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Room 4012, Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 CFR 351.213(b), this review covers only those producers/exporters of the subject merchandise for which a review was specifically requested. The producers/exporters of the subject merchandise for which this review was requested are:

Calcutta Ferrous Ltd.,
Carnation Industries Ltd.,
Commex Corporation,
Crescent Foundry Co. Pvt. Ltd.,
Delta Enterprises,
Dinesh Brothers (P) Ltd.,
Kajaria Iron Castings Pvt. Ltd.,
Kejriwal Iron & Steel Works Pvt. Ltd.,
Metflow Corporation,
Nandikeshwari Iron Foundry Pvt. Ltd.,
Orissa Metal Industries,
Overseas Iron Foundry,
R.B. Agarwalla & Company,
R.B. Agarwalla & Co. Pvt. Ltd.,
RSI Limited,
Seramapore Industries Pvt. Ltd.,
Shree Rama Enterprise,
Shree Uma Foundries,
Siko Exports,
SSL Exports,
Super Iron Foundry,
Uma Iron & Steel, and
Victory Castings Ltd.

Delta Enterprises, Metflow Corporation, Orissa Metal Industries, R.B. Agarwalla & Co. Pvt. Ltd., Shree Uma Foundries, Siko Exports, and SSL Exports reported, through company certifications submitted on the record, that they did not export the subject merchandise to the United States during the period of review. Therefore, in accordance with section 351.213(d)(3) of the Department's regulations, we are rescinding the review with respect to these companies. This review also covers 19 programs.

In the notice of preliminary results, we invited interested parties to comment on the preliminary results (63 FR 37534, July 13, 1998). On August 12, 1998, case briefs were submitted by the Engineering Export Promotion Council of India and the exporters of certain iron-metal castings from India (respondents), and the Municipal Castings Fair Trade Council and its members (petitioners). On August 19, 1998, rebuttal briefs were submitted by the respondents and petitioners.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act). The Department of Commerce (Department) is conducting this administrative review in accordance with section 751(a) of the Act. All citations to the Department's regulations reference 19 CFR part 351 (1998).

Scope of the Review

Imports covered by this administrative review are shipments of Indian manhole covers and frames, clean-out covers and frames, and catch basin grates and frames. These articles are commonly called municipal or public works castings and are used for access or drainage for public utility, water, and sanitary systems. During the review period, such merchandise was classifiable under the *Harmonized Tariff Schedule* (HTS) item numbers 7325.10.0010 and 7325.10.0050. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Verification

As provided in section 782(i) of the Act, we verified information submitted by the Government of India (GOI) and certain producers/exporters of the subject merchandise. We followed standard verification procedures, including meeting with government and company officials and examining relevant accounting and financial records and other original source documents. Our verification results are outlined in the public versions of the verification reports, which are on file in the Central Records Unit, Room B–099 of the Main Commerce Building.

Analysis of Programs

Based upon the responses to our questionnaires, the results of verification, and written comments from the interested parties, we determine the following:

I. Programs Conferring Subsidies

A. Pre-Shipment Export Financing

In the preliminary results, we found that this program conferred countervailable subsidies on the subject merchandise. Our review of the record and our analysis of the comments submitted by the interested parties, summarized below, has led us to modify our findings from the preliminary results for Dinesh Brothers (Dinesh). *See* Comment 1 below. Our findings for the other companies have not changed as a result of our review of the record and our analysis of the comments submitted by the interested parties. Accordingly, the net subsidies for this program are as follows:

Net subsidies—producer/exporter	Net subsidy rate—percent
Calcutta Ferrous Ltd	0.20
Commex Corporation	0.13
Crescent Foundry Co. Pvt. Ltd	0.08
Dinesh Brothers Pvt. Ltd	1.04
Kajaria Iron Castings Pvt. Ltd	0.33
Nandikeshwari Iron Foundry Pvt. Ltd	0.22
R.B. Agarwalla & Company	0.34
RSI Limited	0.37
Seramapore Industries Pvt. Ltd	0.53
Super Iron Foundry	1.11
Uma Iron & Steel	0.34
Victory Castings Ltd	0.30

B. Post-Shipment Export Financing

In the preliminary results, we found that this program conferred countervailable subsidies on the subject

merchandise. Our review of the record and our analysis of the comments submitted by the interested parties, summarized below, has led us to modify our findings from the preliminary results for Calcutta Ferrous (Calcutta) and Dinesh. *See* Comment 1 below for Dinesh and the Memo to the File regarding the Calculations for the Final Results of the Review dated November 10, 1998 (public version) on file in the Central Records Unit of the Department of Commerce (Room B–099) (*Calculation Memo*) for Calcutta. Our findings for the other companies have not changed as a result of our review of the record and our analysis of the comments submitted by the interested parties. Accordingly, the net subsidies for this program are as follows:

Net subsidies—producer/exporter	Net subsidy rate—percent
Calcutta Ferrous Ltd	0.29
Carnation Industries Ltd	0.03
Commex Corporation	0.35
Crescent Foundry Co. Pvt. Ltd	0.31
Dinesh Brothers Pvt. Ltd	0.23
Kajaria Iron Castings Pvt. Ltd	0.42
Nandikeshwari Iron Foundry Pvt. Ltd	0.27
R.B. Agarwalla & Company	0.35
RSI Limited	0.20
Seramapore Industries Pvt. Ltd	0.05
Super Iron Foundry	0.12
Uma Iron & Steel	0.53
Victory Castings Ltd	0.40

C. Post-Shipment Export Credit in Foreign Currency (PSCFC)

In the preliminary results, we found that this program conferred countervailable subsidies on the subject merchandise. Our review of the record and our analysis of the comments submitted by the interested parties, summarized below, has led us to modify our findings from the preliminary results for Calcutta and Dinesh. *See* Comment 1 below for Dinesh and the *Calculation Memo* for Calcutta. Our findings for the other companies have not changed as a result of our review of the record and our analysis of the comments submitted by the interested parties. Accordingly, the net subsidies for this program are as follows:

Net subsidies—producer/exporter	Net subsidy rate—percent
Calcutta Ferrous Ltd	0.02
Dinesh Brothers Pvt. Ltd	0.05
Nandikeshwari Iron Foundry Pvt. Ltd	0.08
R.B. Agarwalla & Company	0.11
RSI Limited	0.08

D. Income Tax Deduction Under § 80 HHC

In the preliminary results, we found that this program conferred countervailable subsidies on the subject merchandise. Our review of the record and our analysis of the comments submitted by the interested parties, summarized below, has led us to modify our findings from the preliminary results for Dinesh. *See* Comment 1 below. Our findings for the other companies have not changed as as result of our review of the record and our analysis of the comments submitted by the interested parties. Accordingly, the net subsidies for this program are as follows:

Net subsidies—producer/exporter	Net subsidy rate—percent
Calcutta Ferrous Ltd.	2.91
Carnation Industries Ltd.	2.92
Commex Corporation	4.79
Crescent Foundry Co. Pvt. Ltd.	4.53
Dinesh Brothers Pvt. Ltd.	1.82
Kejriwal Iron & Steel Works Pvt. Ltd.	11.76
Nandikeshwari Iron Foundry Pvt. Ltd.	3.71
Overseas Iron Foundry	3.74
R.B. Agarwalla & Company	2.73
RSI Limited	2.73
Seramapore Industries Pvt. Ltd.	4.16
Shree Rama Enterprise	10.85
Super Iron Foundry	1.93
Uma Iron & Steel	0.40
Victory Castings Ltd.	2.17

E. Import Mechanisms (Sale of Licenses)

In the preliminary results, we found that this program conferred countervailable subsidies on the subject merchandise. Our review of the record and our analysis of the comments submitted by the interested parties, summarized below, have not led us to change our preliminary findings. Accordingly, the net subsidies for this program are as follows:

Net subsidies—producer/exporter	Net subsidy rate—percent
Carnation Industries Ltd.	0.24
Kajaria Iron Castings Pvt. Ltd.	0.68
Kejriwal Iron & Steel Works	1.00
RSI Limited	0.03
Seramapore Industries Pvt. Ltd.	0.73

F. Exemption of Export Credit From Interest Taxes

In the preliminary results, we found that this program conferred countervailable subsidies on the subject merchandise. Our review of the record and our analysis of the comments submitted by the interested parties, summarized below, has led us to modify our findings from the preliminary results for Calcutta and Dinesh. *See* Comment 1 below for Dinesh and the *Calculation Memo* for Calcutta. Our findings for the other companies have not changed as a result of our review of the record and our analysis of the comments submitted by the interested parties. Accordingly, the net subsidies for this program are as follows:

Net subsidies—producer/exporter	Net subsidy rate—percent
Calcutta Ferrous Ltd.	0.06
Carnation Industries Ltd.	0.13
Commex Corporation	0.06
Crescent Foundry Co. Pvt. Ltd.	0.06
Dinesh Brothers Pvt. Ltd.	0.13
Kajaria Iron Castings Pvt. Ltd.	0.26
Nandikeshwari Iron Foundry Pvt. Ltd.	0.13
R.B. Agarwalla & Company	0.11
RSI Limited	0.22
Seramapore Industries Pvt. Ltd.	0.07
Super Iron Foundry	0.16
Uma Iron & Steel	0.11
Victory Castings Ltd.	0.18

II. Programs Found To Be Not Used

In the preliminary results, we found that the producers/exporters of the subject merchandise did not apply for or receive benefits under the following programs:

1. Market Development Assistance (MDA)
2. Rediscounting of Export Bills Abroad (EBR)
3. International Price Reimbursement Scheme (IPRS)
4. Cash Compensatory Support Program (CCS)
5. Programs Operated by the Small Industries Development Bank of India (SIDBI)
6. Export Promotion Replenishment Scheme (EPRS) (IPRS Replacement)
7. Export Promotion Capital Goods Scheme
8. Benefits for Export Oriented Units and Export Processing Zones
9. Special Imprest Licenses
10. Special Benefits
11. Duty Drawback on Excise Taxes
12. Payment of Premium Against Advance Licenses
13. Pre-Shipment Export Financing in Foreign Currency (PCFC)

We did not receive any comments on these programs from the interested parties, and our review of the record has not led us to change our findings from the preliminary results.

Analysis of Comments

Comment 1: Use of Denominator for Dinesh

Respondents state that the Department misread Dinesh Brothers' (Dinesh) sales information and consequently used the wrong 1996 f.o.b. values to calculate the company's *ad valorem* subsidy rates. As a result of this error, the Department's calculations overstate the countervailing duty applicable to the company for the period of review.

Petitioners counter stating that the sales values used in the Department's calculations are consistent with the information provided in the company's response. They argue that the burden is on respondents to provide clear, complete responses to the Department's inquires.

Petitioners state that even if the Department has erred and used the wrong values, this issue highlights a continuing problem with respect to this order. That is, respondents often supply vague information in their questionnaire responses and then clarify the information only if the Department requests a further explanation or the respondents explain the information at verification. In this case, petitioners argue the Department did not feel it was necessary for Dinesh to explain the reporting of its sales values and the company was not verified. For these reasons, petitioners urge the Department to affirm its use of the sales values used in determining Dinesh's program benefits in the preliminary calculations.

Department's Position

Though we agree with petitioners that Dinesh's sales values were not clearly presented in the company's questionnaire response, after a further examination of the record, we agree with respondents that we did not use the correct f.o.b. values to calculate Dinesh's program benefits. In conducting our preliminary calculations, we incorrectly read Dinesh's sales chart and thus used the wrong 1996 f.o.b. values to calculate the company's *ad valorem* subsidy rates. Therefore, we have recalculated the *ad valorem* subsidies under each program using the correct f.o.b. values as our denominators. The program rates reported above and the final subsidy rate and cash deposit rate for Dinesh listed below reflect the use of the correct sales values.

Comment 2: Sale of Import License by Carnation

When calculating the benefit which Carnation Industries Ltd. (Carnation) received from the sale of an import license, respondents state that the Department mistakenly used an overstated revenue figure as the numerator in its calculation. They argue that the Department incorrectly used the amount of revenue Carnation earned on the sale as reported in the company's financial statements. Respondents state that this amount is inclusive of the sales price plus the tax which Carnation paid to the State of West Bengal. They state that Carnation did not receive the tax, and therefore, the correct amount of the benefit to Carnation is the sales price minus the tax.

Petitioners state that the respondents' argument must be rejected because the Department's regulations clearly state that: ''{i}n calculating the amount of a benefit, the Secretary will not consider the secondary tax consequences of the benefit.'' *See Countervailing Duties: Proposed Rule*, 62 FR 8818, 8856 (February 26, 1997). Petitioners further state that the Department's policy is clear from previous cases and has been upheld by the courts. *See, e.g., Certain Steel Products from Belgium; Final Affirmative Countervailing Duty Determinations*, 58 FR 37273, 37275 (July 9, 1993); *Geneva Steel* v. *United States*, 914 F. Supp. 563, 609–610 (CIT 1996); *Ipsco, Inc.* v. *United States*, 687 F. Supp. 614, 621–22 (CIT 1988); and *Michelin Tire Corp.* v. *United States*, 6 CIT 320, 328 (1983), *vacated on other grounds*, 9 CIT 38 (1985) (*Michelin Tire*).

In this review, petitioners state that the record clearly establishes that the benefit received from the sale of the license was the amount reported in the company's financial statements. Carnation's claim that it initially received something less than that amount is not supported by record evidence. Moreover, whether Carnation was obligated to pay taxes on the revenue earned is inconsequential to the Department's analysis. Therefore, the Department should affirm its preliminary results in this matter.

Department's Position

We agree with petitioners. Not only is the Department's long-standing policy to disregard secondary tax consequences of countervailable benefits, but also the statute is clear in regard to permissible offsets to subsidies. Section 771(6) of the Act provides an exclusive list of offsets which may be deducted from the amount of a gross subsidy, and an offset for income tax payments is not included in that list. For purposes of determining the net subsidy, the Department, pursuant to section 771(6), may subtract from the gross countervailable subsidy the amount of:

(A) Any application fee, deposit, or similar payment paid in order to qualify for, or to receive, the benefit of the countervailable subsidy,

(B) Any loss in the value of the countervailable subsidy resulting from its deferred receipt, if the deferral is mandated by Government order, and

(C) Export taxes, duties, or other charges levied on the export of merchandise to the United States specifically intended to offset the countervailable subsidy received.

In *Michelin Tire*, the court upheld the Department's policy of disregarding secondary tax consequences, rejecting a claim that after-tax considerations should be included in the calculation of a subsidy. In its decision the court stated that: ''[T]hese effects [secondary tax effects] are too uncertain to be considered a necessary part of a subsidy calculation in these circumstances.'' *See* 6 CIT 320, 328 (1983), *vacated on other grounds*, 9 CIT 38 (1985). Therefore, based on the statute, case precedent, and the Department's policy to disregard secondary tax effects on subsidies, we have not altered our calculation of the subsidy which Carnation received from the sale of an import license during the review period.

Comment 3: Use of a Rupee-Loan Interest Rate Benchmark

Respondents contest the Department's use of a rupee-loan interest rate, rather than a dollar-denominated interest rate, to calculate the benefit on PSCFC loans. Respondents note that the Department has determined that PSCFC loans are denominated in dollars and that the discount rate is based on a dollar interest rate. Therefore, the Department should have used as its benchmark to determine the benefit conferred by PSCFC loans, a dollar-related interest rate. Respondents assert that since the Indian banks offering PSCFC financing could themselves borrow dollars at a rate linked to the London Interbank Offering Interest Rate (LIBOR), the appropriate benchmark to determine the subsidy element of the loans, if any, would be a LIBOR-linked rate.

Respondents contend that the Department's use of a benchmark, other than a LIBOR-linked rate, is inconsistent with item (k) of the ''Illustrative List of Export Subsidies,'' Annex I to the *Agreement on Subsidies and Countervailing Measures* (Illustrative List). Item (k) provides that an ''export credit'' is a subsidy only if governments or government-controlled banks provide ''export credits at rates below those which they actually have to pay for the funds so employed.'' Respondents assert

that PSCFC loans should not be viewed as subsidies so long as they are not provided at rates that are below the rates at which the banks themselves could borrow U.S. dollars. Accordingly, PSCFC loans should not be considered beneficial to the extent that they are provided at rates above the appropriate benchmark—a LIBOR-linked rate.

Petitioners argue that respondents are erroneously confusing the terms ''export credit'' and ''packing credit,'' the type of financing provided to castings exporters, when discussing item (k). Petitioners note that the Department has consistently interpreted the term ''export credit'' to refer to medium- and long-term loans and therefore, item (k) does not apply to the short-term export loans which are under review.

Additionally, petitioners assert that the Department has consistently rejected the cost-to-government'' methodology of item (k). In support of their argument, petitioners cite to the Department's determinations in *Extruded Rubber Thread from Malaysia; Final Results of Countervailing Duty Administrative Review,* 60 FR 17515, 17517 (April 6, 1995) and *Certain Textile Mill Products from Mexico; Final Results of Countervailing Duty Administrative Review,* 56 FR 12175, 12177 (March 22, 1991). Petitioners also cite to the 1989 final results of *Certain Textile Mill Products from Mexico,* in which the Department stated:

> When we have cited the Illustrative List as a source for benchmarks to identify and measure export subsidies, those benchmarks have been consistent with our long-standing practice of using commercial benchmarks to measure the benefit to a recipient of a subsidy program. The cost-to-government standard in item (k) of the Illustrative List does not fully capture the benefits provided to recipients of FOMEX financing. Therefore, we must [sic] use a commercial benchmark to calculate the benefit from a subsidy, consistent with the full definition of ''subsidy'' in the statute.

54 FR 36841, 36843 (September 5, 1989). Petitioners further point out that the Department upheld its repudiation of the ''cost-to-government'' standard contemplated in item (k) in the *Statement of Administrative Action: Agreement on Subsidies and Countervailing Measures* (SAA). The SAA states that ''* * * the Illustrative List has no direct application to the CVD portion of the Subsidies Agreement, and items (k) and (l) of the Illustrative List use a cost-to-the-government standard which is inappropriate for CVD purposes.'' *See* H.R. Doc. No. 103–316, Vol. 1, 927–928 (1994). The petitioners assert that this language restates the Department's long-standing practice that the ''cost-to-government'' approach contemplated in item (k) does not adequately capture the benefits provided under short-term export financing programs. Therefore, the Department should reject respondents' argument and continue using a non-preferential interest rate based on comparable, rupee-based financing as a benchmark.

Department's Position

We disagree with respondents that the Department should use a LIBOR-linked interest rate as the benchmark in measuring the benefits conferred by the PSCFC program. In examining whether a short-term export loan confers countervailable benefits, the Department must determine whether ''there is a difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market.'' *See* Section 771(5)(E)(ii) of the Act.

In determining whether there is a difference between the amount the companies paid on the PSCFC loans and the amount they would have paid on a comparable commercial loan, we used, as our benchmark, where available, a company-specific interest rate for rupee-denominated short-term working capital loans obtained on the market during the review period. In the absence of a company-specific rate, we used the ''cash credit'' interest rate which is for domestic working capital finance and is comparable to pre- and post-shipment export finance. *See Certain Iron-Metal Castings From India; Preliminary Results of Countervailing Duty Administrative Review,* 61 FR 64669, 64671 (December 6, 1996) (*1994 Castings Prelim*). In accordance with section 771(5)(E)(ii) of the Act, because the interest rate on PSCFC loans is less than what a company would have to pay on a comparable short-term commercial loan, we determined that PSCFC loans confer countervailable benefits.

We have also determined that PSCFC loans are limited to exporters, and only exporters have access to LIBOR-linked interest rates. Because we found that PSCFC loans are limited to exporters and that non-exporters do not have access to these low-cost financing rates, loans with interest rates linked to LIBOR clearly do not represent the ''comparable commercial loan that the recipient could actually obtain on the market.'' The fact that commercial banks may borrow at LIBOR-linked rates is, therefore, irrelevant to our finding.

Petitioners correctly note that the Department has consistently rejected the ''cost-to-government'' standard of item (k) of the Illustrative List. The SAA specifically states that ''* * * the Illustrative List has no direct application to the CVD portion of the Subsidies Agreement, and items (k) and (l) of the Illustrative List use a cost-to-the-government standard which is inappropriate for CVD purposes.'' *See*0 H.R. Doc. No. 103–316, Vol. 1, 927–928 (1994). For these reasons, we maintain that the correct benchmark to use in determining whether PSCFC loans confer countervailable benefits upon exports of the subject merchandise to the United States, is the ''comparable'' commercial loan rate that the Indian exporters would actually obtain on the market.

Comment 4: Double-Counting of Subsidies

Respondents state that, for purposes of the section 80 HHC tax program (80 HHC), earnings from the sale of import licenses may be deducted from taxable income to determine the tax payable by the exporter. Therefore, because revenue from the sale of licenses is also part of the deductions under 80 HHC, to countervail this revenue once as a direct subsidy, and then to countervail the tax deduction, which is made up of the same revenue, is to double count the subsidy from the import license sales.

Respondents also contend that the Department is double-counting the subsidy from the export financing programs. The financing programs reduce a company's expenses in financing exports, which in turn increases the company's profits on export sales. Because the 80 HHC deduction increases as export profits increase, the financing programs increase the 80 HHC deduction. Therefore, according to respondents, to countervail the export financing as a separate program from the 80 HHC, is to double-count the subsidies conferred by the export financing programs.

Respondents note that they appealed this issue of double-counting to the Court of Appeals for the Federal Circuit (CAFC) and in *Kajaria Iron Castings Pvt. Ltd.* v. *United States,* No. 97–1490 (Fed. Cir. September 8, 1988) (*Kajaria*), the CAFC ruled in favor of the respondents. Accordingly, respondents assert that the Department should revise its position on the issue double-counting for the final results of this review.

Petitioners respond that the Department has analyzed this issue of double-counting extensively in prior proceedings. *See, e.g., Certain Iron-Metal Castings from India; Final Results of Countervailing Duty Administrative Review,* 62 FR 32299–301 (June 13,

1997) (*1994 Castings Final*). Petitioners contend that the Department's prior findings on this issue should be upheld in this administrative review on the basis of (1) The facts on the record; (2) because the subsidies being countervailed are separate and distinct; (3) because the Department has a consistent policy of not examining the tax consequences of tax exemptions related to loans and grants; and (4) there is no reasonable way for the Department to isolate the alleged effects on respondents' export tax liability. In addition, petitioners argue that the Department has explained in earlier reviews that the 80 HHC income tax exemption for export earnings is a countervailable subsidy that is separate and distinct from the subsidies received from export financing programs and the sale of import licenses, and therefore, each subsidy program should be separately countervailed.

Also, petitioners contend that it is not the Department's policy to examine the secondary tax effects of subsidies. Petitioners indicate that the Department's determination to separately countervail these different subsidies is supported by the courts' affirmance of the agency's policy to disregard any secondary effect of a direct subsidy on a company's financial performance. In support of this, petitioners cite *Saarstahl AG* v. *United States,* 78 F.3d 1539, 1543 (Fed. Cir. 1996). Petitioners assert that this approach is proper and reasonable given the difficulties inherent in an effort to calculate secondary effects. Petitioners cite to *Michelin Tire Corp.* v. *United States,* in which the court stated, ''These {secondary} effects are too uncertain to be considered a necessary part of a subsidy calculation.'' *See* 6 CIT 320, 328 (1983), *vacated on other grounds,* 9 CIT 38 (1985).

Petitioners further note that the legislative history of the URAA also makes clear that in determining whether a countervailable subsidy exists, the Department is not required to consider the effect of the subsidy. *SAA* at 246, 926 (codified at 19 U.S.C. 1677(5)(C)). The SAA explains that:

> [T]he Administration wants to make clear its view that the new definition of subsidy does not require that Commerce consider or analyze the effect (including whether there is any effect at all) of a government action on the price or output of the class or kind of merchandise under investigation or review.

Id. at 926. Petitioners state that when applied to the alleged double-counting issue, this means that the Department does not have to consider whether subsidies in the form of grants or loans have any effect on the 80 HHC tax program when determining whether subsidies under 80 HHC are countervailable.

Petitioners further indicate that though respondents argue that the Department should correct for the alleged double-counting issue by making adjustments to the 80 HHC subsidy percentage, they do not provide any comment on how the Department should do this. According to petitioners, the Department has acknowledged in earlier reviews that the adjustments requested by the respondents cannot be accomplished due to the multiple variables, which affect a company's costs, that would have to be isolated.

Department's Position

Respondents' argument that the subsidies provided under the export financing and import licensing programs have been countervailed twice, by also countervailing the full amount of the 80 HHC tax deduction, is incorrect. In *Kajaria,* the CAFC reviewed the Department's decision to countervail that portion of the Cash Compensatory Support (CCS) rebates found to be excessive, and to also countervail those over-rebates under the 80 HHC program. Under the CCS program, the GOI rebated indirect taxes on inputs consumed in the production an exported product. The CCS rebates were considered by the GOI to be export income. Under the GOI's 80 HHC program only profit from export income is exempt from tax liability. With respect to these particular facts, the CAFC in its decision concluded that by first countervailing the CCS over-rebates, as a distinct program, and then countervailing the same over-rebates again as tax exempt export income under the 80 HHC program, the Department had improperly double-counted the over-rebates.

In its decision, the court stated:

> * * * Commerce must avoid double-counting subsidies, *i.e.,* countervailing both the full amount of a subsidy and the non-taxation of that subsidy, when the party under investigation provides documentation that allows Commerce to separate the tax deduction based on the fully countervailed subsidy from the otherwise countervailable portion of the tax deduction.

Kajaria, No. 97–1490 at 24–25. In the present review, neither the interest saved under the export financing programs nor the proceeds earned on the sales of import licenses are deemed to be export income. There is no evidence on the record which demonstrates a direct link between these separate and distinct program subsidies and a specific tax exemption subsidy program, *i.e.,* the 80 HHC tax deduction. The respondents in this review did not provide either income and tax statements, or government descriptions of the subsidy programs which demonstrate that the export financing and import license subsidies are considered by the GOI to be export income and that the profit derived from such income is specifically exempt from tax liability under 80 HHC.

With respect to the export financing programs, the respondents stated that under these schemes, the GOI provides exporters with short-term export lending to finance their working capital requirements. The respondents' contention that as a result of such financing, an exporter realizes a reduction of interest expenses which in turn increases profits on export sales, is speculative. It is incorrect for respondents to assume that every rupee saved on interest costs increases the profits of the company by one rupee and therefore, the concessional financing programs increase the 80 HHC deduction since the deduction increases as profits from exports increase. Thus, we find no basis for the respondents' argument that, by countervailing the export financing programs and the 80 HHC deduction in full, the benefit to the exporter from the financing programs is being countervailed twice.

In regard to the sale of import licenses, the record is void of any indication that the profit a company realizes from the sale of an import license is exempt from tax liability. What evidence respondents did put on the record shows, for example, that Carnation Industries reported and documented on the record that the revenue it earned from the sale of an import licence during the review period was taxed by the State of West Bengal. Therefore, we find no basis for the respondents' argument that revenue earned from the sale of an import license constitutes export income, the profits from which may be deducted from taxable income under 80 HHC. Accordingly, we determine that the subsidy from the import license sale is not being double-counted by also countervailing in full the 80 HHC tax deduction.

Comment 5: Exclusion of Income Earned on Non-Subject Merchandise

According to respondents, where a company was able to break down revenues relating to subject castings versus revenues relating to non-subject merchandise, the Department should have calculated the 80 HHC subsidy based on revenues and profits relating to subject castings only. Respondents assert that by not factoring out

incentives received on sales of merchandise other than subject castings, the subsidies found to be conferred by the 80 HHC program are greater than they ought to be. The respondents submit that it is *ultra vires* to countervail income earned on merchandise other than subject castings because only subject castings are covered by the order.

Respondents claim that two companies, Kejriwal Iron & Steel (Kejriwal) and R.B. Agarwalla & Co. (R.B. Agarwalla) were able to break down revenues relating to subject castings versus revenues relating to non-subject merchandise. Kejriwal submitted a calculation showing export incentives received on sales of non-subject merchandise. The company factored out these incentives when calculating the benefit the 80 HHC program provided to subject castings. R.B. Agarwalla submitted an 80 HHC calculation demonstrating that a portion of its income was directly related to non-subject merchandise, and subtracted out this income in determining the benefit to subject castings provided by the tax program. Respondents assert, for these companies, the Department should revise its 80 HHC calculations countervailing only the income earned on subject castings.

Respondents note that the CAFC in *Kajaria,* stated that the Department improperly included revenue received on non-subject castings in determining the countervailing duty to be imposed on subject castings. *See Kajaria,* No. 97–1490 at 25–27. Respondents state that though the court's decision related to IPRS rebates received on non-subject castings, the court's ruling on the non-countervailability of tax deductions relating to non-subject castings applies to this review since the exporters received revenue on non-subject castings during the period of review. Therefore, in keeping with the decision in *Kajaria,* the Department should recalculate the 80 HHC benefit by deducting all revenues received on non-subject castings for those companies which were able to break down revenues relating to subject castings versus non-subject merchandise.

Petitioners note the respondents' argument has been rejected in prior reviews. Since the facts of this review are no different from the prior reviews, the Department should continue its policy of allocating the benefit from the 80 HHC program over total exports. The 80 HHC program is an export subsidy and the benefits provided under this program are not tied to the production or sale of a particular product or products. Petitioners assert that it does not matter whether an exporter is able to separate its revenues between subject and non-subject castings, because the 80 HHC program is an ''untied'' subsidy program.

Department's Position

We disagree with respondents that for the final results the Department should revise its benefit calculations for the 80 HHC tax exemption program in light of *Kajaria*. The circumstances and the record developed in this review are different from those in the case of *Kajaria*. In *Kajaria,* the Court ruled that the record showed that the IPRS rebates for non-subject merchandise were deemed by the GOI to be export income. Further, the Court found that profits derived from that export income were specifically exempt from income tax liability under the 80 HHC program. In short, rebates specifically identified as export income under one program were directly linked to the exemption from tax liability of profits derived from such export income under another subsidy program. It is clear from the CAFC's opinion that its holding was limited to the particular circumstances in *Kajaria*. The facts and record in this review are not the same as those in *Kajaria*. Thus, no revision to the 80 HHC benefit calculation is warranted.

During this administrative review, no exporter submitted information for the record which demonstrated that IPRS rebates were received for the sale of non-subject merchandise to the United States. In fact, no exporter submitted information that demonstrated that any alleged benefits received for non-subject merchandise were expressly denominated as export income, and that the profits derived from such export income were expressly exempt from tax liability under the 80 HHC program.

As mentioned above, respondents claim that the export incentives which Kejriwal received on the sale of non-subject merchandise should be factored out of the Department's calculation of the benefit to subject castings from the 80 HHC tax deduction. We disagree with the respondents. Kejriwal provided no documentation on the record to support its claim that the export incentives received were in fact export income earned on the sale of non-subject merchandise. Further, nowhere on the record does Kejriwal or the GOI indicate that export incentives are export income and that the section 80 HHC specifically exempts profits derived from that export income. Because the record is void of such information, we have not modified the 80 HHC benefit calculation for Kejriwal to exclude, from the computation, these export incentives.

In like manner, R.B. Agarwalla did not provide any documentation to support its claim that a portion of its income listed as duty drawback received on non-subject merchandise is specifically denominated as export income by the GOI. There is no information on the record which indicates that duty drawback is considered to be export income and that the section 80 HHC specifically exempts the profits derived from that income. Therefore, we have not made any adjustments to the 80 HHC benefit calculation for R.B. Agarwalla to take into account the duty drawback the company received on non-subject merchandise.

The burden of creating an adequate record lies with respondents and not with the Department. *NTN Bearing Corp. of America* v. *United States,* 997 F.2d 1453, 1458 (Fed. Cir. 1993), *quoting Tianjin Mach. Import & Export Corp.* v. *United States,* 806 F. Supp. 1008, 1015 (CIT 1992). In this review, neither Kejriwal nor R.B. Agarwalla developed such a record with respect to the *Kajaria*-type adjustment they are requesting. Moreover, the Department need not engage in any kind of subsidy tracing exercise. On this point, the CAFC was very clear:

> [W]e are mindful of the government's argument that Commerce does not engage in subsidy tracing because of the burden involved in sorting the tax treatment of subsidies. Again, our decision does not mean that in every review or investigation Commerce must trace the tax treatment of subsidies on non-subject merchandise when a tax deduction results in a countervailable subsidy to determine if the deduction is partially based on the subsidy on non-subject merchandise.

Kajaria, No. 97–1490 at 27. Accordingly, the Department has not made any adjustment to the 80 HHC calculations in the final results of this review to determine the subsidy bestowed on exports of the subject merchandise. Because respondents did not provide to the Department documentation with respect to export profits derived from export income earned on non-subject merchandise which is specifically exempt under the 80 HHC, we have continued to employ our ''untied'' benefit methodology to calculate the net subsidy attributable to exports of the subject merchandise for those exporters which claimed the 80 HHC tax deduction during the period of review. It is the Department's consistent and long-standing practice to attribute a benefit from an export subsidy that is not tied to a particular product or

market to all products exported by a firm. *See, e.g., Final Affirmative Countervailing Duty Determination: Certain Pasta from Turkey*, 61 FR 30366, 30370, (June 14, 1996) (*Pasta from Turkey*), and the *1994 Castings Final*, 62 FR 32303.

When an exporter cannot demonstrate to the Department that a subsidy is tied to specific merchandise, then the benefit is not tied to any specific product manufactured or exported by a firm, and therefore, the benefit is ''firm-wide.'' If a subsidy is firm-wide and not ''tied'' to specific merchandise, then the benefit from that subsidy is allocated over the firm's total exports, in the case of an export subsidy. By allocating the ''untied'' benefit provided under the 80 HHC over a company's total exports, we are making an ''apples-to-apples'' comparison. This ''untied'' benefit methodology accurately produces the net subsidy attributable to exports of the subject merchandise and provides for fair results. For these reasons, our calculation of the subsidy under section 80 HHC remains unchanged from the preliminary results.

Even if Kejriwal and R.B. Agarwalla demonstrated to the Department that their respective export incentives and duty drawback were in fact export income earned on non-subject merchandise (with respect to duty drawback, documentation would also have to indicate that imported pig iron was not incorporated into the subject merchandise) and that the 80 HHC specifically exempts profits derived from that export income, each company's net program subsidy rate would remain essentially unchanged. By factoring out export income attributable to non-subject merchandise from the 80 HHC deduction, we would adjust the benefit (the numerator) to reflect the 80 HHC tax deduction attributable to subject merchandise only. Because adjusting the benefit in this manner is contrary to the Department's long-standing practice with regard to the attribution of subsidies and our tying principles, we would then have to adjust the denominator. Since the numerator would reflect only subject merchandise, we would follow our long-standing principles for attribution, and divide the recalculated benefit only by exports of subject merchandise to determine the net subsidy rate for each company. Once all income attributable to non-subject merchandise is factored out of the calculation of the benefit, the amount that remains would be attributable solely to subject merchandise. As noted, the adjustments made would affect both the numerator and denominator and would result, in this proceeding, in net subsidy rates identical to the rates obtained by the Department's current methodology of considering the benefit of the 80 HHC program as ''untied.''

Comment 6: Penalty Interest Paid

According to respondents, in calculating the benefits received by castings exporters from post-shipment export loans, the Department failed to take into account penalty interest paid at interest rates higher than the benchmark. Respondents argue that where a company paid interest on loans at rates both less than and greater than the benchmark rate, all interest—including the overdue penalty interest paid at rates greater than the benchmark rate—needs to be taken into account when determining the actual benefit to the company from the loans. The respondents assert that the methodology employed by the Department virtually eliminates the overdue penalty interest paid from the calculation of the benefit from the post-shipment export loans.

The preliminary calculations demonstrate that where an export loan was initially taken at a preferential rate, the Department calculated the interest paid at the preferential interest rate and compared it to interest that would have been paid at the benchmark rate. Respondents argue that this methodology does not take into account all the interest paid by the exporter on the loan since it ignores overdue interest that the exporter may also have paid on the loan.

Respondents assert that the Department should have adjusted the benefit on the post-shipment export loans by the excess overdue interest paid by the company at the penalty interest rate, because that rate is greater than the benchmark rate. Rather than account for the excess interest paid on the loans, the Department calculated a zero benefit where the interest rate on the portion of the loan overdue was higher than the benchmark rate. The respondents argue that the Department should correct its methodology so as to take into account the overdue penalty interest paid on the loans, because the benefit received by an exporter on any particular loan is a function of both the interest paid at a rate lower than the benchmark and the additional interest paid at a rate higher than the benchmark.

Petitioners state that the Department should reject the respondents' methodology for calculating the countervailable benefit under the export financing programs, because it would permit a non-allowable offset to the countervailable benefit under the programs. In addition, petitioners argue that respondents fail to explain why an offset for penalty interest should be allowed when payment of that interest does not fall within the statute's list of allowable offsets under section 771(6) of the Act.

The penalty interest, petitioners assert, merely assures that the terms of the program are met. The costs associated with such penalty interest charges are, therefore, due to the recipient's failure to comply with the terms of the loan. The penalty which is based on the company's non-compliance with the terms of the program, represents nothing more than a secondary economic effect. Petitioners note that the Department has previously determined that a secondary economic effect should not be used as an offset to a program's benefit. *See, e.g., Oil Country Tubular Goods from Canada; Final Affirmative Countervailing Duty Determination*, 51 FR 15037 (April 22, 1986), *Fabricas El Carmen, S.A.* v. *United States*, 672 F. Supp. 1465 (CIT 1987), *vacated in part (on other grounds), Fabricas El Carmen, S.A.* v. *United States*, 680 F. Supp. 1577 (CIT 1988).

Petitioners further note that the Department has, in a comparable situation, refused to offset preferential with non-preferential loans. *See Oil Country Tubular Goods from Argentina; Final Results of Countervailing Duty Administrative Reviews*, 56 FR 38116, 38117 (August 12, 1991) (*OCTG from Argentina*). In that case, respondents claimed that a loan-by-loan analysis overstated the benefit received and that, taken together, the loans received by the company provided no preferential benefit. In rejecting this argument, the Department asserted:

> [I]t only examines loans received under programs that may potentially be counteravailable [sic] if the interest rate is preferential when compared with the benchmark interest rate. We do not consolidate these preferential loans with non-countervailable commercial loans to examine whether the aggregate interest rate paid on a series of loans is preferential. It is not the Department's practice to offset the less favorable terms of one loan as an offset to another, preferential loan.

Id. Petitioners argue that, by extension, the Department cannot, under the terms of the statute, offset the less favorable interest period of a loan (the period during which the loan was overdue) with the period in which the loan was provided on preferential terms. This is particularly the case, petitioners state, when the higher penalty interest was a result of the company's failure to comply with the terms of the program.

Therefore, the Department is correct in calculating a zero benefit during the period in which the penalty rate exceeded the benchmark rate.

Department's Position

An adjustment to the benefit under the export financing programs in the form advocated by respondents would be an impermissible offset to the benefit. In accordance with section 771(6) of the Act, the Department may subtract from the gross countervailable subsidy the amount of:

(A) Any application fee, deposit, or similar payment paid in order to qualify for, or to receive, the benefit of the countervailable subsidy,

(B) Any loss in the value of the countervailable subsidy resulting from its deferred receipt, if the deferral is mandated by Government order, and

(C) Export taxes, duties, or other charges levied on the export of merchandise to the United States specifically intended to offset the countervailable subsidy received.

As petitioners correctly note, penalty interest under the export financing programs does not fall within this list of allowable offsets.

Additionally, in light of how the post-shipment export financing programs operate, respondents' approach is inaccurate. As we explained in the preliminary results, exporters discount their export bills with Indian commercial banks to finance their operations. *See Certain Iron Metal Castings from India; Preliminary Results of Administrative Review*, 63 FR 37536 (July 13, 1998) (*1996 Castings Prelim*). By discounting an export bill, the company receives payment from the bank in the amount of the export bill, net of interest charges. The loan is considered ''paid'' once the foreign currency proceeds from an export sale are received by the bank. If those proceeds are not paid within the negotiated period, then the loan is considered ''overdue.'' In essence, however, this overdue period is a new loan, because the original ''discounted loan period'' is fully accounted for, that is, the company has received payment from the bank and the interest on that payment has already been deducted. For the overdue loan, the bank will charge the company interest on the original amount of the loan at a higher interest rate. The overdue interest rate varies depending on the period for which the loan is overdue. To determine whether interest charged on the ''overdue'' loan confers a countervailable benefit, we compared the overdue interest rate with the benchmark rate. If the overdue interest rate was higher than the benchmark rate, we found no benefit. Therefore, the adjustment suggested by respondents is inappropriate given the way in which the export financing programs operate.

Comment 7: Company-Specific Benchmarks

Respondents disagree with the Department's use of a company-specific benchmark interest rate for determining the benefits which Calcutta Ferrous and Crescent Foundry respectively received under the pre- and post-shipment export financing programs. Respondents note that, for companies which did not have commercial short-term loans during the review period, the Department used as its benchmark the ''cash credit'' short-term interest rate which was provided by the GOI.

Respondents argue that since commercial loans were available to borrowers at the cash credit rate during the review period, it was inappropriate to use a higher rate as a benchmark for Calcutta Ferrous and Crescent Foundry merely because these companies borrowed at rates higher than the cash credit rate on certain commercial loans. It is the respondents' contention that, where a company borrows at a rate which is lower than the common benchmark, it is appropriate to use the lower, company-specific rate. However, where a company borrows at a rate higher than the common commercial rate, then the higher rate should not be the benchmark used for that company. Respondents argue that there is no reason to assume that a company, which happened to borrow at a higher rate, could not have taken loans at the lower rate during the period of review, and therefore, the Department should use the lower commercial rate. Thus, the Department should cap Calcutta Ferrous' and Crescent Foundry's benchmark rate at the level of the cash credit short-term interest rate which was found available to borrowers in India during the period of review.

Petitioners state that the respondents' argument should be rejected as it is inconsistent with the Department's preferred benchmark methodology. As directed by the Act, the Department is to measure the benefit obtained through a loan program by finding the ''difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market.'' *See* section 771(5)(E)(ii) of the Act. In measuring the benefit, it is the Department's preference to use company-specific rates where available and to use national averages (such as the cash credit rate) only in the event that the investigated firm did not take out any comparable commercial loans during the period. *See* Preamble to the Proposed Regulations, 62 FR 8829, 8830 (February 26, 1997). By using a company-specific benchmark rate for those companies which received, and paid interest on, short-term working capital loans obtained on the market during the period of review, the Department appropriately followed statutory and regulatory policy. For the remaining companies which did not receive, and pay interest on, comparable commercial loans, the Department used, as a benchmark, the next best rate, the national-average cash credit rate.

Petitioners further state that the respondents' argument is not in accordance with the Department's statutory guidelines, since, in certain cases, respondents' methodology would substitute the second best (*i.e.*, a national average rate) when the first best alternative (*i.e.*, a company-specific rate) is available. The respondents' proposed approach is simply a results-oriented argument designed to lower the countervailing duty rate applied to short-term, preferential loan programs. Moreover, it is mere speculation on the part of respondents to claim that companies which borrow at rates above the national-average rate could also borrow at the lower rate. Petitioners contend that it is this type of ambiguity that the statute and regulations address and therefore, the Department must reject respondents' proposed approach.

Department's Position

We disagree with the respondents' argument that the Department used inappropriately high benchmarks to calculate the benefits from the pre- and post-shipment export financing programs for Calcutta Ferrous and Crescent Foundry. As stated in section 771(5)(E)(ii) of the Act, in the case of a loan, a benefit is conferred ''if there is a difference between the amount the recipient of the loan pays on the loan and the amount the recipient would *pay on a comparable commercial loan that the recipient could actually obtain on the market*'' (emphasis added).

During the review period, four of the twelve respondent companies received, and paid interest on, domestic working capital loans which were obtained in a commercial banking market. Accordingly, for these four companies, we used as our benchmark in determining the benefits each company received under the export financing programs, a company-specific rate; this benchmark was a weight-averaged rate based on the interest rates each company paid on its respective

commercial working capital loans. It is the Department's policy to use a company-specific benchmark rate in determining the benefit conferred by a government program. *See, e.g., Industrial Phosphoric Acid from Israel; Final Results of Countervailing Duty Administrative Review,* 63 FR 13626, 13634 (comment 9) (March 9, 1998).

For all other respondent companies which did not receive, and pay interest on, comparable commercial loans during the period of review, we used as our benchmark the next best alternative—the national-average ''cash credit'' rate. In the 1994 administrative review of this order, the Department determined that, in the absence of a company-specific benchmark, the most ''comparable'' short-term benchmark to measure the benefit under the export financing programs, is the cash credit interest rate. The cash credit interest rate is for domestic working capital finance and thus, comparable to pre- and post-shipment export financing.

Respondents argue that since commercial loans were available at the cash credit rate during the review period, it was inappropriate for the Department to use higher benchmark rates for Calcutta Ferrous and Crescent Foundry simply because these companies borrowed at higher rates on certain loans. As noted above, it is the Department's policy to use, when determining the benefit conferred by a loan provided under a government program, the interest rate a company would have paid on a comparable loan obtained on the market. During the review period, both Calcutta Ferrous and Crescent Foundry obtained commercial loans on the market. The market determined the interest rates at which these companies could borrow, and those rates were higher than the national-average cash credit rate. Respondents state that the Department should not assume that a company which happened to borrow at a rate higher than the national-average could not have taken loans at the lower rate during the period, and therefore, the Department should use the lower commercial rate. We find no basis for this argument. If Calcutta Ferrous and Crescent Foundry actually could have borrowed at the national-average rate, then the interest rates charged by the banks on the commercial loans would have reflected that. The fact that they did not is an indication that they could not. It would be unreasonable to expect a company to incur higher than necessary costs. Therefore, we disagree with respondents' argument that the Department should cap Calcutta Ferrous' and Crescent Foundry's company-specific benchmark rates at the level of the cash credit rate.

Comment 8: Countervailability of Advance Licenses

Petitioners argue that the Department improperly failed to countervail Advance Licenses which, they contend, are export subsidies. According to petitioners, Advance Licenses constitute a countervailable subsidy within the meaning of Item (a) of the Illustrative List, which defines one type of export subsidy as ''[t]he provision by governments of direct subsidies to any firm or any industry contingent upon export performance.'' Because Advance Licenses are issued to companies based on their status as exporters, and because products imported under such licenses are duty-free, petitioners state these licenses provide a subsidy based on the requirement that an export obligation be met.

Petitioners claim that the Department has in this, as in prior reviews, mistakenly confused the nature of the Advance License program with a duty drawback program. For a duty drawback program not to be countervailed, it must meet certain conditions as outlined in Item (i) of the Illustrative List. Item (i) provides that ''[t]he remission or drawback of import charges [must not be] in excess of those levied on imported goods that are consumed in the production of the exported products (making normal allowance for waste).'' This condition, according to petitioners, has not been met with respect to the Advance License program because the GOI makes no attempt to determine the amount of the imported duty-free material that is consumed in the production of the exported product.

According to petitioners, there is no evidence on which to base a conclusion that the amount of raw materials imported was not excessive vis-a-vis the products exported. The GOI's concern that a sufficient amount of value has been added to the exported products does not regulate the amount of raw materials incorporated to the exports. Petitioners argue that the yardstick used by the GOI for measuring compliance with the Advance License program falls short of any determination of whether the amount of raw materials imported was excessive in relation to the amount of raw materials found in the exported castings.

Petitioners further argue that no evidence on the record demonstrates that the GOI attempts to determine the grade of pig iron being imported or exported, and without knowing this information, the amount of pig iron consumed in the production of exported subject castings cannot be ascertained. Additionally, the GOI's system of fixing ''input/output norms'' is hampered because exporters, who experience delays in the delivery of raw material inputs imported under an Advance License, may purchase the inputs on the domestic market. Thus, there is no way to ensure that the amount of raw materials imported was not excessive in relation to the amount of raw materials found in the exported castings.

Moreover, petitioners argue that an exporter's ability to transfer Advance Licenses to other companies is further evidence that this program is not equivalent to a drawback program because the licenses are not solely limited to the importation of duty-free materials. The GOI permits Advance Licenses to be transferred between companies under certain conditions and when transferring a license, an exporter would receive in return a monetary payment. For this and the above-indicated reasons, petitioners state that the Department should countervail in full the value of Advance Licenses received by the respondents during the period of review.

Respondents explain that the purpose of the Advance License scheme is to allow for the importation of raw materials duty free for the production of exported products. They state that if Indian exporters did not have Advance Licenses, the exporters would simply import the raw materials, pay duty, and then receive drawback upon export. Respondents argue that just because Advance Licenses are slightly different from a duty drawback system, in that they allow duty free imports rather than provide for remittance of duty upon exportation, does not make them countervailable.

In response to the petitioners' claim that the GOI makes no attempt to determine the amount of imported material that is consumed in the production of exported products, respondents counter that the GOI does maintain such checks which have been verified by the Department in prior reviews. Respondents note that in prior reviews the Department has never found excessive imports, and this is one of the reasons why Advance Licenses have not been found to be countervailable. *See 1994 Castings Final.*

Respondents refute petitioners' claim that the GOI is concerned only with ensuring that a sufficient amount of value is added to exported products. According to respondents, the question of value of exports arises only in determining whether an exporter is eligible to receive an Advance License. Respondents also rebut petitioners'

claim that the GOI does not attempt to determine the grade of pig iron imported or exported. They state if more expensive grades of pig iron were imported than exported, and the pig iron was sold for a premium in the domestic market instead of producing exported castings, then the premium might be a subsidy. However, the respondent companies did not sell domestically any imported pig iron, rather they used it to produce castings for export. Additionally, respondents state that if a license was transferred for a fee during the review period, this might be a subsidy. However, in this review, all the licenses were used to import pig iron duty free for exported finished castings. Therefore, for these reasons, the Department should reject the petitioners' arguments regarding the Advance License scheme, and once again find the program to be a non-countervailable equivalent to duty drawback.

Department's Position

As we have discussed in prior reviews, petitioners have only pointed out the administrative differences between a duty drawback system and the Advance License scheme used by Indian exporters. *See 1994 Castings Final.* Such administrative differences can also be found between a duty drawback system and a bonded warehouse. Each of these systems has the same function: each exists so that exporters may import raw materials to be consumed in the production of an exported product without the assessment of import duties.

The purpose of the Advance License program is to allow a company to import raw materials used in the production of an exported product without first having to pay duty. Companies importing under Advance Licenses are obligated to export the products made using the duty-free imports. Item (i) of the Illustrative List specifies that the remission or drawback of import duties levied on imported goods that are consumed in the production of an exported product is not a countervailable subsidy, if the remission or drawback is not excessive.

In prior reviews, we have determined that Advance Licenses are equivalent to duty drawback. The licenses allow companies to import, net of duty, raw materials which are physically incorporated into the exported products. Further, we have found no evidence in this review, or in a prior review, that imports under Advance Licenses have been excessive, or that castings exporters have transferred such licenses. Accordingly, our determination that the provision of Advance Licenses is not countervailable remains unchanged for this review. However, if in a future review of this order, new information becomes available to the Department in regard to the manner in which the Advance License program operates, we will reevaluate at that time our determination of the program's non-countervailability.

Comment 9: Countervailability of the Duty Entitlement Passbook Scheme

Petitioners state the GOI has established during this review period the Duty Entitlement Passbook Scheme (Passbook Scheme) which is related to the Advance Licence scheme. Petitioners contend that this new scheme extends the export subsidies provided under the Advance License program and therefore is similarly countervailable. The purpose of the Passbook Scheme, which commenced in April 1996, is to widen the Advance License program, giving exporters greater flexibility in paying import duties. *See Memo to Barbara Tillman: Verification of the Government of India's Questionnaire Response in the 1996 Administrative Review* at 9, dated June 29, 1998, (public version) on file in the Central Records Unit of the Department of Commerce (Room B–099) (*GOI VR*). Upon the exportation of goods by a Passbook holder, the GOI ''calculates, on the basis of standard input/output norms, the deemed import content of the exports and determines the basic customs duty payable on those imports.'' *Id.* at 8. The Passbook holder, upon receiving credit for the equivalent amount of the customs duty from the GOI, can ''pay the customs duties on any imported goods,'' not just the duties on the imported goods from which the credits were originally determined. *Id.* at 8.

Consequently, petitioners argue, just as with the Advance License program, the Passbook Scheme lacks an adequate monitoring system to ensure that the credits provided to Passbook holders are not excessive. No evidence on the record demonstrates that the GOI attempts to determine the grade of pig iron either imported or exported in the finished goods to ensure that the amount of input material exported equals the amount imported. Moreover, the flexibility exporters have in using the Passbook credits to pay duties on any imports highlights that the Passbook Scheme is very much unlike a traditional duty drawback program. Therefore, petitioners assert that the Department should find the Passbook Scheme countervailable.

Respondents state the Passbook Scheme, like the Advance License program, operates in a manner equivalent to a duty drawback program allowing for imports of pig iron which is consumed in the production of exported castings. Therefore, the Passbook Scheme, for the same reasons as the Advance License program, is not a countervailable subsidy. Respondents argue that simply because the Passbook Scheme has been referred to as an ''export incentive'' does not make it a countervailable subsidy. Duty Drawback of Excise Duty, the Advance License program, and the Passbook Scheme are all ''export incentives'' because they are for exports; however, they are not, as the Department has previously determined, countervailable subsidies unless they provide excessive rebates.

Respondents further state that if the castings exporters did, in fact, use their Passbook credits to import products other than pig iron, a subsidy might exist; however, there is no evidence on the record that this was done by any of the castings exporters. Therefore, based on the reasons presented, the Department should find the Passbook Scheme, like the Advance License program, to be a non-countervailable equivalent to the duty drawback program.

Department's Position

Petitioners first alleged that the Passbook Scheme might be an export subsidy in their May 27, 1998 letter to the Department. *See Letter in regard to Pre-verification Comments* at 12, dated May 27, 1998, public version of the letter is on file in the Central Records Unit of the Department of Commerce (Room B–099). In accordance with section 351.301(d)(4)(B) of the Department's regulations, we found the petitioners' allegation of a new export subsidy to be untimely. *See Memo to the File: Untimely Allegations of New Subsidies,* dated June 5, 1998 on file in the Central Records Unit of the Department of Commerce (Room B–099). Because the allegation was untimely, we rejected petitioners' subsidy allegation with respect to the Passbook Scheme in this review. During the June 1, 1998 verification meeting with the GOI, the Passbook Scheme was discussed as an extension of the Department's inquiry of the Advance License program. However, because the Passbook Scheme was not a program under examination in this review, the Department did not obtain enough information to analyze whether the scheme is, or is not, a countervailable subsidy. If a future review of this order is requested by petitioners, we will

examine whether to initiate on the Passbook Scheme provided that petitioners file their allegation on a timely basis.

Comment 10: Kajaria's Long-Term Loans From the IDBI

Petitioners assert that the Department erred in the preliminary results of this review by not addressing the long-term loan assistance which Kajaria Iron Castings (Kajaria) received from the Industrial Development Bank of India (IDBI). Petitioners argue that the loan assistance is countervailable because (1) it is provided by the government; (2) it is export-oriented; (3) it allows a principal repayment holiday; and (4) it is likely provided on preferential terms.

To begin with, petitioners state, according to the agency's substantive regulations, the Department will investigate a loan provided by a government-owned bank only when the ''government-owned bank provided the loan at the direction of the government or with funds provided by the government.'' *See* proposed 19 CFR 355.44(b)(9)(ii), 54 FR 23366, 23381 (May 31, 1989). Since the GOI owes 74 percent of the IDBI's shares and 10 out of the 16 IDBI board members are government employees, petitioners contend this criterion is satisfied. *See* GOI VR at 10.

Petitioners further assert that evidence on the record demonstrates that the long-term loan was export-oriented. Petitioners note that during verification Kajaria officials stated that the company exports all of its merchandise. *See Memo to Barbara Tillman: Verification of Kajaria Iron Castings Ltd.'s Questionnaire Response in the 1996 Administrative Review* at 2, dated June 29, 1998, (public version) on file in the Central Records Unit of the Department of Commerce (Room B–099) (*Kajaria VR*).

Petitioners also argue that there is no evidence on the record to demonstrate that Kajaria's principal repayment schedule is normal with respect to commercial, long-term lending. In addition, petitioners state that both Kajaria and the GOI failed to demonstrate at verification that the loan was provided on commercial terms. The GOI simply stated at verification that ''[t]here is no consistency in regard to the interest rates or terms and conditions offered by banks on long-term financing.'' *See* GOI VR at 12. According to petitioners, it is likely that alternative long-term rates were significantly higher than the rate Kajaria received, as most of the short-term financing reported by the responding companies ranged as high as 22 percent. For these reasons, petitioners urge the Department to countervail the long-term loan assistance which Kajaria received from the IDBI.

Respondents contend that the loans received by Kajaria were not provided on terms ''inconsistent with commercial considerations,'' which is the criterion for finding such loans countervailable. *See* proposed regulations 19 CFR 355.44(b)(9)(ii), 54 FR at 23381. Respondents assert that a grace period before paying principal is consistent with commercial, long-term loans. Many commercial loans permit a grace period for repayment of principal until the facility, for which the loan was taken, is operational. This was, in fact, the reason for the delayed payment of principal on Kajaria's loan.

With respect to petitioners' argument that there was an ''additional benefit'' owing to the interest rate Kajaria paid on the loan, respondents state that short-term loans are more often than not provided at rates higher than those on long-term loans. Long-term construction loans are often secured by the facility being built, and this generally results in lower, not higher rates. Respondents also note that the Reserve Bank of India stated at verification that commercial long-term rates are ''usually lower than both the prime lending rate and the cash credit rate.'' *See* GOI VR at 12.

Further, respondents argue that petitioners' statement that Kajaria's export-orientation had any bearing on the approval of the loan is pure speculation. Respondents argue that there is nothing in the loan documents provided by Kajaria or in the company's verification report to suggest that the loan was contingent upon exports or that Kajaria's ''export-orientation'' was taken into account by the lenders. In fact, the IDBI specifically stated at verification that ''the project financing given to Kajaria was not tied to any expectation of exports.'' *Id.* at 11. Therefore, the Department should reject petitioners' arguments relating to Kajaria's long-term loans provided by the IDBI.

Department's Position

At our verification meeting with Kajaria officials, we inquired about the long-term loans which the company received from the IDBI. The officials explained that these long-term loans were received for the construction of a pig iron plant, which commenced production in February 1998. However there was insufficient time remaining before the scheduled date of the final results of this review to fully examine Kajaria's long-term financing. Therefore, in accordance with section 351.311(c)(2) of the Department's regulations, we are deferring an examination of Kajaria's long-term loans from the IDBI until a future administrative review of the company is requested.

Final Results of Review

In accordance with 19 CFR 351.221(b)(4)(i), we calculated an individual subsidy rate for each producer/exporter subject to this administrative review. For the period January 1, 1996 through December 31, 1996, we determine the net subsidy for the reviewed companies to be as follows:

Net subsidies—producer/exporter	Net subsidy rate—percent
Calcutta Ferrous Ltd	3.48
Carnation Industries Ltd	3.32
Commex Corporation	5.33
Crescent Foundry Co. Pvt. Ltd	4.98
Dinesh Brothers Pvt. Ltd	3.27
Kajaria Iron Castings Pvt. Ltd	1.69
Kejriwal Iron & Steel Works Pvt. Ltd	12.76
Nandikeshwari Iron Foundry Pvt. Ltd	4.41
Overseas Iron Foundry	3.74
R.B. Agarwalla & Company Pvt. Ltd	3.64
RSI Limited	3.63
Seramapore Industries Pvt. Ltd	5.54
Shree Rama Enterprise	10.85
Super Iron Foundry	3.32
Uma Iron & Steel	1.38
Victory Castings Ltd	3.05

We will instruct the U.S. Customs Service (Customs) to assess countervailing duties as indicated above. The Department will also instruct Customs to collect cash deposits of estimated countervailing duties in the percentages detailed below of the f.o.b. invoice price on all shipments of the subject merchandise from reviewed companies, entered or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. As discussed in the *1996 Castings Prelim*, the GOI terminated the PSCFC scheme effective February 8, 1996. All PSCFC loans received by respondents were repaid in their entirety (principal and interest) during the period of review. We verified that no residual benefits have been provided or received, and there is no evidence that a substitute program has been established. Therefore, in determining the cash deposit rates for the five castings producers/exporters which used the PSCFC program, we have not included the subsidy conferred by this program during the review period. We

determine that the cash deposit rates for the reviewed companies are as follows:

Net subsidies—producer/exporter	Net subsidy rate—percent
Calcutta Ferrous Ltd	3.46
Carnation Industries Ltd	3.32
Commex Corporation	5.33
Crescent Foundry Co. Pvt. Ltd	4.98
Dinesh Brothers Pvt. Ltd	3.22
Kajaria Iron Castings Pvt. Ltd	1.69
Kejriwal Iron & Steel Works Pvt. Ltd	12.76
Nandikeshwari Iron Foundry Pvt. Ltd	4.33
Overseas Iron Foundry	3.74
R.B. Agarwalla & Company Pvt. Ltd	3.53
RSI Limited	3.55
Seramapore Industries Pvt. Ltd	5.54
Shree Rama Enterprise	10.85
Super Iron Foundry	3.32
Uma Iron & Steel	1.38
Victory Castings Ltd	3.05

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. The requested review will normally cover only those companies specifically named. *See* 19 CFR 351.213(b). Pursuant to 19 CFR 351.212(c), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected, at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal-Mogul Corporation and the Torrington Company* v. *United States*, 822 F. Supp. 782 (CIT 1993) and *Floral Trade Council* v. *United States*, 822 F. Supp. 766 (CIT 1993) (interpreting 19 CFR 353.22(e) (now 19 CFR 351.212(c)), the antidumping regulation on automatic assessment, which is identical to 19 CFR 355.22(g)). Therefore, the cash deposit rates for all companies, except those covered by this review, will be unchanged by the results of this review.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order will be the rate for that company established in the most recently completed administrative proceeding conducted under the URAA. *See 1994 Castings Final*. If such a review has not been conducted, the rate established in the most recently completed administrative proceeding pursuant to the statutory provisions that were in effect prior to the URAA amendments is applicable. *See Final Results of Countervailing Duty Administrative Review: Certain Iron-Metal Castings From India*, 61 FR 64676 (December 6, 1996) (*1993 Castings Final*). These rates shall apply to all non-reviewed companies, including those companies for which the review is being rescinded, until a review of a company assigned these rates is requested and completed. In addition, for the period January 1, 1996 through December 31, 1996, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

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

Dated: November 10, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–30856 Filed 11–17–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Amended Export Trade Certificate of Review, Application No. 92–5A001.

SUMMARY: The Department of Commerce has issued an amendment to the Export Trade Certificate of Review granted to Aerospace Industries Association of America (''AIA'') on April 10, 1992. Notice of issuance of the Certificate was published in the **Federal Register** on April 17, 1992 (57 FR 13707).

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (1998).

The Office of Export Trading Company Affairs (''OETCA'') is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

Export Trade Certificate of Review No. 92–00001, was issued to Aerospace Industries Association of America on April 10, 1992 (57 FR 13707, April 17, 1992) and previously amended on September 8, 1992 (57 FR 41920, September 14, 1992); October 8, 1993 (58 FR 53711, October 18, 1993); November 17, 1994 (59 FR 60349, November 23, 1994); and June 26, 1995 (60 FR 36262, July 14, 1995).

AIA's Export Trade Certificate of Review has been amended to:

1. Add the following companies as new ''Members'' of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)): The Aerostructures Corporation, Nashville, TN (Controlling Entity: The Carlyle Group, Washington, DC); Alliant Techsystems Incorporated, Hopkins, MN; Barnes Aerospace, Windsor, CT (Controlling Entity: Barnes Group, Inc., Bristol, CT); CMS, Inc., Tampa, FL (Controlling Entity: Daimler-Benz North American Corporation, New York, NY); Ducommun Incorporated, Long Beach, CA; Dynamic Engineering Incorporated, Newport News, VA; Esterline Technologies, Bellevue, WA; Intertubine Corporation, Peabody, MA (Controlling Entity: NV Interturbine, The Netherlands); Kistler Aerospace Corporation, Kirkland, WA; Litton Industries, Inc., Woodland Hills, CA; MOOG Inc., East Aurora, NY; Pacific Scientific Company, Duarte, CA; Robinson Helicopter Company, Inc., Torrance, CA; Rockwell Collins, Inc.,

Cedar Rapids, IA (Controlling Entity: Rockwell International Corporation, Costa Mesa, CA); Rolls-Royce North America, Inc., Reston, VA (Controlling Entity: Rolls Royce plc, London, England); Triumph Controls, Inc., North Wales, PA (Controlling Entity: Triumph Group, Inc., Wayne, PA); United Defense, L.P., Arlington, VA (Controlling Entity: The Carlyle Group, Washington, DC); Veridian Corporation, Alexandria, VA; and Woodward Governor Company, Rockford, IL.;

2. Delete as ''Members'' of the Certificate: Ceridian Corporation, Minneapolis, MN; Chrysler Technologies Corporation, Arlington, VA; E-Systems, Inc., Dallas, TX; FMC Corporation, Chicago, IL; Heath Tecna Aerospace Co., Kent, WA; Hercules Incorporated, Wilmington, DE; Loral Vought Systems Corporation, Dallas, TX; Lord Corporation, Erie, PA; Martin Marietta Corporation, Bethesda, MD; McDonnell Douglas Corporation, Berkeley, MO; Rockwell International Corporation, Seal Beach, CA; Rohr, Inc., Chula Vista, CA; Teledyne, Inc., Los Angeles, CA; Texas Instruments Incorporated, Dallas, TX; Westinghouse Electric Corporation, Pittsburgh, PA; and Williams International Corporation, Walled Lake, MI; and

3. Change the listing of the company name for the current ''Members'' cited in this paragraph to the new listing cited in parenthesis as follows: GEC-Marconi Electronic Systems Corporation (Marconi North America Inc.); General Motors Hughes Electronics (Hughes Electronics Corporation); Lockheed Corporation (Lockheed Martin Corporation); and Thiokol Corporation (Cordant Technologies Inc.).

A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Dated: November 12, 1998.

Morton Schnabel,

Director, Office of Export Trading Company Affairs.

[FR Doc. 98–30745 Filed 11–17–98; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 980107004–8216–02]

Approval of Withdrawal of Sixteen Federal Information Processing Standards (FIPS) Publications

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice.

SUMMARY: The purpose of this notice is to announce that the Secretary of Commerce has approved the withdrawal of sixteen Federal Information Processing Standards (FIPS) Publications.

Sixteen FIPS are being withdrawn because they are obsolete, or have not been updated to adopt current voluntary industry standards. Federal agencies and departments are directed by the National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, to use technical standards that are developed in voluntary consensus standards bodies. Consequently, there no longer is a need for FIPS that duplicate voluntary industry standards.

EFFECTIVE DATE: This withdrawal is effective November 18, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley M. Radack, telephone (301) 975–2833, National Institute of Standards and Technology, Gaithersburg, MD 20899.

SUPPLEMENTARY INFORMATION: On February 24, 1998, notice was published in the **Federal Register** (63 FR 9199) proposing withdrawal of nineteen Federal Information Processing Standards (FIPS) Publications, because the technical specifications that they adopt are obsolete and are no longer supported by industry.

Withdrawal means that the FIPS will no longer be part of a subscription series that is provided by the National Technical Information Service, and that NIST will no longer be able to support the standards by answering implementation questions or updating the FIPS when the voluntary industry standards are revised. Current voluntary industry standards should be used by agencies in their procurement actions when appropriate, in accordance with OMB Circular A–119, Federal Participation and Use of Voluntary Standards.

This notice provides only the FIPS publication number, title, and the technical specifications number for each of the sixteen FIPS Publications being withdrawn:

- FIPS 41, Computer Security Guidelines for Implementing the Privacy Act of 1974
- FIPS 69–1, FORTRAN (ANSI X3.9–1978/R1989)
- FIPS 100–1, Interface Between Data Terminal Equipment (DTE) and Data Circuit-Terminating (DCE) for Operation with Packet-Switched Data Networks (PSDN), or Between Two DTEs, by Dedicated Circuit (ANSI X3.100–1989)
- FIPS 120–1, Graphical Kernel System (GKS) (ANSI X3.124–1985/R1991; X3.124.1–1985/R1991; X3.124.2–1988/R1994; X3.124.3–1989; and ISO/IEC 8651–4:1991)
- FIPS 125–1, MUMPS (ANSI/MDC X11.1–1990)
- FIPS 128–2, Computer Graphics Metafile (CGM) (ANSI/ISO 8632.1–4:1992 [1994]; 8632:1992/Amd.1:1994 & Amd. 2:1995; MIL–D–28003A+Amd.1; and ATA Spec. 2100, Version 2.1)
- FIPS 138, Electrical Characteristics of Balanced Voltage Digital Interface Circuits
- FIPS 142, Electrical Characteristics of Unbalanced Voltage Digital Interface Circuits
- FIPS 143, General Purpose 37-Position and 9-Position Interface Between Data Terminal Equipment and Data Circuit-Terminating Equipment (EIA–RS–449)
- FIPS 146–2, Profiles for Open Systems Internetworking Technologies (POSIT)
- FIPS 148, Procedures for Document Facsimile Transmission
- FIPS 153–1, Programmer's Hierarchical Interactive Graphics System (PHIGS) (ANSI/ISO 9592.1,2,3:1989; 9592.1a,2a,3a,4:1992; 9593.1:1990; 9593.2–1990; 9593.4:1991; and 9593.1/AM1, 3/AM1, 4/AM1:1991)
- FIPS 154, High Speed 25-Position Interface for Data Terminal Equipment and Data Circuit-Terminating Equipment (EIA–530–1987)
- FIPS 177–1, Initial Graphics Exchange Specification (IGES) (ANSI/US PRO–100–1993, Version 5.2, LEP Application Protocol, IP–110–1994, and Engr. Dwg. (Class II) Subset (MIL–D–28000A), Dec. 1992 Version)
- FIPS 178, Video Teleconferencing Services at 56 to 1,920 kb/s (ITU–T Recommendations H.221–1993, H.230–1993, H.242–1993, H.261–1993, and H.320–1993)
- FIPS 179–1, Government Network Management Profile (GNMP)

The written comments submitted by interested parties and other materials

available to the Department relevant to these publications were reviewed by NIST. On the basis of this review, NIST recommended that the Secretary approve the withdrawal of the sixteen FIPS Publications, and prepared a detailed justification document for the Secretary's review in support of that recommendation.

Because of comments received, NIST will delay the withdrawal of three FIPS that had been proposed for withdrawal in the February 24, 1998, notice. FIPS 183, Integration Definition for Function Modeling (IDEFO), and FIPS 184, Integration Definition for Information Modeling (IDEF1X), will be retained until voluntary industry standards are available. FIPS 160, C (ANSI/ISO 9899:1992), will be retained until NIST's validation program for the C programming language ends later this year, and then the FIPS will be withdrawn at that time. NIST will publish a **Federal Register** notice announcing the withdrawal of FIPS 160 before December 31, 1998.

The detailed justification document which was presented to the Secretary is part of the public record and is available for inspection and copying in the Department's Central Reference and Records Inspection Facility, Room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW, Washington, DC 20230.

Authority: Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce pursuant to Section 5131 of the Information Technology Management Reform Act of 1996 and the Computer Security Act of 1987, Public Law 104–106.

Dated: November 12, 1998.

Robert E. Hebner,

Acting Deputy Director.

[FR Doc. 98–30796 Filed 11–17–98; 8:45 am]

BILLING CODE 3510–CN–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Initiation of Review of Management Plan/Regulations of the Stellwagen Bank National Marine Sanctuary; Intent To Prepare a Draft Environmental Impact Statement and Management Plan; Public Scoping Meetings

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS) National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of intent to prepare environmental impact statement; notice of scoping meetings.

SUMMARY: The Stellwagen Bank National Marine Sanctuary (SBNMS or Sanctuary) was designated in November 1992, and consists of 638 square nautical miles of open ocean over and surrounding Stellwagen Bank, occurring between Cape Ann and Cape Cod, Massachusetts. The present management plan for the Sanctuary was completed in July 1993. In accordance with Section 304(e) of the National Marine Sanctuaries Act, as amended, (NMSA) (16 U.S.C. 1431 *et seq.*), the Marine Sanctuaries Division (MSD) of the National Oceanic and Atmospheric Administration (NOAA) is initiating review of the management plan, to evaluate substantive progress toward implementing goals for the Sanctuary, and to make revisions to the plan and regulations as necessary to fulfill the purposes and policies of the NMSA.

The revised management plan will likely involve changes to existing policies and regulations of the Sanctuary, to address contemporary issues and challenges, and to better protect and manage the Sanctuary's resources and qualities. The review process is composed of four major stages: information collection and characterization; preparation and release of a draft management plan/environmental impact statement, and any proposed amendments to the regulations; public review and comment; and preparation and release of a final management plan/environmental impact statement, and any final amendments to the regulations. NOAA anticipates completion of the revised management plan and concomitant documents will require approximately eighteen months.

NOAA will conduct public scoping meetings to gather information and other comments from individuals, organizations, and government agencies on the scope, types and significance of issues related to the Sanctuary's management plan and regulations. The scoping meetings are scheduled for the second week in December 1998, as detailed below. All interested persons are invited to attend, and to provide oral comments. Interested persons may also submit written comments at the scoping meetings, or to the address below. Written comments should be received by January 15, 1999.

DATES AND ADDRESSES: Scoping meetings will be held at:

(1) Cape Cod Community College, Commons Building, Upper Commons Room, 2240 Iyanough Road, West Barnstable, MA, Tuesday, December 8, 1998, 7–9 p.m.;

(2) National Marine Fisheries Service (New England Region), 1st Floor Conference Room, One Blackburn Drive, Gloucester, MA, Wednesday, December 9, 1998, 7–9 p.m.; and

(3) New England Aquarium, Education Center, Central Wharf, Boston, MA, Thursday, December 10, 1998, 7–9 p.m.

Written comments may be sent to Stellwagen Bank National Marine Sanctuary (Management Plan Review), Scituate Coast Guard Station, 175 Edward Foster Road, Scituate, MA 02066. Comments will be available for public review at the same address.

FOR FURTHER INFORMATION CONTACT: Brad Barr, Sanctuary Manager, at (508) 747–1691. The Sanctuary office is located at 14 Union Street, Plymouth, MA. Following December 15, 1998, the Sanctuary office will be located at the Scituate address listed above.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: November 13, 1998.

Capt Evelyn Fields,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 98–30863 Filed 11–17–98; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111298C]

Endangered Species; Permits

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

ACTION: Receipt of applications for a scientific research permit (1184) and modifications to scientific research permits (1074, 1124).

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement: NMFS has received a permit application from Garcia and Associates (GAA) in San Anselmo, CA (1184); NMFS has received applications for modifications to existing permits from: Pacific Lumber Company in Scotia, CA (PALCo) (1074), and Idaho Department of Fish and Game at Boise, ID (IDFG) (1124).

DATES: Written comments or requests for a public hearing on any of the applications must be received on or before December 18, 1998.

ADDRESSES: The applications and related documents are available for review in the following offices, by appointment:

For permits 1074 and 1184: Protected Species Division, NMFS, 777 Sonoma Avenue, Room 325, Santa Rosa, CA 95404–6528 (707–575–6066).

For permit 1124: Protected Resources Division, F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–4169 (503–230–5400).

All documents may also be reviewed by appointment in the Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401).

FOR FURTHER INFORMATION CONTACT: For permits 1074 and 1184: Tom Hablett, Protected Resources Division, (707–575–6066).

For permit 1124: Leslie Schaeffer, Portland, OR (503–230–5433).

SUPPLEMENTARY INFORMATION:

Authority

Permits are requested under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217–227).

Those individuals requesting a hearing on these requests for permits should set out the specific reasons why a hearing would be appropriate (see **ADDRESSES**). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the below application summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in this Notice

The following species are covered in this notice: Chinook salmon (*Oncorhynchus tshawytscha*), Coho salmon (*O. kisutch*), Sockeye salmon (*O. nerka*), and Steelhead trout (*O. mykiss*).

New Application Received

GAA (1184) requests a 5-year permit for takes of adult and juvenile, threatened, central California coast coho salmon, and adult and juvenile, endangered, southern California coast steelhead associated with fish population studies throughout the Evolutionarily Significant Units (ESUs) within California. Salmon and steelhead studies conducted by GAA will consist of four assessment tasks for which ESA-listed fish are proposed to be taken: (1) Presence/absence, (2) population estimates, (3) fish rescue, and (4) tissue/scale sampling for genetic studies. ESA-listed fish will be observed or captured, anesthetized, handled (weighed, measured, fin-clipped), allowed to recover from the anesthetic, and released. Indirect mortalities associated with the research are also requested.

Modification Requests Received

PALCo (1074) requests modification 1 to permit 1074 for authorization to include takes of adult and juvenile, threatened coho salmon for enhancement purposes in Yager Creek Basin within the California portion of the southern Oregon/northern California coast (SONCC) coho salmon ESU. PALCo will conduct an adult sampling program in Humboldt County. These studies are to determine: (1) population estimates; (2) hatchery to wild salmonid ratios; (3) stream utilization; and (4) genetic heritage. Adults will be trapped, measured, sampled for tissues and/or scales, marked and released (if not being retained for broodstock). Spawner surveys are also proposed, including the handling and sampling of carcasses. The propagation program conducted at the PLC's Yager Creek Hatchery is to rebuild depleted populations of coho salmon to naturally self-sustaining levels. Both wild and hatchery-produced adults will be used for broodstock. The control of disease, maintenance of genetic viability, and the annual releases of juveniles are in accordance with the guidance of NMFS and the California Department of Fish and Game. Modification 1 is requested to be valid for the duration of the permit, which expires on June 30, 2003.

IDFG requests modification 1 to permit 1124. The permit authorizes annual takes of adult and juvenile, endangered, Snake River (SnR) sockeye salmon; adult and juvenile, threatened, naturally produced and artificially propagated, SnR spring/summer chinook salmon; and juvenile, threatened, SnR fall chinook salmon associated with scientific research in the state of Idaho. Research activities conducted under this permit are expected to provide information about ESA-listed fish population status and dynamics, life history traits, survival rates, behavior features, and fish health. For modification 1, IDFG requests an increase in the annual take of juvenile, threatened, naturally produced, SnR spring/summer chinook salmon. IDFG underestimated parr production and emigration of this species in 1998. ESA-listed juvenile fish are proposed to be captured, handled, and released. Modification 1 is requested to be valid for the duration of the permit, which expires on December 31, 2002.

Dated: November 12, 1998.

Margaret Lorenz,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–30840 Filed 11–17–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111298B]

Endangered Species; Permits

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

ACTION: Issuance of scientific research permits (1174, 1176, 1178) and a modification to a scientific research permit (1053)

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement: NMFS has issued permits to: Mr. Harold Brundage III, of Environmental Research and Consulting, Inc., Chadds Ford, PA (ECRI) (1174), Mr. W. Coleman Long, of US Army Corps of Engineers, Wilmington, DE (COE) (1176), and Michael P. Sissenwine, Ph.D., Northeast Fisheries Science Center, National Marine Fisheries Service, Woods Hole, MA (NEFSC) (1178); and NMFS has issued a modification to a scientific research permit to Molly Lutcavage, Ph.D., New England Aquarium, Boston, MA (NEA) (1053).

DATES: Written comments or requests for a public hearing on any of the applications must be received on or before December 18, 1998.

ADDRESSES: The applications and related documents are available for review in the following offices, by appointment:

For permits 1053, 1174, and 1178: Protected Resources Division, F/NER3, One Blackburn Dr., Gloucester, MA 01930 (978–281–9328).

For permits 1176: Office of Protected Resources, Endangered Species Division, F/PR3, 1315 East-West Highway, Silver Spring, MD 20910 (301–713–1401).

All documents may also be reviewed by appointment in the Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401).

FOR FURTHER INFORMATION CONTACT: For permits 1174 and 1176: Terri Jordan, Silver Spring, MD (301–713–1401);

For permits 1053 and 1178: Michelle Rogers, Silver Spring, MD (301–713–1401)

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the ESA, is based on a finding that such permits/modifications: (1) Are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Permits and modifications are issued in accordance with and are subject to parts 217–222 of Title 50 CFR, the NMFS regulations governing listed species permits.

Species Covered in this Notice

The following species are covered in this notice: Green turtle (*Chelonia mydas*), Hawksbill turtle (*Eretmochelys imbricata*), Kemp's ridley turtle (*Lepidochelys kempii*), Leatherback turtle (*Dermochelys coriacea*), Loggerhead turtle (*Caretta caretta*), and Shortnose sturgeon (*Acipenser brevirostrum*).

Permits and Modifications Issued

Notice was published on September 1, 1998 (63 FR 46416), that NEA had filed an application for a modification to permit 1053. Modification 1 was issued on November 19, 1998, and authorizes NEA to conduct direct in-water capture of 8 leatherback turtles, which will be satellite tagged, PIT tagged, blood sampled, weighed, measured, and photographed. The turtles will be captured using a breakaway hoop net, a method that has been used successfully to capture porpoise, pinnipeds, and small cetaceans. Modification 1 also authorizes a 2-year extension to permit 1053. Modification 1 is valid for the duration of the permit, which expires on December 31, 2000.

Notice was published on August 3, 1998 (63 FR 41229), that an application had been filed by ECRI. Permit 1174 was issued on October 22, 1998, and authorizes ECRI to sample for and collect shortnose sturgeon in the Delaware River and Estuary system and in the lower Susquehanna River/Chesapeake Bay Complex. The objectives of the study are to collect data on current distribution, abundance, length structure and movements of shortnose sturgeon in the Delaware River Estuary and in the low Susquehanna River and Chesapeake Bay. Emphasis will be placed on calculating reliable population estimates, determining aggregation areas, and obtaining information on juvenile shortnose sturgeon. Information on population size and length distribution for the Delaware River population will be compared with that during the 1980s. Permit 1174 expires on August 31, 2003.

Notice was published on August 31, 1998 (63 FR 46218), that an application had been filed by COE. Permit 1176 was issued on November 9, 1998, and authorizes COE to use hatchery bred shortnose sturgeon to test the potential impacts of blasting to deepen Wilmington harbor in North Carolina. COE will place hatchery raised sturgeon in wire cages below the surface and subject them to a series of tests blasts to determine the effect that the harbor deepening will have on wild sturgeon in the harbor. As required by a September 13, 1996, biological opinion, additional protective measures will be taken during the test blasting to prevent wild sturgeon from being affected. These measures include relocation of any wild sturgeon found to be in the area prior to the blasts and air bubble curtains. Due to contract awards schedule, the test blast schedule would likely begin in November, 1998 and may continue through January, 1999. Permit 1176 expires on December 31, 1999.

Notice was published on September 15, 1998 (63 FR 49335), that an application had been filed by NEFSC. Permit 1178 was issued on October 29, 1998, and authorizes NEFSC to take listed sea turtles taken incidental to fisheries in the Northwest Atlantic Ocean. The work will be conducted by scientific observers aboard such vessels. The following species and take numbers have been authorized: 300 loggerhead, 85 leatherback, 10 Kemp's ridley, 10 hawksbill, and 10 green turtles. NEFSC is authorized to measure, photograph, flipper tag, scan for PIT tags, resuscitate (if necessary) and release turtles taken by foreign and domestic commercial fishing vessels operating in state waters and the Exclusive Economic Zone. Further, NEFSC is authorized to bring to shore, when feasible, dead sea turtles for necropsy. Necropsy will only be performed by personnel currently permitted to conduct such research. This research supports the NMFS mission of assessing the impacts of commercial fisheries on marine resources of interest to the United States. Permit 1178 expires on December 31, 2003.

Dated: November 12, 1998.

Margaret Lorenz,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–30841 Filed 11–17–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102998C]

Marine Mammals; Permit No. 1024 (P77–2#69)

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

ACTION: Issuance of scientific research permit amendment.

SUMMARY: Notice is hereby given that a request for amendment of scientific research permit no. 1024 submitted by the Southwest Fisheries Science Center, National Marine Fisheries Service, 8604 La Jolla Shores Drive, La Jolla, CA 92038 [Co- Investigator: Dr. Rennie S. Holt) has been granted to increase the number of Antarctic fur seals to be taken annually.

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

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

SUPPLEMENTARY INFORMATION: On September 15, 1998, notice was published in the **Federal Register** (63 FR 49337) that an amendment of permit no. 1024, issued December 30, 1996 (62 FR 1875), had been requested by the above-named organization. The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of § 216.39 of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

Dated: November 9, 1998.

Ann D. Terbush,

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

[FR Doc. 98–30831 Filed 11–17–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110498C]

Marine Mammals; File No.914–1470

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that University of Southern Mississippi, Department of Biological Sciences, USM Box 5018, Hattiesburg, MS 39401 [Principal Investigator: Mr. Bobby L. Middlebrooks], has been issued a permit to import fluid and tissue samples of bottlenose dolphin *(Tursiops truncatus* and *gilli)*, beluga whale (*Delphinapterus leucas*), and Pacific white-sided dolphin (*Lagenorhynchus obliquidens*) held captive in facilities in Nassau, Bahamas, Honduras, and Finland for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432 (813/570–5312).

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Sara Shapiro 301/713–2289.

SUPPLEMENTARY INFORMATION: On September 15, 1998, notice was published in the **Federal Register** (63 FR 49337) that a request for a scientific research permit to import samples had been submitted by the above-named organization. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Dated: November 12, 1998.

Ann D. Terbush,

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

[FR Doc. 98–30832 Filed 11–17–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Technical Information Service

NTIS Advisory Board Meeting

AGENCY: National Technical Information Service, Technology Administration, Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the National Technical Information Service Advisory Board (the ''Board'') will meet on Wednesday, December 2, 1998, from 9 a.m. to 11:30 a.m. and from 1 p.m. to 4 p.m. The session from 9 a.m. to 11:30 a.m. will be closed to the Public.

The Board was established under the authority of 15 U.S.C. 3704b(c), and was Chartered on September 15, 1989. The Board is composed of five members appointed by the Secretary of Commerce who are eminent in such fields as information resources management, information technology, and library and information services. The purpose of the meeting is to review and make recommendations regarding general policies and operations of NTIS, including policies in connection with fees and charges for its services. The agenda will include a progress report on NTIS activities, an update on the progress of FedWorld, and a discussion of NTIS' long range plans. The closed session discussion is scheduled to begin at 9 a.m. and end at 11:30 a.m. on December 2, 1998. The session will be closed because premature disclosure of the information to be discussed would be likely to significantly frustrate implementation of NTIS' business plans.

DATES: The meeting will convene on December 2, 1998, at 9 a.m. and adjourn at 4 p.m.

ADDRESSES: The meeting will be held in Room 2029 Sills Building, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161.

PUBLIC PARTICIPATION: The meeting will be open to public participation from 1 p.m. to 4 p.m. on December 2, 1998. Approximately thirty minutes will be set aside on December 2, 1998, for comments or questions from the public. Seats will be available for the public and for the media on a first-come, first-served basis. Any member of the public may submit written comments concerning the Board's affairs at any time. Copies of the minutes of the open session meeting will be available within thirty days of the meeting from the address given below.

FOR FURTHER INFORMATION CONTACT: Linda Lucas, NTIS Advisory Board Secretary, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161 Telephone: (703) 605–6400; Fax (703) 605–6700.

Dated: November 10, 1998.

Donald W. Corrigan,

Acting Director.

[FR Doc. 98–30849 Filed 11–17–98; 8:45 am]

BILLING CODE 3510–04–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Federative Republic of Brazil

November 12, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Brazil and exported during the period January 1, 1999 through December 31, 1999 are based on limits notified to the Textiles Monitoring Body pursuant to

the Uruguay Round Agreement on Textiles and Clothing (ATC).

Effective on January 1, 1999, a visa will no longer be required for products integrated in the second stage of the integration of textiles and clothing into GATT 1994 from WTO member countries (see 63 FR 53881, published on October 7, 1998). A visa will continue to be required for non-integrated products. For quota purposes only, products remaining in categories partially integrated will continue to be designated by the designator ''pt.''

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1999 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Information regarding the 1999 CORRELATION will be published in the **Federal Register** at a later date.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 12, 1998.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 1999, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Brazil and exported during the twelve-month period beginning on January 1, 1999 and extending through December 31, 1999, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Aggregate Limit 200–227, 237, 239pt. [1], 300–326, 331–348, 350–352, 359pt. [2], 360–363, 369–D [3], 369pt. [4], 400–431, 433–438, 440–448, 459pt. [5], 464, 469pt. [6], 600–629, 631, 633–652, 659pt. [7], 666, 669–P [8], 669pt. [9] and 670, as a group.	544,207,428 square meters equivalent.
Sublevels within the aggregate	
218	6,762,406 square meters.
219	24,688,791 square meters.
225	11,834,212 square meters.
300/301	9,171,379 kilograms.
313	56,792,206 square meters.
314	9,298,311 square meters.
315	27,894,932 square meters.
317/326	25,359,027 square meters.
334/335	181,974 dozen.
336	101,098 dozen.
338/339/638/639	1,819,750 dozen.
342/642	535,814 dozen.
347/348	1,314,263 dozen.
350	203,896 dozen.
361	1,374,921 numbers.
363	29,344,134 numbers.
369–D	655,395 kilograms.
410/624	13,524,815 square meters of which not more than 2,735,601 square meters shall be in Category 410.
433	18,990 dozen.
445/446	74,391 dozen.
604	641,996 kilograms of which not more than 490,670 kilograms shall be in Category 604–A [10].
607	5,961,398 kilograms.
647/648	606,584 dozen.
669–P	2,184,653 kilograms.

[1] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[2] Category 359pt.: all HTS numbers except 6406.99.1550.

[3] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[4] Category 369pt.: all HTS numbers except 6302.60.0010, 6302.91.0005, 6302.91.0045 (Category 369–D); 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020 and 6406.10.7700.

[5] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[6] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

[7] Category 659pt.: all HTS numbers except 6406.99.1510 and 6406.99.1540.

[8] Category 669–P: only HTS numbers 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000.

[9] Category 669pt.: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020, 6305.39.0000 (Category 669–P); 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040.

[10] Category 604–A: only HTS number 5509.32.0000.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1998 shall be charged to the applicable category limits for that year (see directive dated December 19, 1997) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

The conversion factor for merged Categories 338/339/638/639 is 10 (square meters equivalent/category unit).

Effective on January 1, 1999, a visa will no longer be required for products integrated in the second stage of the integration of textiles and clothing into GATT 1994 from WTO member countries (see directive dated September 30, 1998). A visa will continue to be required for non-integrated products. For quota purposes only, products remaining in categories partially integrated will continue to be designated by the designator ''pt.''

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–30797 Filed 11–17–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Hong Kong

November 10, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 19, 1998.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on

embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for swing and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Also see 62 FR 67830, published on December 30, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 10, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 22, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Hong Kong and exported during the twelve-month period which began on January 1, 1998 and extends through December 31, 1998.

Effective on November 19, 1998, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Group I	
200–227, 300–326, 360–363, 369(1) [2], 369pt. [3], 400–414, 464, 469pt. [4], 600–629, 666, 669pt. [5] and 670, as a group.	233,958,436 square meters equivalent.
Group II	
237, 239pt. [6], 331–348, 350–352, 359(1) [7], 359(2) [8], 359pt. [9], 431, 433–438, 440–448, 459pt. [10], 631, 633–652, 659(1) [11], 659(2) [12], 659pt. [13], and 443/444/643/644/843/844(1), as a group.	842,148,945 square meters equivalent.
Sublevels in Group II	
359(1)	642,706 kilograms.
659(1)	690,724 kilograms.
Within Group II subgroup	
351	1,222,151 dozen.
651	321,445 dozen.

[1] These limits have not been adjusted to account for any imports exported after December 31, 1997.

[2] Category 369(1): only HTS number 6307.10.2005.

[3] Category 369pt.: all HTS numbers except 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 6406.10.7700 and HTS number in 369(1).

[4] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

[5] Category 669pt.: all HTS numbers except 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040.

[6] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[7] Category 359(1): only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010.

[8] Category 359(2): only HTS numbers 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070.

[9] Category 359pt.: all HTS numbers except 6406.99.1550 and HTS numbers in 359(1) and 359(2).

[10] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[11] Category 659(1): only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[12] Category 659(2): only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[13] Category 659pt.: all HTS numbers except 6406.99.1510, 6406.99.1540 and HTS numbers in 659(1) and 659(2).

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.98–30798 Filed 11–17–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in India

November 10, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 19, 1998.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for swing and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Also see 62 FR 67831, published on December 30, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 10, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 22, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man–made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 1998 and extends through December 31, 1998.

Effective on November 19, 1998, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
218	14,051,165 square meters.
314	7,478,793 square meters.
334/634	156,421 dozen.
336/636	1,038,204 dozen.
338/339	4,176,074 dozen.
345	206,479 dozen.
363	44,958,680 numbers.
369–S [2]	720,820 kilograms.
641	1,343,145 dozen.
647/648	481,433 dozen.
Group II.	
200, 201, 220–227, 237, 239pt. [3], 300, 301, 331–333, 350, 352, 359pt. [4], 360–362, 600–604, 606 [5], 607, 611–629, 631, 633, 638, 639, 643–646, 649, 650, 652, 659pt. [6], 666, 669pt. [7], 670, 831, 833–838, 840–858 and 859pt. [8], as a group.	112,440,569 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1997.

[2] Category 369–S: only HTS number 6307.10.2005.

[3] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[4] Category 359pt.: all HTS numbers except 6406.99.1550.

[5] Category 606: all HTS numbers except 5403.31.0040 (for administrative purposes Category 606 is designated as 606(1)).

[6] Category 659pt.: all HTS numbers except 6406.99.1510 and 6406.99.1540.

[7] Category 669pt.: all HTS numbers except 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040.

[8] Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.98–30800 Filed 11–17–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Nepal

November 12, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Bilateral Textile Agreement, effected by exchange of notes dated May 30 and June 1, 1986, as amended and extended, and Memoranda of Understanding (MOUs) dated November 6, 1996 and June 20, 1997, between the Governments of the United States and Nepal establish limits for the period January 1, 1999 through December 31, 1999.

These limits may be revised if Nepal becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Nepal.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1999 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Information regarding the 1999 CORRELATION will be published in the **Federal Register** at a later date.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 12, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; the Bilateral Textile Agreement, effected by exchange of notes dated May 30 and June 1, 1986, as amended and extended; and Memoranda of Understanding dated November 6, 1996 and June 20, 1997 between the Governments of the United States and Nepal, you are directed to prohibit, effective on January 1, 1999, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Nepal and exported during the twelve-month period beginning on January 1, 1999 and extending through December 31, 1999, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
336/636	248,267 dozen.
340	358,576 dozen.
341	1,151,784 dozen.
342/642	312,957 dozen.
347/348	807,673 dozen.
363	7,303,400 numbers.
369–S [1]	954,810 kilograms.
640	180,469 dozen.
641	406,913 dozen.

[1] Category 369–S: only HTS number 6307.10.2005.

The limits set forth above are subject to adjustment pursuant to the provisions of the current bilateral agreement between the Governments of the United States and Nepal.

Products in the above categories exported during 1998 shall be charged to the applicable category limits for that year (see directive dated November 6, 1997) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

These limits may be revised if Nepal becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Nepal.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that

these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–30799 Filed 11–17–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in Nepal

November 10, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: November 19, 1998.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Category 363 is being increased for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Also see 62 FR 60828, published on November 13, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 10, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 6, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Nepal and exported during the twelve-month period which began on January 1, 1998 and extends through December 31, 1998.

Effective on November 19, 1998, you are directed to increase the limit for Category 363 to 8,061,300 numbers [1], as provided for under the terms of the current bilateral textile agreement between the Governments of the United States and Nepal.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–30801 Filed 11–17–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Thailand

November 12, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 18, 1998.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for carryover, carryforward, recrediting unused carryforward, and carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Also see 62 FR 65246, published on December 11, 1997.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 12, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 5, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Thailand and exported during the twelve-month period which began on January 1, 1998 and extends through December 31, 1998.

Effective on November 18, 1998, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Group II	
237, 331–348, 350–352, 359–H [2], 359pt. [3], 431, 433–438, 440, 442–448, 459pt. [4], 631, 633–652, 659–H [5], 659pt. [6], 831, 833–838, 840–858 and 859pt. [7], as a group.	322,661,640 square meters equivalent.
Sublevels in Group II	
338/339	2,315,889 dozen.
638/639	2,200,813 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1997.

[2] Category 359–H: only HTS numbers 6505.90.1540 and 6505.90.2060.

[3] Category 359pt.: all HTS numbers except 6505.90.1540, 6505.90.2060 (Category 359–H); and 6406.99.1550.

[4] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[5] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[6] Category 659pt.: all HTS numbers except 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6406.99.1510 and 6406.99.1540.

[7] Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

[1] The limit has not been adjusted to account for any imports exported after December 31, 1997.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–30803 Filed 11–17–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

New Export Visa Stamp for Certain Textile Products Produced or Manufactured in Mauritius

November 12, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs providing for the use of a new export visa stamp.

EFFECTIVE DATE: December 1, 1998.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

Beginning on December 1, 1998, the Government of Mauritius will start issuing a new export visa stamp for shipments of textile products, produced or manufactured in Mauritius and exported from Mauritius on or after December 1, 1998 to reflect the name change of the ''Ministry of Trade and Shipping'' to the ''Ministry of Industry and Commerce.'' There will be a one-month grace period from December 1, 1998 through December 31, 1998, during which products exported from Mauritius may be accompanied by either the old or new export visa stamp. Products exported from Mauritius on or after January 1, 1999 must be accompanied by the new export visa stamp.

A facsimile of the new visa stamp is on file at the U.S. Department of Commerce, 14th and Constitution Avenue, NW., room 3104, Washington, DC.

See 60 FR 62076, published on December 4, 1995.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 12, 1998.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 28, 1995, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. That directive directed you to prohibit entry of certain textile products, produced or manufactured in Mauritius for which the Government of the Mauritius has not issued an appropriate export visa.

Beginning on December 1, 1998, you are directed to amend further the directive dated November 28, 1995 to provide for the use of a new export visa stamp issued by the Government of Mauritius to accompany shipments of textile products, produced or manufactured in Mauritius and exported from Mauritius on or after December 1, 1998. This new visa stamp reflects the name change of the ''Ministry of Trade and Shipping'' to the ''Ministry of Industry and Commerce.''

Textile products exported from Mauritius during the period December 1, 1998 through December 31, 1998 may be accompanied by either the old or new export visa stamp. Products exported from Mauritius on or after January 1, 1999 must be accompanied by the new export visa stamp.

A facsimile of the new visa stamp is enclosed with this letter.

Shipments entered or withdrawn from warehouse according to this directive which are not accompanied by an appropriate export visa shall be denied entry and a new visa must be obtained.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–30802 Filed 11–17–98; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by November 12, 1998. Interested persons are invited to submit comments on or before November 30, 1998.

ADDRESSES: Written comments regarding the emergency review 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, D.C. 20503 or should be electronically mailed to the internet address Werfel—d@a1.eop.gov. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the internet address Pat—Sherrill@ed.gov, or should be faxed to 202–708–9346.

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 Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (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 at the beginning of the Departmental review of the information collection. 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. ED invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: November 13, 1998.

Hazel Fiers,

Acting Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: New.

Title: Request for Comment on Planning and Implementation of the Learning Anytime Anywhere Partnerships Grant Competition.

Abstract: The Learning Anytime Anywhere Partnerships is a new grant competion. The information collected will be used by Dept. Of Education staff to help set priorities and plan implementation of the grant program. It is expected that comments will be received from college and university faculty and administrators, higher education associations, software developers and publishers, industry training groups and other interested organizations or individuals.

Additional Information: This emergency notice is needed to collect feedback in order to develop the grant application.

Frequency: On occasion.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 50; Burden Hours: 100.

[FR Doc. 98–30909 Filed 11–17–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Leader, Information Management Group, Office of the Chief Financial and 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 December 18, 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 or should be electronically mailed to the internet address *Werfel*__d@a1.eop.gov. 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, or should be electronically mailed to the internet address *Pat*__Sherrill@ed.gov, or should be faxed to 202–708–9346.

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 Leader, Information Management Group, Office of the Chief Financial and 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.

Dated: November 12, 1998.

Kent H. Hannaman,

Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Reinstatement.

Title: Alaskan Native Educational Equity Program.

Frequency: Annually.

Affected Public: Individuals or households; Not-for-profit institutions; State, local or Tribal Gov't; SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 200. Burden Hours: 3,200.

Abstract: The Alaskan Native Programs address the severe educational handicaps of Alaska Native school children. The Department uses the information to make grant awards. This collection involves a discretionary grant which falls under the Streamlined Discretionary Process, 1890–0001.

[FR Doc. 98–30773 Filed 11–17–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Program Interest; Comprehensive Nuclear-Test-Ban Treaty Research and Development Program

AGENCY: Department of Energy (DOE), Office of Nonproliferation and National Security, Office of Research and Development (NN–20).

ACTION: Notice of Program Interest—to fund unsolicited applications/proposals for financial assistance awards contributing to the mission of the Comprehensive Nuclear-Test-Ban Treaty (CTBT) Research and Development (R&D) Program.

SUMMARY: The DOE is interested in receiving for consideration applications for Federal Financial Assistance Awards pursuant to the financial assistance rules contained in Title 10 CFR part 600 (10 CFR part 600, specifically 10 CFR

600.9). On behalf of the DOE CTBT R&D Program, DOE invites Unsolicited Applications/Proposals from interested and qualified Nonprofit Organizations, Institutions of Higher Education, and Commercial Organizations to pursue research that supports the CTBT R&D Program mission.

The CTBT R&D Program mission is: ''to carry out research and development necessary to provide U.S. government agencies, that are responsible for monitoring and/or verifying CTBT compliance, with technologies, algorithms, hardware and software for integrated systems to detect, locate, identify and characterize nuclear explosions at the thresholds and confidence levels that meet U.S. requirements in a cost-effective manner.'' Program priorities focus on the advancement of seismic, infrasound, radionuclide, and hydroacoustic knowledge and capabilities. This Notice of Program Interest is intended to encourage the participation of Nonprofit Organizations, Institutions of Higher Learning, and Commercial Organizations in furthering these program mission interests.

DATES: This Notice of Program Interest expires September 30, 1999. This date is not a deadline for applications; applications may be submitted at any time. An updated notice may be issued after September 30, 1999.

ADDRESSES: Applicants seeking funding consideration by the CTBT R&D Program under this Notice of Program Interest are requested to mark and submit their Unsolicited Applications/Proposals, eight (8) total, as follows:

Original and copies # 1–6: Leslie A. Casey, Treaty Monitoring Programs Manager, c/o CTBT R&D Program—Notice of Program Interest—NN–20, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585–0420. DOE/NN–20 will initiate the objective merit review process.

Copy # 7: John N. Augustine, Unsolicited Applications/Proposals Manager, c/o CTBT R&D Program—Notice of Program Interest—NN–20, U.S. Department of Energy, Federal Energy Technology Center (FETC), 626 Cochrans Mill Road, PO Box 10940, Pittsburgh, PA 15236–0940. DOE–FETC will assign a DOE identification number and acknowledge receipt of the proposal.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy (NN–20), 1000 Independence Ave., SW., Washington, DC 20585–0420. Attn.: Leslie A. Casey, Telephone Number: (202) 586–2151, Fax Number: (202) 586–0485.

SUPPLEMENTARY INFORMATION: Responses to this Notice of Program Interest must explain how the proposed work furthers the CTBT R&D Program mission and resolves program research issues. These are summarized on the Web Page: ''http://www.ctbt.rnd.doe.gov/coordination/'', under the heading ''R&D Issues and Metrics''. Successful applications will: demonstrate a knowledge of the CTBT R&D Program (as represented in the Reports Listing at the Program's web site—http://www.ctbt.rnd.doe.gov); offer novel or innovative approaches leading to performance improvements and cost reductions; and/or respond to ground truth data deficiencies.

Application Submission Requirements

Applications/proposals are to follow the ''Guide for the Submission of Unsolicited Applications/Proposals,'' (DOE/PR–0014) which is available on the Web Page ''http://www.fetc.doe.gov/business/index.html). This guide identifies What to Submit with respect to Departmental information requirements for Basic Information, Business and Financial Information, Technical Information, and Certifications. It is imperative that Unsolicited Applications/Proposals adequately address these requirements as omissions could delay proposal processing.

In addition, Unsolicited Applications/Proposals are to address the technical work to be performed and costs associated with that work. The required information and format are as follows:

(1) *Project Description:* (Provide a comprehensive, but succinct (350 character) summary of the proposed research project. It should convey the project objective, application, method, product and value to U.S. government agencies and other users).

(2) *Objective(s):* (State research objectives).

(3) *Application:* (Describe the product and how it is to be used. Discuss the product's merits over the current baseline and any technical uncertainties that could impede the performance of the resulting product).

(4) *User(s):* (Identify potential users and indicate whether they have expressed interest in the product).

(5) Prior Work: (Summarize the current state-of-the-art for the stated field of endeavor. Provide credentials of key participants and describe their previous relevant work. Cite applicable bibliographic references).

(6) Collaborators: (Identify other participants and describe their role and contribution).

(7) Proposed Work & Scientific Basis: (Specify the technical approach to manage the project; describe specific tasks and subtask activities to be conducted by Work Breakdown Structure (WBS) to achieve the research objectives; and identify key decision points (milestones). Relate these elements to how they further the stated research objectives and advance the state-of-the-art).

(8) Research Issues: (Identify the technical issues that will be addressed by the project; list potential barriers and explain how they will be overcome).

(9) Tasks: (By WBS element list the tasks, associated subtasks, and associated costs. Differentiate the cost for fully burdened labor, equipment, materials, other (such as travel, taxes, fee (if applicable), etc.) (Once Unsolicited Proposals are selected for funding, a complete break-down by cost element will be required.)

(10) Milestones: (List milestones (key decision points) and scheduled completion dates by task).

(11) Deliverables: (List deliverables (products) and scheduled completion dates by task).

Unsolicited Applications/Proposals will be evaluated against many factors. Some of the criteria that are likely to apply include: technical merit; applicant's familiarity with other ongoing work; the relevance and quality of the applicant's prior work; the effectiveness of the proposed technical approach; timeliness; cost; and the period of performance. Successful proposals will also facilitate evaluation against these criteria.

Funding Considerations

Financial Assistance Awards (Grants or Cooperative Agreements) are anticipated to be funded for project durations of 1–3 years and awards will generally range from $100,000 to $500,000. While Unsolicited Applications/Proposals may be considered for funding at any time following receipt, favorable consideration may be enhanced by timing submission to parallel DOE's review and funding cycle. Applications/proposals that are submitted by March 1, 1999 will support funding decisions in June/July, 1999 followed by contract negotiations over the summer in preparation for awards in early FY 2000.

Submission, Withdrawal, and Unsuccessful Applications

Unsolicited Proposals will be accepted on an ongoing basis. Unsolicited Applications/Proposals must state an acceptance period of 180 days; however, Unsolicited

Applications/Proposals may be withdrawn by the Applicant at any time by written notification to the DOE Unsolicited Applications/Proposals Manager previously identified. Unsolicited Applications/Proposals that are received may be considered for funding at any time following receipt. Unsolicited Applications/Proposals that are not selected in FY 98 may be reconsidered for funding in the following year. Unsolicited Applications/Proposals that are not funded and not withheld for reconsideration will be destroyed and the Applicant will be notified accordingly. A Federal Financial Assistance Award (Grant and Cooperative Agreements) application package which includes a sample award can be obtained from the DOE Contracting Officer previously identified or can be down-loaded from the DOE AL Web Page: ''http://www.doeal.gov/cpd/'' under the heading ''Solicitations''.

It is DOE policy to exercise extreme care to ensure that the proposal information is not duplicated, used or disclosed in whole or in part for any purpose other than to evaluate the proposal, without written permission of the Applicant. Furthermore, with respect to the Unsolicited Proposal evaluation, the Applicant is hereby informed that it is standard practice of the CTBT R&D program officials to include review by DOE laboratory managers and experts in the topic area of the proposal. If you are an expert and are willing to serve as a reviewer on a non-remunerative basis, the CTBT R&D Program would like to be notified of your interest. Serving as a technical reviewer could encompass these Unsolicited Proposals, subject to non-disclosure agreements, as well as other proposals related to the CTBT R&D Program. Interested individuals are requested to forward their résumé and cover letter expressing their interest to: Manager, Treaty and Monitoring Program (NN–20), U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585–0420. Finally, proposal evaluation may include coordination with other government agencies or their designated contractors, primarily to check for duplication of effort and end user interest. This is an important integration practice appropriate to a full-scope, ongoing and mature program such as the CTBT R&D program.

Issued in Washington, DC on November 12, 1998.

Leslie A. Casey,

Treaty Monitoring Programs Manager, NN–20.

[FR Doc. 98–30785 Filed 11–17–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats.

DATES: Thursday, December 3, 1998, 6 p.m.–9:30 p.m.

ADDRESSES: Arvada Center for the Arts and Humanities, 6901 Wadsworth Boulevard, Arvada, CO.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, EM SSAB-Rocky Flats, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021, phone: (303) 420–7855, fax: (303) 420–7579.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1. The Board plans to continue its discussion on waste management topics.
2. Other Board business may be conducted as necessary.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the beginning of the meeting.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303) 420–7855. Hours of operation for the Public Reading Room are 9 a.m. and 4 p.m. on Monday through Friday. Minutes will also be made available by writing or calling Deb Thompson at the Board's office address or telephone number listed above.

Issued at Washington, DC on November 13, 1998.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98–30864 Filed 11–17–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–142–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

November 12, 1998.

Take notice that on November 5, 1998, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheet to be effective December 7, 1998:

Fourth Revised Sheet No. 70

ANR states that the purpose of this filing is to set forth in the pro forma service agreement contained in its tariff the specific types of discounts that ANR may agree to enter into with its shippers.

ANR states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–30819 Filed 11–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA99–1–000]

Burlington Resources Oil & Gas Company; Notice of Petition for Adjustment

November 12, 1998.

Take notice that on October 30, 1998, Burlington Resources Oil & Gas Company (Burlington), filed a petition for adjustment under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA), requesting an order from the Commission finding that Burlington has no Kansas ad valorem tax refund liability to Panhandle Eastern Pipe Line Company (Panhandle), under the Commission's September 10, 1997 order in Docket No. RP97–369–000 *et al.*[1] Burlington's petition is on file with the Commission and open to public inspection.

The Commission's September 10 order on remand from the D.C. Circuit Court of Appeals[2] directed First Sellers under the NGPA to make Kansas ad valorem tax refunds, with interest, for the period from 1983 to 1988.

Panhandle served Southland Royalty Company (Southland) with a Kansas ad valorem tax refund claim. Burlington states that Southland was merged into Burlington on January 1, 1996, i.e., Burlington is Southland's successor.

Burlington further states that Southland entered into a November 24, 1992 Letter Agreement with Panhandle, which terminated the applicable Gas Purchase Agreements giving rise to Southland's refund obligation to Panhandle. Burlington adds that Paragraph 7 of that Letter Agreement released the parties from any claims under those contracts. In view of this, Burlington contends that Panhandle's Kansas ad valorem tax refund claim is a claim against Southland that relates to the Southland-Panhandle contracts and that, as such, Panhandle assumed the risk of and liability for the subject refunds. Accordingly, Burlington contends that it does not owe any refunds to Panhandle.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Secretary.

[FR Doc. 98–30818 Filed 11–17–98; 8:45 am]

BILLING CODE 6717–01–M

[1] See 80 FERC ¶ 61,264 (1997); order denying rehearing issued January 28, 1998, 82 FERC ¶ 61,058 (1998).

[2] *Public Service Company of Colorado* v. *FERC*, 91 F.3d 1478 (D.C. 1996), cert. denied, Nos. 96–954 and 96–1230 (65 U.S.L.W. 3751 and 3754, May 12, 1997) (Public Service).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–141–000]

KN Wattenberg Transmission Limited Liability Co.; Notice of Tariff Filing

November 12, 1998.

Take notice that on November 5, 1998, KN Wattenberg Transmission Limited Liability Co. (KNW) tendered for filing to become a part of KNW's FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets, to be effective December 5, 1998:

First Revised Sheet No. 0
First Revised Sheet No. 16
First Revised Sheet No. 77
First Revised Sheet No. 80
First Revised Sheet No. 81
First Revised Sheet No. 82
First Revised Sheet No. 88
First Revised Sheet No. 91
First Revised Sheet No. 92
First Revised Sheet No. 93
First Revised Sheet No. 94
First Revised Sheet No. 95
First Revised Sheet No. 99

KNW is making this housekeeping filing as an effort to clarify and correct various sections of KNW's FERC Tariff.

KNW states that copies of the filing were served upon all affected firm customers of KNW and applicable state agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–30820 Filed 11–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP98–259–001 and TM99–2–31–001 (not consolidated)]

NorAm Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

November 12, 1998.

Take notice that on November 6, 1998, NorAm Gas Transmission Company (NGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised volume No. 1, the following revised tariff sheets to be effective November 1, 1998:

Docket No. RP98–259–000

Substitute Thirteenth Revised Sheet No. 5
Substitute Thirteenth Revised Sheet No. 6

Docket No. TM99–2–31–000

Substitute Fourteenth Revised Sheet No. 5
Substitute Fourteenth Revised Sheet No. 6

NGT states that this filing is being submitted to reflect administrative corrections related to NGT's approved Electric Power Costs (EPC) surcharge with respect to its inclusion in the Maximum and Minimum Commodity and Overrun Rates.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C.

20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–30762 Filed 11–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–47–000]

NorAm Gas Transmission Company; Notice of Request Under Blanket Authorization

November 12, 1998.

Take notice that on November 2, 1998, NorAm Gas Transmission Company (NorAm), 1111 Louisiana Street, Houston, Texas 77210, filed in Docket No. CP99–47–000 a request pursuant to Sections 157.205, 157.211 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211, and 157.216) for authorization to abandon, construct, and operate certain facilities in Arkansas. NorAm makes such request under its blanket certificate issued in Docket Nos. CP82–384–000 and CP82–384–001 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission.

NorAm proposes to abandon, by sale and transfer to Arkla, the facilities list below which are located in Lafayette and Columbia Counties, Arkansas. The facilities will be sold to Arkla at their net book value of $140,931.73. Specifically, NorAm proposes to sell to Arkla a 1.53 mile segment of Line AM–39 that serves the Town of Buckner, Arkansas and nine rural delivery taps. NorAm also proposes to abandon a 5.33 mile segment of Line AM–39, Line AM–42 in its entirety, and approximately 1.6 miles of Line AM–44 used to deliver gas to the Town of Waldo, Arkansas and eight rural delivery taps.

It is stated that Arkla will operate these facilities as part of its distribution system to provide low-pressure service to its existing customers. It is averred that no service will be abandoned as a result of this proposed abandonment.

In conjunction with these abandonments, NorAm proposes to install a 2-inch meter station on Line AM–190 and a 3-inch meter station on Line AM–44 to continue deliveries to Arkla. NorAm estimates the cost to construct these two taps to be approximately $13,076.

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.

David P. Boergers,

Secretary.

[FR Doc. 98–30765 Filed 11–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulation Commission

[Docket No. RP99–144–000]

Northern Border Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

November 12, 1998.

Take notice that on November 6, 1998, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective January 1, 1999:

Fortheenth Revised Sheet Number 156
Thirteenth Revised Sheet Number 157

Northern Border proposed to increase the Maximum Rate from 3.683 cents per 100 Dekatherm-Miles to 3.716 cents per 100 Dekatherm-Miles and to decrease the Minimum Revenue Credit from 1.535 cents per 100 Dekatherm-Miles to 1.463 cents per 100 Dekatherm-Miles. The revised Maximum Rate and Minimum Revenue Credit are being filed in accordance with Northern Border's Tariff provisions under Rate Schedule IT–1.

The herein proposed changes do not result in a change in Northern Border's total revenue requirement.

Northern Border states that copies of this filing have been sent to all of Northern Border's contracted shippers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–30816 Filed 11–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–419–001]

OkTex Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

November 12, 1998.

Take notice that on November 6, 1998, OkTex Pipeline Company (OkTex), filed the tariff sheets in compliance with the Commission's directives in Order No. 587–H.

OkTex states that the tariff sheets reflect the changes to OkTex's tariff that resulted from the Gas Industry Standards Board's (GISB) consensus standards that were adopted by the Commission in its July 15, 1998 Order No. 587–H in Docket No. RM96–1–008. OkTex further states that Order No. 587–H contemplates that OkTex will implement the GISB consensus standards for November 1998 business, and that the tariff sheets therefore reflect an effective date of November 2, 1998.

OkTex states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to protest this filing should file a protest with the

Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–30761 Filed 11–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–55–000]

Portland Natural Gas Transmission System; Notice of Application

November 12, 1998.

Take notice that on November 6, 1998, Portland Natural Gas Transmission System (PNGTS), One Harbour Place, Portsmouth, New Hampshire 03801, filed in Docket No. CP99–55–000, an application, pursuant to Section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing the construction and operation of pipeline facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, PNGTS proposes to construct and operate a 4-inch diameter pipe that will extend three feet above ground and a 4-inch diameter valve and flange, near milepost 149.55 in Windham, Maine. PNGTS states that these facilities will be enclosed within a standard six-foot high and ten-foot square chain link fence located on PNGTS's permanent right-of-way. PNGTS expects to utilize these facilities to construct a delivery tap in Windham, Maine in the future to provide natural gas service. PNGTS is currently constructing its pipeline from the Canadian border to Portland, Maine. PNGTS contends that it is more efficient, less expensive, environmentally preferable, and safer to construct the proposed facilities during construction of the PNGTS pipeline rather than after the pipeline has been placed into operation. PNGTS states that the estimated cost of the project is $32,000.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 19, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 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 directly involved. Any person wishing to become a party in any proceeding herein 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 filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have 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 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 permission and approval for the proposed abandonments and a grant of the certificate are 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 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 PNGTS to appear or to be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 98–30763 Filed 11–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–140–000]

Questar Pipeline Company; Notice of Tariff Filing

November 12, 1998.

Take notice that on November 5, 1998, Questar Pipeline Company (Questar) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, with an effective date of January 1, 1999:

Ninth Revised Sheet Nos. 5 and 5A
Eighth Revised Sheet No. 40
Third Revised Sheet No. 90
Original Sheet No. 90A

Questar tendered this tariff filing in compliance with the Commission's April 29 order that approved the Stipulation and Agreement (S&A) filed by the Gas Research Institute (GRI) on January 21, 1998. The S&A reflects the GRI Surcharge rates for 1999. Additionally, the S&A created a Voluntary Contribution Mechanism for shippers who voluntarily choose to contribute to GRI through a ''check-the-box'' mechanism. This filing incorporates both the 1999 GRI Surcharge rates and the Voluntary Contribution Mechanism into Questar's tariff.

Questar states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and

the Public Service Commission of Wyoming.

Any person desiring to be heart or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–30821 Filed 11–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–50–000]

Southern Natural Gas Company; Notice of Request Under Blanket Authorization

November 12, 1998.

Take notice that on November 2, 1998, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202–2563, filed a request with the Commission in Docket No. CP99–50–000, pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to relocate certain delivery point facilities including metering and apprutenant facilities where it serves Mississippi Valley Gas Company (MVG) authorized in blanket certificate issued in Docket No. CP82–406–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Southern proposes to relocate the existing meter at its existing Clayton Village Delivery Point which is currently located at the end of MVG's 2-inch Clayton Village Line. Southern further proposes to relocate the facilities to a site at or near Mile Post 7.500 on Southern's 6-inch Starkville Lateral Line in Oktibbeha County, Mississippi. Southern reported that the estimated cost of the relocation of the delivery point facilities would be approximately $12,000. Southern continued that the new location would be more accessible to Southern's general operations in this area of its system.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, 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 NGA (18 CFR 157.205) allowed time, 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 NGA.

David P. Boergers,

Secretary.

[FR Doc. 98–30764 Filed 11–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–93–001]

Texas Eastern Transmission Corporation; Notice of Supplemental Filing

November 12, 1998.

Take notice that on November 6, 1998, Texas Eastern Transmission Corporation (Texas Eastern) submitted for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following substitute revised tariff sheet to become effective December 1, 1998:

Sub Twenty-second Revised Sheet No. 35

Texas Eastern states that the above substitute tariff sheet is being filed to supplement Texas Eastern's October 15, 1998 filing in Docket No. RP99–92–000 (October 15 Filing) which reflects a decrease in the PCB-Related Costs component of Texas Eastern's currently effective rates. Texas Eastern states that due to a transposition error in the October 15 Filing, the Rate Schedule SCT Demand Charge for the Market Area path, M1–M3, was understated on the tariff sheet. Texas Eastern states that this supplemental filing is made for the sole purpose of correcting such SCT Demand Charge on Twenty-second Revised Sheet No. 35.

Texas Eastern states that copies of the filing were mailed to all affected customers of Texas Eastern and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–30822 Filed 11–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–92–001]

Texas Eastern Transmission Corporation; Notice of Supplemental Filing

November 12, 1998.

Take notice on November 6, 1998, that Texas Eastern Transmission Corporation (Texas Eastern) submitted for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following substitute revised tariff sheet to become effective December 1, 1998:

Sub Twenty-third Revised Sheet No. 35

Texas Eastern states that the above substitute tariff sheet is being filed to supplement Texas Eastern's October 19, 1998 filing in Docket No. RP99–93–000 (October 19 Filing) in the subject docket. A tariff sheet was filed with a transposition error which occurred in Texas Eastern's Docket No. RP99–92–000 October 15, 1998 filing. The Rate Schedule SCT Demand Charge for the Market Area path, M1–M3, was understated on the tariff sheet. Texas Eastern states that this supplemental filing is made for the sole purpose of correcting such SCT Demand Charge on Twenty-third Revised Sheet No. 35 filed on October 19, 1998.

Texas Eastern states that copies of the filing were mailed to all affected customers of Texas Eastern and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the

Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–30823 Filed 11–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–51–000]

Williston Basin Interstate Pipeline Company; Notice of Request Under Blanket Authorization

November 12, 1998.

Take notice that on November 3, 1998, Williston Basin Interstate Pipeline Company (Williston Basin), 200 North Third Street, Suite 300, Bismarck, North Dakota 58501, filed in Docket No. CP99–51–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for authorization to abandon an existing meter and associated appurtenant facilities at the St. Marie meter station in Valley County, Montana. Williston Basin makes such request under its blanket certificate issued in Docket No. CP82–487–000, et al., pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission.

Williston Basin states that it was authorized to acquire and operate the St. Marie meter station pursuant to the Commission's Order dated February 13, 1985 in Docket Nos. CP82–487–000, et al., at 30 FERC ¶ 61,143. It is indicated that on October 10, 1989, Williston Basin filed a prior notice application in Docket No. CP90–24–000 to add additional metering to its existing metering capabilities to more accurately measure the volumes being delivered to the local distribution customer, Montana-Dakota Utilities Company (Montana-Dakota) at that meter station. In that docket Williston Basin was authorized to install an additional meter and a larger relief valve parallel to the existing metering. The new meter was used in conjunction with the smaller existing meter to measure winter load deliveries.

It is averred that the smaller meter at that site is not currently being used and that Williston Basin has determined that due to a reduction in usage in the area because of the closure of a Boeing aircraft test facility, two meters at that location are no longer required. Therefore, Williston Basin proposes herein to abandon the old rotary meter and associated appurtenant facilities at the St. Marie meter station.

Williston Basin states that the abandonment of the old meter and associated appurtenant facilities at the St. Marie meter station will not affect Williston Basin's peak day or annual transportation, since service will continue to be provided through the existing second meter at that site.

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 authorizied 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.

David P. Boergers,

Secretary.

[FR Doc. 98–30817 Filed 11–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–488–000]

Wisconsin Public Service Corporation; Notice of Filing

November 9, 1998.

Take notice that on November 3, 1998, Wisconsin Public Service Corporation (WPSC), tendered for filing an amendment to its February 22, 1993, Agreement with the City of Marshfield concerning the ownership and operation of combustion turbine generation. The amendment implements a revision to the capacity rating of the West Marinette Unit.

Wisconsin Public Service Requests waiver of the Commission's Regulations to permit the amendment to become effective on January 1, 1999.

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 and protests should be filed on or before November 23, 1998. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–30771 Filed 11–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG98–92–000, et al.]

Medical Area Total Energy Plant, Inc., et al.; Electric Rate and Corporate Regulation Filings

November 6, 1998.

Take notice that the following filings have been made with the Commission:

1. Medical Area Total Energy Plant, Inc.

[Docket No. EG98–92–000]

Take notice that on November 2, 1998, Medical Area Total Energy Plant, Inc. (MATEP), for good cause shown, hereby amends its application for determination of exempt wholesale generator (EWG) status, filed July 2, 1998, pursuant to 18 CFR 365.5 of the Commission's Regulations. MATEP amends its EWG application in order to demonstrate further that it is exclusively in the business of owning and operating electric generation facilities thereby qualifying for EWG status.

Copies of the amended application were served upon the Securities and Exchange Commission and the Massachusetts Department of Telecommunications and Energy.

Comment date: November 27, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Commonwealth Chesapeake Company, L.L.C.

[Docket No. EG99–15–000]

Take notice that on October 30, 1998, Commonwealth Chesapeake Company, L.L.C. (CCCo), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

CCCo will own and operate an eligible facility (a 300–MW, oil-fired, electric generating facility) to be located in Accomack County, Virginia.

Comment date: November 27, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. ISO New England Inc.

[Docket No. ER98–3554–000]

Take notice that on October 30, 1998, ISO New England Inc. (ISO) tendered for filing proposed rates under Section 205 of the Federal Power Act for its FERC Tariff for Transmission Dispatch and Power Administration Services (the Tariff).

Pursuant to Section 35.13(a)(1) of the Commission's Regulations, 18 CFR 35.13(a)(1), the ISO seeks approval of the rates set forth in its Tariff and accompanying rate schedules.

The ISO requests that these rates be allowed to go into effect on January 1, 1999.

Copies of the filing were served upon all participants in the New England Power Pool (NEPOOL) and all non-participant entities that are customers under the NEPOOL Open Access Transmission Tariff, as well as on the utility regulatory agencies of the six New England States.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc.

[Docket No. ER98–4289–001]

Take notice that on November 2, 1998, Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc. (Montana-Dakota) tendered for filing with the Federal Energy Regulatory Commission pursuant to the Commission's October 16, 1998 Order in this proceeding, a compliance filing related to its Market-Based Wholesale Power Sales Rate Schedule.

Comment date: November 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. CET Marketing L.P. and Cogen Energy Technologies L.P.

[Docket Nos. ER98–4412–000 and ER98–4423–000 (not consolidated)]

Take notice that on October 30, 1998, CET Marketing L.P. and Cogen Energy Technologies L.P. submitted with the Federal Energy Regulatory Commission (Commission) the Power Put and Interconnection Agreement between Niagara Mohawk Power Corporation and Cogen Energy Technologies, as requested by Commission Staff in the above-referenced proceeding.

A copy of this filing letter has been served on all parties on the Commission's official service list.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Carolina Power & Light Co.

[Docket No. ER99–479–000]

Take notice that on October 30, 1998, Carolina Power & Light Company (CP&L) tendered for filing the Agreement Between North Carolina Eastern Municipal Power Agency and Carolina Power 7 Light Company Applicable to Remaining Supplemental load Beginning January 1, 1999. The Agreement is intended to supplement the 1981 Power Coordination Agreement, filed as FERC Rate Schedule No. 121.

CP&L requests an effective date of January 1, 1999.

CP&L states that copies of the filing have been served on the Power Agency as well as on the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Atlantic City Electric Co., et. al., Baltimore Gas and Electric Co., Delmarva Power & Light Co., PECO Energy Co., PP&L, Inc., Potomac Electric Power Co., Public Service Electric and Gas Co., Jersey Central Power & Light Co., Metropolitan Edison Co., Pennsylvania Electric Co., UGI Utilities, Inc.

[Docket No. ER99–396–000]

Take notice that on October 30, 1998, Atlantic City Electric Company, Baltimore Gas and Electric Company, Delmarva Power & Light Company, PECO Energy Company, PP&L, Inc., Potomac Electric Power Company, Public Service Electric and Gas Company, Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, and UGI Utilities, Inc., submitted for filing amendments to the PJM Open Access Transmission Tariff, designated as PJM Interconnection, L.L.C., FERC Electric Tariff, First Revised Volume No. 1 (PJM OATT). The amendments modify the PJM OATT to include a new Schedule 1A—RTO Scheduling, System Control and Dispatch Service.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Allegheny Power Service Corp., on behalf of Monongahela Power Co. and The Potomac Edison Co., and West Penn Power Co. (Allegheny Power)

[Docket No. ER99–397–000]

Take notice that on October 30, 1998, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power Companies), filed Amendment No. 6 to the Power Supply Agreement between the Allegheny Power Companies.

The Allegheny Power Companies request a January 1, 1999 effective date for this amendment.

Copies of the filing have been served on the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Consumers Energy Co.

[Docket No. ER99–398–000]

Take notice that on October 30, 1998, Consumers Energy Company (CECo), tendered for filing revisions to Sections 1.18 and 34.1 of its Open Access Transmission Tariff. The proposed amendment would allow CECo to calculate the Load Ratio Share of its network transmission service customers on an annual basis, rather than by a rolling twelve month calculation of this ratio. According to CECo, the proposed amendment should have no material impact on transmission compensation.

Copies of the filing have been served on all CECo network transmission customers and the Michigan Public Service Commission.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Pacific Gas and Electric Co.

[Docket No.ER99–418–000]

Take notice that on October 30, 1998, Pacific Gas and Electric Company (PG&E) tendered for filing a request to extend the Commission's October 2, 1998 Order through June 30,1999. An October 2, 1998 Order approved PG&E's California Independent System Operator's (ISO) Grid Management Charge (GMC) Pass-Through to existing wholesale contract customers for 1998. PG&E seeks an extension of this pass-through authority under the same terms and conditions through June 30, 1999. PG&E also seeks to add the City and County of San Francisco and the Northern California Power Agency to revised rate sheets for this tariff.

PG&E requests that its filing be made effective January 1, 1999.

This filing is part of the comprehensive restructuring proposal for the California electric power industry that is before the Federal Energy Regulatory Commission.

Copies of this filing have been served upon the California Public Utilities Commission and all other parties on the Service List to this proceeding.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. American Electric Power Service Corp.

[Docket No. ER99–421–000]

Take notice that on October 30, 1998, The American Electric Power Service Corporation (AEPSC), tendered for filing executed Firm and Non-Firm Point-to-Point Transmission Service Agreements for Hoosier Energy REC, Inc. and for Potomac Electric Power Company, and a Network Integration Transmission Service Agreement for Buckeye Power Inc., all under the AEP Companies; Open Access Transmission Service Tariff (OATT). The OATT has been designated as FERC Electric Tariff Original Volume No. 4, effective July 9, 1996.

AEPSC requests waiver of notice to permit the Service Agreements to be made effective for service billed on and after October 1, 1998.

A copy of the filing was served upon the Parties and the state utility regulatory commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Atlantic City Electric Co., et. al.

[Docket No. ER99–422–000]

Take notice that on October 30, 1998, Atlantic City Electric Company, Baltimore Gas and Electric Company, Delmarva Power & Light Company, PECO Energy Company, PP&L, Inc., Potomac Electric Power Company, Public Service Electric and Gas Company, Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company and UGI Utilities, Inc. submitted an amendment to the Transmission Owners Agreement (TOA). The purpose of this modification to the TOA is to accommodate retail choice in the PJM region.

An effective date of January 1, 1999, has been requested for this modification.

A copy of this filing has been sent to the regulatory commissions of Pennsylvania, New Jersey, Maryland, Delaware, Virginia and the District of Columbia for their information, as well as to PJM Interconnection, L.L.C.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Cogentrix Energy Power Marketing, Inc.

[Docket No. ER99–452–000]

On October 30, 1998, Cogentrix Energy Power Marketing, Inc. (CEPM) filed a Notification of Change in Status, notifying the Commission that CEPM had become affiliated with additional generating companies, as a result of indirect acquisitions by its parent company, Cogentrix Energy, Inc. CEPM also submitted a market power analysis for each market in which a new affiliate owns or controls generation.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Northern States Power Co. (Minnesota) and (Wisconsin)

[Docket No. ER99–463–000]

Take notice that on October 30, 1998, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (jointly NSP) filed proposed Substitute First Revised Sheet Nos. 73 and 74, Schedule 4—Energy Imbalance Service, to the NSP Open Access Transmission Tariff (Tariff). The substitute tariff sheets replace First Revised Sheet Nos. 73 and 74 accepted for filing effective October 1, 1998, in the Commission's order dated April 30, 1998 in this docket. 83 FERC ¶ 61,203 (1998). The substitute tariff sheets are necessary because the CPEX price index to be used to determine the value of hourly imbalances is no longer published. NSP proposes the substitute tariff pages also be effective October 1, 1998, subject to refund.

In addition, NSP proposes to amend the comparable energy imbalance provisions pursuant to the Western Transmission Agreement (WTA) with Wisconsin Public Power, Inc. (WPPI) and the energy imbalance provisions pursuant to the pre-tariff TM–1 transmission service agreements with various municipal customers.

NSP states that it served a copy of the filing on parties to this consolidated proceeding, on affected Tariff customers and the utility commissions in Minnesota, Michigan, North Dakota, South Dakota and Wisconsin.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. American Electric Power Service Corp.

[Docket No. ER99–449–000]

Take notice that on November 2, 1998, the American Electric Power Service Corporation (AEPSC), tendered for filing service agreements 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 to permit the service agreements to be made effective on the dates specified in the initial filings.

A copy of this filing was served upon the parties and the State Utility Regulatory Commission's of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: November 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Citizens Utilities Co.

[Docket No. ER99–450–000]

Take notice on that on November 2, 1998, Citizens Utilities Company tendered for filing a Line Loss Amendment to Settlement Agreement. This Line Loss Amendment to Settlement Agreement is sponsored and entered into by all of the signatories to the Settlement Agreement in Docket Nos. ER95–1586–000, EL–96–17–000, and OA96–184–000, including Citizens, Burlington Electric Department, Central Vermont Public Service Corporation, the Vermont Department of Public Service, Vermont Marble Power Division of OMYA, Inc., Vermont Public Power

Supply Authority, Barton Village, Inc., Enosburg Falls Water & Light Department and the Village of Orleans. The Commission approved the Settlement Agreement by letter order issued on November 13, 1997, 81 FERC ¶ 61,197(1997).

Citizens proposes an effective date of January 1, 1999 for the Line Loss Amendment.

Copies of the filing have been served on all of the above persons, as well as all of the parties in Docket Nos. ER95–1586-000, EL96–17–000, and OA96–184–000.

Comment date: November 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. New England Power Pool

[Docket No. ER99–451–000]

Take notice that on November 2, 1998, the New England Power Pool Executive Committee filed for acceptance signature pages to the New England Power Pool (NEPOOL) Agreement dated September 1, 1971, as amended, signed by FPL Energy Maine, Inc.; FPL Energy Power Marketing, Inc.; ESI Northeast Energy GP, Inc.; FPL Energy Maine Hydro LLC; FPL Energy Mason LLC; FPL Energy Wyman LLC; FPL Energy Wyman IV LLC; FPL Energy Avec LLC (the ''Applicants''). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Executive Committee states that the Commission's acceptance of the Applicants' signature pages would permit NEPOOL to expand its membership to include the Applicants. NEPOOL further states that the filed signature pages do not change the NEPOOL Agreement in any manner, other than to make the Applicants members in NEPOOL. NEPOOL requests an effective date of January 1, 1999, for commencement of participation in NEPOOL by the Applicants.

Comment date: November 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. MidAmerican Energy Co.

[Docket No. ER99–453–000]

Take notice that on November 2, 1998, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309 tendered for filing an initial rate schedule consisting of an Interconnection Agreement dated October 9, 1998 between MidAmerican and Storm Lake Power Partners I LLC (SLPP) and a First Amendment thereto dated October 9, 1998 which includes Enron Wind Development Corp. (Enron Wind) as a party.

MidAmerican states that the Interconnection Agreement enables the interconnection of electric facilities owned by SLPP (or Enron Wind) and MidAmerican for the purpose of the delivery of power by SLPP (or Enron Wind) to MidAmerican. The First Amendment makes Enron Wind a party to the Interconnection Agreement subject to the terms of the First Amendment.

Copies of the filing were served on representatives of SLPP, Enron Wind, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: November 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Public Service Company of New Mexico

[Docket No. ER99–454–000]

Take notice that on November 2, 1998, Public Service Company of New Mexico (PNM) submitted for filing a Service Agreement executed October 15, 1998, for Firm Point-to-Point Transmission Service between PNM (Transmission Provider) and Constellation Power Source, Inc. (Transmission Customer), under the terms of PNM's Open Access Transmission Service Tariff. PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Copies of this filing have been served on Constellation Power Source, Inc. and the New Mexico Public Utility Commission.

Comment date: November 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. The Montana Power Co.

[Docket No. ER99–455–000]

Take notice that on November 2, 1998, The Montana power Company (Montana) tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, an unexecuted Network Integration Transmission Service Agreement and Network Operating Agreement with Conoco Pipe Line Company (Conoco) and the Colstrip Project Owners (Colestrip Owners) under Montana's FERC Electric Tariff, Second Revised Volume No. 5 (Open Access Transmission Tariff).

A copy of the filing was served upon Conoco and Colstrip Owners.

Comment date: November 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Rochester Gas and Electric Corp.

[Docket No. ER99–457–000]

Take notice that on November 2, 1998, Rochester Gas and Electric Corporation (RG&E) filed a Service Agreement between RG&E and Allegheny Energy (Customer). This Service Agreement specifies that the Customer has agreed to the rates, terms and conditions of the RG&E open access transmission tariff filed on July 9, 1996 in Docket No. OA96–141–000.

RG&E requests waiver of the Commission's sixty (60) day notice requirements and an effective date of October 12, 1998 for the Strategic Energy LTD. Service Agreement.

RG&E has served copies of the filing on the New York State Public Service Commission and on the Customer.

Comment date: November 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Commonwealth Edison Company

[Docket No. ER99–458–000]

Take notice that on November 2, 1998 Commonwealth Edison Company (ComEd) tendered for filing service agreements establishing Baltimore Gas & Electric (BGE), Cargill-Alliant, LLC (C-A), Constellation Power Source, Inc. (CONS), Duke Power (DUKE), Kentucky Utilities Company (KU) and Ameren Services Company (AMRN) as customers under ComEd's FERC Electric Market Based-Rate Schedule for power sales.

ComEd requests an effective date of October 3, 1998 for the service agreements, and accordingly, seeks waiver of the Commission's notice requirements.

Copies of the filing were served on BGE, C-A, CONS, DUKE, KU AMRN, LGE and the Illinois Commerce Commission.

Comment date: November 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. Maine Public Service Co.

[Docket No. ER99–459–000]

Take notice that on November 2, 1998, Maine Public Service Company (Maine Public) filed an executed Service Agreement for Non-Firm Point-to-Point Transmission Service under Maine Public's Open Access Transmission Tariff with Energy Atlantic LLC.

Main Public requests waiver of the Commission's 60-day notice requirements so that the agreement can become effective on October 29, 1998.

Comment date: November 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. Florida Power Corp.

[Docket No. ER99–460–000]

Take notice that on November 2, 1998, Florida Power Corporation (FPC) tendered for filing a service agreement between the City of Bartow, Florida and FPC for service under FPC's Cost-Based Wholesale Power Sales Tariff (CR–1), FERC Electric Tariff, Original Volume Number 9. This Tariff was accepted for filing by the Commission on April 20, 1998, effective as of October 29, 1997, in Docket No. ER98–374–000.

Comment date: November 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. Central Hudson Gas and Electric Corp.

[Docket No. ER99–461–000]

Take notice that on November 2, 1998, Central Hudson Gas and Electric Corporation (CHG&E), tendered for filing pursuant to Section 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations (18 CFR 35.12), a Service Agreement between CHG&E and Merchant Energy Group of the Americas, Inc. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER97–890–000.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: November 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. Madison Gas and Electric Co.

[Docket No. ER99–462–000]

Take notice that on November 2, 1998, Madison Gas and Electric Company (MGE) tendered for filing with the Federal Energy Regulatory Commission (Commission), a Service Agreement with Merchant Energy Group of the Americas, Inc.

Comment date: November 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

27. Nevada Power Co.

[Docket No. OA97–2–003]

Take notice that on November 2, 1998, Nevada Power Company tendered for filing a Statement of Policy and Code of Conduct pursuant to the Commission's order issued in the above-mentioned docket on September 18, 1998.

Comment date: December 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

28. Gregory Power Partners, L.P.

[Docket No. QF99–32–000]

Take notice that on October 30, 1998, Gregory Power Partners, L.P., c/o LG&E Power Inc., 12500 Fair lakes Circle, Suite 350, Fairfax, Virginia 22033, filed with the Federal Energy Regulatory Commission, an Application for Certification of Qualifying Status of a Cogeneration Facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The facility is an approximately 427 MW (net) topping-cycle cogeneration facility located in Gregory, Texas. The facility is interconnected with Central Power & Light Company.

Comment date: November 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

29. Commonwealth Chesapeake Co., L.L.C.

[Docket No. EG99–15–000]

Take notice that on October 30, 1998, Commonwealth Chesapeake Company, L.L.C. (CCCo), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

CCCo will own and operate an eligible facility (a 300-MW, oil-fired, electric generating facility) to be located in Accomack County, Virginia.

Comment date: November 27, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

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, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 98–30815 Filed 11–17–98; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6190–4]

Effluent Guidelines Task Force Open Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: The Effluent Guidelines Task Force, an EPA advisory committee, will hold a meeting to discuss the Agency's Effluent Guidelines Program. The meeting is open to the public.

DATES: The meeting will be held on Tuesday, December 1, 1998 from 9:00 a.m. to 5:00 p.m., and Wednesday, December 2, 1998 from 8:30 a.m. to 3:00 p.m.

ADDRESSES: The meeting will take place at the Radisson Barcelo Hotel, 2121 P Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Beverly Randolph, Office of Water (4303), 401 M Street, SW, Washington, D.C. 20460; telephone (202) 260–5373; fax (202) 260–7185.

SUPPLEMENTARY INFORMATION:

Pursuant to the Federal Advisory Committee Act (Pub.L. 92–463), the Environmental Protection Agency gives notice of a meeting of the Effluent Guidelines Task Force (EGTF). The EGTF is a committee of the National Advisory Council for Environmental Policy and Technology (NACEPT), the external policy advisory board to the Administrator of EPA.

The EGTF was established in July of 1992 to advise EPA on the Effluent Guidelines Program, which develops regulations for dischargers of industrial wastewater pursuant to Title III of the Clean Water Act (33 U.S.C. 1251 *et seq.*). The Task Force consists of members appointed by EPA from industry, citizen groups, state and local government, the academic and scientific communities, environmental justice community, and EPA regional offices. The Task Force was created to offer advice to the Administrator on the long-term strategy for the effluent guidelines program, and particularly to provide recommendations on a process for expediting the promulgation of effluent guidelines. The Task Force generally

does not discuss specific effluent guideline regulations currently under development.

The meeting is open to the public, and limited seating for the public is available on a first-come, first-served basis. The public may submit written comments to the Task Force regarding improvements to the Effluent Guidelines program. Comments should be sent to Beverly Randolph at the above address. Comments submitted by November 24, 1998 will be considered by the Task Force at or subsequent to the meeting.

Dated: November 12, 1998.

Tudor T. Davies,

Director, Office of Science and Technology.

[FR Doc. 98–30846 Filed 11–17–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6190–7]

Notice of Proposed Settlement; Talisman Sugar Corporation Properties, Palm Beach and Hendry Counties, Florida

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and under section 7003(d) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6973(d), the United States Environmental Protection Agency (EPA) proposes to enter into a ''prospective purchaser agreement'' (PPA) concerning property owned by the Talisman Sugar Corporation (''Talisman'') in Palm Beach and Hendry Counties, Florida. EPA proposes to enter into the PPA with The Nature Conservancy (''TNC''), a non-profit District of Columbia corporation, and the South Florida Water Management District, (the ''District''), a special ad valorem taxing authority established by the Florida legislature, which is responsible for management of water delivery in South Florida. The PPA concerns the acquisition by TNC and the District of certain real property presently owned or leased by Talisman in Palm Beach and Hendry Counties, Florida.

The real property in question (the ''Property'') consists of approximately 50,757 acres in the Everglades Agricultural Area (''EAA''). Most of the Property is currently owned by Talisman, but the Property includes certain parcels leased by Talisman. The Property is the subject of a Purchase and Sale Agreement between Talisman and the TNC (the ''Purchase and Sale Agreement''), dated July 2, 1998, which gives TNC the right to purchase Talisman's interest in the Property.

TNC is also a party to a Cooperative Agreement with the United States Department of the Interior and the District (the ''Cooperative Agreement''), dated July 24, 1998, pursuant to which portions of the Property may be transferred to the District. The purpose of TNC's and the District's participation in the Purchase and Sale Agreement and/or Coopertive Agreements is to further restoration of the Florida Everglades ecosystem. The PPA obligates TNC and the District to manage portions of the Property that they acquire in a manner that is consistent with the comprehensive Everglades restoration program envisioned by the Cooperative Agreement.

Pursuant to the PPA, TNC and the District will be protected from CERCLA liability and from liability under section 7003(d) of RCRA, 42 U.S.C. 6973(d), which may arise from their participation in the acquisition of the Property, as described above. This protection is contingent on TNC's and the District's management of the property as described above.

EPA will consider public comments on the proposed settlement for thirty (30) days. Commenters may request an opportunity for a public meeting in the affected area, in accordance with section 7003(d) of RCRA, 42 U.S.C. 6973(d). EPA may withdraw from or modify the proposed settlement should public comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate.

Copies of the proposed settlement are available from Ms. Paula V. Batchelor, Waste Management Division, U.S. EPA, Region 4, Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, Georgia 30303–8909.

Written comments may be submitted to Ms. Batchelor within thirty (30) calendar days of the date of publication.

Franklin E. Hill,

Chief, Program Services Branch, Waste Management Division.

[FR Doc. 98–30953 Filed 11–17–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6190–3]

Proposed Administrative Penalty Assessments and Opportunity to Comment

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed assessments of Clean Water Act Class I administrative penalties and opportunity to comment.

SUMMARY: EPA is providing notice of proposed administrative penalties for alleged violations of the Clean Water Act. EPA is also providing notice of opportunity to comment on the proposed penalties.

EPA is authorized under section 309(g) of the Act, 33 U.S.C. 1319(g), to assess a civil penalty after providing the person subject to the penalty notice of the proposed penalty and the opportunity for a hearing, and after providing interested persons notice of the proposed penalty and a reasonable opportunity to comment on its issuance. Under section 309(g), any person who without authorization discharges a pollutant to a navigable water, as those terms are defined in section 502 of the Act, 33 U.S.C. 1362, may be assessed a penalty in a ''Class I'' administrative penalty proceeding. Class I proceedings under section 309(g) are conducted in accordance with proposed consolidated rules of practice governing the administrative assessment of civil penalties, published at 63 FR 9464 (Feb. 25, 1998).

EPA is providing notice of the following proposed Class I penalty proceedings initiated by the Water Division, U.S. EPA, Region 9, 75 Hawthorne St., San Francisco, CA 94105:

In the Matter of S&H Dairy, Docket No. CWA–IX–FY98–28, filed September 28, 1998; proposed penalty, $5,000; for unauthorized discharge from the S&H Dairy, 4125 Bentley Road, Oakdale, CA 95361, on January 23, 1998, to a canal operated by the Oakdale Irrigation District; and

In the Matter of Bairos Brothers Dairy, Inc., Docket No. CWA–IX–FY98–27, filed September 28, 1998; proposed penalty, $5,000; for unauthorized discharge from the Bairos Brothers Dairy, 3037 Albers Road, Modesto, CA 95357, on January 23, 1998, to the Albers Lateral of the Oakdale Irrigation District.

Procedures by which the public may comment on a proposed Class I penalty or participate in a Class I penalty

proceeding are set forth in the proposed consolidated rules. The deadline for submitting public comment on a proposed Class I penalty is thirty days after issuance of public notice. The Regional Administrator of EPA, Region 9 may issue an order upon default if the respondent in the proceeding fails to file a response within the time period specified in the proposed consolidated rules.

FOR FURTHER INFORMATION CONTACT: Persons wishing to received a copy of the proposed consolidated rules, review the complaints, proposed consent orders, or other documents filed in these proceedings, comment upon the proposed penalties, or participate in any hearings that may be held, should contact Danielle Carr, Regional Hearing Clerk, U.S. EPA, Region 9, 75 Hawthorne St., San Francisco, CA 94105, (415) 744–1391. Documents filed as part of the public record in these proceedings are available for inspection during business hours at the office of the Regional Hearing Clerk.

In order to provide opportunity for public comment, EPA will not take final action in these proceedings prior to thirty days after issuance of this notice.

Dated: October 28, 1998.

Alexis Strauss,

Acting Director, Water Division.

[FR Doc. 98–30845 Filed 11–17–98; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Fifth Meeting of the Advisory Committee for the 2000 World Radiocommunication Conference (WRC–2000 Advisory Committee)

AGENCY: Federal Communications Commission.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the next meeting of the WRC–2000 Advisory Committee will be held on December 9, 1998, at the Federal Communications Commission. The purpose of the meeting is to continue preparations for the 2000 World Radiocommunication Conference. The Advisory Committee will consider any consensus views or proposals introduced by the Advisory Committee's Informal Working Groups.

DATES: The meeting will be held on Wednesday, December 9, 1998 at 10:00 a.m.–12:00 noon.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Room 856, Washington D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Damon C. Ladson, FCC International Bureau, Planning and Negotiations Division, at (202) 418–0420.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission (FCC) established the WRC–2000 Advisory Committee to provide advice, technical support and recommendations relating to the preparation of United States proposals and positions for the 2000 World Radiocommunication Conference (WRC–2000). In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the fifth meeting of the WRC–2000 Advisory Committee. The WRC–2000 Advisory Committee has an open membership. All interested parties are invited to participate in the Advisory Committee and to attend its meetings. The proposed agenda for the fifth meeting is as follows:

AGENDA—Fifth Meeting of the WRC–2000 Advisory Committee, Federal Communications Commission, 1919 M Street, N.W., Room 856, Washington, D.C. 20554

December 9, 1998; 10:00 a.m.–12:00 noon

1. Opening Remarks
2. Approval of Agenda
3. Approval of the Minutes of the Fourth Meeting
4. IWG Reports
5. Consideration of Consensus Views and Issue Papers
6. Development of Draft Proposals
7. Future Meetings
8. Other Business

Federal Communications Commission.

Shirley S. Suggs,

Chief, Publications Branch.

[FR Doc. 98–30746 Filed 11–17–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[PR Docket No. 91–143; DA 98–2257]

Private Land Mobile Radio Service Rules, Arizona Public Safety Plan

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Chief Public Safety and Private Wireless Division released this Public Notice approving an amendment to the Arizona Public Safety Regional Plan (Region 3 Plan) that revises the current channel allotments for radio frequencies in the 821–824/866–869 MHz bands within the state of Arizona. In accordance with the National Public Safety Plan, each region is responsible for planning its use of public safety radio frequency spectrum in the 821–824/866–869 MHz bands.[1]

DATES: November 6, 1998.

FOR FURTHER INFORMATION CONTACT: Joy Alford, Federal Communications Commission, Washington, DC, (202) 418–0694.

SUPPLEMENTARY INFORMATION: By this notice, the minor amendment to the Region 3 Public Safety Radio Plan (Region 3 Plan) that proposes to revise the current channel allotments for radio frequencies in the 821–824/866–869 MHz bands within the state of Arizona is approved. The amendment assigns certain frequencies to new users in Region 3. The amendment also includes minor non-frequency assignment changes or corrections to the plan. In accordance with the Public Safety National Plan, each region is responsible for planning its use of the public safety radio frequency spectrum in the 821–824–866–869 MHz bands.[2] The Region 3 Plan was originally adopted by the Commission on September 4, 1991,[3] and was subsequently revised by letter on May 24, 1995. On August 28, 1998, the Commission issued a Public Notice (Report No. WT 98–40) inviting interested parties to file comments regarding a proposed amendment to the Region 3 Plan that was filed with the Commission on June 12, 1998. We have reviewed the Region 3 request. The amendment is a minor change to the Region 3 Plan and includes concurrences from each of the adjacent Regions 5, 7, 27, 29, and 41. Further, we have received no comments in response to the Public Notice of August 28, 1998, referenced above. The amendment, is therefore, accepted and approved as submitted. The Secretary's office will place the amended Region 3 Plan in the official docket file where it will remain available to the public. Questions regarding this public notice may be directed to Joy Alford, Wireless Telecommunications Bureau (202) 418–0694. The original Region 3 Public Safety Plan, is available for inspection and copying during normal business hours in the FCC Reference Center (Room 230) 1919 M Street, NW, Washington, DC. The original Region 3

[1] Report and Order, General Docket No. 87–112, 3 FCC Rcd 905 (1987).

[2] Report and Order, General Docket No. 87–112, 3 FCC Rcd 905 (1987).

[3] Order, Private Radio Docket 91–143, 6 FCC Rcd 5335 (1991).

Public Safety Plan, may also be ordered from the Commission's copy contractor, International Transcription Services, Inc., 1231 20th Street, NW, Washington, DC 20036, Telephone (202) 857–3800.

Federal Communications Commission.

Shirley Suggs,

Chief, Publications Branch.

[FR Doc. 98–30806 Filed 11–17–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Gen. Docket No. 88–549; DA 98–2256]

Private Land Mobile Radio Service Rules, North Central Texas Public Safety Plan

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Chief Public Safety and Private Wireless Division released this Public Notice approving an amendment to the North Central Texas Public Safety Regional Plan (Region 40 Plan) that revises the current channel allotments for radio frequencies in the 821-824/866–869 MHz bands within North Central Texas. In accordance with the National Public Safety Plan, each region is responsible for planning its use of public safety radio frequency spectrum in the 821–824/866–869 MHz bands. [1]

DATES: November 6, 1998.

FOR FURTHER INFORMATION CONTACT: Joy Alford, Federal Communications Commission, Washington, D.C., (202) 418–0694.

SUPPLEMENTARY INFORMATION: By this notice, the minor amendment to the Region 40 Public Safety Radio Plan (Region 40 Plan) that proposes to revise its current channel allotments for radio frequencies in the 821–824/866–869 MHz bands within the North Central Texas area, is approved. The amendment assigns certain frequencies within Region 40 for low power interoperability purposes. In accordance with the Public Safety National Plan, each region is responsible for planning its use of public safety radio frequency spectrum in the 821–824/866–869 MHz bands.[2] The Region 40 Plan was originally adopted by the Commission on June 22, 1989,[3] and was subsequently modified by letter on December 31, 1992. On August 28, 1998, the Commission issued a Public Notice (Report No. WT 98–30) inviting interested parties to file comments to a proposed amendment that was filed with the Commission on July 17, 1997, to amend the Region 40 Plan. We have reviewed the Region 40 request. We have received no comments to the Public Notice of August 28, referenced above. The amendment is a minor change to the Region 40 Plan and is approved as submitted. The Secretary's office will place the amended Region 40 Plan in the official docket file where it will remain available to the public. Questions regarding this public notice may be directed to Joy Alford, Wireless Telecommunications Bureau (202) 418–0694. The original Region 40 Public Safety Plan, is available for inspection and copying during normal business hours in the FCC Reference Center (Room 230) 1919 M Street, N.W., Washington, D.C. The original Region 40 Public Safety Plan, may also be ordered from the Commission's copy contractor, International Transcription Services, Inc., 1231 20th Street, N.W., Washington, D.C. 20036, Telephone (202) 857–3800.

Federal Communications Commission.

Shirley Suggs,

Chief, Publications Branch.

[FR Doc. 98–30807 Filed 11–17–98; 8:45 am]

BILLING CODE 6712–01–P

[1] Report and Order, General Docket No. 87–112, 3 FCC Rcd 905 (1987).

[2] Report and Order, General Docket No. 87–112, 3 FCC Rcd 905 (1987), at paragraph 57.

[3] Order, General Docket 88–549, 4 FCC Rcd 5401 (1989).

FEDERAL COMMUNICATIONS COMMISSION

[Gen. Docket No. 90–287; DA 98–2258]

Private Land Mobile Radio Service Rules, Northern California Public Safety Plan

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Chief Public Safety and Private Wireless Division released this Public Notice approving an amendment to the Northern California Public Safety Regional Plan (Region 6 Plan) that revises the current channel allotments for radio frequencies in the 821–824/866–869 MHz bands within Northern California. In accordance with the National Public Safety Plan, each region is responsible for planning its use of public safety radio frequency spectrum in the 821–824/866–869 MHz bands.[1]

DATES: November 6, 1998.

FOR FURTHER INFORMATION CONTACT: Joy Alford, Federal Communications Commission, Washington, D.C., (202) 418–0694.

SUPPLEMENTARY INFORMATION: By this notice, the minor amendment to the Region 6 Public Safety Radio Plan (Region 6 Plan) that proposes to revise the current channel allotments for radio frequencies in the 821–824/866–869 MHz bands in the Northern California area is approved. The amendment exchanges several channels previously allocated and designates new use for some channels which were allotted for use in specific counties. In accordance with the Public Safety National Plan, each region is responsible for planning its use of public safety radio frequency spectrum in the 821–824/866–869 MHz bands.[2] The Region 6 Plan was originally adopted by the Commission on November 20, 1990,[3] and was subsequently revised on July 22, 1992,[4] October 17, 1994,[5] and August 4, 1997.[6] On September 15, 1998, the Commission issued a Public Notice (DA 98–1777) inviting interested parties to file comments regarding a proposed amendment that was filed with the Commission on March 6, 1998, to amend the Region 6 Plan. We have reviewed the Region 6 request. We have received no comments in response to the Public Notice of September 15, 1998, referenced above. The amendment is a minor change to the Region 6 Plan and is approved as submitted. The Secretary's office will place the amended Region 6 Plan in the official docket file where it will remain available to the public. Questions regarding this public notice may be directed to Joy Alford, Wireless Telecommunications Bureau (202) 418–0694. The original Region 6 Public Safety Plan, is available for inspection and copying during normal business hours in the FCC Reference Center (Room 230) 1919 M Street, N.W., Washington, D.C. The original Region 6 Public Safety Plan, may also be ordered from the Commission's copy contractor, International Transcription Services, Inc., 1231 20th Street, N.W., Washington, DC 20036, Telephone (202) 857–3800.

Federal Communications Commission.

Shirley Suggs,

Chief, Publications Branch.

[FR Doc. 98–30808 Filed 11–17–98; 8:45 am]

BILLING CODE 6712–01–P

[1] Report and Order, General Docket No. 87–112, 3 FCC Rcd 905 (1987).

[2] Report and Order, General Docket No. 87–112, 3 FCC Rcd 905 (1987).

[3] Order, General Docket 90–287, 5 FCC Rcd 7132 (1990).

[4] Order, DA 92–1009, 7 FCC Rcd 4908 (1992).

[5] Order, 9 FCC Rcd 6128 (1994).

[6] Public Notice, Report No. WT–97–33.

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2303]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

November 10, 1998.

Petitions for reconsideration and clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, D.C. or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed by December 3, 1998. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Review of the Commission's Rules Regarding the Main Studio and Local Public Inspection Files of Broadcast Television and Radio Stations (MM Docket No. 97–138).

Number of Petitions Filed: 5.

Federal Communications Commission.

Shirley Suggs,

Chief, Publications Branch.

[FR Doc. 98–30809 Filed 11–17–98; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL LABOR RELATIONS AUTHORITY

[FLRA Docket No. DA–RO–60006]

Notice of Opportunity To Submit Amici Curiae Briefs in Representation Proceeding Pending Before the Federal Labor Relations Authority

AGENCY: Federal Labor Relations Authority.

ACTION: Notice of the opportunity to file briefs as amici curiae in a proceeding before the Federal Labor Relations Authority in which the Authority is determining the standard for evaluating a union petition for a representation election where an activity has unlawfully assisted the petitioning union.

SUMMARY: The Federal Labor Relations Authority provides an opportunity for all interested persons to file briefs as amici curiae on significant issues arising in a case pending before the Authority. The Authority is considering this case pursuant to its responsibilities under the Federal Service Labor-Management Relations Statute, 5 U.S.C. 7101–7135 (the Statute) and its Regulations, set forth at 5 CFR part 2422. The issues in this case concern the standard for evaluating a union petition for a representation election where an activity has unlawfully assisted the petitioning union.

DATES: Briefs submitted in response to this notice will be considered if received by mail or personal delivery in the Authority's Office of Case Control by 5 p.m. on or before Friday, December 18, 1998. Placing submissions in the mail by this deadline will not be sufficient. Extensions of time to submit briefs will not be granted.

ADDRESSES: Mail or deliver written comments to Peter J. Constantine, Director, Case Control Office, Federal Labor Relations Authority, 607 14th Street, NW., Suite 415, Washington, DC 20424–0001.

FORMAT: All briefs shall be captioned: *United States Army Air Defense Artillery Center, and Fort Bliss, Fort Bliss, Texas, Case No. DA–RO–60006, Amicus Brief.* Briefs shall also contain separate, numbered headings for each issue discussed. An original and four (4) copies of each amicus brief must be submitted, with any enclosures, on 8½×11 inch paper. Briefs must include a signed and dated statement of service that complies with the Authority's regulations showing service of one copy of the brief on all counsel of record or other designated representatives. 5 CFR 2429.27 (a) and (c). Copies of the Authority's decision granting the application for review in this case and a list of the designated representatives for the case may be obtained by mail or by facsimile by contacting Peter J. Constantine at the Authority's Case Control Office at the address set forth above.

FOR FURTHER INFORMATION CONTACT: Peter J. Constantine, at the address listed above or by telephone: (202) 482–6540.

SUPPLEMENTARY INFORMATION: On November 3, 1998, the Authority granted an application for review of the RD's Decision and Order in *United States Army Air Defense Artillery Center and Fort Bliss, Fort Bliss, Texas,* Case No. DA–RO–60006 (54 FLRA No. 127 (1998)). A summary of that case follows.

1. Background

Following organizing efforts, the National Federation of Federal Employees (NFFE) filed a petition pursuant to section 7111 of the Statute and § 2422.2 of the Authority's Regulations, 5 CFR 2422.2, (the Regulations in effect prior to March 15, 1996, are applicable in this case), seeking an election to represent a bargaining unit represented by the National Association of Government Employees (NAGE). NAGE filed an unfair labor practice (ULP) charge, claiming that the Activity unfairly aided NFFE in its attempt to collect signatures by allowing a non-employee NFFE organizer onto its premises. The Regional Director (RD) held the representation case in abeyance until the charge was resolved. NAGE contended that the Activity had permitted the non-employee NFFE organizer access to work areas where employees represented by NAGE worked. NAGE and the Activity settled the ULP charge. Without admitting a violation of the Statute, the Activity agreed to post a notice indicating that it would not permit NFFE access to its premises.

After the settlement of the ULP charge, NFFE argued that the RD should schedule an election and that no hearing was required because the ULP charge had been settled. Instead, the RD scheduled a hearing to determine whether the petition should be dismissed because of the Activity's alleged improper conduct. At the hearing, NFFE claimed that a large number of signatures were lawfully obtained by employees who were assisting NFFE in its organizing efforts and were not obtained by its non-employee organizer, and that there was no showing that its organizer unlawfully obtained any signatures supporting the showing of interest petition. NAGE contended that a hearing was appropriate in the circumstances of this case.

2. The Regional Director's Decision

The RD found that the Activity had improperly granted NFFE access to its premises. The RD determined, based on employees' testimony, that the organizer was seen in work areas during duty hours soliciting signatures, but that no one actually saw the organizer obtain signatures during those times. The RD also determined that NFFE obtained approximately 75 percent of the signatures it collected during a time period that roughly corresponded to the organizer's activity.

Relying on *Social Security Administration and National Treasury Employees Union,* 52 FLRA 1159 (1997) (*Social Security*), *rev'd in part sub nom. National Treasury Employees Union* v. *FLRA,* 139 F.3d 214 (D.C. Cir. 1998), the RD found that the Activity improperly assisted NFFE, in violation of section 7116(a)(3) of the Statute, when it failed to determine whether NFFE had other

means of contacting the employees it was seeking to organize, before permitting the NFFE organizer access to its premises, including common areas. According to the RD, the Activity permitted the NFFE organizer improper access when the only limit it placed on him was to solicit signatures of employees in work areas on their non-duty time.

The RD concluded that, under the totality of the circumstances, the Activity had unlawfully assisted NFFE, because it controlled the premises, it failed to verify whether NFFE had alternative means of contact, and it permitted NFFE access to the premises. The RD concluded that, because the unlawful assistance interfered with the employees' rights under section 7102 of the Statute, any cards signed during the period of the Activity's unlawful assistance were tainted. Therefore, the RD dismissed the petition.

3. The Application for Review

As applicable here, NFFE contends that its non-employee organizer had a right to be on the Activity's premises because NFFE represents employees at that Activity and because NFFE did not do anything illegal in its solicitation of the showing of interest. NFFE contends that the signatures on its showing of interest petition were validly obtained by bargaining unit employees. NFFE asserts that its organizer merely gathered the petition sheets from the employees who had obtained the signatures. NFFE also asserts that there was no showing that any of the signatures was improperly obtained.

NAGE asserts that the facts support the conclusion that the Activity unlawfully assisted NFFE in obtaining signatures.

Addressing NFFE's contentions, the Authority concluded that NFFE did not establish that the RD committed prejudicial procedural error in holding a hearing or that the RD disregarded Authority Regulations, and denied NFFE's application in these and other respects. NFFE did not raise and the Authority did not reach the question of whether the RD properly applied the standards set forth in *Social Security*.

Finding that there is an absence of precedent, the Authority granted the application for review on the issue of what standard should apply to evaluate whether the type of improper conduct alleged in this case warrants dismissal of an otherwise valid election petition.

4. Question on Which Briefs Are Solicited

The Authority has directed the parties in the case to file briefs addressing the following question: What standard should be used to determine whether an activity's improper conduct should lead to the dismissal of an election petition on the basis that the accompanying showing of interest was tainted?

As this matter is likely to be of concern to agencies, labor organizations, and other interested persons, the Authority finds it appropriate to provide for the filing of amicus briefs addressing these issues.

(**Authority:** 5 U.S.C. 7105(a)(2) (B) and (I)).

For the authority.

Peter J. Constantine,

Director, Case Control Office, Federal Labor Relations Authority.

[FR Doc. 98–30868 Filed 11–17–98; 8:45 am]

BILLING CODE 6727–01–P

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 December 2. 1998.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, NW, Atlanta, Georgia 30303-2713:

1. Philip Bachman & Martha Bachman, both of Greeneville, Tennessee; to retain voting shares of Greene County Bancshares, Inc., Greeneville, Tennessee, and thereby indirectly retain voting shares of Greene County Bank, Greeneville, Tennessee.

2. James G. Tanner, III, Baton Rouge, Louisiana; to acquire voting shares of First National Bancshares of Eunice, Inc., Eunice, Louisiana, and thereby indirectly acquire voting shares of First Bank, Eunice, Louisiana.

Board of Governors of the Federal Reserve System, November 12, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–30774 Filed 11–17–98; 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 December 11, 1998.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Marlborough Bancorp, Marlborough, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of Marlborough Co-Operative Bank, Marlborough, Massachusetts.

B. Federal Reserve Bank of Philadelphia, (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. Commerce Bancorp, Inc., Cherry Hill, New Jersey; to acquire 100 percent of the voting shares of Prestige Financial

Corp., Flemington, New Jersey, and Prestige State Bank, Flemington, New Jersey.

C. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. First Union Corporation, Charlotte, North Carolina; to acquire additional nonvoting common stock of United Bancshares, Inc., Philadelphia, Pennsylvania, and thereby increase its investment in United Bank of Philadelphia.

D. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Peotone Bancorp, Inc., Peotone, Illinois, and its subsidiary, Southwest Bancorp, Inc., Worth, Illinois; to retain direct and indirect ownership of 7.98 percent of the voting shares of Bank of the San Juans, Durango, Colorado.

Board of Governors of the Federal Reserve System, November 12, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–30776 Filed 11–17–98; 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 December 2, 1998.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Fleet Financial Group, Inc., Boston, Massachusetts; to acquire Merrill Lynch Specialists, Inc., New York, New York, and thereby engage in dealing to a limited extent in all types of ineligible securities; and in providing securities brokerage services, pursuant to § 225.28(b)(7)(i) of Regulation Y, and incidental activities (including related securities credit activities and custodial services as well as acting as a ''conduit'' or ''intermediary'' in securities borrowing and lending) *See Fleet Financial Group, Inc.*, 84 Fed. Res. Bull. 227 (1998).

Board of Governors of the Federal Reserve System, November 12, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–30775 Filed 11–17–98; 8:45 am]

BILLING CODE 6210–01–F

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board

AGENCY: General Accounting Office.

ACTION: Notice of Meeting on December 3 and 4.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that the Federal Accounting Standards Advisory Board will hold a two-day meeting on Thursday, December 3 and Friday, December 4, 1998 in room 7C13, the Comptroller General's Briefing Room, of the General Accounting Office building, 441 G St., NW., Washington, DC.

The purposes of the meeting are to: (A) discuss the following issues: (1) Direct Loans and Loan Guarantees, (2) Social Insurance, and (3) Grant Accounting; and (B) hold a roundtable discussion on Accounting for National Property, Plant, and Equipment.

Any interested person may attend the meeting as an observer. Board discussions and reviews are open to the public.

FOR FURTHER INFORMATION, CONTACT: Wendy Comes, Executive Director, 441 G St., NW., Room 3B18, Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Pub. L. 92–463, sec. 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101–6.1015 (1990).

Dated: November 13, 1998.

Wendy M. Comes,

Executive Director.

[FR Doc. 98–30869 Filed 11–17–98; 8:45 am]

BILLING CODE 1610–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Financial Institution Data Match.

OMB No.: New.

Description: Section 372 of Pub. L. 104–193, requires State to establish procedures under which the State child support enforcement (IV–D) agency shall enter into agreements with financial institutions doing business in the State for the purpose of securing information leading to the enforcement of child support orders. States will develop and operate, a data match system in which each financial institution will provide quarterly the name, record address, social security number or taxpayer identification number, and other identifying information for each noncustodial parent who maintains an account at such institution and who owes past-due support. H.R. 3130, the ''Child Support Performance and Incentive Act of 1998'', section 506 amends section 452 and 466(a)(17)(A)(i) of the PRWORA of 1996 to permit the Secretary of Health and Human Services, through the Federal Parent Locator Service (FPLS), to aid State CSE agencies in coordinating data matches with multi-state financial institutions.

Respondents: State, Local or Tribal Government.

ANNUAL BURDEN ESTIMATES

Title	Number of respondents	Number of responses per respondent	Average burden per response	Burden
Financial on Data Match Tape	1,886	4	.5	3,772

Estimated Total Annual Burden Hours: 3,772.

Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Ms. Wendy Taylor.

Dated: November 12, 1998.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 98–30843 Filed 11–17–98; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0308]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Veterinary Adverse Drug Reaction, Lack of Effectiveness, Product Defect Report

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by December 18, 1998.

ADDRESSES: Submit written comments on the collection of information to Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, rm. 16B–26, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the PRA (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance.

Veterinary Adverse Drug Reaction, Lack of Effectiveness, Product Defect Report—21 CFR Part 510—(OMB Control Number 0910–0012)

Section 512(l) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(l)), 21 CFR 510.300, 510.301, and 510.302 require that applicants of approved new animal drug applications (NADA's), submit within 15-working days of receipt, complete records of reports of certain adverse drug reactions and unusual failure of new animal drugs. Other reporting requirements of adverse reactions to these drugs must be reported annually or semiannually in a specific format.

This continuous monitoring of approved new animal drugs, affords the primary means by which FDA obtains information regarding potential problems in safety and effectiveness of marketed animal drugs and potential manufacturing problems. Data already on file with FDA is not adequate because animal drug effects can change over time and less apparent effects may take years to manifest themselves. Reports are reviewed along with those previously submitted for a particular drug to determine if any change is needed in the product or labeling, such as package insert changes, dosage changes, additional warnings or contraindications, or product reformulation.

Adverse reaction reports are required to be submitted by the drug manufacturer on FDA Forms 1932 or 1932a (voluntary reporting form), following complaints from animal owners or veterinarians. Product defects and lack of effectiveness complaints are submitted to FDA by the drug manufacturer following their own detection of a problem or complaints from product users or their veterinarians also using FDA Forms 1932 and 1932a. Form FDA 2301 is used for the required transmittal of periodic reports and promotional material for new animal drugs. Respondents to this collection of information are applicants of approved NADA's.

In the **Federal Register** of June 10, 1998 (63 FR 31788), the agency requested comments on the proposed collection of information using the reporting forms cited previously. In response, FDA received one comment to the docket. The comment expressed favor in submitting adverse drug reactions, lack of effectiveness and product defect reports (data), electronically and suggested that Form FDA 1932 be formatted in industry standard format (Microsoft Word or Word Perfect), so that these data can be submitted electronically. The Center for Veterinary Medicine (CVM), is developing procedures for electronic submission of adverse drug reactions, lack of effectiveness and product defects. Currently, CVM is not able to accept electronic submission of this specific data until the electronic submission data standards are in place and the hardware/software technology is set up. In the meantime, the current regulations do allow for acceptance of computerized reports under 21 CFR 510.302(c)(1), in lieu of Form FDA 1932. The information contained in a computerized report and the sequence in which it is presented must be equivalent to that required in the hard copy of Form FDA 1932 and should include the valid OMB control number identified with Form FDA 1932, i.e., 0910–0012. The computerized report must be submitted in duplicate to CVM for approval prior to initial use. Further, once the forms are approved and disseminated for use, CVM will post electronic copies via the Worldwide

Web (WWW). Both the computerized report and forms available via the WWW must be submitted via paper.

FDA estimates the burden for this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Form No.	21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Form FDA 2301	510.302a	190	19.74	3,750	0.5	1,875
Form FDA 1932	510.302b	190	15.25	2,900	1.0	2,900
Form FDA 1932a (voluntary)	510.302b	100	1.0	100	1.0	100
Total Burden Hours						4,875

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Response per Recordkeeper	Hours per Recordkeeper	Total Hours
510.300(a) and 510.301(a)	190	15.26	3,750	10.35	38,812
510.300(b) and 510.301(b)	190	19.74	2,900	0.50	1,450
Total Burden Hours					40,262

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimate of the times required for record preparation and maintenance is based on agency communication with industry. Other information needed to calculate the total burden hours (i.e., adverse drug reaction, lack of effectiveness, and product defect reports) are derived from agency records and experience.

Dated: November 10, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–30752 Filed 11–17–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98P–0833]

Medical Devices; Exemptions From Premarket Notification; Class II Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing notice of a petition requesting exemption from the premarket notification requirements for a class II device, the audiometer. FDA is publishing this notice in order to obtain comments on this petition in accordance with procedures established by the Food and Drug Administration Modernization Act of 1997 (FDAMA).

DATES: Written comments by December 18, 1998.

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

FOR FURTHER INFORMATION CONTACT: Heather S. Rosecrans, Center for Devices and Radiological Health (HFZ–404), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1190.

SUPPLEMENTARY INFORMATION:

I. Statutory Background

Under section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c), FDA must classify devices into one of three regulatory classes: Class I, class II, or class III. FDA classification of a device is determined by the amount of regulation necessary to provide a reasonable assurance of safety and effectiveness. Under the Medical Device Amendments of 1976 (the 1976 amendments (Pub. L. 94–295)), as amended by the Safe Medical Devices Act of 1990 (Pub. L. 101–629)), devices are to be classified into class I (general controls) if there is information showing that the general controls of the act are sufficient to assure safety and effectiveness; into class II (special controls), if general controls, by themselves, are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls to provide such assurance; and into class III (premarket approval), if there is insufficient information to support classifying a device into class I or class II and the device is a life-sustaining or life-supporting device or is for a use which is of substantial importance in preventing impairment of human health, or presents a potential unreasonable risk of illness or injury.

Most generic types of devices that were on the market before the date of the 1976 amendments (May 28, 1976) (generally referred to as preamendment devices) have been classified by FDA under the procedures set forth in section 513(c) and (d) of the act through the issuance of classification regulations into one of these three regulatory classes. Devices introduced into interstate commerce for the first time on or after May 28, 1976, (generally referred to as postamendment devices) are classified through the premarket notification process under section 510(k) of the act (21 U.S.C. 360(k)). Section 510(k) of the act and the implementing regulations, 21 CFR part 807, require persons who intend to market a new device to submit a premarket notification report (510(k)) containing information that allows FDA to determine whether the new device is ''substantially equivalent'' within the meaning of section 513(i) of the act to a legally marketed device that does not require premarket approval.

On November 21, 1997, the President signed into law FDAMA (Pub. L. 105–115). Section 206 of FDAMA, in part, added a new section 510(m)(1) of the act which requires FDA, within 60 days after enactment of FDAMA, to publish in the **Federal Register** a list of each

type of class II device that does not require a report under section 510(k) of the act to provide reasonable assurance of safety and effectiveness. Section 510(m) of the act further provides that a 510(k) will no longer be required for these devices upon the date of publication of the list in the **Federal Register**. FDA published that list in the **Federal Register** of January 21, 1998 (63 FR 3142).

Section 510(m)(2) of the act provides that, 1 day after the date of publication of the list under section 510(m)(1), FDA may exempt a device on its own initiative or upon petition of an interested person, if FDA determines that a 510(k) is not necessary to provide reasonable assurance of the safety and effectiveness of the device. This section requires FDA to publish in the **Federal Register** a notice of intent to exempt a device, of the petition, and to provide a 30-day comment period. Within 120 days of publication of this document, FDA must publish in the **Federal Register** its final determination regarding the exemption of the device that was the subject of the notice. If FDA fails to respond to a petition under this section within 180 days of receiving it, the petition shall be deemed granted.

II. Criteria for Exemption

There are a number of factors FDA may consider to determine whether a 510(k) is necessary to provide reasonable assurance of the safety and effectiveness of a class II device. These factors are discussed in the guidance the agency issued on February 19, 1998, entitled ''Procedures for Class II Device Exemptions from Premarket Notification, Guidance for Industry and CDRH Staff.'' That guidance can be obtained through the World Wide Web on the CDRH home page at ''http://www.fda.gov/cdrh'' or by facsimile through CDRH Facts-on-Demand at 1–800–899–0381 or 301–827–0111. Specify ''159'' when prompted for the document shelf number.

III. Petition

FDA has received the following petition requesting an exemption from premarket notification for a class II device:

1. Hearing Industries Association, 21 CFR 874.1050, *Audiometer*.

IV. Comments

Interested persons may, on or before December 18, 1998, submit to the Dockets Management Branch (address above) written comments regarding this notice. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The petition and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 5, 1998.

D.B. Burlington,

Director, Center for Devices and Radiological Health.

[FR Doc. 98–30813 Filed 11–17–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Pilot Program for Streamlining Licensure of Blood and Blood Components; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

The Food and Drug Administration (FDA) is announcing a public workshop entitled ''Pilot Program for Streamlining Licensure of Blood and Blood Components.'' At the workshop, FDA will describe a pilot program that is under development and solicit input from blood and blood component manufacturers about streamlining the licensure review process.

Date and Time: The workshop will be held on Wednesday, December 9, 1998, 8:30 a.m. to 4:30 p.m.

Location: The workshop will be held at the Doubletree Hotel, 1750 Rockville Pike, Rockville, MD.

Contact: Joseph Wilczek, Center for Biologics Evaluation and Research (HFM–350), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6129, or Cody Bridges, Laurel Consulting Group, 3030 Clarendon Blvd., suite 240, Arlington, VA 22201, 703–351–7676, FAX 703–528–0716, or email ''cbridges@lcgnet.com''.

Registration: Send or fax registration information (including name, title, firm name, address, telephone, and fax number) to Cody Bridges by Friday, November 27, 1998. Registration at the site will be done on a space available basis on the day of the workshop beginning at 7:30 a.m. There is no registration fee for the workshop.

If you need special accommodations due to a disability, please contact Cody Bridges at least 7 days in advance.

Transcripts: Transcripts of the workshop may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 days after the workshop at a cost of 10 cents per page. The workshop transcript will also be available on CBER's website at ''http://www.fda.gov/cber/minutes/workshop-min.htm''.

Supplementary Information: FDA will sponsor a 1-day workshop to provide guidance to blood and blood component manufacturers on how to certify that they are in compliance with pilot monographs in lieu of traditional blood applications and supplements. Two pilot monographs to be discussed at the workshop apply to irradiation of blood and blood components and red blood cell immunization programs.

The objectives of the workshop are to describe FDA's pilot program and to solicit input from blood and blood component manufacturers about streamlining the licensure review process for certain blood products.

Dated: November 10, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–30751 Filed 11–17–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Blood Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Blood Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on December 10, 1998, 8 a.m. to 5:30 p.m. and December 11, 1998, 8 a.m. to 3 p.m.

Location: DoubleTree Hotel, 1750 Rockville Pike, Rockville, MD.

Contact Person: Linda A. Smallwood, Center for Biologics Evaluation and Research (HFM–350), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–3514, or FDA Advisory Committee Information Line, 1–800–741–8138

(301–443–0572 in the Washington, DC area), code 19516. Please call the Information Line for up-to-date information on this meeting.

Agenda: On December 10, 1998, the committee will: (1) Hear updates on the Hepatitis C Virus (HCV) Lookback Guidance, malaria deferral, and supply issues regarding plasma derivatives; (2) hear informational summaries on the Donor Suitability Workshop and the Pilot Program for Streamlining the Licensure of Blood and Blood Components Workshop; and (3) discuss the topic of Hepatitis B Anti-Core (Anti-HBc) Re-entry. In the afternoon, the committee will discuss and provide recommendations on end user notification initiatives for plasma derivatives. On December 11, 1998, the committee will discuss and provide recommendations on the topic of inadvertent contamination of plasma pools for fractionation and recombinant B-Domain-Deleted Antihemophilic factor, sponsor: Genetics Institute.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by November 30, 1998. Oral presentations from the public will be scheduled from approximately 9 a.m. to 9:30 a.m.; 11:30 a.m. to 12 m.; and 3 p.m. to 3:30 p.m. on December 10, 1998, and from approximately 9 a.m. to 9:30 a.m. and 12 m. to 12:30 p.m. on December 11, 1998. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before November 30, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 9, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–30749 Filed 11–17–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0966]

Transmissible Spongiform Encephalopathies Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Transmissible Spongiform Encephalopathies Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on December 18, 1998, 8 a.m. to 5:30 p.m. Written comments must be submitted on or before Friday, December 4, 1998.

Location: Holiday Inn, Versailles Ballrooms I and II, 8120 Wisconsin Ave., Bethesda, MD.

Addresses: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, e-mail ''JBUTLER1@BANGATE.FDA.GOV''. Comments should be identified with the docket number found in brackets in the heading of this document.

Contact Person: William Freas or Sheila D. Langford, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12392. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss possible deferral of blood or plasma donors based on geographical criteria linked to possible foodborne exposure to the agent of Bovine Spongiform Encephalopathy as a measure to reduce the potential for transmission of new variant Creutzfeldt-Jakob Disease (nvCJD) through blood and blood products. The potential effects of such deferrals on the supply of blood and blood products will be considered as part of the committee's deliberations.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the Dockets Management Branch (address above) on or before December 4, 1998, as described under the *Comments* caption. Oral presentations from the public will be scheduled between approximately 2:15 p.m. and 3:15 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before December 9, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Comments: Interested persons may, on or before December 4, 1998, submit to the Dockets Management Branch (address above) written comments regarding this subject. Received comments will be given to the committee for review and made available to the public. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 9, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–30748 Filed 11–17–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0813]

Guidance for Industry on Fast Track Drug Development Programs: Designation, Development, and Application Review; Availability; Collection of Information

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled ''Fast Track Drug Development Programs: Designation, Development,

and Application Review.'' This document provides guidance to industry on FDA's fast track program, which seeks to facilitate the development and expedite the review of new drugs that are intended to treat serious or life-threatening conditions and that have the potential to address unmet medical needs for such conditions. The guidance document is also intended to meet the requirement of section 112(b) of the Food and Drug Administration Modernization Act of 1997 (the Modernization Act).

DATES: Written comments on the guidance document may be submitted by February 16, 1999. General comments on the agency guidance documents are welcome at any time.

ADDRESSES: Copies of this guidance for industry are available on the Internet at ''http://www.fda.gov/cder/guidance/index.htm'' or ''http://www.fda.gov/cber/guidelines.htm''. Submit written requests for single copies to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or the Office of Communication, Training, and Manufacturers Assistance (HFM–540), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on this guidance document to the Dockets Management Branch (HFD–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. After the comment period, comments may be submitted to one of the centers at the address below.

FOR FURTHER INFORMATION CONTACT: Andrea C. Masciale, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041; or Bette A. Goldman, Center for Biologics Evaluation and Research (HFM–500), 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–5098.

SUPPLEMENTARY INFORMATION:

FDA is announcing the availability of a guidance for industry entitled ''Fast Track Drug Development Programs: Designation, Development, and Application Review.'' This guidance document is intended to meet the requirement of section 112(b) of the Modernization Act (Pub. L. 105–115), which amends the Federal Food, Drug, and Cosmetic Act (the act) by adding new section 506 (21 U.S.C. 356) and directs FDA to issue guidance describing its policies and procedures pertaining to fast track products.

FDA's fast track programs are designed to facilitate the development and expedite the review of new drugs that are intended to treat serious or life-threatening conditions and that demonstrate the potential to address unmet medical needs (fast track products). In this guidance document, FDA discusses the regulations, policies, and procedures of the Center for Biologics Evaluation and Research (CBER) and the Center for Drug Evaluation and Research (CDER) that are related to fast track products. This guidance document describes and clarifies the criteria and processes for designating a new drug as a product in a fast track drug development program and describes the diverse activities and programs that can facilitate the development and expedite the review of drugs that demonstrate the potential to advance the treatment of serious and life-threatening illnesses.

This guidance document is being issued as a Level 1 guidance consistent with FDA's Good Guidance Practices (62 FR 8961, February 27, 1997). It is being implemented without prior public comment because the guidance document is needed to implement the Modernization Act. The agency understands the need for this document to be available immediately in order for there to be clear guidance to industry, the public, and agency reviewers about this very significant program. However, FDA also understands that many interested persons may wish to provide comments and suggest revisions to this guidance. FDA is, therefore, emphasizing that it is soliciting comment from all interested persons and is providing a 90-day comment period and establishing a docket for receipt of comments. The agency will give full consideration to all comments received and make any appropriate changes to the guidance in a timely manner.

This guidance document represents the agency's current thinking on its policies and procedures relating to products in fast track drug development programs. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

This guidance document contains collections of information that require clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction of 1995. In a notice published in the **Federal Register** of October 21, 1998 (63 FR 56195), FDA announced that this collection of information has been submitted to OMB for emergency processing. The notice also solicited comments on the collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless a currently valid OMB control number has been displayed.

Interested persons may, at any time, submit to the Dockets Management Branch (address above) written comments on the guidance document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 11, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–30811 Filed 11–17–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0969]

''Guidance for Industry: Evaluation of the Human Health Impact of the Microbial Effects of Antimicrobial New Animal Drugs Intended for Use in Food-Producing Animals''; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled ''Guidance for Industry: Evaluation of the Human Health Impact of the Microbial Effects of Antimicrobial New Animal Drugs Intended for Use in Food-Producing Animals.'' This draft guidance announces that FDA now believes it is necessary to evaluate the human health impact of the microbial effects associated with all uses of all classes of antimicrobial new animal drugs intended for use in food-producing animals when approving such drugs.

DATES: Written comments should be submitted by December 18, 1998.

ADDRESSES: Submit written requests for single copies of this draft guidance to

the Communications Staff (HFV–12), Center for Veterinary Medicine (CVM), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist the office in processing your requests.

Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville MD 20852. Comments should be identified with the full title of the draft guidance and the docket number found in brackets in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section of this document for electronic access to the draft guidance.

FOR FURTHER INFORMATION CONTACT: Margaret A. Miller, Office of New Animal Drug Evaluation (HFV–100), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1620.

SUPPLEMENTARY INFORMATION:

I. Background

FDA's ''Good Guidance Practices'' (GGP's) require the agency to publish, as Level 1 guidance, a change in interpretation or policy that is of more than a minor nature (62 FR 8961, February 27, 1997). Therefore, FDA is announcing the availability of a draft guidance entitled ''Guidance for Industry: Evaluation of the Human Health Impact of the Microbial Effects of Antimicrobial New Animal Drugs Intended for Use in Food-Producing Animals.'' The draft guidance describes the agency's current thinking on this subject.

Since the 1970's, FDA has evaluated the effects of an antimicrobial drug product on enteric bacteria of food-producing animals in determining whether certain feed uses of an antimicrobial new animal drug are safe under section 512 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b). Under section 512 of the act, an application for approval of a new animal drug must ''include adequate tests by all methods reasonably applicable to show whether or not such drug is safe for use * * *'' (21 U.S.C. 360b(d)(1)(A)) . Section 201(u) of the act (21 U.S.C. 321(u)) states that when ''safe' is used in section 512, the term ''has reference to the health of man or animal''. In addition, section 512(d)(2) of the act states that, when determining the safety of a new animal drug, the agency ''shall consider, among other relevant factors, (A) the probable consumption of such drug and of any substance formed in or on food because of the use of such drug, [and] (B) the cumulative effect on man * * * of such drug, taking into account any chemically or pharmacologically related substance * * *'' (21 U.S.C. 360b(d)(2)).

In the past, FDA evaluated the human health impact of the microbial effects of only certain uses of antimicrobial new animal drugs in animal feeds (Ref. 1). However, based on scientific evidence referenced in the draft guidance, the agency now believes that sponsors of all antimicrobial new animal drugs intended for use in food-producing animals should provide information that will allow the agency to evaluate the human health impact of the intended use.

To assess the human health impact, the following two separate, but related aspects, should be evaluated: (1) The quantity of resistant enteric bacteria formed in the animal's intestinal tract following exposure to the antimicrobial new animal drug (resistance) and (2) changes in the number of enteric bacteria in the animal's intestinal tract that can cause human illness (pathogen load). In some cases, a preapproval study or studies may be needed. FDA recognizes that there is no standardized protocol established for determining the human health impact of the microbial effect(s) of an antimicrobial product, and that one standard study is likely to be inappropriate for all intended uses.

This draft guidance represents the agency's current thinking only about its authority under the act to consider the human health impact of the microbial effects associated with all uses of all classes of antimicrobial new animal drugs intended for use in food-producing animals. It does not provide technical guidance regarding the design of studies or types of information required to satisfy the requirements to demonstrate safety. The agency intends to solicit public comments on this issue at a meeting of the Veterinary Medicine Advisory Committee in Rockville, MD, on December 10 and 11, 1998, and possibly later at other public meetings that involve experts in public health.

The draft document does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statute, regulations, or both.

References that are cited in the draft guidance have been placed on display in the Dockets Management Branch (address above), and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

II. Comment

Interested persons may, on or before December 18, 1998, submit to the Dockets Management Branch (address above) written comments regarding this draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the draft guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the draft guidance using the World Wide Web (WWW). For WWW access, connect to CVM at ''http://www.fda.gov/cvm''.

IV. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. U.S. Food and Drug Administration, ''Human Health Safety Criteria,'' Center for Veterinary Medicine, Guideline 18.

2. Food and Drug Administration, ''Penicillin Use in Animal Feeds,'' 42 FR 43769–43793, August 30, 1977.

3. Endtz, H., G. Ruijs, et. al., ''Quinolone Resistance in *Campylobacter* Isolated From Man and Poultry Following the Introduction of Fluoroquinolones in Veterinary Medicine,'' *Journal of Antimicrobial Chemotherapy*, 27, 199–208, 1991.

4. Aserkoff, B., and J. V. Bennett, ''Effect of Antibiotic Therapy in Acute Salmonellosis on the Fecal Excretion of *Salmonella*,''*New England Journal of Medicine*, 281, 636–640, 1969.

5. Seyfarth, A. M., H. C. Wegener, and N. Frimodt-Moller, ''Antimicrobial Resistance in *Salmonella enterica* subsp. *enterica* serovar *typhimurium* from Humans and Production Animals,'' *Journal of Antimicrobial Chemotherapy*, 40, 67–75, 1997.

6. D'Aoust, J-Y., *Salmonella Species*, In: Food Microbiology Fundamentals and Frontiers, edited by Doyle, M. P., L. R. Beuchat, and T. J. Montville, ASM Press, Washington, DC, pp. 129–158, 1997.

7. Nachamkin, I., *Campylobacter jejuni*, In: Food Microbiology Fundamentals and Frontiers, edited by Doyle, M. P., L. R. Beuchat, T. J. Montville, ASM Press, Washington, DC, pp. 159–170, 1997.

8. Bates, J., J. Z. Jordens, and D. T. Griffiths, ''Farm Animals as a Putative Reservoir for Vancomycin-resistant Enterococcal Infection in Man,'' *Journal of Antimicrobial Chemotherapy*, 34, 507–514, 1994.

9. Department of Agriculture, Food Safety Inspection Service, ''Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) Systems; Final Rule,'' 61 FR 38805–38989, July 25, 1996.

10. Department of Agriculture, ''Nationwide Beef Microbiological Baseline: Steers and Heifers,'' October 1992–September 1993; ''Nationwide Broiler Chicken Microbiological Baseline,'' July 1994–June 1995; and ''Nationwide Pork Microbiological Baseline: Market Hogs,'' April 1995–March 1996: Food Safety Inspection Service, Data Collection Programs, Microbiology Division.

11. U.S. Food and Drug Administration, ''Microbiological Testing of Antimicrobial Drug Residues in Food,'' Center for Veterinary Medicine, Guideline 52.

Dated: November 10, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–30747 Filed 11–17–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Services

North American Wetlands Conservation Council; Membership

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of policy and request for comments.

SUMMARY: The purpose of this action is to notify the public regarding an existing term rotation policy for membership of charitable and non-profit organizations of the North American Wetlands Conservation Council. This policy will assure broad representation from such organizations in keeping with the purposes of the North American Wetlands Conservation Act.

DATES: Comments on this policy must be received by January 19, 1999.

ADDRESSES: Comments regarding this notice should be addressed to: Director (FSW/NAWWO), U.S. Fish and Wildlife Service, 110 ARLSQ, 1849 C ST., NW, Washington, D.C. 20240. Comments received on this notice will be available for public inspection during normal business hours in Room 110, Arlington Square Building, 4401 No. Fairfax Drive, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Mr. David A. Smith, Executive Director, or Mr. Douglas A. Ryan, Wildlife Biologist, North American Waterfowl and Wetlands Office, 703/358–1784; Facsimile 703/358–2282.

SUPPLEMENTARY INFORMATION:

Background

The North American Wetlands Conservation Council (Council) was established by the North American Wetlands Conservation Act (Act), 16 U.S.C. 4401–4412, Public Law 101–233, and is comprised of nine members. The Council reviews and recommends wetland conservation projects to the Migratory Bird Conservation Commission, following criteria given in the Act. Two permanent Council seats are occupied by the Director of the U.S. Fish and Wildlife Service and the Secretary of the Board of the National Fish and Wildlife Foundation. Four of the seven non-permanent seats are Directors of State Fish and Wildlife agencies representing the four migratory bird flyways. Individuals representing non-governmental organizations (NGOs) that are actively participating in carrying out wetland conservation projects under the Act, the Plan, or the Tripartite Agreement (among the U.S., Canada, and Mexico) occupy the other three non-permanent seats. Appointment of the non-permanent members is at the discretion of the Secretary of the Interior (Secretary). The term for non-permanent seats is three years. In addition, the Secretary appoints an alternate member and may appoint ex-officio non-voting members to the Council.

What is the Policy?

In the Spring of 1998, the Secretary adopted a term rotation policy of two consecutive terms or six consecutive years for organizations occupying the three NGO Council seats. An NGO that has completed two terms would be eligible for full reappointment to the next vacancy among the three NGO seats and also eligible for appointment to either the alternate seat or an ex-officio seat.

Why Was the Policy Adopted?

The Secretary adopted a two-term rotation policy for NGO members on the Council for the following reasons:

- The purpose of the Act is to encourage partnership among public agencies and other interests for the conservation of wetlands and migratory birds in North America. This policy is intended to build broad support for the Act by opening the door to a variety of organizations to take full advantage of opportunities available through Council participation.
- All organizations that meet the requirements for NGOs stated above in the Act should be given full and fair consideration for Council membership.
- Given the detailed approval process, and frequent consideration of complex issues associated with Council participation, appointing any NGO representative to serve two consecutive terms is appropriate, as it would allow that representative to become familiar with Council operations and to reach their full potential for contributing to the work of the Council.
- While the Act requires that NGOs on the Council be active participants in wetlands conservation, it does not restrict Council participation to only those NGOs that are most active (i.e., in terms of matching dollars and services, and grants received).
- Each NGO can only represent its own organization, unlike State agencies on the Council that have the responsibility and capability to represent the flyways, of which they are a part.
- Regardless of appointment status, those NGOs that have contributed substantially to Act-funded projects are encouraged to continue as instrumental participants in project development and implementation.

In summary, the purpose of this action is to notify the public and invite any comments regarding the Secretary's existing term rotation policy for charitable and non-profit organizations on the North American Wetlands Conservation Council, to fully implement the purpose of the North American Wetlands Conservation Act.

NEPA Consideration

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(C)), and the Council on Environmental Quality's regulation for implementing NEPA (40 CFR parts 1500–1508), the Service has determined that the policy published in this document is categorically excluded from the NEPA process as provided by 516 DM 2, Appendix 1.10 of the Departmental Manual.

Authorship: The primary author of this notice is Mr. Douglas A. Ryan, U.S. Fish and Wildlife Service North American Waterfowl and Wetlands Office, Arlington, Virginia.

Dated: November 6, 1998.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 98–30766 Filed 11–17–98; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment and Finding of No Significant Impact, and Receipt of an Application for an Incidental Take Permit for a Proposed Residential Development Called Ocean Reef Club, Plats 18 and 19, Monroe County, Florida

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

Driscoll Properties, Inc. and Driscoll Foundation, Inc. previously obtained an incidental take permit (ITP) pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (U.S.C. 1531 et seq.), as amended (Act). The previous ITP authorized the take of the endangered Key Largo woodrat (*Neotoma floridana smalli*), Key Largo cotton mouse (*Peromyscus gossypinus allapaticola*), and Schaus swallowtail butterfly (*Heraclides aristodemus ponceanus*) in association with residential construction on 89 lots in Plats 18 and 19 of Ocean Reef Club, north Key Largo, Monroe County, Florida. However, the original ITP expired on May 31, 1995, and 70 of the 89 lots covered under that ITP were not altered. Accordingly, a new ITP is required to ensure compliance with the prohibitions of section 9 of the Act while residential construction occurs on the remaining undeveloped lots that still contain suitable habitat for the species listed above. Review of the undeveloped lots by the Fish and Wildlife Service (Service) indicated that 49 of the 70 lots still contain suitable habitat for the Key Largo woodrat, Key Largo cotton mouse, and Schaus swallowtail butterfly.

Forty-one of the 49 lots for which take of federally listed species will occur during construction related activities have been sold by Driscoll Properties, Inc. and Driscoll Foundation, Inc. to third parties. The Ocean Reef Community Association represents all third party lot owners.

Driscoll Properties, Inc., Driscoll Foundation, Inc., and Ocean Reef Community Association (Applicants), seek an ITP from the Service. The ITP would authorize for a period of 10 years the incidental take of the endangered Key Largo woodrat, Key Largo cotton mouse and Schaus swallowtail butterfly. The proposed residential development is called Ocean Reef Club, Plats 18 and 19 and will consist of 49 homes located on about 20 acres in section 24, Township 59 South, Range 40 East, and section 19, Township 59 South, Range 41 East, Monroe County, Florida (Project). Clearing of the 49 residential lots will destroy suitable habitat for the three species identified above. A more detailed description of the mitigation and minimization measures to address the effects of the Project to the protected species are outlined in the Applicant's Habitat Conservation Plan (HCP), the Service's Environmental Assessment (EA), and in the **SUPPLEMENTARY INFORMATION** section below.

The Service also announces the availability of an EA and HCP for the incidental take application. Copies of the EA and/or HCP may be obtained by making a request to the Regional Office (see **ADDRESSES**). Requests must be in writing to be processed. This notice also advises the public that the Service has made a preliminary determination that issuing the ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended (NEPA). The Finding of No Significant Impact (FONSI) is based on information contained in the EA and HCP. The final determination will be made no sooner than 30 days from the date of this notice. This notice is provided pursuant to Section 10 of the Act and NEPA regulations (40 CFR 1506.6).

The Service specifically requests information, views, opinions from the public via this Notice on the Federal action, including the identification of any other aspects of the human environment not already identified in the Service's EA. Further, the Service is specifically soliciting information regarding the adequacy of the HCP as measured against the Service's ITP issuance criteria found in 50 CFR Parts 13 and 17.

DATES: Written comments on the ITP application, EA, and HCP should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before December 18, 1998.

ADDRESSES: Persons wishing to review the application, HCP, and EA may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or Field Supervisor, Fish and Wildlife Service, Post Office Box 2676, Vero Beach, Florida 32961–2676. Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Requests for the documentation must be in writing to be processed. Comments must be submitted in writing to be adequately considered in the Service's decision-making process. Please reference permit number TE004859–0 in such comments, or in requests of the documents discussed herein.

FOR FURTHER INFORMATION CONTACT: Mr. Rick G. Gooch, Regional HCP Coordinator, (see **ADDRESSES** above), telephone: 404/679–7110, facsimile: 404/679–7081; or Mr. Mike Jennings, Fish and Wildlife Biologist, South Florida Ecosystem Office, Vero Beach, Florida (see **ADDRESSES** above), telephone: 561/562–3909.

SUPPLEMENTARY INFORMATION: The Key Largo woodrat and Key Largo cotton mouse are subspecies that occur only on Northern Key Largo. They have been extirpated from much of the Key Largo due to clearing of tropical hardwood hammocks for urban development. The Schaus swallowtail butterfly is restricted to extreme Southeast Florida and the upper and middle keys. This butterfly is also dependant on tropical hardwood hammock vegetation and has been adversely affected by urban growth in South Florida and the Florida Keys.

The Key Largo woodrat represents the southern most subspecies of the eastern woodrat (*Neotoma floridana*). It is restricted to the tropical hardwood hammocks of Key Largo. Like the cotton mouse, the woodrat has experienced substantial declines in their range due principally to urban development on Key Largo. Extant woodrats are now found only north of the intersection of U.S. 1 and C.R. 905. More than 41 percent of the historical habitat of this species has been lost to urbanization. Like the cotton mouse, woodrats are vulnerable to habitat loss and fragmentation and the indirect affects of urban encroachment (e.g., competition with black rats and increased predation from domestic animals).

Key Largo woodrats, like other members of the genus *Neotoma*, are known for their construction of large stick nests. Nests are typically built at the base of a tree and are composed of sticks, twigs, and other organic matter. Woodrats are territorial in the vicinity of their nest sites, but probably interact socially under some form of hierarchy with other woodrats. Woodrats appear to attain their greatest densities in mature hardwood hammocks, with lower densities found adjacent to urban settings.

The Key Largo cotton mouse is larger and more reddish in appearance than other subspecies in Florida. It is found only on Key Largo in relict tropical hardwood hammock vegetation. Historically the Key Largo cotton mouse was found throughout Key Largo where tropical hardwood hammocks existed but development and the subsequent loss of tropical hardwood vegetation resulted in a range reduction of this species. It is now found only in North Key Largo, north of the intersection of U.S. 1 and C.R. 905.

Little is known about the Key Largo cotton mouse and much is inferred from other cotton mice populations in Florida. In general, this subspecies is considered a nocturnal tropical hardwood hammock dweller that constructs nests in logs, tree hollows and rock crevices. Key Largo cotton mice may breed at any time of the year and produce two to three litters per year. These cotton mice are omnivorous and are believed to rely heavily on the large fruit and berry crop produced by tropical hardwood hammock vegetation.

Key Largo cotton mice are threatened by habitat loss and fragmentation as well as the indirect effects of urbanization. As of 1991, 41.2 percent of all tropical hardwood hammock vegetation had been cleared to meet human needs. Residential and commercial development also lead to increases in feral or free-roaming domestic animals and provide habitat for black rats. Domestic animals and black rats compete with or prey upon Key Largo cotton mice.

The Schaus swallowtail butterfly is a large dark brown and yellow butterfly that inhabits tropical hardwood hammocks of extreme South Florida. Historically, the Schaus swallowtail butterfly was distributed from South Miami to Lower Matecumbe Key. More recently, Schaus swallowtail butterflies were known only from undisturbed tropical hardwood hammocks from Elliott Key in Biscayne National Park south to Northern Key Largo. Reintroductions have recently occurred from Southern Dade County to Lower Matecumbe Key. This species was federally listed due to habitat destruction, mortality associated with application of pesticides for mosquito control, and over-harvesting by collectors. These factors acting in combination with high natural mortality associated with predation of caterpillars resulted in substantial declines in the number and range of this species.

The Schaus swallowtail butterfly prefers dense, mature tropical hardwood hammocks where direct sunlight is filtered or dappled. Adults feed on a number of nectar producing plant species endemic to hardwood hammocks, but have most often been observed feeding on guava (*Psidium guajava*), cheese shrub (*Morinda royoc*), and wild coffee (*Psychotria undata*). Adults rarely feed in open areas exposed to direct sunlight. The eggs of this species are typically laid on wild lime (*Zanthoxylem fagara*) and torchwood (*Amyris elemifera*) with caterpillars subsequently eating young, tender shoots of these species.

The Applicant's HCP and the Service's EA describes the following minimization and mitigation strategy to be employed by the Applicant to offset the impacts of the Project to the Key Largo woodrat, Key Largo cotton mouse, and Schaus swallowtail butterfly. Many of the mitigation measures identified below were implemented and completed as part of the ITP previously issued to Driscoll Properties, Inc. and Driscoll Foundation, Inc.:

- Protect and convey through conservation easement 5.94 acres of tropical hardwood hammock to the Florida Game and Fresh Water Fish Commission (completed).
- Construct 10 rock piles within conservation easement to provide nesting habitat for woodrats (completed).
- Revegetate scarified portions of conservation easement (completed).
- Revegetate five acres of scarified land with tropical hardwood hammock vegetation (complete).
- Monitor revegetation success (ongoing).
- Sixty to 80 percent of each lot to not be disturbed (ongoing, pursuant to Monroe County ordinance).
- Hand clearing of vegetation from the footprint of construction activities and allowing a minimum of 14 days before mechanical removal of felled vegetation. This measure minimizes the potential for directly killing Key Largo woodrats or Key Largo cotton mice (ongoing).
- Deed restrictions to prohibit free ranging domestic animals (completed)

The EA considers the environmental consequences of two alternatives. A third alternative, acquisition of lots, was considered but not fully evaluated in the EA because ranking of lands suitable for acquisition under the State of Florida Conservation and Recreation Lands (CARL) acquisition program did not identify these lots (either singularly or in combination) as a priority properties. Their small size, proximity to adjacent residential areas, high cost, and low biological value likely preempted consideration for acquisition.

The no action alternative may result in the loss of habitat and exposure of the Applicants under Section 9 of the Act if lots were cleared. If the ITP were not issued and the Applicants did not remove vegetation from any of the lots, habitat for the three federally listed species would remain intact and probably provide suitable habitat in the future. The proposed action alternative is issuance of the ITP according to the HCP as submitted and described above. Under the proposed alternative, about 19.6 acres of suitable habitat will be destroyed during residential development. The effect of the minimization and mitigation strategy will be that about 11 acres of habitat will be protected or enhanced and another 11 to 15 acres will be preserved onsite through vegetation set asides.

As stated above, the Service has made a preliminary determination that the issuance of the ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of NEPA. This preliminary information may be revised due to public comment received in response to this notice and is based on information contained in the EA and HCP. An appropriate excerpt from the FONSI reflecting the Service's finding on the application is provided below:

Based on the analysis conducted by the Service, it has been determined that:

- Issuance of the ITP will not appreciably reduce the likelihood of survival and recovery of the affected species in the wild.
- The HCP contains provisions which sufficiently minimize and/or mitigate the impacts of issuing the ITP.
- Issuance of the ITP would not have significant effects on the human environment in the project area.
- The proposed take is incidental to an otherwise lawful activity.
- Adequate funding will be provided to implement the measures proposed in the submitted HCP and authorizing ITP.
- Other than impacts to endangered and threatened species as outlined in the documentation of this decision, the indirect impacts which may result from issuance of the ITP are addressed by other regulations and statutes under the jurisdiction of other government entities. The validity of the Service's ITP is contingent upon the Applicant's compliance with the terms of the permit and all other laws and regulations under the control of State, local, and other Federal governmental entities.

The Service will also evaluate whether the issuance of a Section 10(a)(1)(B) ITP complies with Section 7 of the Act by conducting an intra-

Service Section 7 consultation. The results of the biological opinion, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP.

Dated: November 10, 1998.

H. Dale Hall,

Deputy Regional Director.

[FR Doc. 98–30787 Filed 11–17–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–020–1320–00]

Notice of Intent to Plan

AGENCY: Bureau of Land Management (BLM), Montana, Miles City Field Office, Interior.

ACTION: Notice of Intent to Plan, Spring Creek Coal Company's Coal Lease Application MTM 88405 for Certain Coal Resources in the Powder River Coal Region, Big Horn County, Montana.

SUMMARY: On June 26, 1998, Spring Creek Coal Company (SCCC) filed an application with the Bureau of Land Management (BLM) to lease a 150 acre tract containing about 19.8 million tons of Federally owned coal reserves near the Spring Creek Coal Mine. On June 3, 1998, Spring Creek Coal Company filed an application with the State of Montana Department of Natural Resources and Conservation (DNRC) to lease a 479 acre coal tract. The tract, which would consist of three separate state leases, contains an estimated 62.1 million tons of state owned coal.

As Co-Lead Agencies, the BLM and Montana DNRC will prepare one Environmental Assessment to evaluate the impacts of coal mining which would result from leasing the tracts of Federal and State coal.

The lands included in the coal lease applications are located in Big Horn County, Montana and are described as follows:

Federal Lease Tract MTM 88405

T. 8 S., R. 39 E., P.M.M.
Sec. 13: SW¼SW¼SW¼, SW¼SE¼SW¼SW¼;
Sec. 14: S½SW¼NE¼SE¼, S½NE¼SE¼SE¼, NW¼NE¼SE¼SE¼, S½SE¼SE¼, NW¼SE¼SE¼;
Sec. 23: NE¼NE¼, SE¼SW¼NW¼NE¼, N½SW¼NW¼NE¼, E½NW¼NE¼;
Sec. 24: NW¼SE¼NW¼NW¼, N½SW¼NW¼NW¼, N½NW¼NW¼.

150 acres, more or less

State of Montana Lease Tracts

Lease C–1099–XX

T. 8 S., R., 39 E., P.M.M.
Sec. 14: S½S½NW¼, SW¼, W½SE¼.

Lease C–1100–XX

T. 8 S., R., 39 E., P.M.M
Sec. 15: NE¼SW¼SE¼, SE¼SE¼, N½SE¼, S½SE¼NE¼.

Lease C–1101–XX

T. 8 S., R., 39 E., P.M.M
Sec. 23: N½N½NW¼, NW¼NW¼NE¼.

479.16 acres, more or less

This action could amend the Powder River Resource Management Plan (1984) if certain Federal coal leasing unsuitability designations on or adjacent to the Federal coal tracts are changed. The analysis will be based on existing statutory requirements and will meet the requirements of the Federal Land Policy and Management Act (FLPMA) of 1976 and the Surface Mining Control and Reclamation Act (SMCRA) of 1977.

DATES: Public scoping on the proposal will begin with the date of publication of this Notice and will end 30 days after publication. Any issues, concerns or alternatives should be submitted to BLM December 18, 1998, so they can be addressed in the environmental analysis.

To facilitate the planning effort, two public scoping meetings have been scheduled as follows:

1. December 3, 2 pm, Lame Deer, Montana, Dull Knife Memorial College Auditorium;
2. December 3, 7 pm, Hardin, Montana, Becker Hotel Conference Room, 200 North Center.
3. December 7, 1 pm, Sheridan, Wyoming, Fulmer Public Library, 335 W. Alger.

ADDRESSES: All submissions should be sent to the following address: Bureau of Land Management, Miles City Field Office, Dan Benoit, Team Leader, 111 Garryowen Road, Miles City, Montana 59301.

FOR FURTHER INFORMATION CONTACT: Dan Benoit, Team Leader, Bureau of Land Management, Miles City Field Office, (406) 232–7001, ext 206.

SUPPLEMENTARY INFORMATION: Spring Creek Coal Company is the lessee and operator of Federal Coal Lease MTM 069782 at the Spring Creek Mine. The proposed lease area adjoins the current lease to the north.

Due to its coal reserve base and configuration, the Spring Creek lease application area is a logical step to extend the life of the Spring Creek Mine. With the current permitted reserves of coal, the current level of production at the Spring Creek Mine can be maintained for approximately 19 more years.

The areas applied for would be mined as an extension of the Spring Creek Mine and would utilize the same methods as those currently being used. The leases being applied for would extend the life of the mine for an additional 8 years beyond what is currently permitted, and enable recovery of coal as a logical extension of the current pits at the Spring Creek Mine.

Dated: November 9, 1998.

Timothy M. Murphy,

Miles City Field Manager.

[FR Doc. 98–30860 Filed 11–17–98; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–956–98–1420–00]

Colorado: Filing of Plats of Survey

November 5, 1998.

The plats of survey of the following described land will be officially filed in the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado, 80215–7093, effective 10:00 am, November 5, 1998. All inquiries should be sent to this address.

Township	Range	Meridian	Group No.	Approval date
T. 13 S.	R. 85 W.	6	1216	October 1, 1998.
T. 04 N.	R. 84 W.	6	1134	October 13, 1998.
T. 05 N.	R. 92 W.	6	1188	October 23, 1998.
T. 03 N.	R. 75 W.	6	1208	October 23, 1998.
T. 01 S.	R. 78 W.	6	1198	October 26, 1998.
T. 45 N.	R. 03 W.	NM	Supplemental Plat	October 26, 1998.
T. 13 S.	R. 85 W.	6	1216	November 3, 1998.
T. 01 S.	R. 01 W.	UTE	1144	November 4, 1998.

Donald W. Ashbaugh,

Acting Chief Cadastral Surveyor for Colorado.

[FR Doc. 98–30861 Filed 11–17–98; 8:45 am]

BILLING CODE 4310–JB–P

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 University of Nebraska State Museum, University of Nebraska-Lincoln, Lincoln, NE

AGENCY: National Park Service, Interior.

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 University of Nebraska State Museum, University of Nebraska-Lincoln, Lincoln, NE.

A detail assessment of the human remains was made by University of Nebraska professional staff in consultation with representatives of the Omaha Tribe of Nebraska.

In 1939, human remains representing an unknown number of individuals were removed from a historic Omaha cemetery (25 DK 2a) in Dakota County, NE during excavations under the direction of Stanley Bartos, Jr. No known individuals were identified. During NAGPRA inventory activity in 1994–1995, five individuals from this site were found in the University's collections.

In 1940, human remains representing an unknown number of individuals were removed from a historic Omaha cemetery (25 DK 10) in Dakota County, NE during excavations under the direction of John Champe. No known individuals were identified. During NAGPRA inventory activity in 1994–1995, three individuals from this site were found in the University's collections.

Prior to November 16, 1990, the University of Nebraska, Lincoln and the Omaha Tribe agreed to repatriate all individuals and associated funerary objects then identified from these two sites. Consultations with representatives of the Omaha Tribe during this time identified these two sites as historic Omaha cemeteries.

Based on the above mentioned information, officials of the University of Nebraska have determined that, pursuant to 43 CFR 10.2(d)(1), the human remains listed above represent the physical remains of eight individuals of Native American ancestry. Officials of the University of Nebraska have not determined the cultural affiliation of these Native American human remains because, pursuant to 25 U.S.C. 3009(2), these human remains are part of an action on a repatriation request pending on the date of enactment of NAPGRA and will therefore be repatriated to the Omaha Tribe.

In 1941, human remains representing two individuals were recovered from the Maxwell site (25 DK 13) near Homer, NE during excavations conducted by S. Bartos Jr. under the direction of John L. Champe and Paul Cooper. No known individuals were identified. No associated funerary objects are present.

Based on the degree of preservation and skeletal morphology, these individuals have been determined to be Native American from the historic period. Based on the apparent age of the remains and the location of this burial, this individual has been determined to be affiliated with the Omaha Tribe of Nebraska.

During the 1910s, human remains representing one individual were recovered during construction activity at 13th and I Street in Omaha, NE by Robert Gilder who donated the human remains to the University of Nebraska State Museum. No known individual was identified. No associated funerary objects are present.

Based on the condition of the remains and copper staining on a hand phalanx, this individual has been determined to be Native American. A historic Omaha village site is located several miles to the south of this burial site. Based on the apparent age of the remains and the location of this burial, this individual has been determined to be affiliated with the Omaha Tribe of Nebraska.

In 1940, human remains representing one individual were recovered from Emil Entenmann's cornfield in Stanton County, NE, and acquired by the Museum. No known individual was identified. No associated funerary objects are present.

Because glass beads are reported to have been associated with the burial, these human remains have been determined to be Native American from the historic period. During the historic period, the Omaha Tribe occupied the immediate vicinity of this burial. Consultation with representatives of the Omaha Tribe confirms this information that this burial is attributable to the Omaha Tribe.

Based on the above mentioned information, officials of the University of Nebraska-Lincoln have determined that, pursuant to 43 CFR 10.2(d)(1), the human remains listed above represent that physical remains of four individuals of Native American ancestry. Officials of the University of Nebraska-Lincoln 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 the Omaha Tribe of Nebraska.

This notice has been sent to officials of the Omaha 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 Dr. Priscilla Grew, Vice Chancellor for Research, University of Nebraska-Lincoln, 302 Canfield Administration Building, Lincoln, NE 68588–0433; telephone (402) 472–3123, before December 18, 1998. Repatriation of the human remains to the Omaha Tribe of Nebraska may begin after that date if no additional claimants come forward.

The National Park Service is not responsible for the determinations within this notice.

Dated: November 10, 1998.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 98–30683 Filed 11–17–98; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–385 (Preliminary) and 731–TA–809–810 (Preliminary)]

Live Cattle From Canada and Mexico

AGENCY: United States International Trade Commission.

ACTION: Notice of withdrawal of petitions in countervailing duty and antidumping investigations.

SUMMARY: On November 10, the Department of Commerce and the Commission received a letter from petitioner in the subject investigations (Ranchers-Cattlemen Action Legal Foundation (''R–CALF''), Columbus, MT) withdrawing its petitions. Commerce has not initiated its investigations as provided for in sections 702(c) and 732(c) of the Tariff Act of 1930 (19 U.S.C. 1671a(c) and 1673a(c)). Accordingly, the Commission gives notice that its countervailing duty and antidumping investigations

concerning live cattle from Canada and Mexico (investigations Nos. 701–TA–385 (Preliminary) and 731–TA–809–810 (Preliminary)) are discontinued.

EFFECTIVE DATE: November 10, 1998.

FOR FURTHER INFORMATION CONTACT: Elizabeth Haines (202–205–3200), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

Issued: November 13, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–30851 Filed 11–17–98; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation 332–400]

Conditions of Competition in U.S. Forest Products Trade

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

EFFECTIVE DATE: November 9, 1998.

SUMMARY: Following receipt of a request on October 19, 1998, from the Committee on Finance, U.S. Senate, the Commission instituted investigation No. 332–400, *Conditions of Competition in U.S. Forest Products Trade*, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

FOR FURTHER INFORMATION: Industry-specific information may be obtained from William Hoffmeier (202–205–3321), Vincent Honnold (202–205–3314), or William Lipovsky (202–205–3330), Office of Industries, U.S. International Trade Commission, Washington, DC 20436. For information on the legal aspects of this investigation contact William Gearhart of the Office of the General Counsel (202-205–3091). News media should contact Peg O'Laughlin, Office of External Relations (202–205–1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202) 205–1810.

Background

The Committee on Finance has requested that the Commission investigate the conditions of competition in forest products trade, with special emphasis on trade barriers and forest practices that may distort domestic and international markets in Asia, Europe, and Latin America, and provide a report setting forth the results of that investigation. As requested by the Committee, the Commission will provide in its report, to the extent possible, the following:

- An overview of the global market for forest products, including consumption, production, capacity, and trade trends during 1994–98;
- A description of the U.S. forest products industry and the major foreign forest products industries in Asia, Europe, and Latin America, including recent changes in production, capacity, marketing practices and market shares;
- A description of trade patterns (both imports and exports) and conditions affecting U.S. forest products trade, including tariff and non-tariff barriers (especially in Asia, Europe, and Latin America), fluctuations in exchange rates, and competition from exporting countries;
- A description of Asian, European, and Latin American government policies affecting U.S. forest products trade, including factors such as financial and other domestic support programs, access to raw materials, regulatory enforcement, forestry practices that may distort domestic and/or international markets for forest products, as well as support from entities such as international financial institutions; and
- A comparison of the strengths and weaknesses of major U.S., Asian, European, and Latin American producers in such areas as raw materials, capital availability, technological capabilities, extent of plant and equipment modernization, present capacity and future planned capacity expansion, and government support.

The investigation will be limited to forest products covered in chapters 44, 47, and 48 of the Harmonized Tariff Schedules of the United States. The report will include information on future forest products supply and demand trends. As requested, the Commission will provide its completed report to the Committee by October 19, 1999.

Public Hearing

A public hearing in connection with the investigation will be held at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC, beginning at 9:30 a.m. on May 26, 1999. All persons will have the right to appear, by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC, 20436, no later than 5:15 p.m., May 12, 1999. Any prehearing briefs (original and 14 copies) should be filed not later than 5:15 p.m., May 14, 1999; the deadline for filing post-hearing briefs or statements is 5:15 p.m., June 9, 1999. In the event that, as of the close of business on May 12, 1999, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary to the Commission (202–205–1816) after May 12, 1999, to determine whether the hearing will be held.

Written Submissions

In lieu of, or in addition to, participating in the hearing, interested parties are invited to submit written statements concerning the matters to be addressed by the Commission in its report on this investigation. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked ''Confidential Business Information'' at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's *Rules of Practice and Procedure* (19 C.F.R. 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary to the Commission for inspection by interested parties. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than 5:15 p.m. on June 9, 1999. All submissions should be addressed to the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the

Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

List of Subjects

Forest products, exports, imports, markets, trade, production, consumption, capacity, barriers, distortions, financial and government support, exchange rates, United States, Asia, Europe, Latin America, and future trends.

By order of the Commission.

Issued: November 12, 1998.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–30850 Filed 11–17–98; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: Request OMB Emergency Approval; Petition for Nonimmigrant Filing Fee Exemption.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted an emergency information collection request (ICR) utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with section 1320.13(a)(1) of the Paperwork Reduction Act of 1995. The INS has determined that it cannot reasonably comply with the normal clearance procedures under this part because normal clearance procedures are reasonably likely to prevent or disrupt the collection of information. Therefore, OMB approval has been requested by November 20, 1998. If granted, the emergency approval is only valid for 180 days. ALL comments and/or questions pertaining to this pending request for emergency approval MUST be directed to OMB, Office of Information and Regulatory Affairs, Attention: Mr. Stuart Shapiro, 202–395–7316, Department of Justice Desk Officer, Washington, DC 20503. Comments regarding the emergency submission of this information collection may also be submitted via facsimile to Mr. Shapiro at 202–395–6974.

During the first 60 days of this same period, a regular review of this information collection is also being undertaken. During the regular review period, the INS requests written comments and suggestions from the public and affected agencies concerning this information collection. Comments are encouraged and will be accepted until January 19, 1999. During 60-day regular review, ALL comments and suggestions, or questions regarding additional information, to include obtaining a copy of the information collection instrument with instructions, should be directed to Mr. 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. 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: *New information collection.*

(2) Title of the Form/Collection: Petition for Nomimmigrant Filing Fee Exemption.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form I–129W. Office of Adjudications, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Business or other for-profit. This addendum to Form I–129 will be used by the INS to determine if an H–1B petitioner is exempt from the additional filing fee of $500, as provided by the American Competitiveness and Workforce Improvement Act of 1998.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 100,000 responses at 15 minutes (.25) hours per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 25,000 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: November 13, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–30865 Filed 11–17–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Bureau of Justice Assistance, National White Collar Crime Center; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; new collection: National Opinion Poll on White Collar Crime.

The Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with emergency review procedures of the Paperwork Reduction Act of 1995. OMB approval has been requested by November 24, 1998. The proposed information collection is published to obtain comments from the public and affected agencies. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information Regulation Affairs, Attention: Mr. Stewart Shapiro, (202) 395–7857, Department of Justice Desk Officer, Washington, DC 20530.

During the first 60 days of this same review period, a regular review of this information collection is also being undertaken. All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Jenny Sundra Layne, 200 Commerce Drive, Suite 200, Morgantown WV 26505, or facsimile at (304) 291–2282. Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should

address one or more of the following four points:

(1) 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 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:* New Collection.

(2) *Title of the Form/Collection:* National Opinion Poll on White Collar Crime.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection: Form:* None. National White Collar Crime Center, Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice.

(4) *Affected public who will be as or required to respond, as well as a brief abstract: Primary:* Individual or Households. *Other:* None. The NWCCC Training and Research Institute anticipates conducting a survey of public attitudes and perceptions of white collar crime. Particular areas of interest include seriousness, awareness, arrest and imprisonment, knowledge of prevention resources, victim risk behaviors, victim experience, and general demographics.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* 1810 respondents at 20 minutes per telephone interview.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 603 annual burdens hours.

If additional information is required contact: Ms. Brenda E. Dyer, Deputy Clearance Office, 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: November 12, 1998.

Brenda E. Dyer,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–30755 Filed 11–17–98; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Consolidation Coal Company

[Docket No. M–98–89–C]

Consolidation Coal Company, Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Loveridge No. 22 Mine (I.D. No. 46–01433) located in Marion County, West Virginia. The petitioner proposes to increase the maximum length of their trailing cables to 1,000 feet for the mining machine, loading machine, shuttle car, roof bolter, and the section ventilation fan while developing longwall panels. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

2. Cyprus Plateau Mining Corporation

[Docket No. M–98–90–C]

Cyprus Plateau Mining Corporation, One Oxford Centre, 301 Grant Street, 20th Floor, Pittsburgh, Pennsylvania 15219–1410 has filed a petition to modify the application of 30 CFR 75.323(e) (actions for excessive methane) to its Willow Creek Mine (I.D. No. 42–02113) located in Carbon County, Utah. The petitioner requests a modification of the standard to permit more than 2 percent methane in a bleeder split of air immediately before the split joins another split of air. The petitioner asserts that application of the standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

3. Deitz Bros. Coal Company

[Docket No. M–98–92–C]

Deitz Bros. Coal Company, 137 W. 7th Street, Tuscarora, Pennsylvania 17851 has filed a petition to modify the application of 30 CFR 75.1100–2 (quantity and location of firefighting equipment) to its 4 Ft. Vein (I.D. No. 36–08706) located in Schuylkill County, Pennsylvania. The petitioner proposes to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage equipped with three 10 quart pails are not practical. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

4. Deitz Bros. Coal Company

[Docket No. M–98–93–C]

Deitz Bros. Coal Company, 137 W. 7th Street, Tuscarora, Pennsylvania 17851 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its 4 Ft. Vein (I.D. No. 36–08706) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the existing standard to permit the gunboat to be operated without safety catches or other no less effective devices. The petitioner proposes to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope above the main connecting device and to use hoisting ropes with a safety factor in excess of the 4 to 8 to 1. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

5. Bowie Resources, Inc.

[Docket No. M–98–94–C]

Bowie Resources, Inc., 1855 Old Hwy. 133, PO Box 483, Paonia, Colorado 81428 has filed a petition to modify the application of 30 CFR 75.701 (grounding metallic frames, casings, and other enclosures of electric equipment) to its Bowie Mine (I.D. No. 05–04591) located in Delta County, Colorado. The petitioner proposes to use a portable diesel powered generator for utility power and to move electrically powered mining equipment in and around the mine following the specific procedures outlined in this petition. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

6. Bowie Resources, Inc.

[Docket No. M–98–95–C]

Bowie Resources, Inc., 1855 Old Hwy. 133, PO Box 483, Paonia, Colorado 81428 has filed a petition to modify the application of 30 CFR 75.901 (protection

of low- and medium-voltage three-phase circuits used underground) to its Bowie Mine (I.D. No. 05–04591) located in Delta County, Colorado. The petitioner proposes to use a portable diesel powered generator for utility power and to move electrically powered mining equipment in and around the mine following the specific procedures outlined in this petition. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

7. Mettiki Coal Corporation

[Docket No. M–98–96–C]

Mettiki Coal Corporation, 293 Table Rock Road, Oakland, Maryland 21550 has filed a petition to modify the application of 30 CFR 75.1100–2(e)(2) (quantity and location of firefighting equipment) to its Mettiki Mine (I.D. No. 18–00621) located in Garrett County, Maryland. The petitioner requests a modification of the standard to permit provision of two portable fire extinguishers at each temporary electrical installation. The petitioner proposes to store at each temporary electrical installation two multipurpose, dry chemical, portable fire extinguishers, each having at least a minimum capacity of 10 pounds of dry powder. The petitioner states that all portable fire extinguishers would be approved by the Underwriters Laboratories, Inc., or Factory Research Corporation, and each would have a rating of 2A 10BC or higher. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

8. The Pittsburg & Midway Coal Mining Company

[Docket No. M–98–97–C]

The Pittsburg & Midway Coal Mining Company, PO Box 6518, Englewood, Colorado 80155–6518 has filed a petition to modify the application of 30 CFR 75.364(b)(4) (weekly examination) to its Sebree #1 Mine (I.D. No. 15–17044) located in Webster County, Kentucky. Due to a rock fall in front of the No. 2 Seal at the No. 7 entry in the North Submain return, examining the area every 7 days would be unsafe. The petitioner proposes to examine the inby and outby side of the rock fall at the No. 2 Seal once during each 24 hour period. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

9. Oxbow Mining, Inc.

[Docket No. M–98–98–C]

Oxbow Mining, Inc., PO Box 535, Somerset, Colorado 81434 has filed a petition to modify the application of 30 CFR 75.380(d)(5) (escapeways; bituminous and lignite mines) to its Sanborn Creek Mine (I.D. No. 05–04452) located in Gunnison County, Colorado. The petitioner requests a modification of the standard to allow continued usage of the current secondary escapeway as an alternative intake escapeway instead of using the No. 3 Substation Return Airshaft. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to ''comments@msha.gov'', or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Room 627, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 18, 1998. Copies of these petitions are available for inspection at that address.

Dated: November 10, 1998.

Carol J. Jones,

Acting Director, Office of Standards, Regulations, and Variances.

[FR Doc. 98–30862 Filed 11–17–98; 8:45 am]

BILLING CODE 4510–43–P

MEDICARE PAYMENT ADVISORY COMMISSION

Commission Meeting

AGENCY: Medicare Payment Advisory Commission.

ACTION: Notice of Meeting.

SUMMARY: The Commission will hold its next public meeting on Monday, November 23, 1998 and Tuesday, November 24, 1998 at the Embassy Suite Hotel, 1250 22nd Street NW., Washington, DC. The meeting is tentatively scheduled to begin at 9:30 a.m. on November 23, and at 9:00 a.m. on November 24.

The Commission will discuss demonstration program for frail elderly, care at the end of life, and its workplan on end-stage renal disease. It will consider beneficiary financial liability, access to care, and two quality issues: informed consumer choice and health care errors. Finally, it will discuss graduate medical education, the physician fee schedule, and payments to hospital outpatient departments.

Agendas were mailed on Monday, November 9, 1998. The final agenda will be available on the Commission's web sites (WWW.MedPAC.GOV).

ADDRESSES: MedPAC's address is: 1730 K Street, NW, Suite 800, Washington, D.C. 20006. The telephone number is 202/653–7220.

FOR FURTHER INFORMATION CONTACT: Diane Ellison, Office Manager, 202/653–7220.

SUPPLEMENTARY INFORMATION: If you are not on the Commission mailing list and wish to receive an agenda, please call 202/653–7220.

Murray N. Ross,

Executive Director.

[FR Doc. 98–30770 Filed 11–17–98; 8:45 am]

BILLING CODE 6820–BW–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

SES Performance Review Board

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of members of the Performance Review Board for the National Endowment for the Arts. This notice supersedes all previous notices of the PRB membership of the Agency.

DATES: Upon publication.

FOR FURTHER INFORMATION CONTACT: Maxine C. Jefferson, Director of Human Resources, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Room 627, Washington, DC 20506, (202) 682–5405.

SUPPLEMENTARY INFORMATION: Sec. 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES Performance Review Boards. The Board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any response by the senior executive, and make recommendations to the appointing authority relative to the performance of the senior executive.

The following persons have been selected to serve on the Performance Review Board of the National Endowment for the Arts:

Scott Shanklin-Peterson, Senior Deputy Chairman

Karen K. Christensen, Deputy Chairman for Grants and Awards
Laurence M. Baden, Deputy Chairman for Management and Budget
Alfred B. Spellman, Jr., Deputy Chairman for Guidelines, Panel, and Council Operations
Richard P. Woodruff, Congressional and White House Liaison

Leon Williams,

Acting Director of Human Resources, National Endowment for the Arts.

[FR Doc. 98–30804 Filed 11–17–98; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Pub. L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On September 21, 1998, the National Science Foundation published a notice in the **Federal Register** of permit applications received. A permit was issued on November 5, 1998 to the following applicant:

Erick Chiang Permit No. 99–012

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 98–30866 Filed 11–17–98; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Notice

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on December 3–5, 1998, in Conference Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Thursday, November 20, 1997 (62 FR 62079).

Thursday, December 3, 1998

8:30 A.M.–8:45 A.M.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:45 A.M.–10:30 A.M.: NEI Whole Plant Study and Options to Make 10 CFR Part 50 Risk-Informed (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and the Nuclear Energy Institute (NEI) regarding staff options to make 10 CFR Part 50 risk-informed and NEI Whole Plant Study to evaluate options for modifying 10 CFR Part 50 requirements.

10:45 A.M.–12:15 P.M.: Proposed Options to Make 10 CFR 50.59 Risk-Informed (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and NEI regarding staff options to make 10 CFR 50.59 (Changes, tests and experiments) risk-informed.

1:15 P.M.–4:15 P.M.: Integrated Review of Assessment Processes and Improvements to the Senior Management Meeting Process (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and NEI regarding the integrated review of the assessment processes, improvements to the Senior Management Meeting Process, changes to the inspection program, and related matters.

4:30 P.M.–7:00 P.M.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports, including those on the role of frequency-consequence curves in risk-informed decisionmaking, NRC Safety Research Program, and on lessons learned from the review of the AP600 passive plant design.

Friday, December 4, 1998

8:30 A.M.–8:35 A.M.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting.

8:35 A.M.–9:00 A.M.: Subcommittee Report (Open)—The Committee will hear a report of the Plant License Renewal Subcommittee regarding matters discussed during the November 18, 1998 meeting as well as a proposed ACRS report on license renewal activities.

9:00 A.M.–9:45 A.M.: Report of the Planning and Procedures Subcommittee (Open/Closed)—The Committee will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, and organizational and personnel matters relating to the ACRS, including status of appointment of a new member to the ACRS.

[**Note:** A portion of this session may be closed to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of this Advisory Committee, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.]

9:45 A.M.–10:30 A.M.: Future ACRS Activities (Open)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings.

10:45 A.M.–11:00 A.M.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations (EDO) to comments and recommendations included in recent ACRS reports. The EDO's responses are expected prior to the meeting.

11:00 A.M.–11:30 A.M.: Election of Officers for Calendar Year 1999 (Open)—The Committee will elect a Chairman and a Vice Chairman to the ACRS and a Member-at-Large to the Planning and Procedures Subcommittee.

1:15 P.M.–2:30 P.M.: Potential Items for Meeting with the NRC Commissioners (Open)—The Committee will discuss potential items for discussion during the ACRS meeting with the Commissioners on February 3, 1999. (The commission has not approved topics for this meeting.)

2:30 P.M.–7:00 P.M.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports.

Saturday, December 5, 1998

8:30 A.M.–2:00 P.M.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports.

2:00 P.M.–2:30 P.M.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 29, 1998 (63 FR 51968). In accordance with these procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Electronic recordings will be permitted only during the open portions of the meeting and questions may be asked only by members of the Committee, its

consultants, and staff. Persons desiring to make oral statements should notify Mr. Sam Duraiswamy, Chief of the Nuclear Reactors Branch, at least five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Chief of the Nuclear Reactors Branch prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Chief of the Nuclear Reactors Branch if such rescheduling would result in major inconvenience.

In accordance with subsection 10(d) Pub. L. 92–463, I have determined that it is necessary to close portions of this meeting noted above to discuss matters that relate solely to the internal personnel rules and practices of this Advisory Committee per 5 U.S.C. 552b(c)(2), and to discuss information the release of which would constitute a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(6).

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting Mr. Sam Duraiswamy, Chief of the Nuclear Reactors Branch (telephone 301/415–7364), between 7:30 a.m. and 4:15 p.m. EST.

ACRS meeting agenda, meeting transcripts, and letter reports are available for downloading or viewing on the internet at *http://www.nrc.gov/ACRSACNW*.

Video teleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician, (301–415–8066) between 7:30 a.m. and 3:45 p.m. EST at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

The ACRS meeting dates for Calendar Year 1999 are provided below:

ACRS meeting No.	1999 ACRS meeting date
	January 1999—No meeting.
459	February 4–6, 1999.
460	March 10 (1:00 p.m.)–13, 1999.
461	April 7 (1:00 p.m.)–10, 1999.
462	May 5 (1:00 p.m.)–8, 1999.
463	June 2–4, 1999.
464	July 7–9, 1999.
	August 1999—No meeting.
465	September 1–3, 1999.
466	September 30–October 2, 1999.
467	November 4–6, 1999.
468	December 2–4, 1999.

Dated: November 13, 1998.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 98–30870 Filed 11–17–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Planning and Procedures

The ACRS Subcommittee on Planning and Procedures will hold a meeting on December 2, 1998, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, December 2, 1998—2:00 p.m.

The Subcommittee will discuss proposed ACRS activities and related matters. It may also discuss the status of appointment of a new member to the ACRS. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff person named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the cognizant ACRS staff person, Dr. John T. Larkins (telephone: 301/415–7360) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: November 13, 1998.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 98–30871 Filed 11–17–98; 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 Pub. L. 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Pub. L. 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from October 24, 1998, through November 5, 1998. The last biweekly notice was published on November 4, 1998 (63 FR 59584).

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 December 18, 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.

Commonwealth Edison Company, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of amendment request: October 16, 1998.

Description of amendment request: The proposed amendments would lower the power level below which the turbine control valve (TCV) and turbine stop valve (TSV) closure scram signals and the end-of-cycle recirculation pump trip (EOC-RPT) signals are not in effect. The bypass setpoint (P_{bypass}) would be reduced from 30 percent rated power to 25 percent rated power. The licensee also proposes to delete the reference to turbine first stage pressure as a measure of core thermal power in the Technical Specifications. To ensure that the trip functions will not be inadvertently bypassed when they are required to be operable, a requirement would be added to periodically verify that TCV and TSV scram trip functions and the ECO-RPT trip functions are not bypassed at greater than or equal to 25 percent of rated thermal power.

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 of occurrence or consequences of an accident previously evaluated:

The probability of an accident previously evaluated will not increase as a result of this change because the setpoint change does not alter any of the initiators of an accident or cause them to occur more frequently.

The consequences of an accident previously evaluated are not impacted. LaSalle Units 1 and 2 each have approximately 30 percent bypass capability. Therefore, a scram on TCV or TSV closure signals is not needed until 30 percent core thermal power is reached, as adequate steam bypass capacity is available. A lower P_{bypass} remains conservative with respect to this criterion.

LaSalle utilizes power and flow dependent thermal limits. The power dependent portion of these thermal limits is dependent on the P_{bypass} setpoint. These limits provide assurance that adequate fuel thermal-mechanical margin is maintained through adherence to the thermal limits Technical Specification requirements.

Revised thermal limits have been determined based on the results of GE transient analyses. Adhering to these thermal limits ensures that the consequences of an accident or transient would not be increased from the consequences under the approved 30 percent setpoint. Adjustments to the thermal limits were determined through use of the NRC-approved ODYN reactor dynamic model for the limiting Load Rejection Without Bypass and the Feedwater Controller Failure events.

The deletion of the reference to turbine first stage pressure and rewording the Technical Specifications Notes does not affect either accident initiators or plant equipment, as they are administrative changes.

Adding the periodic verification that the bypass channels are set correctly ensures that scrams or EOC-RPT will not be inadvertently bypassed when Thermal Power is greater than or equal to 25 percent of Rated Thermal Power. The statement that specification 4.0.2 applies to the 18 month interval is needed, since the notes are not standard surveillance requirements and the interval is consistent with other similar instrumentation to which 4.0.2 currently applies.

Therefore, the proposed changes do not involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated:

The setpoint change and proposed bypass verification notes ensure that the scrams for TSV closure and TCV fast closure, and EOC–RPT, will be enabled above 25 percent of rated thermal power, rather than above 30 percent of rated thermal power. This change results in simplified reload transient analyses and does not impact any other equipment.

No other physical modifications are being proposed by this submittal. The only plant operational impact is that between 25 percent and 30 percent power, the plant will now scram upon a turbine trip, which is an analyzed transient.

The remaining changes to Technical Specification wording are administrative in nature and consistent with other Technical Specifications.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Involve a significant reduction in the margin of safety:

LaSalle Units 1 and 2 each have approximately 30 percent bypass capability. Therefore, a scram on TCV or TSV closure signals in not needed until 30 percent core thermal power is reached, as adequate steam bypass capacity is available. However, reduction of this setpoint to 25 percent power actually aids the plant transient response between 25 percent and 30 percent power.

The new thermal limits reflect the revised setpoint and have been determined based on revised limiting transient analyses that have included the new P_{bypass} value. If a transient were to occur, the revised operating limits ensure that adequate margin would be available to preclude violation of the Minimum Critical Power Ratio (MCPR) safety limit and the fuel thermal-mechanical limits.

All other UFSAR [Updated Final Safety Analysis Report] events are either bounded by the analyses performed or are not impacted by the P_{bypass} change.

The wording changes to the Technical Specifications do not change the requirement for the bypass function and for maintaining the bypass function and thus do not affect the analyses discussed above.

The addition of the Notes periodically verifying the TCV and TSV Closure Trip Functions are not bypassed at greater than or equal to 25 percent Rated Thermal Power ensures the trip functions will not be inadvertently bypassed when required to be Operable.

Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: Jacobs Memorial Library, 815 North Orlando Smith Avenue, Illinois Valley Community College, Oglesby, Illinois 61348–9692.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Stuart A. Richards.

Duke Energy Corporation (DEC), et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: July 22 and October 22, 1998.

Description of amendment request: The proposed amendments would revise the Technical Specifications (TS) to reflect the licensee's planned use of fuel supplied by Westinghouse. The

Westinghouse fuel has different design characteristics from the fuel currently in use. Accordingly, the following changes would need to be made to the TS: Figure 2.1.1–1, ''Reactor Core Safety Limits—Four Loops in Operation''; various core operating parameters specified by Surveillance Requirements 3.2.1.2, 3.2.1.3, and 3.2.2.2; Section 4.2.1, ''Fuel Assemblies''; and Section 5.6.5, ''Core Operating Limits Report (COLR).''

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, addressing the three standards of 10 CFR 50.92(c):

First Standard

Implementation of this LAR [license amendment request] would not involve a significant increase in the probability or consequences of an accident previously evaluated. The revised Reactor Core Safety Limits Figure further restricts acceptable operation. Moving an uncertainty factor from the Improved Technical Specifications to the Core Operating Limits Report (COLR) does not exempt this factor from regulatory restrictions. COLR parameters are generated by NRC approved methods with the intent of ensuring that previously evaluated accidents remain bounding. The COLR is submitted to the NRC upon implementation of each fuel cycle or when the document is otherwise revised. No accident probabilities or consequences will be impacted by this LAR.

Second Standard

Implementation of this LAR would not create the possibility of a new or different kind of accident from any previously evaluated. The revised Reactor Core Safety Limits Figure further restricts acceptable operation. Moving an uncertainty factor from the Improved Technical Specifications to the COLR does not exempt this factor from regulatory restrictions. Since the parameter in question is not being deleted, the possibility of a new or different kind of accident from any previously evaluated does not exist.

Third Standard

Implementation of this LAR would not involve a significant reduction in a margin of safety. Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following an accident situation. These barriers include the fuel cladding, the reactor coolant system, and the containment system. Use of the ZIRLO™ cladding material has been reviewed and approved in Reference 1 (as listed in Chapter 2.1 of Topical Report DPC–NE–2009/DPC–NE–2009P, Duke Power Company Westinghouse Fuel Transition Report). ZIRLO™ cladding has been extensively used in Westinghouse nuclear reactors. The changes proposed in this LAR are necessary to ensure that the performance of the fission product barriers (cladding) will not be impacted following the replacement of one fuel design for another. No safety margin will be significantly impacted.

The NRC staff reviewed the licensee's analysis, and agrees 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: York County Library, 138 East Black Street, Rock Hill, South Carolina.

Attorney for licensee: Mr. Paul R. Newton, Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina.

NRC Project Director: Herbert N. Berkow.

Duquesne Light Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of amendment request: June 18, 1996. This notice supersedes the notice published on July 31, 1996 (61 FR 40015) in its entirety.

Description of amendment request: For Beaver Valley Power Station, Unit No. 1 (BVPS–1) only, the proposed amendment would revise Technical Specification (TS) 4.4.5 and associated Bases; the Bases for TS 3/4.4.6.2 would also be revised. The proposed changes are editorial in nature and are intended to provide consistency between the TSs and associated Bases. Index page XIX would be revised to reflect the revision of page numbers for TS Tables 4.4–1 and 4.4–2 due to shifting of text.

For Beaver Valley Power Station, Unit No. 2 (BVPS–2) only, the proposed amendment would implement a voltage-based repair criteria for steam generator tubes similar to the changes approved for BVPS–1 by License Amendment No. 198. The proposed changes are intended to reflect the guidance provided in NRC Generic Letter 95–05, ''Voltage-Based Repair Criteria for Westinghouse Steam Generator Tubes Affected by Outside Diameter Stress Corrosion Cracking.'' The proposed changes would revise TSs 4.4.5 and 3.4.6.2 and associated Bases. TS Table 4.4–2 would be revised to reference TS 6.6 for reporting requirements.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

Tube burst criteria are inherently satisfied during normal operating conditions due to the proximity of the tube support plate (TSP). Test data indicates that tube burst cannot occur within the TSP, even for tubes which have 100% throughwall electric discharge machining notches, 0.75 inch long, provided that the TSP is adjacent to the notched area. Since tube-to-TSP proximity precludes tube burst during normal operating conditions, use of the criteria must retain tube integrity characteristics which maintain a margin of safety of 1.43 times the bounding faulted condition, main steamline break (MSLB) pressure differential. The Regulatory Guide (RG) 1.121 criterion requiring maintenance of a safety factor of 1.43 times the MSLB pressure differential on tube burst is satisfied by ⅞″ diameter tubing with bobbin coil indications with signal amplitudes less than 8.6 volts, regardless of the indicated depth measurement.

The upper voltage repair limit (V_{URL}) will be determined prior to each outage using the most recently approved NRC database to determine the tube structural limit (V_{SL}). The structural limit is reduced by allowances for nondestructive examination (NDE) uncertainty (V_{NDE}) and growth (V_{GR}) to establish V_{URL}. Using the Generic Letter (GL) 95–05 NDE and growth allowances for an example, the NDE uncertainty component of 20% and a voltage growth allowance of 30% per full power year can be utilized to establish a V_{URL} of 5.7 volts. The 20% NDE uncertainty represents a square-root-sum-of-the-squares (SRSS) combination of probe wear uncertainty and analyst variability. The degradation growth allowance should be an average growth rate or 30% per effective full power year, whichever is larger.

Relative to the expected leakage during accident condition loadings, it has been previously established that a postulated MSLB outside of containment but upstream of the main steam isolation valve (MSIV) represents the most limiting radiological condition relative to the plugging criteria. In support of implementation of the revised plugging limit, analyses will be performed to determine whether the distribution of cracking indications at the tube support plate intersections during future cycles are projected to be such that primary-to-secondary leakage would result in postulated site boundary and control room doses exceeding 10 CFR 100, 10 CFR 50 Appendix A, and GDC–19 [General Design Criterion-19] requirements, respectively. A separate calculation has determined the maximum allowable MSLB leakage limit in a faulted loop. This limit was calculated using the technical specification reactor coolant system (RCS) Iodine-131 activity level of 1.0 microcuries per gram dose equivalent Iodine-131 and the recommended Iodine-131 transient spiking values consistent with NUREG–0800. The projected MSLB leakage rate calculation methodology prescribed in Section 2.b of GL 95–05 will be used to calculate the end-of-cycle (EOC) leakage. Projected EOC voltage distribution will be developed using the most recent EOC eddy current results and considering an appropriate voltage measurement uncertainty. The log-logistic probability of

leakage correlation will be used to establish the MSLB leakrate used for comparison with the faulted loop allowable limit. Therefore, as implementation of the voltage-based repair criteria does not adversely affect steam generator tube integrity and implementation will be shown to result in acceptable dose consequences, the proposed amendment does not result in any increase in the probability or consequences of an accident previously evaluated in the Updated Final Safety Analysis Report (UFSAR).

The proposed changes to the BVPS–1 Index, Specifications and associated Bases and the proposed change to BVPS–2 Table 4.4–2 are editorial in nature. Therefore, these changes do not involve an increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Implementation of the proposed steam generator tube voltage-based repair criteria does not introduce any significant changes to the plant design basis. Use of the voltage-based repair criteria does not provide a mechanism which could result in an accident outside of the region of the tube support plate elevations as no outside diameter stress corrosion cracking (ODSCC) is occurring outside the thickness of the tube support plates. Neither a single or multiple tube rupture event would be expected in a steam generator in which the plugging limit has been applied (during all plant conditions).

Duquesne Light Company will implement a maximum primary-to-secondary leakage rate limit of 150 gpd [gallons per day] per steam generator to help preclude the potential for excessive leakage during all plant conditions. The RG 1.121 criterion for establishing operational leakage rate limits that require plant shutdown are based upon leak-before-break considerations to detect a free span crack before potential tube rupture during faulted plant conditions. The 150 gpd limit provides for leakage detection and plant shutdown in the event of the occurrence of an unexpected single crack resulting in leakage that is associated with the longest permissible crack length. RG 1.121 acceptance criteria for establishing operating leakage limits are based on leak-before-break considerations such that plant shutdown is initiated if the leakage associated with the longest permissible crack is exceeded.

The single through-wall crack lengths that result in tube burst at 1.43 times the MSLB pressure differential and the MSLB pressure differential alone are approximately 0.57 inch and approximately 0.84 inch, respectively. A leak rate of 150 gpd will provide for detection of approximately 0.41 inch long cracks at nominal leak rates and approximately 0.62 inch long cracks at the lower 95% confidence level leak rates. Since tube burst is precluded during normal operation due to the proximity of the TSP to the tube and the potential exists for the crevice to become uncovered during MSLB conditions, the leakage from the maximum permissible crack must preclude tube burst at MSLB conditions. Thus, the 150 gpd limit provides for plant shutdown prior to reaching critical crack lengths for MSLB conditions using the lower 95% leakrate data. Additionally, this leak-before-break evaluation assumes that the entire crevice area is uncovered during blowdown. Partial uncovery will provide benefit to the burst capacity of the intersection. Analyses have shown that only a small percentage of the TSPs are deflected greater than the TSP thickness during a postulated MSLB.

As steam generator tube integrity upon implementation of the voltage-based repair criteria continues to be maintained through inservice inspection and primary-to-secondary leakage monitoring, the possibility of a new or different kind of accident from any accident previously evaluated is not created.

The proposed change to BVPS–1 Index, Specifications and associated Bases and the proposed change to BVPS–2 Table 4.4–2 are editorial in nature. These changes do not change the performance of plant systems, plant configuration or method of operating the plant.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The use of the voltage-based repair criteria at BVPS–2 maintains steam generator tube integrity commensurate with the criteria of RG 1.121. This guide describes a method acceptable to the Commission for meeting GDCs 14, 15, 30, 31, and 32 by reducing the probability or the consequences of steam generator tube rupture. This is accomplished by determining the limiting conditions of degradation of steam generator tubing, as established by inservice inspection, for which tubes with unacceptable cracking should be repaired or removed from service. Upon implementation of the proposed criteria, even under the worst case conditions, the occurrence of ODSCC at the tube support plate elevations is not expected to lead to a steam generator tube rupture event during normal or faulted plant conditions. The EOC distribution of crack indications at the tube support plate elevations will be confirmed to result in acceptable primary-to-secondary leakage during all plant conditions and that radiological consequences remain within the licensing basis.

In addressing the combined effects of loss-of-coolant-accident (LOCA) + safe shutdown earthquake (SSE) on the steam generator component (as required by GDC 2), it has been determined that tube collapse may occur in the steam generators at some plants. This is the case as the tube support plates may become deformed as a result of lateral loads at the wedge supports at the periphery of the plate due to the combined effects of the LOCA rarefaction wave and SSE loadings. Then, the resulting pressure differential on the deformed tubes may cause some of the tubes to collapse. There are two issues associated with steam generator tube collapse. First, the collapse of steam generator tubing reduces the RCS flow area through the tubes. The reduction in flow area increases the resistance to flow of steam from the core during a LOCA which, in turn, may potentially increase peak clad temperature. Second, there is a potential that partial through-wall cracks in tubes could progress to complete through-wall cracks during tube deformation or collapse.

The results of an analysis using the larger break inputs show that the LOCA loads were found to be of insufficient magnitude to result in steam generator tube collapse or significant deformation. Since the leak-before-break methodology is applicable to the reactor coolant loop piping, the probability of breaks in the primary loop piping is sufficiently low that they need not be considered in the structural design of the plant. The limiting LOCA event becomes the pressurizer spray line break. Analysis results have demonstrated that no tubes were subject to deformation or collapse. No tubes have been excluded from application of the subject voltage-based steam generator tube repair criteria.

Addressing RG 1.83 considerations, implementation of the voltage-based repair criteria is supplemented by: enhanced eddy current inspection guidelines to provide consistency in voltage normalization, the bobbin coil inspection will include 100% of the hot-leg TSP intersections and cold-leg intersections down to the lowest cold-leg TSP with known ODSCC, the determination of the TSPs having ODSCC will be based on the performance of at least 20% random sampling of tubes inspected over their full length, and rotating pancake coil inspection requirements for the larger indications left inservice to characterize the principal degradation as ODSCC.

As noted previously, implementation of the tube support plate intersection voltage-based repair criteria will decrease the number of tubes which must be repaired. The installation of steam generator tube plugs reduces the RCS flow margin. Thus, implementation of the voltage-based repair criteria will maintain the margin of flow that would otherwise be reduced in the event of increased tube plugging.

The proposed change to the BVPS–1 Index, Specifications and associated Bases and the proposed change to BVPS–2 Table 4.4–2 are editorial in nature. These changes will not reduce the margin of safety because they have no impact on any safety analysis assumptions.

Based on the above, it is concluded that the proposed license amendment request does not result in a significant reduction in margin with respect to plant safety as defined in the UFSAR or any BASES of the plant technical specifications.

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: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts &

Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Robert A. Capra.

Duquesne Light Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of amendment request: October 15, 1998.

Description of amendment request: The proposed amendment would make several changes that are administrative in nature. The changes would (1) make editorial changes to delete obsolete material or material adequately described elsewhere, change action statement numbers, update the technical specification (TS) index pages, and make changes to be consistent with the guidance of the improved standard technical specifications (ISTS); (2) delete reporting requirements that duplicate reporting requirements contained in 10 CFR; and (3) relocate the requirement for meteorological monitoring instrumentation from the TS to the Licensing Requirements Manual.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

a. This change deletes an expired Unit 1 license condition and a Unit 2 license requirement that is not required since it is redundant to the reporting requirements addressed in 10 CFR 50.73. Deleting these requirements does not involve any increase in the probability or consequences of an accident previously evaluated.

b. The reference to Specification 3.0.6 was omitted from Specification 3.0.1 in Unit 1 Amendment 213 and Unit 2 Amendment 90 and is being added to 3.0.1 to be consistent with the Improved Standard Technical Specifications of NUREG 1431. This does not involve any increase in the probability or consequences of an accident previously evaluated.

c. The Core Alteration definition has been updated to be consistent with the regulations and ISTS. The Offsite Dose Calculation Manual (ODCM) definition has been updated to be consistent with the change to Administrative Control 6.9.3. The Members of the Public definition has been changed to be consistent with 10 CFR 20.1003. This does not involve any increase in the probability or consequences of an accident previously evaluated.

d. Changing Table 3.3–6 Action Statement 36 to Action Statement 35 is an editorial change to eliminate redundant use of action statement numbers. This does not involve any increase in the probability or consequences of an accident previously evaluated.

e. The technical specification index is being revised to address removal of the Meteorological Monitoring specification and title and page number changes to the administrative control reporting requirements section. The Meteorological Monitoring specification is being relocated to the Licensing Requirements Manual (LRM). Relocating the Meteorological Monitoring requirements is in accordance with the guidance in the Commission's Final Policy Statement and revisions to 10 CFR 50.36 on the content of the technical specifications and the ISTS. The Meteorological Monitoring requirements do not meet any of the criteria, 1 thru 4 of 10 CFR 50.36 and can, therefore, be relocated from the Technical Specifications to the LRM. These changes do not involve any increase in the probability or consequences of an accident previously evaluated.

f. The exclusion area boundary is adequately described in each unit's UFSAR [Updated Final Safety Analysis Report], therefore, design feature 5.1 Site Location is also being modified by deleting the description of the exclusion area boundary. This does not involve any increase in the probability or consequences of an accident previously evaluated.

g. The change to refer to the Unit 1 Overpressure Protection System (OPPS) enable temperature in Specification 3.4.9.3 in lieu of specifying 275 °F was evaluated and found acceptable in the request for approval of Amendment 160. The deletion of the asterisk in Unit 2 Specification 3.9.8.1 was justified as part of the request for approval of Amendment 25. The inadvertent omission of the ACTION to take in the case that the temperature of the steam generator is precisely 50 °F above the cold leg temperature is being corrected. The cases of greater than and less than 50 °F are already included. These are editorial changes that do not involve any increase in the probability or consequences of an accident previously evaluated.

h. The administrative control reporting requirements have been modified to incorporate various ISTS requirements. This requires changing titles and eliminating requirements addressed elsewhere, removing reference to deleted sections, and replacing reference to the administrative control section reporting requirements in various specifications with reference to 10 CFR 50.4. The 1993 NRC final policy statement set forth the criteria for determination of those requirements to be included in TS. The reporting requirements being removed from the TS do not meet the criteria for inclusion in the TS; therefore, the reporting requirements have been modified to reflect those requirements provided in the ISTS. These are editorial changes that do not involve any increase in the probability or consequences of an accident previously evaluated.

i. The Technical Specification index has been modified to address the revised pages.

These changes have been determined to be editorial and administrative in nature, and as such, would not affect any accident assumptions or radiological consequences of an accident. Therefore, the proposed changes would not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The editorial changes, the elimination of reporting requirements which duplicate 10 CFR requirements and administrative improvements to incorporate the ISTS requirements are all changes that are administrative in nature. The proposed changes will not affect any plant system or structure, nor will they affect any system functional or operability requirements. Consequently, no new failure modes are introduced as a result of the proposed changes. Therefore, the proposed change will not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The proposed amendment modifies reporting requirements and incorporates associated editorial changes that do not impact the UFSAR design basis or accident analyses assumptions. This change does not introduce any new operational modes or physical modifications to the plant; therefore, no action will occur that will involve a significant reduction in a margin of safety. In addition, the proposed change does not affect radiological release limits, monitoring equipment or operating practices. Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Robert A. Capra.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: September 23, 1998.

Description of amendment request: The proposed amendment would change Division III battery specific gravity acceptance criteria outlined in River Bend Station (RBS) Technical Specifications (TS). The change is required as a result of battery system design modifications which are scheduled to be implemented in April 1999 during refueling outage (RF) RF–8. During this time, the current Division III

battery will be replaced. The new battery, which also will have a greater capacity rating, will be supplied with a nominal specific gravity of 1.215 at 77°F in contrast to the existing Division III battery supplied with a nominal specific gravity of 1.210 at 77°F. Since TS Section 3.8.6, Table 3.8.6–1 values for specific gravity are based on the manufacturer's nominal specific gravity, these values will need to be updated.

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. This request does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The system loads, voltage requirements, and inrush currents have been calculated in accordance with IEEE Std. 485, ''IEEE Recommended Practice for Sizing Large Lead Storage Batteries for Generating Stations and Substations.'' To support these design requirements at a capacity of 80%, a new battery must be installed. The nominal specific gravity of the new battery, as provided by the manufacturer of the battery, is 1.215 at 77°F.

A review of USAR Chapter 15, including Appendix 15A, was conducted to determine what accidents, if any, may be impacted by the proposed change to the Division III battery specific gravity.

USAR Sections 15.2, ''Increase in Reactor Pressure;'' 15.3, ''Decrease in Reactor Coolant System Flow Rate;'' and Section 15.6, ''Decrease in Reactor Coolant Inventory'' discuss accidents that involve the initiation of HPCS when reactor vessel level drops to the initiation point. The function of the HPCS System is to mitigate the consequences of an accident (i.e., to maintain reactor vessel coolant inventory after small breaks which do not depressurize the reactor vessel, or provide spray cooling heat transfer following larger breaks, Ref. USAR Section 6.3.1.2.1). The function of the Division III 125 Vdc Power System is to provide a highly reliable, continuous, and independent source of control and motive power for the HPCS System logic, HPCS diesel generator set control and protection, and all Division III related control (Ref. USAR Section 8.3.2.2.1). This is a support function for the HPCS System.

USAR Section 15.5, ''Increase In Reactor Coolant Inventory,'' postulates an inadvertent HPCS actuation resulting from operator error. The proposed changes to the Division III battery specific gravity cannot result in an inadvertent HPCS actuation/injection. The proposed changes to the allowable specific gravity values provided in Technical Specification 3.8.6 are in agreement with the manufacturer's nominal specific gravity. The revision simply ensures that the battery has sufficient capacity to meet the energy requirements of its critical loads. The proposed change does not create any new internally generated missiles, nor does it affect the High Energy Line Break Analysis or any other accident described in Chapter 15 of the USAR. Neither the function nor the operation of the Division III battery is impacted by the proposed change.

The replacement Division III battery will be supplied by the manufacturer with a nominal specific gravity of 1.215 at 77°F. The battery manufacturer's rated performance is based on the specific gravity of the battery being maintained near the nominal specific gravity. Since the Division III design basis calculation depends on the battery manufacturer's rated performance, battery parameters upon which that performance is based must be monitored. The current Technical Specification values for specific gravity are based upon a nominal specific gravity of 1.210 at 77°F. The proposed values accurately reflect the manufacturer's nominal specific gravity. Testing the Division III battery to the proposed values provides assurance that the HPCS functions supported by the 125 Vdc System will not be adversely affected by the Division III battery.

The proposed changes will not affect failure modes of existing equipment. The proposed changes do not affect the ability of any structures, systems or components to perform their safety functions. Therefore, no undue risk to the health and safety of the public has been created by the proposed changes, nor is there any change in the radiological consequences at the site boundary.

By incorporating the correct value for battery specific gravity verification in Table 3.8.6–1, the Technical Specifications will accurately reflect the new design basis value for the Division III battery specific gravity. This change allows the performance of the Division III battery to be verified against the correct design basis value, thus providing assurance that the Division III 125 Vdc power system function will remain as assumed in the accident analysis. Therefore, the proposed change cannot affect any accidents previously evaluated (probability or consequences). Consequently, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. This request does not create the possibility of occurrence of a new or different kind of accident from any previously evaluated.

Since a battery's capacity decreases as specific gravity decreases below the manufacturer's nominal value, monitoring the battery's specific gravity is one means of ensuring that the battery will adequately supply the minimum energy required to support the system function assumed in the accident analysis.

All safety systems will continue to function as originally designed. The subject equipment will not function in a manner different than described in USAR Section 8.3.2.2. The functional and performance requirements of the Division III 125 Vdc System and its associated interfaces have not been altered. The proposed change simply ensures that the HPCS battery performance is verified against the correct design basis value. This value provides assurance that the HPCS System functions will not be adversely affected by the capacity of the battery. Therefore, the proposed changes do not create the possibility of occurrence of a new or different kind of accident from any previously evaluated.

3. This request does not involve a significant reduction in a margin of safety.

This proposed change updates the acceptance criteria of the current specific gravity for the Division III battery. This acceptance criteria is in accordance with manufactures recommendations. The design and license basis for the Division III systems and functions remain unchanged and the battery will continue to supply the 125 Vdc loads necessary to support these functions. This value will reflect the manufacturer's nominal specific gravity for the Division III battery. With the system functions supported as assumed in the accident analyses, the margin to safety remains unchanged.

As a result, the proposed change does not involve a significant reduction in a margin to 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 are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, LA 70803.

Attorney for licensee: Mark Wetterhahn, Esq., Winston & Strawn, 1400 L Street, NW, Washington, DC 20005.

NRC Project Director: John N. Hannon.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: October 8, 1998.

Description of amendment request: The proposed amendment would implement Boiling Water Reactor Owners Group (BWROG) Enhanced Option I–A (EIA) Reactor Stability Long Term Solution as documented in NEDO–32339, Revision 1, ''Reactor Stability Long-Term Solution, Enhanced Option I–A.'' The EIA long term solution has been accepted by the NRC in Safety Evaluation Report, ''Reactor Stability Long-Term Solution, Enhanced Option I–A Generic Technical Specifications (TS), NEDO–32339, Supplement 4.''

The proposed changes to the RBS TS will enable the full implementation of the Enhanced Option I–A (EIA) long term solution to the neutronic/thermal hydraulic instability issue. Specifically, the proposed change deletes the limits

on power and flow conditions associated with the implementation of the guidance in General Electric Service Information Letter #380, Revision 1, ''BWR Core Thermal Hydraulic Stability'' (current TS 3.4.1, Figure 3.4.1–1 and RBS plant procedures), adds new specifications, to establish limits for Fraction of Core Boiling Boundary (FCBB) and the Period Based Detection System (PBDS), modifies the RPS instrumentation specification and the description of the contents of the Core Operating Limits Report (COLR) in current TS 5.6.5. The two new specifications require maintaining stability control and the availability of a stability detection system during operation in defined regions of the power and flow operating domain.

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 amendments do no involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendments allow the implementation of the Enhanced Option I–A (EIA) long term solution to the neutronic/thermal hydraulic instability issue. Current TS restrictions on power and flow conditions, number of operating recirculation loops, and operator actions implemented to reduce the probability of neutronic/thermal hydraulic instability are eliminated and new stability requirements consistent with NEDO–32339–A, Supplement 4, Revision 1, are imposed.

While the proposed amendments permit operation in regions of the power and flow operating domain postulated to be susceptible to neutronic/thermal hydraulic instability, the implementation of the EIA solution ensures there is not a significant increase in the probability or consequences of an accident previously evaluated. Operation in these regions does not increase the probability of occurrence of initiators and precursors of other previously analyzed accidents. The proposed amendments permit the implementation of the features of the EIA solution which prevent neutronic/thermal hydraulic instability. The features include pre-emptive reactor scram upon entry into the regions of the power and flow operating domain most susceptible to neutronic/thermal hydraulic instability—the Exclusion Region. The EIA solution prevents neutronic/thermal hydraulic instability during operation in regions of the power and flow operating domain previously excluded from operation and therefore does not significantly increase the probability of a previously analyzed accident.

The EIA solution also requires implementation of stability control prior to entry into a region of the power and flow operating domain which is potentially susceptible, in the absence of stability control, to neutronic/thermal hydraulic instability. The modified rod block functions providing the restricted region entry alarm (RREA), boiling boundary limits, and PBDS functions are required on entry into the Restricted Region of the power to flow map. The boiling boundary limits, and Period Based Detection System (PBDS) functions are required on entry into the Monitored Region of the power to flow map. The EIA solution prevents or allows for detection and suppression of neutronic/thermal hydraulic instability during operation in these regions of the power and flow operating domain.

The EIA solution includes restrictions on power and flow conditions and actions associated with the modified APRM flow biased scram and RREA functions. Required actions include adherence to the boiling boundary limit stability control prior to entry and during operation in the region of the power and flow operating domain which is potentially susceptible to neutronic/thermal hydraulic instability—in the absence of stability control. In addition, the proposed amendments require operator actions based upon control room indications generated by a new PBDS. The PBDS is designed to provide alarm indication that conditions consistent with a significant degradation in the stability performance of the reactor have occurred and the potential for imminent onset of neutronic/thermal hydraulic instability may exist. The PBDS also provides analog indication of the highest and second highest successive period confirmation count for all of the LPRMs monitored. This provides the plant operators with continuous indication of reactor stability operating conditions. The PBDS system provides indication only and does not affect plant structures, systems, or components in any way that could increase the probability or consequences of an accident. Rather, the improved control room indications provide the operator with more accurate and timely information.

The EIA solution allows for the ''Setup'' of APRM flow biased scram and control rod block function. The EIA solution requires adherence to certain boiling boundary limit stability controls prior to selection by the operator of APRM flow biased scram and control rod block function ''Setup'' setpoints. This ''Setup'' function allows operation in a region of the power and flow operating domain potentially susceptible to neutronic/thermal hydraulic instability provided the additional limits of the flow control boiling boundary (FCBB) and PBDS are met. After exiting the region requiring the stability control to be met, the setpoints can be manually reset to their normal values. Stability controls are required to be in place when setpoints are ''Setup''. As a backup EIA feature, the APRM flow biased setpoints automatically reset to their normal values above a pre-determined flow condition. This automatic reset to the more conservative setpoints ensures that the pre-emptive reactor scram will prevent operation as a result of an anticipated operational occurrence in the region most susceptible to neutronic/thermal hydraulic instability should the operator not select the more conservative setpoints appropriate for operation following exit from the region requiring stability control. The FCBB, PBDS, and automatic reset of the APRM flow biased scram and control rod block function ''setup'' setpoints allow for the use of the ''setup'' feature and help ensure that there is not an increase in the probability or consequences of an accident.

Operation in the regions of the power and flow operating domain excluded by current TS 3.4.1 and Figure 3.4.1–1 can occur as a result of anticipated operational occurrences. In the absence of operator actions the severity of these anticipated operational occurrences may increase due to the potential occurrence of neutronic/thermal hydraulic instability as a result of operation in these regions. Upon entry, as a result of an anticipated operational occurrence, into the region most susceptible to neutronic/thermal hydraulic instability the pre-emptive reactor scram prevents neutronic/thermal hydraulic instability. Therefore, the consequences of an accident do not significantly increase while operating with stability control in place.

The required EIA features is designed to limit possible neutronic/thermal hydraulic instabilities and to detect and suppress further neutronic/thermal hydraulic instabilities. These features include: a pre-emptive automatic scram, the control rod block and alarms associated with entry into the region susceptible to neutronic/thermal hydraulic instabilities, automatic reset of APRM flow biased setpoints, PBDS, FCBB, and the required operator actions, including manual reactor scram. Therefore, the proposed amendments prevent the occurrence of neutronic/thermal hydraulic instability during operation or as a consequence of an anticipated operational occurrence and do not significantly increase the consequences of any previously analyzed accident.

2. The proposed amendments do not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed amendments eliminate existing restrictions on power and flow conditions and impose alternative restrictions which permit the implementation of the EIA long term stability solution. The current restrictions on the power and flow conditions do not prevent entry into regions of the power and flow operating domain most susceptible to neutronic/thermal hydraulic instability and therefore the possibility of neutronic/thermal hydraulic instability exists in the absence of operator action. The required features of the EIA solution implement a pre-emptive scram upon entry into the region most susceptible to neutronic/thermal hydraulic instability, without operator action. The accessible operating domain allowed by the proposed amendments is essentially a subset of the power and flow operating domain currently allowed. Initial conditions are bounded by the current initiators and precursors of accidents and anticipated operational occurrences. Accordingly, no new accident of initiator is present. Therefore, the proposed amendments do not create the possibility of a new or different kind of accident from that previously evaluated.

Concurrent with the implementation of the proposed amendments, a modified Flow

Control Trip Reference (FCTR) card, EIA FCTR card, and a new Period Based Detection System (PBDS) will be installed as required by the EIA solution. The function of the EIA FCTR card is to aid the operator in the identification of entry into regions of the power and flow operating domain potentially susceptible to neutronic/thermal hydraulic instability in the absence of stability controls and to initiate a pre-emptive scram upon entry into the regions most susceptible to neutronic/thermal hydraulic instability. This is accomplished by altering the existing values of setpoints of the APRM flow biased scram and the control rod block functions generated by the EIA FCTR card.

The design of the EIA digital FCTR card is a functional equivalent of the original analog FCTR card. The Failure Modes and Effects Analysis (FMEA) for the card detailed in NEDC–32339P-A Supplement 2 found no single failure that would increase the consequences of an accident. The EIA FCTR card maintains the original basis for the NMS interface functions of the analog FCTR card it replaces. The plant specific environmental conditions (temperature, humidity, pressure, seismic, and electromagnetic compatibility) have been confirmed to be enveloped by the environmental qualification values for the EIA FCTR cards. Therefore, the potential for spurious scrams or common mode failures induced by environmental effects (e.g., electromagnetic interference) is considered negligible. The installation of the EIA FCTR card will therefore not create the possibility of a new or different kind of accident from any accident previously evaluated.

The function of the PBDS is to provide the operator with an indication that conditions consistent with a significant degradation in the stability performance of the reactor has occurred and the potential for imminent onset of neutronic/thermal hydraulic instability may exist. This is accomplished by the installation of a new PBDS card in the Neutron Monitoring System in accordance with NRC approved BWROG and GE design. The PBDS card takes inputs from individual local power range monitors and provides analog indication of the highest and second highest successive period confirmation count, provides a Hi DR and Hi-Hi DR alarm, and INOP status indication to the operator in the control room. These displays can not create the possibility of a new or different kind of accident from any accident previously evaluated. The plant specific environmental conditions (temperature, humidity, pressure, seismic, and electromagnetic compatibility) have been confirmed to be enveloped by the PBDS environmental qualification values. Therefore, the installation of the PBDS card will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendments do not involve a significant reduction in the margin of safety.

The proposed amendments permit the implementation of the EIA long term solution to the stability issue. Under certain conditions, existing BWR designs are susceptible to neutronic/thermal hydraulic instability. GDC 10 of 10 CFR 50, Appendix A, requires that specified acceptable fuel design limits not be exceeded during anticipated operational occurrences. General Design Criterion (GDC) 12 of 10 CFR 50, Appendix A, requires thermal hydraulic instability to be prevented by design or be readily and reliably detected and suppressed. When the design of the reactor system does not prevent the occurrence of neutronic/thermal hydraulic instability, instability is considered an anticipated operational occurrence. The proposed amendments and the associated design modifications provide automatic features and operational information to the Control Room that replace the existing BWROG Interim Corrective Actions (ICAs). Thus the EIA solution assures compliance with GDC-10 and GDC 12 by providing for reliable detection and suppression and by the prevention of neutronic/thermal hydraulic instability. This therefore precludes neutronic/thermal hydraulic instability from becoming a credible consequence of an anticipated operational occurrence. As a result the margins of safety are maintained.

Analyses performed by the BWROG indicate that neutronic/thermal hydraulic instability induced power oscillations could result in conditions exceeding the MCPR SL prior to detection and suppression by the current design of the Neutron Monitoring System and Reactor Protection System. To ensure compliance with GDC 12 the BWROG developed Interim Corrective Actions (ICAs) to enhance the capability of the operator to readily and reliably detect and suppress neutronic/thermal hydraulic instability. The BWROG ICAs also provided additional guidance for monitoring local power range monitors beyond the requirements of current TS 3.4.1 to ensure adequate margin to the onset of neutronic/thermal hydraulic instability. Reliance on operator actions to comply with GDC 12 was accepted on an interim basis by the NRC pending final implementation of a long term solution to the stability issue. The modified design of the Reactor Protection System (APRM flow biased scram) and stability control prior to entry into a region of the power and flow operating domain which is potentially susceptible, in the absence of stability control, to neutronic/thermal hydraulic instability implemented with the EIA solution prevents neutronic/thermal hydraulic instability. In addition, significant backup protection features, including the PBDS and specified operator actions, are required to be implemented. As a result, the margin to the onset of neutronic/thermal hydraulic instability provided by the existing TS requirements and BWROG ICAs recommendations is not reduced by the implementation of the EIA solution. The EIA solution assures compliance with GDC 12 by the prevention of neutronic/thermal hydraulic instability and therefore precludes neutronic/thermal hydraulic instability from becoming a credible consequence of an anticipated operational occurrence. The consequences of anticipated operational occurrences will not increase and the margin to the MCPR SL will not decrease upon implementation of the EIA solution. Therefore, the proposed amendment 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: Government Documents Department, Louisiana State University, Baton Rouge, LA 70803.

Attorney for licensee: Mark Wetterhahn, Esq., Winston & Strawn, 1400 L Street, NW, Washington, DC 20005.

NRC Project Director: John N. Hannon.

Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: October 1, 1998.

Description of amendment request: The proposed change modifies Technical Specification (TS) 3.3.3.7.3 and Surveillance Requirement 4.3.3.7.3 for the broad range gas detection system. A change to Technical Specification Basis 3/4.3.3.7 has been included to support this change. This change to the TS is necessary for the installation of a new, more reliable broad range gas detection system.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The broad range gas detection system has no effect on the accidents analyzed in Chapter 15 of the Final Safety Analysis Report. It's only effect is on habitability of the control room, which will be enhanced by installation of the new monitoring system and this change to the Technical Specifications. Qualitative analysis based on a quantitative risk assessment has shown that the impact on operator incapacitation and subsequent core damage risk of the periodic automatic background/reference spectrum check is negligible and that the probability of malfunction of the BRGMs due to a slowly increasing toxic chemical concentration is negligible.

Therefore, the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different type of

accident from any accident previously evaluated?

Response: No.

The proposed Technical Specification change in itself does not change the design or configuration of the plant. The new broad range toxic gas monitoring system performs the same function as the old system, but it accomplishes this function with increased reliability.

Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: No.

The broad range gas detection system has no effect on a margin of safety as defined by Section 2 of the Technical Specifications. Its only effect is on habitability of the control room, which will be enhanced by installation of the new monitoring system and this change to the Technical Specifications.

Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, LA 70122.

Attorney for licensee: N.S. Reynolds, Esq., Winston & Strawn, 1400 L Street NW, Washington, DC 20005–3502.

NRC Project Director: John N. Hannon.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Nuclear Generating Plant, Unit No. 3 (CR–3), Citrus County, Florida

Date of amendment request: July 30, 1998 (LAR–222).

Description of amendment request: The proposed amendment will change the Improved Technical Specifications (ITS) to add a new Required Action for the existence of breaches in the Control Complex Habitability Envelope (CCHE) that are in excess of allowances. A new surveillance requirement for the performance of a periodic integrated leak test of the CCHE boundary on a 24-month frequency would also be added. Changes to the current Ventilation Filter Test Program (VFTP) are proposed to adopt current standards for laboratory testing, change acceptable values of control room emergency ventilation flow rate and filter differential pressure, and add the Auxiliary Building Ventilation Exhaust Filters to the VFTP. Conforming changes to the ITS Bases are also included.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below.

1. Does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated. The Control Room Emergency Ventilation System (CREVS) and the Control Complex Habitability Envelope (CCHE) are designed to limit the radiation dose to the control room operating staff following a design basis accident. Since these systems are only effective in limiting dose following an accident, the existence of limited breaches in the CCHE, the performance of periodic leak tests, and changes to the Ventilation Filter Test Program (VFTP) would not increase the probability of occurrence of any evaluated event. The features of the CREVS and the Control Complex emergency filters, or the CCHE have no direct function in mitigating the offsite consequences of any evaluated accident. The Auxiliary Building exhaust filters are not credited with reducing offsite doses, however, if available would filter releases from the Auxiliary Building. Adding them to the VFTP will not increase the consequences calculated for any evaluated accident.

The proposed changes are consistent with the revised control room operator dose calculations as presented in the Control Room Habitability Report dated July 1998. Since all calculated doses are within 10 CFR Part 50, Appendix A GDC 19 limits there is no significant increase in consequences.

It is conceivable that the existence of additional breaches in the CCHE could result in an increase in operator dose, however the low probability of a catastrophic reactor accident, the relatively short time allowed for breaches to be open in excess of approved dose calculation assumptions, and the ability to close breaches expeditiously makes the risk increase insignificant.

The changes to the ITS Bases improve information on the operation and function of CREVS, and establish that CREVS operability is dependent on maintaining CCHE integrity. The inclusion of this information reinforces the importance of maintaining the CCHE boundary, and will help to ensure the CREVS is capable of performing its intended safety function.

The Control Room Habitability Report, dated July 1998, provided with this LAR presents the methodology used and the results of the operator dose calculations for the Maximum Hypothetical Accident, toxic gas release, and other design basis accidents. The report provides the information needed for NRC review of LAR 222, Revision I and the associated unreviewed safety question. This evaluation concludes that the current level of CCHE integrity provides adequate protection for the control room operator.

Based on the foregoing, the proposed amendment does not significantly increase the probability or consequence of an accident previously evaluated.

2. Does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Neither performance of periodic CCHE leak tests nor changes to the existing VFTP can create the possibility of a new or different kind of accident. During the period of time when CCHE breaches are greater than the design calculation, there exists the possibility that control room dose from an analyzed accident may be greater than specified in General Design Criterion 19. This condition will not however create the possibility of a new or different kind of accident. Since CREVS and the emergency filtration units function to provide protection following a radiological accident the changes proposed to improve their performance cannot create a new or different kind of accident. Changes to the Bases to provide better information on determining CREVS and CCHE operability cannot create the possibility of a new or different kind of accident.

3. Does not involve a significant reduction in a margin of safety.

The proposed amendment does not involve a significant reduction in a margin of safety. Neither performance of periodic CCHE leak tests nor changes to the existing VFTP can create a reduction in the margin of safety. The changes to both of these programs will result in improved assurance that the CREVS and CCHE will perform as expected if required for operator protection. Changes to the Bases of the CREVS Technical Specification which clarify the conditions necessary for operability will improve understanding of the requirements for maintaining control room habitability, and will not create a reduction in the margin of safety. The existence of additional breaches in the CCHE for short periods of time does not significantly increase the risk of control room operator exposure to airborne radioactivity or toxic gas. There is no change in the risk to the public since the CCHE has no direct function in mitigating the offsite consequences of any evaluated accident. Any event that could create these exposures has an extremely low probability of occurrence, and while the potential for higher operator exposure exists if additional breaches are open, the short duration allowed would not significantly increase the risk of exposure. Therefore, for the reason stated above the existing margin of safety would not be reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied.

Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Coastal Region Library, 8619

W. Crystal Street, Crystal River, Florida 34428.

Attorney for licensee: R. Alexander Glenn, General Counsel, Florida Power Corporation, MAC–A5A, P.O. Box 14042, St. Petersburg, Florida 33733–4042.

NRC Project Director: Frederick J. Hebdon.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Nuclear Generating Plant, Unit No. 3 (CR–3), Citrus County, Florida

Date of amendment request: September 30, 1998 (LAR–238).

Description of amendment request: The proposed amendment will correct the reactor coolant system (RCS) leakage detection capability of the Reactor Building atmosphere gaseous radioactivity monitor described in the Improved Technical Specification Bases and the Final Safety Analysis Report (FSAR). These documents currently identify that the gaseous radioactivity monitor is capable of detecting a one gallon per minute (gpm) RCS leak within one hour. The licensee has determined that it would take approximately 14 hours for this instrument to detect a one gpm RCS leak using currently accepted assumptions. The capability of other monitors to detect a one gpm RCS leak within one hour is not affected by this change.

The licensee cited several factors which contribute to the difficulty in reliably detecting RCS leakage increases of one gpm within one hour using a gaseous radioactivity monitor. These include the relatively long half-life of Xe-133 (primary nuclide of detection), fluctuations in background levels of radioactivity, the existence of minor RCS leaks, improved performance of nuclear fuel, and improved primary water chemistry control. Based on RCS radioactivity concentrations assumed in the Environmental Report, half-lives of the most abundant gaseous nuclides, and background radioactivity levels, the licensee indicated a one gpm leak can conservatively be detected in approximately 14 hours by the gaseous monitor. The licensee has determined that this change to the licensing basis is an unreviewed safety question.

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.

No. The function of the RM–A6 gaseous radioactivity monitor is to detect leakage from the RCS that may develop as a result of a flaw in a pressure boundary component. The previously identified capability to detect a one gpm leak within one hour would have provided an earlier warning of a small RCS leak than the actual detection capability now identified. However, RCS loss of coolant accidents evaluated in the FSAR cover the full spectrum of break sizes up to and including a complete severance of the largest RCS piping. The results of these analyses demonstrate that the consequences of such leaks are acceptable.

No other equipment relies on the capability of the RM–A6 gaseous monitor's ability to detect RCS leakage to perform its function. Likewise, no accident analyses rely on RCS leak detection for successful mitigation. Identifying the detector's actual capability to detect an RCS leak will not increase the probability of occurrence of an RCS leak. Detection time for an RCS leak was a consideration in granting a partial exemption to General Design Criterion 4. However, the capability of the RCS piping to resist propagation of a flaw from a leak into a break was based on material fracture analysis and material properties, not on the ability to detect low levels of leakage.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

No. The function of the RM–A6 gaseous radioactivity monitor is to detect RCS leakage that may develop from a flaw in a pressure boundary component. The monitor is a passive component that provides an indication of possible leakage for further operator evaluation. Identifying that a longer response time is required for the monitor to detect a small leak will not create the possibility of a new or different kind of accident. Existing analyses for small and large break loss of coolant accidents provide an evaluation of the full spectrum of RCS break sizes.

3. Involve a significant reduction in a margin of safety.

No. The RM–A6 gaseous radioactivity monitor is included in plant technical specifications as one of two containment atmosphere RCS leak detection instruments required to be operable to satisfy a limiting condition for operation. If the RM–A6 particulate monitor is not operable, then the response time of the containment atmosphere monitor will be increased. RCS piping analyses have demonstrated that the propagation of a small primary loop leak into a pipe break would not occur rapidly. NRC acceptance of the applicable analyses included significant safety factors for the propagation of flaws into pipe breaks which were based on low probability stress combinations of normal plus safe shutdown earthquake loads. Considering the actual detection capability of the RM–A6 gaseous monitor and the existence of other diverse leak detection capabilities, detection of a leak in a relatively short period of time is anticipated. In the event an RCS leak developed into a pipe break, current accident analyses would bound the effects of the pipe break on and off site. Therefore, the possibility of increased time to detect an RCS leak does not represent 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 request involves no significant hazards consideration.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 34428.

Attorney for licensee: R. Alexander Glenn, General Counsel, Florida Power Corporation, MAC–A5A, P.O. Box 14042, St. Petersburg, Florida 33733–4042.

NRC Project Director: Frederick J. Hebdon.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Nuclear Generating Plant, Unit No. 3 (CR–3), Citrus County, Florida

Date of amendment request: October 16, 1998 (LAR–229).

Description of amendment request: The proposed amendment would change the Crystal River Unit 3 (CR–3) Final Safety Analysis Report (FSAR), Improved Technical Specifications (ITS) and ITS Bases to resolve an Unreviewed Safety Question (USQ). This USQ was created by changing the normal standby position of valves DHV–34 and DHV–35 (low pressure injection (LPI) pump suction valves from borated water storage tank) from normally open to normally closed. Maintaining these valves normally closed is necessary to ensure assumptions used in fire protection analyses remain valid. The proposed amendment would also add new ITS surveillance requirements for verifying on a periodic basis that the LPI system components and piping, and the building spray suction piping, are full of water.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below.

1. Involve a significant increase in the probability or consequences of an accident previously evaluated?

Valves DHV–34 and DHV–35 are located in the suction lines between the borated water storage tank (BWST) and the low pressure injection (LPI) and building spray (BS) pumps. These valves are maintained normally closed, and are designed to automatically open upon receipt of a reactor coolant system (RCS) low-low pressure signal

of 500 psig or a reactor building (RB) high pressure signal of 4 psig from the engineered safeguards actuation system (ESAS). The designed full stroke time of these valves is within the assumptions of the accident analyses performed for the specific design basis accidents that require the LPI and/or BS systems for accident mitigation. This is the original design basis for these valves. Therefore, the valves are fully capable of performing their intended safety functions while being maintained normally closed.

The failure of one of these valves to open does not impact the mitigation of previously analyzed accidents that require the operation of the LPI and/or BS systems, and cannot increase the probability of these accidents occurring. No RCS or secondary system pressure boundaries are compromised, no release paths for radioactive materials are created, and no challenge to any safety limit or acceptance limit are created by maintaining these valves normally closed.

A single, active failure causing one of these valves to fail to open upon demand would render one train of LPI and BS unavailable for accident mitigation. However, the accident analyses have already accounted for the possibility of only one train of LPI and BS being available, and the consequences of previously evaluated accidents would therefore remain unchanged.

Undetected voiding in the LPI piping and components, and BS suction piping, is highly unlikely to occur. Based on the design and physical layout of the LPI system and BS system, and the monitoring of the systems performed on a periodic basis, any potential for LPI piping and components and BS suction piping voiding will be quickly and easily recognized and corrected. Therefore, since voiding is not likely to occur, the consequence of previously evaluated accidents would not be significantly increased by the proposed change.

2. Create the possibility of a new or different kind of accident from previously evaluated accidents?

Failure of either valves DHV–34 or DHV–35 to open upon demand on an ESAS signal will not create the possibility of a new or different kind of accident. The LPI system and BS system are maintained in a standby condition during normal plant operations, and automatically actuate only after an accident has occurred to mitigate the effects of the initiating accident. No RCS or secondary system pressure boundaries are compromised, no release paths for radioactive materials are created, and no challenges to any safety limit or acceptance limit are created by maintaining these valves normally closed. Additionally, the possibility of undetected voiding in the LPI piping and components, and BS suction piping, is not likely to occur by maintaining these valves normally closed. Therefore, maintaining valves DHV–34 and DHV–35 normally closed will not be an initiator of a new or different kind of accident from previously evaluated accidents.

3. Involve a significant reduction in a margin of safety?

Maintaining valves DHV–34 and DHV–35 normally closed will not create a reduction in the margin of safety. Maintaining valves DHV–34 and DHV–35 normally closed will ensure the capability to safely shut down the reactor under certain postulated fire scenarios, but will result in an extremely small increase in the probability of failure of one train of LPI and BS to perform its safety functions. Based on use of the CR–3 Probabilistic Safety Analysis (PSA) model, and assuming the failure of either valve DHV–34 or DHV–35 to open, the impact on the core-damage frequency was estimated and determined to slightly increase from 7.38 E–6 to 7.41 E–6 per year. This increase (3 E–8 or 0.4%) is in the range considered acceptable in Regulatory Guide 1.174, ''An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Current Licensing Basis,'' dated July 1998.

Maintaining these valves normally closed will not result in undetected voiding in the LPI piping and components, and BS suction piping, as a result of performance of periodic pressure monitoring. If voiding occurs, the Improved Technical Specifications specify the actions required to restore the affected systems to operable status, including correcting the external leakage creating the observed pressure decay. Therefore, the proposed monitoring will ensure the margin of safety is not reduced.

Based on these benefits and risks, there is no discernible change in the risk to the public in mitigating the offsite consequences of any evaluated accident since the failure of one train of LPI and/or BS for any reason is bounded by the assumptions of the accident analyses. Failure of valve DHV–34 or DHV–35 to open upon demand results in extremely low increases in the potential for reactor core damage. Therefore, the existing margin of safety will not be reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 34428.

Attorney for licensee: R. Alexander Glenn, General Counsel, Florida Power Corporation, MAC–A5A, P.O. Box 14042, St. Petersburg, Florida 33733–4042.

NRC Project Director: Frederick J. Hebdon.

GPU Nuclear, Inc., et al., Docket No. 50–289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: October 15, 1998.

Description of amendment request: The proposed amendment request would revise the TMI–1 Updated Final Safety Analysis Report (UFSAR) Chapter 14 postulated accident analysis radiological dose consequences resulting from application of revised atmospheric dispersion factors (X/Q) at the Technical Specification Section 5.1.1 defined exclusion area boundry (EAB) and low population zone (LPZ).

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. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or the consequences of an accident previously evaluated. The proposed amendment has no effect on structures, systems or components. More extensive and recent meteorological data have been utilized for atmospheric dispersion factor (X/Q) determination for both EAB and LPZ. An evaluation of the design basis accidents with revised EAB and LPZ X/Q values results in increases in UFSAR Chapter 14 EAB and LPZ dose consequences which remain well within the guidelines of 10 CFR Part 100.

Therefore, this activity does not involve a significant increase in the probability of occurrence or the consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any previously evaluated. The proposed amendment has no impact on any plant structures, systems or components. The proposed change revises the atmospheric dispersion factors for EAB and LPZ used in the existing UFSAR Chapter 14 accident analyses, based on more extensive meteorological data. These changes only effect the postulated dose consequences of currently analyzed accidents. Therefore, this activity does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety. The proposed amendment has no impact on structures, systems or components. The proposed revisions to the EAB and LPZ X/Q values are based on recent more extensive meteorological data and Regulatory Guide 1. 145 methods. The increased X/Q values provide a more accurate assessment of meteorological conditions which result in postulated dose consequences which remain well within the guidelines of 10 CFR Part 100. Therefore, this activity does 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: Law/Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pitman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Cecil O. Thomas.

GPU Nuclear, Inc., et al., Docket No. 50–289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: October 19, 1998.

Description of amendment request: The proposed Technical Specification change request would add operability and surveillance requirements for the remote shutdown system similar to those in NUREG–1430, ''Standard Technical Specifications—Babcock and Wilcox Plants'' Section 3.3.18 entitled ''Remote Shutdown System''.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or the consequences of an accident previously evaluated. The proposed amendment adds operability and surveillance requirements for the existing TMI–1 remote shutdown system similar to those contained in NRC NUREG–1430, ''Standard Technical Specifications—Babcock & Wilcox Plants''. The addition of these requirements to Technical Specifications provides further assurance of remote shutdown system operability in the event that operators must place and maintain the unit in a safe shutdown condition from outside the control room. The function and operation of the remote shutdown system has not changed. Therefore, this activity has no affect on the probability of occurrence or consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any previously evaluated. The proposed amendment has no impact on any plant structures, systems or components. The function and operation of the remote shutdown system has not changed. Therefore, this activity does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety. The proposed amendment provides additional assurance of remote shutdown system operability. The function and operation of the remote shutdown system has not changed. Therefore, this activity does 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: Law/Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

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. 50–289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: October 19, 1998.

Description of amendment request: The proposed change to the TMI–1 Technical Specification would revise the limit on reactor coolant system activity to a maximum allowable of 1.0 microcurie/gram dose equivalent I–131. The proposed revision provides an allowable reactor coolant system specific activity limit base on once-through steam generator (OTSG) inspection results performed each refueling outage.

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. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or the consequences of an accident previously evaluated. The proposed amendment has no effect on structures, systems or components. The existing steam line break criteria are maintained. This change only accounts for radiological consequences resulting from a revised maximum allowable reactor coolant system (RCS) specific activity limit of 1.0 μiCi/gm. The new radiological consequences of the revised MSLB accident, which also incorporate more conservative values for atmospheric dispersion, are below 10 CFR 100 limits and 10 CFR 50, Appendix A, GDC–19 limits for the control room. The use of revised atmospheric dispersion factors for other TMI–1 accident analysis is addressed in a separate license amendment request submittal. Therefore, this activity does not involve a significant increase in the probability of occurrence or the consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any previously evaluated. The proposed amendment has no impact on any plant structures, systems or components. OTSG tube structural integrity is maintained. Therefore, this activity does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety. The proposed amendment has no impact on structures, systems or components. OTSG tube structural integrity is maintained. The existing TMI–1 Technical Specification Section 3.1.4.1 Bases state that the limitations on the specific activity of the primary coolant ensure that the resulting 2-hour doses at the site boundary will be well within the Part 100 limit following associated design basis accidents postulated in conjunction with an assumed steady state primary-to-secondary steam generator tube leakage of 1.0 gpm. This margin of safety is preserved since resulting does consequences incorporating more conservative values for atmospheric dispersion remain well within the Part 100 limit. Therefore, this activity does 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: Law/Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pitman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Cecil O. Thomas.

Illinois Power Company, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of amendment request: October 23, 1998.

Description of amendment request: The proposed amendment would allow implementation of a feedwater leakage control system to address leakage through the primary containment feedwater penetration isolation valves.

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 implements a method of providing a qualified sealing system for the primary containment feedwater penetration isolation valves. This water sealing function, i.e., the FWLCS, constitutes a new operating mode of the Residual Heat Removal (RHR) system. The FWLCS introduces new piping that constitutes an extension of the reactor coolant system (RCS); however, such piping is designed to the same requirements as other RCS piping and as such introduces no significant increase in the probability of any accident previously evaluated. Notwithstanding, a postulated line break in any of the new FWLCS piping would not, by itself, introduce any new effects or consequences not already bounded by postulated line-break or LOCA events previously evaluated in the USAR. Since the proposed change does not affect any parameters or conditions that contribute to the initiation of any accidents previously evaluated, the proposed change cannot increase the probability of any accident previously evaluated.

The proposed change potentially affects the leak-tight integrity of the primary containment designed to mitigate the consequences of a loss-of-coolant accident (LOCA). Once the FWLCS mode has been initiated and a water seal for the seating surfaces of the primary containment feedwater penetration isolation valves has been established (within one hour after the accident), post-LOCA primary containment atmosphere will be prohibited from leaking through the feedwater penetrations and thus bypassing the secondary containment.

Calculations of post-accident DBA LOCA doses affected by this change use accepted ICRP 30 dose conversion factors and take credit for suppression pool scrubbing. Suppression pool scrubbing is effective in reducing iodine release but has no assumed effect on the removal of noble gases. Since the methodology and assumptions for scrubbing are acceptable to the NRC per the guidance in SRP Section 6.5.5 and the values for decontamination factors are conservative, considerable margin is preserved within the analysis. However, these calculations show increases in some of the previously evaluated post-accident doses when compared with dose calculations performed as part of the initial plant licensing basis. Although some of the newly calculated post-accident doses are larger than those that were previously approved, the increases remain small enough to be within the acceptance limits given in 10 CFR 50, Appendix A, GDC 19 and in 10 CFR 100.11.

Since all of the newly calculated post-accident doses resulting from the proposed addition of a water sealing system for the feedwater primary containment penetration isolation valves are below the 10 CFR 50, Appendix A, GDC 19 and 10 CFR 100.11 acceptance limits, IP has concluded that the proposed change does not result in a significant increase in the consequences of an accident previously evaluated.

2. The proposed change institutes a new operating mode of the RHR system (the FWLCS mode). When this mode is established, it will reduce primary containment atmosphere leakage to the environment in the event of a LOCA. Flow diverted from the RHR system to the FWLCS has been evaluated, and has been determined to have no adverse impact on the capability of the RHR system to perform its intended safety functions. Further, the additional piping added for the FWLCS is designed to appropriate requirements for the RCS, thus ensuring that RCS integrity is maintained per design. Sufficient isolation between the RCS and the RHR low-pressure piping will also be maintained per the FWLCS design. Thus, no safety functions are altered or impacted as a result of this change. Installing, operating, or testing the components that support the FWLCS mode has no influence on, nor does it contribute to the possibility of a new or different kind of accident or malfunction from those previously analyzed. Because the USAR analysis already assumes leakage through the feedwater primary containment penetrations following a design basis LOCA, and the subject change does not affect the type of accident(s) that are postulated to occur, the proposed change does not present the possibility of an accident of a different type. Additionally, the change in dose analysis methodology does not create an accident or malfunction of a different type since it only involves the analysis of the effects of accidents or malfunctions previously evaluated in the USAR.

Based on the above, IP has concluded that the proposed change will not create the possibility of a new or different kind of accident not previously evaluated.

3. The margin of safety impacted by the proposed change involves the dose consequences of postulated accidents which are directly related to the primary containment leakage rate, specifically those consequences associated with dose attributable to leakage through the feedwater lines which are secondary containment bypass leakage paths.

Although considerable conservatisms were included in the reanalysis, this reanalysis identified some dose values that increased above the previously licensed values as well as some dose values that decreased below the previously licensed values. However, all of the radiation dose consequences resulting from the proposed change will continue to be below the 10 CFR 50, Appendix A, GDC 19 and 10 CFR 100.11 acceptance criteria.

Except for providing a method of sealing the feedwater primary containment penetration isolation valves (and therefore the method of performing periodic leakage testing of these components) no other change in the method of primary containment leakage testing or secondary containment bypass leakage path testing is being proposed. All other primary and secondary containment bypass leakage testing will continue to be performed in accordance with existing Technical Specification requirements. Adequate programs are in place to ensure that proper maintenance and repairs are performed during the service life of the primary containment, systems and components penetrating the primary containment, and for all secondary containment bypass leakage paths.

As a result, IP has concluded that the proposed change will not result in a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Vespasian Warner Public Library, 120 West Johnson Street, Clinton, IL 61727.

Attorney for licensee: Leah Manning Stetzner, Vice President, General Counsel, and Corporate Secretary, 500 South 27th Street, Decatur, IL 62525.

NRC Project Director: Stuart A. Richards.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: September 28, 1998.

Description of amendment request: The proposed amendment request would resolve an unreviewed safety question (USQ) and amend the operating license to allow manual override capability for the containment isolation actuation signal to reactor coolant system letdown isolation valves.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed modification does not change the probability of any accident previously evaluated since it does not change any mode of normal operation. Neither the accident signal (CIAS) nor the override feature is an initiator of an analyzed event. The consequences of an accident are also not changed significantly due to the fact that design and administrative controls ensure that previous accident analyses are bounding. The associated isolation valves will operate as they have in the past in response to an accident signal. There is no single failure that would prevent the letdown isolation function from occurring. The CIAS override feature can only be used if operators have verified that an UHE is the event which has taken place and safety functions are being met.

This ensures that no significant fuel failures will occur due to the event and the consequences of overriding CIAS will not adversely impact radiological conditions in the auxiliary building.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed modification does not create any failure mode which could impact the operation of the RCS or associated systems in a manner that would create a new or different kind of accident. With respect to the letdown isolation function, the plant will operate as it previously has and will respond the same way, automatically, to an accident signal. No new accidents have been identified.

3. The proposed change does not involve a significant reduction in a margin of safety.

The procedural restrictions associated with the use of the CIAS override feature will ensure that existing analyses addressing the consequences of an UHE will be bounding and that safety functions will be maintained as defined in EOPs. The radiological consequences of letdown restoration in the auxiliary building will be similar to normal operating conditions and will be bounded by that assumed in the EEQ analysis. RCS inventory and pressure control will be maintained within the established procedural limits.

Letdown restoration capability already exists after ESF reset. The modification permits letdown restoration to occur earlier than it would previously have been possible.

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: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Attorney for licensee: Perry D. Robinson, Winston & Strawn, 1400 L Street, NW, Washington, DC 20005–3502.

NRC Project Director: William H. Bateman.

Philadelphia Electric Company, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: October 15, 1998.

Description of amendment request: The proposed Technical Specification (TS) changes involve revising TS Section 3/4.10 to include a new Special Test Exception allowing the reactor to be considered in operational condition (OPCON) 4 (cold shutdown) during inservice leak or hydrostatic testing with a reactor coolant water temperature greater than 200°F and less than or equal to 212°F. This is an exception to certain OPCON 3 (hot shutdown) requirements, including primary containment. The proposed TS changes will permit unrestricted access to the primary containment for the performance of required inspections.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed Technical Specifications (TS) changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS changes do not make any physical alterations or modifications to plant systems or equipment. The proposed TS changes will permit the performance of inservice leak or hydrostatic testing, with the reactor in OPERATIONAL CONDITION (OPCON) 4 (COLD SHUTDOWN) and the average reactor coolant temperature greater than 200°F and less than or equal to 212°F. The probability of a leak in the reactor coolant pressure boundary during inservice leak or hydrostatic testing is not increased by considering the reactor in OPCON 4 with reactor coolant temperatures greater than 200°F and less than or equal to 212°F. The inservice leak and hydrostatic testing is performed water solid or near water solid. The stored energy in the reactor core will be very low and the potential for failed fuel and a subsequent increase in reactor coolant activity above TS limits is minimal. In addition, Secondary Containment will be operable and capable of handling airborne radioactivity from leaks that could occur during the performance of inservice leak or hydrostatic testing. Requiring the Secondary Containment to be operable will ensure that potential airborne radioactivity from leaks will be filtered through the Standby Gas Treatment System (SGTS), thereby limiting any radioactivity releases to the environment.

In the event of a large primary system leak, the reactor vessel would rapidly depressurize allowing the low pressure Emergency Core Cooling System (ECCS) subsystems to operate. The capability of the systems that are required for OPCON 4 would be adequate to keep the core flooded under this condition. Small system leaks would be detected by leakage inspections before significant inventory loss has occurred. This is an integral part of the hydrostatic testing program.

Therefore, the proposed TS changes will not significantly increase the probability or consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS changes do not make any physical alterations or modifications to plant systems or equipment. The proposed TS changes do not adversely impact the operation of any plant equipment. Allowing the reactor to be considered in OPCON 4 during hydrostatic or inservice leak testing, with a reactor coolant temperature greater than 200°F and less than or equal to 212°F, is an exception to certain OPCON 3 (HOT SHUTDOWN) requirements, including primary containment integrity. The hydrostatic or inservice testing is performed water solid, or near water solid. The stored energy in the reactor core will be very low and the potential for failed fuel and a subsequent increase in coolant activity above TS limits is minimal. In addition, the Secondary Containment will be operable and capable of handling airborne radioactivity from leaks that could occur during the performance of hydrostatic or inservice leakage testing.

The inservice leak or hydrostatic test conditions remain unchanged. The potential for a system leak remains unchanged since the reactor coolant system is designed for temperatures exceeding 500°F with similar pressures. There are no alterations of any plant systems or components that cope with the spectrum of accidents.

Therefore, the proposed TS changes will not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

The proposed TS changes do not make any physical alterations or modifications to plant systems or equipment. The proposed changes will permit the performance of inservice leak and hydrostatic testing with a reactor coolant temperature greater than 200°F and less than or equal to 212°F and the reactor in OPCON 4. Since the reactor vessel head will be in place, Secondary Containment integrity will be maintained, and all systems required in OPCON 4 will be operable in accordance with the applicable TS requirements. The proposed TS changes will not have any significant impact on any design basis accident or safety limit. The hydrostatic or inservice leak testing is performed water solid, or near water solid. The stored energy in the reactor core is very low and the potential for failed fuel and a subsequent increase in coolant activity would be minimal. In the event of a large primary system leak, the reactor pressure vessel would rapidly depressurize and the low pressure ECCS subsystems would function as designed to maintain adequate reactor core coverage. This would ensure that the fuel would not exceed peak clad temperature limits.

Also, requiring Secondary Containment integrity will assure that potential airborne radioactive material can be filtered through the SGTS. This will assure that any offsite doses remain well within the limits of 10 CFR 100 guidelines. Small system leaks would be detected by inspections before significant inventory loss could occur.

Therefore, this proposed TS change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are

satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, PA 19464.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, PA 19101.

NRC Project Director: Robert A. Capra.

Public Service Electric & Gas Company, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: October 19, 1998.

Description of amendment request: The proposed amendment would eliminate restrictions imposed by Technical Specification (TS) 3.0.4 for the Filtration, Recirculation and Ventilation System (FRVS) during fuel movement and core alteration activities. Specifically, TS Limiting Conditions for Operation (LCOs) 3.6.5.3.1 and 3.6.5.3.2 would each be revised to add a note stating that the provisions of TS 3.0.4 are not applicable for initiation of handling of irradiated fuel in the secondary containment and core alterations provided that the plant is in Operational Condition 5, with reactor water level equal to or greater than 22 feet 2 inches.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS change does not involve any physical changes to plant structures, systems or components (SSC). FRVS will continue to function as designed. FRVS is an Engineered Safety Feature (ESF) designed to mitigate the consequences of an accident, and therefore, can not contribute to the initiation of any accident. For refueling accidents, the current design basis analysis of FRVS credits only the iodine removal capability of the FRVS ventilation unit and neglects the considerable iodine removal capability of the FRVS recirculation units. In addition, this proposed TS change will not increase the probability of occurrence of a malfunction of any plant equipment important to safety, since the time limits imposed by the current FRVS LCO Action Statements are not affected by these proposed changes. The proposed changes merely allow entry into the FRVS LCO Action Statement in order to support refueling activities.

Therefore, the proposed TS changes, which would permit the initiation of core alterations and handling of irradiated fuel with only one operable FRVS ventilation unit and four operable FRVS recirculation units for a limited seven day period under specific refueling conditions, would not result in the increase of the consequences of an accident previously evaluated.

Therefore, the proposed TS change 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.

The proposed TS changes do not involve any physical changes to plant SSC. The design and operation of the FRVS is not changed from that currently described in the [Updated Final Safety Analysis Report] UFSAR. FRVS will continue to function as designed to mitigate the consequences of an accident. No changes of any kind are being made to FRVS, or its support or supported systems. Deleting the restrictions imposed by TS 3.0.4 as proposed in this TS change request eliminates a compliance restriction imposed by the current TS. Since the current TS already provide a seven day period to perform refueling activities with inoperable FRVS ventilation and recirculation units, the proposed changes would not introduce plant operation in a configuration that is not already permitted in the TS. Therefore, there is no possibility that implementing this proposed TS change would create a different type of malfunction to the FRVS than any previously evaluated. In addition, the proposed TS changes do not alter the conclusions described in the UFSAR regarding operation of FRVS.

Therefore, the proposed TS change does not create the possibility of a new or different kind of accident from any previously evaluated.

(3) The proposed change does not involve a significant reduction in a margin of safety.

The proposed TS change involves the elimination of TS 3.0.4 restrictions imposed on the FRVS LCO. The TS 3.0.4 requirements impose an unnecessary challenge to performing refueling activities when the FRVS LCO Action Statements already sufficiently define the remedial measures to be taken. The time limits imposed by the current FRVS LCO Action Statements are not affected by these proposed changes. The FRVS LCO will retain sufficient configuration controls to appropriately maintain the capability of FRVS to mitigate design basis refueling accidents, no new FRVS configurations will be permitted by the proposed changes, and there will be no reduction in any margin of safety resulting from this proposed TS change. Therefore, the proposed TS change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, NJ 08070.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Project Director: Robert A. Capra.

South Carolina Electric & Gas Company (SCE&G), South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station (VCSNS), Unit No. 1, Fairfield County, South Carolina

Date of amendment request: September 18, 1998.

Description of amendment request: The proposed amendment would revise the VCSNS Technical Specifications (TS) to address the Best Estimate Analyzer for Core Operations—Nuclear (BEACON) core power distribution monitoring and support system. The BEACON system provides continuous core monitoring capabilities to augment the flux mapping system when rated thermal power (RTP) is greater than 25%. The proposed amendment would also make editorial changes to TS 3.3.3.2 and 4.3.3.2.c to delete the reference to F_{xy}.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change allows the Power Distribution Monitoring System (PDMS) to be used for measuring power distribution limits when Thermal Power is greater than 25% RTP. This includes relocating manufacturing and measurement uncertainty values from the Technical Specification to the COLR [core operating limit report]. Also included in this change is the addition of a new specification and bases section for the Power Distribution Monitoring System (PDMS). The Technical Specification Power Distribution Limits are not being changed; only the method in which they are measured is being changed. The probability of an accident is not significantly increased. The measurement of power distribution limits and the location of manufacturing and measurement uncertainty values are not initiators of any analyzed event. The change will not affect the consequences of any analyzed event. The power distribution limits will still be measured and verified to be within limits as required by the current Technical Specification Surveillance. The cycle-specific core operating limits, although not in Technical Specifications, will be followed in the operation of VCSNS. The actions as required by current Technical Specifications, when or if limits are exceeded are not being

changed. This change will not significantly affect the assumptions relative to the mitigation of accidents.

Each accident analysis addressed in the VCSNS Final Safety Analysis Report will be examined with respect to changes in cycle-dependent parameters, which are obtained from application of the NRC-approved reload design methodologies, to ensure that the transient evaluation of new reloads are bounded by previously accepted analyses. This examination, which will be performed per requirements of 10 CFR 50.59, ensures that future reloads will not involve an increase in the probability or consequences of an accident previously evaluated.

Therefore, the change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change allows the Power Distribution Monitoring System (PDMS) to be used for measuring power distribution limits when Thermal Power is greater than 25% RTP. This includes relocating manufacturing and measurement uncertainty values from the Technical Specification to the COLR. Also included is the addition of a new specification and bases section for the Power Distribution Monitoring System. No safety-related equipment, safety function, or plant operation will be altered as a result of this proposed change. No hardware is being added to the plant as part of the change. The cycle specific variables are calculated using the NRC-approved methods and submitted to the NRC to allow the Staff to continue to trend the values of these limits. The Technical Specifications will continue to require operation within the required core operating limits and appropriate actions will be taken when or if limits are exceeded. The change will not introduce any new accident initiators. Therefore, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in margin of safety?

The proposed change allows the Power Distribution Monitoring System (PDMS) to be used for measuring power distribution limits when Thermal Power is greater than 25% RTP. The margin of safety presently provided by current Technical Specifications remains unchanged. Only the method in which the power distribution measurements are obtained is being changed. This method is verified by Westinghouse, and reviewed and approved by the NRC. Appropriate measures exist to control the values of the manufacturing and measurement uncertainties. The proposed amendment continues to require operation within the core limits, as obtained from NRC-approved reload design methodologies. Appropriate actions required to be taken when or if limits are violated remain unchanged.

Future changes to measurement and manufacturing uncertainties located in the current Technical Specification will be evaluated per the requirements of 10 CFR 50.59. Since the 10 CFR 50.59 process does not allow any reduction in the margin of safety, prior NRC approval is required prior to a reduction in the margin of safety. If the evaluation of the changes [does] not result in [an] unreviewed safety question, prior NRC approval will not be required. Additionally, the VCSNS Technical Specifications require that all revisions of the plant COLR be submitted to the NRC upon issuance.

Therefore, the change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Fairfield County Library, 300 Washington Street, Winnsboro, SC 29180.

Attorney for licensee: Randolph R. Mahan, South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218.

NRC Project Director: Herbert N. Berkow.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant (FNP), Units 1 and 2, Houston County, Alabama

Date of amendment request: October 12, 1998.

Description of amendment request: The proposed amendments would revise Section 6, ''Administrative Controls,'' of the current Units 1 and 2 Technical Specifications (TS) to recognize additional management positions associated with the steam generator replacement project and providing them the ability to approve procedures regarding this project.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed changes do not significantly increase the probability or consequences of an accident previously evaluated in the FSAR [Final Safety Analysis Report]. The proposed changes have no impact on the probability of an accident. The change being proposed is administrative in nature and involves no physical alteration of the plant or changes to setpoints or operating parameters. The change will provide an appropriate level of review and approval of procedures related to the FNP steam generator replacement without impacting the operational attention of the current on-site plant management. There is no change in the FNP design basis as a result of this change and, as a result, does not involve a significant increase in the consequences of an accident previously evaluated.

(2) The proposed changes to the TS do not increase the possibility of a new or different kind of accident than any already evaluated in the FSAR. No new limiting single failure or accident scenario has been created or identified due to the proposed changes. Safety-related systems will continue to perform as designed. The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

(3) The proposed changes do not involve a significant reduction in the margin of safety. Adding individuals with the appropriate knowledge base to the list of individuals who can approve procedures, which may affect plant nuclear safety, is administrative in nature. There is no impact on the accident analyses. The training and experience requirements for the newly designated management positions are similar to those requirements for other FNP management positions. Therefore the established level of procedure review and approval is not adversely impacted. In addition, these changes allow FNP management to remain focused on plant operations. Thus the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302.

Attorney for licensee: M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama.

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: September 28, 1998.

Description of amendment request: The proposed amendment would modify the requirements applicable when one or more trains of fuel handling building exhaust air or control room makeup and cleanup filtration are inoperable, and eliminate the need to enter Technical Specification 3.0.3 when multiple trains of these systems are inoperable. In addition, the proposed changes would align the actuating instrumentation and logic system required actions with those that are applicable to the systems. Finally,

an administrative change is proposed to remove a footnote that is no longer applicable to the facility.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes consist of:

(a) Assuring that the Specifications define consistent allowed outage times when the same safety function is addressed in multiple Specifications,

(b) Allowing a system to remain inoperable when appropriately restrictive administrative controls are placed on operations that could result in a challenge to the safety function of the system,

(c) Providing an appropriately short Allowed Outage Time for inoperability needed to permit required maintenance and testing that affects all trains of a system,

(d) Redefining system operability and associated actions in a manner consistent with the system design and function,

(e) Aligning a system to the actuated condition on the loss of an actuation channel,

(f) Using consistent terminology throughout the Specifications.

The proposed changes do not represent significant increases in the probability or consequences of an accident because:

(a) The alignment of the action times between actuating system and actuated system operability requirements do not affect the probability or consequences since inoperability of the actuated system has the same effect as inoperability of the actuating system. Since the changes proposed to the actuating system action times will reflect those of the actuated system action times, no change to the allowed outage time applicable to the safety function addressed and fulfilled by both, will occur.

(b) Administrative controls to prevent the conduct of operations that could lead to a challenge to the safety function of the system when the actuation system is inoperable, assures that the design bases functions of the system will not be challenged. Therefore, the probability or consequences of an event previously identified have not been significantly changed.

(c) Allowing up to 12 hours to recover from the inoperability of all three trains of Control Room Ventilation or two or more trains of Fuel Handling Building HVAC does not represent a significant change to the probability of an accident because the inoperability of these ventilation systems are not identified as precursors to a design basis event. The low likelihood of a design basis accident during the limited period of allowed inoperability of these systems does not represent a significant increase in the consequences of an accident.

(d) The redefinition of plant operability requirements into functional trains rather than individual components does not affect the required system functional operability. Therefore, this change does not represent an increase in the probability or consequences of an accident previously identified.

(e) The alignment of the Control Room Ventilation System to the same configuration it would be placed in from an actuation of the inoperable radiation monitoring channel places the system in the design condition. This alignment would result in maintaining the control room envelope pressurized and increases the protection afforded to the operators.

(f) The change in terminology does not change any requirements or actions in the Specification. Therefore this change does not represent an increase in the probability or consequences of any accident previously evaluated.

Based on the above discussion, the individual changes do not represent an increase in the probability or consequences of any accident previously evaluated.

In addition to the changes proposed to controls over Control Room Ventilation, Fuel Handling Building HVAC, and associated actuation logic, an administrative change is proposed to remove the footnote at the bottom of page 3/4 7–20. Since the footnote no longer has meaning or relevance to the operation of the facility, its removal does not increase the probability or consequences of any accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes make the existing Specifications internally consistent, manually align a system to the actuated position, provide an alternative measure that assures [that] a safety function which is unavailable is not required to [be] perform[ed], provide an extended period of allowance for all trains of a system to be inoperable, and redefines system operability to reflect its functional design. The proposed changes do not introduce any new equipment into the plant or significantly alter the manner in which existing equipment will be operated. The systems affected by the proposed changes are not identified as contributing causal factors in design basis accidents, their function is to assist in mitigation of accidents postulated to occur. Since the proposed changes do not allow activities that are significantly different from those presently allowed, no possibility exists for a new or different kind of accident from those previously evaluated.

In addition to the changes proposed to controls over reactivity changes, an administrative change is proposed to remove the footnote at the bottom of page 3/4 7–20. Since the footnote does not perform any function and will never again apply to plant operations, its removal cannot create the possibility of a new or different kind of accident from those previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The proposed changes do not involve a significant reduction in a margin of safety because the ability of the Fuel Handling Building HVAC and Control Room Ventilation Systems will be maintained. The margin of safety is defined by the ability of the systems to limit the release of radioactive materials and limit exposures to operators respectively following a postulated design basis accident. The only aspect of the proposed change that can be postulated to have any effect on a margin of safety is the proposed allowance for all trains of Control Room Ventilation or Fuel Handling Building HVAC to be inoperable for a limited period. The low probability of a design basis event that would require the system to perform its safety function during the limited period allowed by the proposed action assures that the change does not involve a significant change in a margin of safety. Therefore, the proposed changes do not significantly affect these operating restrictions and the margin of safety which support the ability to make and maintain the reactor in a safe shutdown and limit the release of radioactive material is not affected.

In addition to the changes described above, an administrative change is proposed to remove the footnote at the bottom of page 3/4 7–20. Since the footnote is no longer applicable to the facility, its removal cannot result in 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 standards of 10 CFR 50.92© 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, NW, Washington, DC 20036–5869.

NRC Project Director: John N. Hannon.

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: September 29, 1998.

Description of amendment request: The licensee proposes to use a revised methodology to calculate mass and energy release following a postulated large-break loss-of-coolant accident. The amendment request also included proposed changes to the Updated Final Safety Analysis Report.

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 updates the design large break loss of coolant accident (LBLOCA) analysis and methodology described in the UFSAR to support replacement of Westinghouse Model E Original Steam Generators (OSG) with Westinghouse Delta-94 Replacement Steam Generators (RSG).

A safety analysis has been performed, including evaluation of existing analyses and performance of bounding or confirming calculations, to determine effects of the proposed changes.

Analysis of mass and energy releases and resultant containment pressure and temperature response for the RSG concluded a small reduction in peak pressure and temperature for the RSG compared to the OSG. Thus, the proposed amendment does not involve a significant increase in the probability of an accident previously evaluated.

Changes to the LBLOCA model caused by installation of the RSGs and associated changes in analysis methodology result in no change in radiological consequence as delineated in 10 CFR 100 and the Standard Review Plan (NUREG–0800). Consequences of this design basis accident have not increased.

Thus, changes in the LBLOCA design basis event analysis associated with replacement of OSGs with RSGs 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.

This proposal updates the design basis large break loss of coolant accident (LBLOCA) analysis and methodology described in the Updated Final Safety Analysis Report (UFSAR) to support replacement of OSGs with RSGs.

Fit, form, and design function of RSG equipment is not significantly changed from OSG equipment. Analyses of LBLOCA mass and energy releases and resultant containment system response indicates that performance with RSGs remains within the existing design limits. Thus, 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.

A safety analysis has been performed, including evaluations of existing analyses and performance of bounding and/or confirming calculations, to determine the effect of the proposed changes. Results of these analyses demonstrate that the proposed license amendment and operation of STP Units with Delta-94 steam generators installed will not produce post-accident Containment pressures or temperatures exceeding existing Technical Specification limits. Consequently, there are no effects on dose analyses due to design basis LBLOCA performance of the RSGs. Radiological consequences of the postulated accident did not change, and all results remain within the acceptance criteria of 10 CFR 100 and the Standard Review Plan (NUREG–0800).

Thus, the change in LBLOCA analysis results and methodology descriptions in the UFSAR associated with replacement of Model E steam generators with Delta-94 steam generators 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 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, NW, Washington, DC 20036–5869.

NRC Project Director: John N. Hannon.

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: September 30, 1998.

Description of amendment request: The proposed amendment would change the Updated Final Safety Analysis Report and revise the offsite dose licensing basis to account for operation of the existing steam generators at reduced feedwater inlet temperatures, and to account for operation of the new replacement steam generators. The calculated offsite dose consequences would increase for the main steamline break, reactor coolant pump shaft seizure, and rod cluster control assembly ejection accidents. The proposed increases in offsite doses are minimal and all doses remain below the dose limits for their respective accidents, as specified by 10 CFR Part 100 and the Standard Review Plan (NUREG–0800).

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 document updates the facilities' radiological design basis, as described in the Updated Final Safety Analysis Report, to address both a reduction in allowed nominal feedwater temperature for Model E steam generators from 440 °F to 420 °F and the replacement of Model E steam generators with Delta-94 steam generators. Therefore, these changes do not change the probability of an accident previously evaluated.

A safety analysis has been performed, including evaluations of existing analyses and performance of bounding and/or confirming calculations, to determine the impact of the proposed changes. Effects on the dose analyses due to the accompanying physical changes to the plant are slight. However, some improvements were made to the analytical models used in the analyses. These improvements were responsible for the majority of the increase in offsite doses. While the radiological consequences of some postulated accidents increased, all results remain within the acceptance criteria, as defined in 10 CFR 100 and the Standard Review Plan (NUREG–0800).

The radiological consequences of the postulated accidents remain within their respective acceptance criteria with the use of the revised analysis methodologies. Therefore, the change to allow operation of the Model E steam generators at a reduced feedwater temperature of 420°F and the replacement of Model E steam generators with Delta-94 steam generators 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.

This document updates the facilities' radiological design basis, as described in the Updated Final Safety Analysis Report, to address both a reduction in allowed nominal feedwater temperature for Model E steam generators from 440 °F to 420 °F and the replacement of Model E steam generators with Delta-94 steam generators. Since the proposed changes to the Updated Final Safety Analysis Report are analytical in nature, the 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.

A safety analysis has been performed, including evaluations of existing analyses and performance of bounding and/or confirming calculations, to determine the impact of the proposed changes. Effects on the dose analyses due to the accompanying physical changes to the plant are slight. However, some improvements were made to the analytical models used in the analyses. These improvements were responsible for the majority of the increase in offsite doses. While the radiological consequences of some postulated accidents increased, all results remain within the acceptance criteria, as delineated in 10 CFR 100 and the Standard Review Plan (NUREG–0800), for the respective accidents.

The radiological consequences of the postulated accidents remain within their respective acceptance criteria with the use of the revised analysis methodologies. Therefore, the change to allow operation of the Model E steam generators at a reduced feedwater temperature of 420 °F and the replacement of Model E steam generators with Delta-94 steam generators 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 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.

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of amendment request: October 27, 1998.

Description of amendment request: The proposed amendment would change Technical Specification (TS) Section 3/4.8.2.3, ''Electrical Power Systems—DC Distribution—Operating,'' and the associated bases. The surveillance requirements for battery testing would be revised.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

The Davis-Besse Nuclear Power Station (DBNPS) has reviewed the proposed changes and determined that a significant hazards consideration does not exist because operation of the Davis-Besse Nuclear Power Station, Unit Number 1, in accordance with these changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because no accident initiators, conditions, or assumptions are adversely affected by the proposed changes to station battery testing methodology and frequency.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because no accident conditions or assumptions are adversely affected by the proposed changes in station battery testing methodology and frequency. The proposed changes do not alter the source term, containment isolation, or allowable radiological releases. The proposed changes are consistent with the most recent IEEE Standard 450–1995, ''IEEE Recommended Practice for Maintenance, Testing, and Replacement of Vented Lead-Acid Batteries for Stationary Applications,'' and the ''Improved Standard Technical Specifications for Babcock and Wilcox Plants,'' NUREG–1430, Revision 1.

2. Not create the possibility of a new or different kind of accident from any accident previously evaluated because no new accident initiators or assumptions are introduced by the proposed changes. The batteries are not an initiator or contributor to the initiation of an accident. No new accident scenarios, transient precursors, failure mechanisms, or limiting faults are introduced as a result of the proposed changes.

3. Not involve a significant reduction in a margin of safety because the proposed TS changes do not significantly reduce or adversely affect the capabilities of any plant structures, systems or components. These changes increase the effectiveness and frequency of the battery tests being performed. Therefore, there is not a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, OH 43606.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Stuart A. Richards.

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of amendment request: October 27, 1998.

Description of amendment request: The proposed amendment would relocate a Technical Specification (TS) surveillance requirement from TS Section 3/4.6.5.1, ''Shield Building-Emergency Ventilation System'' to TS Section 3/4.6.5.2, ''Shield Building Integrity.'' Administrative and bases changes would also be made.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

The Davis-Besse Nuclear Power Station has reviewed the proposed changes and determined that a significant hazards consideration does not exist because operation of the Davis-Besse Nuclear Power Station, Unit Number 1, in accordance with these changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because no accident initiator is affected by the proposed changes to the Technical Specifications (TS) Index; TS Definition 1.6, ''Shield Building Integrity''; TS 3/4.6.5.1, ''Emergency Ventilation System''; TS 3/4.6.5.2, ''Shield Building Integrity''; TS Bases 3/4.6.5.1, ''Emergency Ventilation System''; or TS Bases 3/4.6.5.2, ''Shield Building Integrity.''

1b. Not involve a significant increase in the consequences of an accident previously evaluated because no accident conditions and assumptions are significantly affected by the above proposed changes. The proposed change to relocate existing TS Surveillance Requirement (SR) 4.6.5.1.d.4 to TS 3/4.6.5.2, and the subsequent application of the Limiting Condition for Operation (LCO) of TS 3/4.6.5.2 should the Emergency Ventilation System (EVS) be unable to produce the required negative pressure in the annulus space due to an opening in the ventilation boundary, would allow 24 hours to restore the capability of maintaining the required negative pressure in the annulus. The current SR 4.6.5.1.d.4 and associated TS LCO 3.6.5.1 would require entry into TS 3.0.3, thereby allowing only one hour for restoration before commencing plant shutdown. The allowed outage time of 24 hours is reasonable considering the limited leakage design of containment and the low likelihood of a Design Basis Accident (DBA) occurring during this time period. The proposed changes are consistent with the guidance of the ''Improved Standard Technical Specifications for Combustion Engineering Plants,'' NUREG–1432, Revision 1 and the ''Improved Standard Technical Specifications for Westinghouse Plants,'' NUREG–1431, Revision 1. The ''Improved Standard Technical Specifications for Babcock and Wilcox Plants,'' NUREG–1430, Revision 1 does not contain guidance for shield building integrity because the DBNPS is the only Babcock and Wilcox-type plant with the containment vessel/annulus space/shield building design. The proposed changes do not alter the drawdown capability of the EVS. Since the likelihood of a DBA occurring during this 24 hour period is low and the containment is of a low leakage design, the radiological consequences of a previously evaluated accident are not significantly increased. The proposed changes do not alter the source term, containment isolation or allowable radiological releases.

2. Not create the possibility of a new or different kind of accident from any accident previously evaluated because no new accident initiators or assumptions are introduced by the proposed changes. No new accident scenarios, transient precursors, failure mechanisms, or limiting failures are introduced as a result of the proposed changes.

3. Not involve a significant reduction in a margin of safety because the proposed TS changes do not significantly reduce or significantly adversely affect the capabilities of any plant structures, systems or

components. The capability of the shield building/EVS to respond when necessary and to maintain a negative pressure will not be significantly changed by these proposed TS changes. Accordingly, there is not a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, OH 43606.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Stuart A. Richards.

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of amendment request: October 28, 1998.

Description of amendment request: The proposed amendment would change Technical Specification (TS) Section 6, ''Administrative Controls.'' Several requirements would be modified and/or relocated to the Updated Safety Analysis Report.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

The Davis-Besse Nuclear Power Station has reviewed the proposed changes and determined that a significant hazards consideration does not exist because operation of the Davis-Besse Nuclear Power Station, Unit Number 1, in accordance with these changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because no accident initiators, conditions or assumptions are affected by the proposed changes to Technical Specification (TS) 6.5.1.6 ''[Station Review Board] Responsibilities''; TS 6.8.4.d, ''Radioactive Effluents Control Program''; TS 6.10, ''Record Retention''; TS 6.11, ''Radiation Protection Program''; TS 6.12, ''High Radiation Area''; and TS 6.15, ''Offsite Dose Calculation Manual (ODCM).''

These changes proposed to TS 6.5.1.6, TS 6.8.4.d, TS 6.10, and TS 6.15 are administrative changes that improve or update the content of TS Section 6.0, ''Administrative Controls.''

The change proposed to TS 6.11 would relocate its content to the DBNPS Updated Safety Analysis Report, thereby removing it from the TS consistent with the NRC's NUREG–1430, Revision 1, ''Improved Standard Technical Specifications for Babcock and Wilcox Plants.''

The changes proposed to TS 6.12 are based upon the current revision to 10 CFR Part 20, ''Standards for Protection Against Radiation,'' as published in the **Federal Register**, dated August 15, 1994, and TS approved by the NRC for the San Onofre Nuclear Generating Station Units 2 and 3 in Operating License Amendments 127 and 116, respectively. The changes to TS 6.12 also provide for the use of alternative methods for controlling access to high radiation areas and state-of-the-art radiation protection monitoring methods, such as closed circuit television and telemetry.

Under the proposed changes, the TS would continue to satisfy the applicable requirements of 10 CFR 50.36(c)(5).

1b. Not involve a significant increase in the consequences of an accident previously evaluated because no accident conditions or assumptions are affected by the proposed changes. As described above, these changes are administrative changes or are proposed pursuant to the current revision to 10 CFR Part 20, ''Standards for Protection Against Radiation.'' The proposed changes do not alter the source term, containment isolation, or allowable releases. The proposed changes, therefore, will not increase the radiological consequences of a previously evaluated accident.

2. Not create the possibility of a new or different kind of accident from any accident previously evaluated because no new accident initiators or assumptions are introduced by the proposed changes. As described above, these changes are administrative changes or are proposed pursuant to the current revision to 10 CFR Part 20, ''Standards for Protection Against Radiation.''

3. Not involve a significant reduction in a margin of safety because the proposed changes are administrative changes or are proposed pursuant to the current 10 CFR Part 20 requirements. These proposed changes do not reduce or adversely affect the capabilities of any plant structures, systems or components.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, OH 43606.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Stuart A. Richards.

Wisconsin Public Service Corporation, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: October 27, 1998.

Description of amendment request: This proposed amendment request would modify Technical Specification (TS) 4.2.b, ''Steam Generator Tubes,'' to redefine the plugging limits for the Westinghouse Hybrid Expansion Joint sleeves (HEJs) and Westinghouse Laser Welded Sleeves (LWSs). Additional administrative changes are also proposed. The proposed changes are as follows:

1. TS 4.2.b.3.c.1 would be changed to correct an oversight from a previous amendment. The current TS 4.2.b.2.c.1 makes reference to TS 3.4.a.1.C. This reference is no longer valid because TS 3.4.a.1.C became TS 3.4.d as a result of TS Amendment 123. This change corrects an oversight from a previous amendment and is administrative.

2. TS 4.2.b.4.a would be revised to specify the updated revision of WCAP–14685 and the addendum to WCAP–13088.

3. TS 4.2.b.4.b would be revised to specify the corrected value for the plugging limit of the Westinghouse mechanical HEJ sleeves. The plugging limit would change from 24 percent to 23 percent or more sleeve wall degradation.

4. TS 4.2.b.4.e would be revised to specify the corrected value for the plugging limit of Westinghouse laser welded sleeves. The plugging limit would change from 25 percent to 23 percent or more sleeve wall degradation.

The associated bases pages for TS Section 4.2 would also be modified to reflect the above changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change was reviewed in accordance with the provisions of 10 CFR 50.92 to show no significant hazards exist. The proposed change will not:

1. Involve a significant increase in the probability or consequence of an accident previously evaluated.

The analysis of change in plugging limits was performed in accordance with RG 1.121 and ASME B&PV Code and, therefore, all required safety factors are met. The plugging limit or allowed degraded wall thickness value is not used in any accident analyses; therefore, this change has no significant

effect on any previously evaluated accidents. The change does not significantly increase the probability or consequences of an accident previously evaluated.

Because the maximum primary-to-secondary differential pressure parameter has changed, the conventional analysis techniques originally used to qualify the required weld width under predicted the shear stress in the LWS and LWR [laser weld repair] of HEJ welds. Consequently, a verification program using experimental analysis, as allowed by Section III of the ASME B&PV Code, was performed to show that the weld remains in compliance with the ASME B&PV Code. Using a different analysis technique to verify that the previously approved weld width for LWS and LWR of HEJs is still accurate does not increase the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

Recalculating the allowable sleeve wall degradation and plugging limits and verifying the acceptability of the 0.015 inch weld width ensures that currently approved conditions are maintained. Requiring tubes to be plugged at a smaller sleeve wall degradation value does not result in any new or different conditions which could create a new or different accident.

Verification of the currently approved weld width using a different analysis technique does not have a physical effect on any plant equipment or operating parameters and, therefore, can not create a new or different kind of accident.

3. Involve a significant reduction in the margin of safety.

These TS changes are being made to ensure that the current margins of safety are maintained. This is accomplished by reducing the allowable sleeve wall degradation and plugging limit. Verifying the required, minimum weld width by an allowed, alternate analysis technique, as described by ASME B&PV Code, ensures that an adequate margin of safety is maintained and there is not a significant reduction in the margin of safety.

The minor administrative changes do not impact the technical content or implementation of the TS and therefore can not create a significant hazard.

The changes to the steam generator tube and sleeve plugging limits are necessary because of an increase in the normal operating differential pressure between the primary and secondary coolant systems. The differential pressure was increased as a result of the effects of extensive tube plugging on primary to secondary heat transfer. Since, per Regulatory Guide 1.121, the safety factor for mimimum acceptable wall thickness for steam generator tubes is based on normal operating pressures, it was found necessary to recalculate the plugging limits.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Wisconsin, Cofrin Library, 2420 Nicolet Drive, Green Bay, WI 54311–7001.

Attorney for licensee: Bradley D. Jackson, Esq., Foley and Lardner, P.O. Box 1497, Madison, WI 53701–1497.

NRC Project Director: Cynthia A. Carpenter.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: October 23, 1998.

Description of amendment request: The amendment would revise Technical Specification 3.5.1, ''Emergency Core Cooling Systems—Accumulators,'' to increase the allowed outage time for the accumulators from 1 hour to 24 hours if an accumulator is inoperable for reasons other than not meeting its boron concentration requirements.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The overall protection system performance will remain within the bounds of the accident analyses documented in Chapter 15 of the Updated Safety Analysis Report (USAR), WCAP–10961–P, and WCAP–11883, since no hardware changes are proposed. The impact of the increase in the accumulator AOT on core damage frequency for all the cases evaluated in WCAP–15049 is within the acceptance limit of 1.0E–06/yr for a total plant CDF less than 1.0E–03/yr. The incremental conditional core damage probabilities calculated in WCAP–15049 for the accumulator AOT increase meet the criterion of 5E–07 in Regulatory Guide DG–1065 for all cases except those that are based on design basis success criteria. As indicated in WCAP–15049, design basis accumulator success criteria are not considered necessary to mitigate large break LOCA events, and was only included in the WCAP–15049 evaluation as a worst case data point. In addition, WCAP–15049 states that the NRC has indicated that an ICCDP greater than 5E–07 does not necessarily mean the change is unacceptable.

The safety injection accumulators are credited in Section 15.6.5 of the Updated Safety Analysis Report for large and small break LOCA. There will be no effect on these analyses, or any other accident analysis, since the analysis assumptions are unaffected and remain the same as discussed in Section 15.6.5. Design basis accidents are not assumed to occur during allowed outage times covered by the Technical Specifications. As such, the ECCS Evaluation Model equipment availability assumptions made in Section 15.6.5 remain valid.

The safety injection accumulators will continue to function in a manner consistent with the above analysis assumptions and the plant design basis. As such, there will be no degradation in the performance of, nor an increase in the number of challenges to, equipment assumed to function during an accident situation.

The proposed technical specification change does not involve any hardware changes nor does it affect the probability of any event initiators. There will be no change to normal plant operating parameters, engineered safety feature (ESF) actuation setpoints, accident mitigation capabilities, accident analysis assumptions or inputs. Therefore, this change will not increase the probability of an accident or malfunction.

The corresponding increase in CDF due to the proposed change to increase the AOT of the accumulators from one hour to 24 hours is not significant. Pursuant to the guidance in Section 3.5 of NEI 96–07, Revision 0, ''Guidelines for 10 CFR 50.59 Safety Evaluations,'' the proposed increase in AOT does not ''degrade below the design basis the performance of a safety system assumed to function in the accident analysis,'' nor does it ''increase challenges to safety systems assumed to function in the accident analysis such that safety system performance is degraded below the design basis without compensating effects.''

Therefore, it is concluded that this change does not increase the probability of occurrence of a malfunction of equipment important to safety.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. This change does not involve any change to the installed plant systems or the overall operating philosophy of WCGS.

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of the proposed change. As described in Section 9.1 of the WCAP–15049 evaluation, the plant design will not be changed with this proposed Technical Specification AOT increase. All safety systems still function in the same manner and there is no additional reliance on additional systems or procedures. The proposed accumulator AOT increase has a very small impact on core damage frequency. The WCAP–15049 evaluation demonstrates that the small increase in risk due to increasing the accumulator AOT is within the acceptance criteria provided in Draft Regulatory Guide DG–1065. No new accident or transients can be introduced with

the requested change and the likelihood of an accident or transient is not impacted.

The malfunction of safety related equipment, assumed to be operable in the accident analyses, would not be caused as a result of the proposed technical specification change. No new failure mode has been created and no new equipment performance burdens are imposed. Therefore, the possibility of a new or different malfunction of safety related equipment is not created.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change does not involve a significant reduction in a margin of safety. There will be no change to the Departure from Nucleate Boiling Ratio (DNBR) Correlation Limit, the design DNBR limits, or the safety analysis DNBR limits discussed in Bases Section 2.1.1.

The basis for the accumulator LCO, as discussed in Bases Section 3/4.5.1, is to ensure that a sufficient volume of borated water will be immediately forced into the core through each of the cold legs in the event the RCS pressure falls below the pressure of the accumulators, thereby providing the initial cooling mechanism during large RCS pipe ruptures. As described in Section 9.2 of the WCAP–15049 evaluation, the proposed change will allow plant operation in a configuration outside the design basis for up to 24 hours, instead of 1 hour, before being required to begin shutdown. The impact of this on plant risk was evaluated and found to be very small. That is, increasing the time the accumulators will be unavailable to respond to a large LOCA event, assuming design basis accumulator success criteria is necessary to mitigate the event, has a very small impact on plant risk. Since the frequency of a design basis large LOCA (a large LOCA with loss of offsite power) would be significantly lower than the large LOCA frequency of the WCAP–15049 evaluation, the impact of increasing the accumulator AOT from 1 hour to 24 hours on plant risk due to a design basis large LOCA would be significantly less than the plant risk increase presented in the WCAP–15049 evaluation. It is therefore concluded that the proposed change does not involve a significant reduction in the margin of safety as described in Technical Specification Bases Section 3/4.5.1.

As discussed previously, the performance of the accumulators will remain within the assumptions used in the large and small break LOCA analyses, as presented in USAR Section 15.6.5. Also, there will be no effect on the manner in which safety limits or limiting safety system settings are determined nor will there be any effect on those plant systems necessary to assure the accomplishment of protection functions.

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 locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037.

NRC Project Director: William H. Bateman.

Yankee Atomic Electric Company, Docket No. 50–029, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of amendment request: October 15, 1998.

Description of amendment request: The licensee proposes to extend the interval of submission of Effluent and Waste Disposal Reports from semi-annual to annual pursuant to 10 CFR 50.36a(a)(2). This action would require a change to Technical Specification (TS) 6.8.2.b, a reporting requirement, and textual changes in other parts of the TS to make the change consistent throughout.

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 changes to the Yankee Nuclear Power Station Defueled Technical Specifications proposed above are administrative in nature. The proposed changes are consistent with the revised 10 CFR 50.36a, ''Technical specifications on effluents from nuclear power reactors,'' which require the submittal of one Radioactive Effluent Release Report per year. Furthermore, the NRC has already concluded in issuing the 10 CFR 50.36a rule change that implementation of the proposed technical specifications changes would not result in a reduction to the public health and safety or common defense and security.

As such, the changes:

(1) Will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The administrative nature of the changes do not affect the operation of YNPS in the permanently defueled condition. Furthermore, the changes do not result in a change to the plant design, configuration, or operating procedures. Because the physical plant is not affected, and the only change is the frequency with which reports are submitted to the NRC, the probability of an accident previously evaluated is not increased and the radiological consequences of an accident previously evaluated are not increased.

(2) Will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The changes described do not modify the design, configuration, or operating procedures for any plant systems or components. The accident analyses for the facility are not affected by the proposed changes. The changes do not introduce any new failure mechanisms. Therefore, the changes do not create the possibility of a new or different kind of accident from any previously evaluated.

(3) Will not involve a significant reduction in the margin of safety.

The changes described are administrative in nature. The changes do not modify the design, configuration, or operating procedures for any plant systems or components. The changes do not affect the facility's accident analyses. Radioactive effluent release limits remain unchanged. The submittal of reports to the NRC is an administrative function and is not included in the bases of any Technical Specifications to define or establish a margin of safety. Therefore, the proposed changes do not reduce the margin of safety as defined in the bases of any Technical Specifications.

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: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Attorney for licensee: Thomas Dignan, Esquire, Ropes and Gray, One International Place, Boston, Massachusetts 02110–2624.

NRC Project Director: Seymour H. Weiss.

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.

Baltimore Gas and Electric Company, Docket No. 50–317, Calvert Cliffs Nuclear Power Plant, Unit No. 1, Calvert County, Maryland

Date of amendment request: October 16, 1998.

Description of amendment request: The amendment would change Technical Specification (TS) 3.3.1, ''Reactor Protective System Instrumentation—Operating'' and TS 3.3.2, ''Reactor Protective System Instrumentation Shutdown'' to clarify an inconsistency between TS wording and the design basis as described in the TS Bases and the Updated Final Safety Analysis Report.

Date of publication of individual notice in **Federal Register**: October 27, 1998 (63 FR 57320).

Expiration date of individual notice: November 27, 1998.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

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.

Carolina Power & Light Company, et al., Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: August 17, 1998.

Brief description of amendments: The amendments revise Technical Specification 5.2.2.f regarding the senior reactor operator licensing requirement for the operations manager.

Date of issuance: November 4, 1998.

Effective date: November 4, 1998.

Amendment Nos.: 204 and 234.

Facility Operating License Nos. DPR–71 and DPR–62: Amendments revise the facility's Technical Specifications.

Date of initial notice in **Federal Register**: September 9, 1998 (63 FR 48258) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 4, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

GPU Nuclear, Inc. et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: September 19, 1998.

Brief description of amendment: This amendment revises Section 5.4.8 of the Oyster Creek Nuclear Generating Station Updated Final Safety Analysis Report (UFSAR) such that it incorporates the use of a freeze seal as a temporary part of the reactor coolant pressure boundary.

Date of Issuance: November 4, 1998.

Effective date: November 4, 1998.

Amendment No. 201.

Facility Operating License No. DPR–16. Amendment revised the UFSAR.

Date of initial notice in **Federal Register**: September 30, 1998 (63 FR 52307).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated November 4, 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.

GPU Nuclear, Inc. et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: July 23, 1998, as supplemented September 25, 1998. The September 25, 1998, supplement did not change the initial proposed no significant hazards consideration determination.

Brief description of amendment: The amendment establishes that the existing Safety Limit Minimum Critical Power Ratio in Technical Specification 2.1.A is applicable for Cycle 17.

Date of Issuance: November 5, 1998.

Effective date: November 5, 1998, to be implemented within 30 days.

Amendment No.: 202.

Facility Operating License No. DPR–16: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: August 26, 1998 (63 FR 45525).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated November 5, 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.

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: January 29, 1997, as supplemented February 11, 12, March 7, 10, 11, 19, 20, April 29, June 30, and July 10,1997, June 20, June 22, July 24, September 15, and October 1, 1998.

Brief description of amendments: The amendments change the design basis of the cooling water system emergency intake line flow capacity. The changes also reclassify the intake canal for use during a seismic event, which would be an additional source of cooling water available during a design-basis earthquake. The amendments also reflect the completion of license conditions that were implemented as part of interim amendments 128/120 dated March 25, 1997, to reflect compensatory measures taken by Northern States Power until a seismically qualified emergency cooling water source could be provided.

Date of issuance: November 4, 1998.

Effective date: November 4, 1998, with full implementation within 30

days. Implementation of the USAR update shall be no later than June 1, 1999, as stated in License Condition 3.

Amendment Nos.: 140 and 131.

Facility Operating License Nos. DPR–42 and DPR–60. Amendments revised the licenses.

Date of initial notice in **Federal Register**: October 1, 1998 (63 FR 52772). The October 1, 1998, submittal provided revised USAR pages reflecting the change to the cooling water system emergency intake design bases. This information was within the scope of the October 1, 1998, **Federal Register** notice and did not change the staff's initial proposed no significant hazards considerations determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 4, 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.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of application for amendments: March 6, 1998.

Brief description of amendments: The proposed changes modify the technical specifications (TS) to eliminate reference to shutdown cooling (SDC) system isolation bypass valve inverters. This allows the licensee to replace the inverters with transfer switches.

Date of issuance: October 26, 1998.

Effective date: October 26, 1998, to be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 2—143; Unit 3—134.

Facility Operating License Nos. NPF–10 and NPF–15: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: September 23, 1998 (63 FR 50939).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 26, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Main Library, University of California, P.O. Box 19557, Irvine, California 92713.

Southern Nuclear Operating Company, Inc., et al., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request: December 30, 1997, as supplemented by letter dated April 9, 1998.

Brief Description of amendments: The amendments change the Technical Specifications to revise the surveillance requirements for the Auxiliary Building and Service Water Building batteries to remove the existing 1.75 volt minimum individual cell voltage associated with the ''service test'' acceptance criterion and replace it with a reference to the battery load profile specified in the Final Safety Analysis Report, Section 8.3.2.

Date of issuance: November 3, 1998.

Effective date: As of the date of issuance to be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 1—139; Unit 2—131.

Facility Operating License Nos. NPF–2 and NPF–8: Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register**: April 8, 1998 (63 FR 17234). The April 9, 1998, letter provided clarifying information that did not change the scope of the December 30, 1997, application and the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 3, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama.

Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of application for amendment: August 6, 1998.

Brief description of amendment: Change Technical Specifications (TS) Surveillance and Bases Sections 3.3.2, ''ESFAS Instrumentation,'' and 3.7.5, ''AFW System'' to clarify the intent of the surveillance testing requirements for the turbine driven auxiliary feedwater pump, which is consistent with the wording and intent of the Westinghouse Improved TS.

Date of issuance: October 26, 1998.

Effective date: October 26, 1998.

Amendment No.: 13.

Facility Operating License No. NPF–90: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register**: September 23, 1998 (63 FR 50941).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 26, 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 6, 1996, as supplemented April 15, July 14, and October 16, 1998. The supplemental submittals contained clarifying information only, and did not change the initial no significant hazards consideration determination.

Brief description of amendments: The amendments revise the Technical Specifications (TS) Sections 3.4.1.4, 4.4.1.4, 3.4.1.5, 3.4.1.6, 4.4.1.6.1, 4.4.1.6.2, 4.4.1.6.3, 3/4.4.2 and 3/4.4.3 for Unit 1, and 3.4.1.4, 4.4.1.4, 3.4.1.5, 3/4.4, 3.4.1.6, 4.4.1.6.1, 4.4.1.6.2, and 4.4.1.6.3 for Unit 2, modifying the requirements for isolated loop startup to permit filling of a drained isolated loop via backfill from the reactor coolant system through partially opened loop stop valves.

Date of issuance: October 30, 1998.

Effective date: October 30, 1998.

Amendment Nos.: 215 and 196.

Facility Operating License Nos. NPF–4 and NPF–7: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 4, 1996 (61 FR 64396).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 30, 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.

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

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 for the amendment 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.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective 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 application for amendment, (2) the amendment to Facility Operating License, 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 room for the particular facility involved.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By December 18, 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. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

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 the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

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: October 23, 1998, as supplemented October 26, 1998.

Brief description of amendments: The amendments clarify the conditions that constitute operable Individual Rod Position Indication (IRPI) system channels, provide for an allowed out of service time for inoperable IRPI indicator channels, and provide compensatory measures to be taken when any channel is determined to be inoperable.

Date of issuance: October 30, 1998.

Effective date: October 30, 1998.

Amendment Nos.: 139 and 130.

Facility Operating License Nos. DPR–42 and DPR–60. Amendments revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation of the amendments, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated October 30, 1998.

Attorney for licensee: J.E. Silberg, Esquire, Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW, Washington, DC 20037.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

NRC Project Director: Cynthia A. Carpenter.

Dated at Rockville, Maryland, this 10th day of November 1998.

For the Nuclear Regulatory Commission.

William H. Bateman,

Acting Director, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–30691 Filed 11–17–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Supplemental Information on the Implementation of the Final Rule on Radiological Criteria for License Termination

SUMMARY: This notice provides supplemental information regarding implementation of the Nuclear Regulatory Commission's (NRC's) Final Rule on Radiological Criteria for License Termination (License Termination Rule, LTR) which was issued on July 21, 1997 (62 FR 39058). The information provided in this notice pertains to: (1) The end of the ''grandfathering period'' on August 20, 1998; (2) issuance of the draft regulatory guide on the LTR for interim use; (3) availability of the NRC's screening computer code (DandD, Version 1) for calculating screening values to demonstrate compliance with the dose limits in the LTR; (4) screening values for building surface contamination for beta/gamma radiation emitters; (5) NRC plans to hold public workshops to discuss issues related to the draft guidance and implementation of the LTR; (6) staff plans to develop a standard review plan (SRP) for decommissioning; and (7) status of NRC decommissioning guidance documents.

SUPPLEMENTARY INFORMATION:

1. End of the Grandfathering Period

Subpart E to 10 CFR Part 20 contains a provision, 20.1401(b)(3), that the criteria in the LTR do not apply to sites that submit a sufficient decommissioning plan (DP) or license termination plan (LTP) before August 20, 1998, provided the NRC approves the DP or the LTP before August 20, 1999, and the plan is in accordance with the criteria identified in the Site Decommissioning Management Plan (SDMP) Action Plan (57 FR 13389; April 16, 1992). The period from the effective date of the LTR, August 20, 1997 through August 20, 1998, is referred to as the ''grandfathering period,'' during which the criteria in the SDMP Action Plan could continue to be proposed. This notice reminds licensees that the grandfathering period has ended, and that all future requests to terminate a license must be in accordance with the provisions in Part 20, Subpart E. Note that the NRC review of the licensee plans submitted in accordance with 10 CFR 20.1401(b)(3), incorporating the SDMP Action Plan criteria, will continue through August 20, 1999.

2. Draft Regulatory Guide

The NRC has issued Draft Regulatory Guide DG–4006, ''Demonstrating Compliance with the Radiological Criteria For License Termination,'' for a two-year interim use period (i.e., July 8, 1998 through July 7, 2000). NRC has also issued draft NUREG reports in support of DG–4006 (the applicable draft NUREG reports are referenced in DG–4006). A notice of availability of the Draft Regulatory Guide was published in the **Federal Register** on August 4, 1998 (63 FR 41604).

3. Availability of NRC DandD Screening Code

On August 20, 1998, NRC issued a screening computer code DandD, Version 1. The DandD code, when used with default parameters, is an acceptable method for licensees to calculate screening values to demonstrate compliance with the unrestricted use dose limit in the LTR. The DandD code can be installed by downloading the self-extracting program file, setup.exe, accessed through the web site: ''http:/techconf.llnl.gov/radcri/java.html,'' clicking on ''dose assessment,'' and then on ''decontamination and decommissioning software.'' The installation instruction file ''readme.txt'' can also be downloaded, using the above web site, to help users installing the code. Important support documents (e.g., NUREG–1549, ''Decision Methods for Dose Assessment to Comply With Radiological Criteria for License Termination'' and NUREG/CR–5512, Vol. #3, ''Residual Radioactive

Contamination From Decommissioning, Parameter Analysis) can also be accessed through the above web site. As discussed in DG–4006, use of DandD with the default parameters is intended for screening calculations only. If screening results indicate that remediation might be needed, a site-specific dose assessment is recommended before deciding on remedial actions. NRC expects pathway analysis/dose assessment codes other than DandD to be more appropriate for some conditions. Regulatory Guide DG–4006 contains guidance regarding the information required to support the use of other codes and models. In the interim period, NRC will review all dose assessment results on a case-by-case basis.

The DandD code, when used with the default parameter set, provides a method for calculating screening concentrations for radionuclides in soil, and screening levels for surface contamination on building surfaces. It should be noted that the screening values, based on DandD, differ from the criteria listed in the SDMP Action Plan. In most cases, the screening values for beta/gamma emitters are higher than the SDMP Action Plan criteria, while the values for alpha emitters are much lower.

During the two-year interim use period for the draft guidance (DG–4006), NRC plans to continue to refine the screening approach and to evaluate the extent of conservatism of the results of the DandD code. It may be more appropriate to develop a different screening method or approach for alpha emitters. NRC will assess the results of the DandD screening method, particularly the low screening values for alpha emitters, during the workshops to be held on the LTR guidance development. Note that DG–4006 clearly encourages the use of site-specific dose assessments, whenever needed, and recognizes that the screening values will not be appropriate in all cases.

4. Screening Values for Building Surface Contamination

The staff has developed, as a tool to facilitate the efficient implementation of the LTR, a screening table (Table 1) of unrestricted release values for building surface contamination of common beta/gamma emitting radionuclides. The screening table was derived using the DandD screening code, Version 1, and its default input parameters. Table 1 provides criteria which permit licensees to demonstrate compliance with the unrestricted release dose criterion in the LTR. The values in Table 1 correspond to surface concentrations of radionuclides contamination that would be deemed in compliance with the unrestricted use dose limit in 10 CFR 20.1402 (i.e., 0.25 mSv/yr, (25 mrem/yr)). The values correspond to screening ''derived concentration guidelines'' (DCGL) for each specific radionuclide based on the methodology described in DG–4006. Sites with building surface contamination levels below those listed in Table 1 would be deemed acceptable for release for unrestricted use in accordance with the dose criteria in 10 CFR 20.1402, provided that residual radioactivity has been reduced to ''as low as reasonably achievable'' (ALARA) levels. The table is intended for use as criteria to facilitate license termination for many simple routine decommissioning cases without a site-specific dose assessment. For facilities with contamination levels above those in Table 1, additional site-specific dose assessments may be necessary, and licensees should refer to DG–4006 regarding acceptable methods for conducting the appropriate dose assessment.

Table 1 does not include screening values for radionuclides that emit alpha particles, or for soil contamination. The NRC staff is assessing current screening approaches for sites with alpha emitters and for soil contamination. For such sites, licensees are encouraged to use, in the interim period, site-specific dose assessments based on actual site conditions.

5. Future Public Workshops

NRC will hold a series of public workshops over the two-year interim period to describe the status of the ongoing development of both DG–4006 and the SRP, to provide industry and other interested parties an opportunity to provide comments, and to discuss users' experiences with implementing the guidance. The future dates for the workshops are: December 1–2, 1998; January 21–22, 1999; March 18–19, 1999; June 16–17, 1999; August 18–19, 1999; and October 20–21, 1999. All workshops will be conducted in the Auditorium located at NRC's Headquarters (Two White Flint North Building, 11545 Rockville Pike, Rockville, MD 20852–2738). For further details on workshops, see the **Federal Register** notice published on October 21, 1998 (63 FR 56237).

6. Standard Review Plan

The NRC staff is developing an SRP for the evaluation of licensee submittals related to compliance with the radiological criteria in the LTR. The goal of the SRP is to enable NRC staff to evaluate information submitted by licensees in a timely, efficient, and consistent manner, and to determine if the decommissioning will be conducted such that the public health and safety is protected and the facility can be released in accordance with NRC's requirements. The development of the SRP will be coordinated with the effort to revise and finalize DG–4006. The web site ''http://techconf.llnl.gov/cgi-bin/topics'' provides updated information on the status of the guidance and the SRP, and a mechanism for the public to provide comments on the draft guidance.

7. Status of Decommissioning Guidance Documents

Guidance material in DG–4006 and the SRP will incorporate or supersede most existing NRC decommissioning guidance documents. Guidance documents will be revised to be consistent with the LTR, or they will be phased out. Table 2 lists the status of existing NRC guidance documents affected by the LTR and associated new guidance.

Under the SDMP Action Plan criteria, the tables of surface contamination values contained in Regulatory Guide 1.86, ''Termination of Operating Licenses for Nuclear Reactors,'' and Policy and Guidance Directive FC 83–23, ''Guidelines for Decontamination of Facilities and Equipment Prior to Release for Unrestricted Use or Termination of Byproduct, Source, or Special Nuclear Material Licenses,'' were used as the decommissioning criteria for building surfaces. The values in Table 1 are intended to replace the tables in the above two documents for license termination purposes.

The surface contamination criteria in Regulatory Guide 1.86 have been applied by reactor licensees for license termination only. However, for materials licenses (under 10 CFR Parts 30, 40, and 70), the guidelines in Policy and Guidance Directive FC 83–23 have been used by licensees for two purposes: (a) As criteria for license termination, and (b) as criteria for unrestricted release of equipment and other materials during operations. On June 30, 1998, the Commission directed the NRC staff to develop a dose-based regulation for clearance of equipment and materials having residual radioactivity. The criteria that eventually emerge from this rulemaking effort are intended to replace the surface contamination values in Policy and Guidance Directive FC 83–23. Until that time, licensees may continue to use the criteria in Policy and Guidance Directive FC 83–23 for unrestricted

release of equipment and material, to the extent authorized by their licenses.

FOR FURTHER INFORMATION CONTACT: Mr. David N. Fauver, Low-Level Waste and Decommissioning Projects Branch, at (301) 415–6625, or Dr. Rateb (Boby) Abu Eid, Performance Assessment and High-Level Waste Integration Branch, at (301) 415–5811, both of the Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Dated at Rockville, Maryland, this 12th day of November 1998.

For the Nuclear Regulatory Commission.

John W.N. Hickey,

Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

TABLE 1—ACCEPTABLE LICENSE TERMINATION SCREENING VALUES OF COMMON RADIONUCLIDES FOR BUILDING SURFACE CONTAMINATION

Radionuclide	Symbol	Acceptable screening levels [1] for unrestricted release (dpm/100 cm^2) [2]
Hydrogen-3 (Tritium).	^{3}H	1.2E+08
Carbon-14	^{14}C	3.7E+06
Sodium-22	^{22}Na	9.5E+03
Sulfur-35	^{35}S	1.3E+07
Chlorine-36	^{36}Cl	5.0E+05
Manganese-54 ..	^{54}Mn	3.2E+04
Iron-55	^{55}Fe	4.5E+06
Cobalt-60	^{60}Co	7.1E+03
Nickel-63	^{63}Ni	1.8E+06
Strontium-90	^{90}Sr	8.7E+03
Technetium-99 ..	^{99}Tc	1.3E+06
Iodine-129	^{129}I	3.5E+04
Cesium-137	^{137}Cs	2.8E+04
Iridium-192	^{192}Ir	7.4E+04

[1] Screening levels are based on the assumption that the fraction of removable surface contamination is equal to 0.1. For cases when the fraction of removable contamination is undetermined or higher than 0.1, users may assume, for screening purposes, that 100% of surface contamination is removable, and therefore the screening levels should be decreased by a factor of 10. Alternatively, users having site-specific data on the fraction of removable contamination (e.g., within the 10% to 100% range) may calculate site-specific screening levels using DandD Version 1.

[2] Units are disintegrations per minute per 100 square centimeters (dpm/100 cm^2). 1 dpm is equivalent to 0.0167 becquerel (Bq). The screening values represent surface concentrations of individual radionuclides that would be deemed in compliance with the 0.25 mSv/yr (25 mrem/yr) unrestricted release dose limit in 10 CFR 20.1402. For radionuclides in a mixture, the ''sum of fractions'' rule applies; see 10 CFR Part 20, Appendix B, Note 4. Refer to NRC Draft Guidance DG–4006 for further information on application of the values in this table.

TABLE 2—EXISTING GUIDANCE DOCUMENTS APPLICABLE TO DECOMMISSIONING THAT WILL REQUIRE REVISION OR DISCONTINUATION IN ORDER TO IMPLEMENT THE LICENSE TERMINATION RULE (LTR)

Decommissioning guidance document	Status with respect to LTR
Decommissioning Criteria in Action Plan to Ensure Timely Cleanup of Site Decommissioning Management Plan Sites (SDMP Action Plan) (57 FR 13389).	Superseded by LTR and DG–4006 (Note: Still applicable to sites ''grandfathered'' in accordance with 10 CFR 20.1401(b)).
Policy and Guidance Directive FC 83–23, ''Guidelines for the Decontamination of Facilities and Equipment Prior to Release for Unrestricted Use or Termination of Byproduct, Source, or Special Nuclear Material Licenses''.	Superseded by DG–4006 for License Termination (Note: This document may continue to be used as criteria for unrestricted release of equipment and material from licensed material facilities during operational activities prior to license termination, to the extent authorized by the licensees).
Draft Branch Technical Position on ''Screening Methodology for Assessing Prior Land Burials of Radioactive Wastes Authorized Under Former 10 CFR 20.304 and 20.302'' (96 FR 28223).	Superseded by LTR and DG–4006.
''Preliminary Hazards Analysis for Contaminated Buildings at Formerly Licensed Sites''.	Superseded by DG–4006.
NUREG/BR–0241, ''NMSS Handbook for Decommissioning Fuel Cycle and Materials Licensees''.	References to decommissioning criteria are superseded by the LTR and DG–4006. The Handbook will be updated as appropriate to be consistent with the LTR and current guidelines.
Regulatory Guide 1.86, ''Termination of Operating Licenses for Nuclear Reactors''.	Superseded by DG–4006
Draft NUREG/CR–5849, ''Manual for Conducting Radiological Surveys in Support of License Termination''.	Superseded by DG–4006.

[FR Doc. 98–30867 Filed 11–17–98; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Sunshine Act Meeting

The meeting of the Railroad Retirement Board which was to be held on November 18, 1998, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois 60611, has been canceled.

The person to contact for more information is Beatrice Ezerski, Secretary to the Board. Phone No. 312–751–4920.

Dated: November 13, 1998.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 98–31008 Filed 11–16–98; 3:53 pm]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40660; International Series Release No. 1170; File No. SR–DTC–98–19]

Self-Regulatory Organizations; The Depository Trust Company; Order Approving a Proposed Rule Change Relating to Enhancement of the Current Link With Deutsche Borse Clearing AG

November 10, 1998.

On September 15, 1998, The Depository Trust Company (''DTC'') Filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–DTC–98–19) pursuant to Section 10(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on September 23, 1998.[2] The Commission received seven comment letters in response to the filing.[3] For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

Under the rule change, DTC will open an omnibus account at Deutsche Borse Clearing AG (''DBC'') in order to create a two-way interface between DTC and DBC. Presently, DBC has an omnibus account at DTC which enables DBC and its participants to effect book-entry deliveries at DTC to DTC participants. The current link between DTC and DBC allows DBC and its participants to use the custody, book-entry, and delivery services of DTC for transactions involving securities that are eligible in both systems. The current link permits a DTC participant to settle a cross-border transaction with a DBC counterparty by making a book-entry delivery, on a free of payment basis, from its participant account at DTC to the DBC omnibus account at DTC and by identifying the DBC participant account to which the delivered securities should be credited.[4] Cash settlement of the transaction will take place outside of DTC.

However, under the current link a DBC participant cannot make a book-entry delivery of securities held in its account at DBC to a DTC participant's account at DTC. In order for a DBC participant to make a delivery of securities to a DTC counterparty's account at DTC, the DBC participant must deliver the physical securities to DTC.

The rule change will permit book-entry movements of securities from a DBC participant's account at DBC to a DTC counterparty's account at DTC. Thus, a DBC participant will be able to settle a cross-border transaction with a DTC counterparty by making a book-entry delivery, on a free of payment basis, from its participant account at DBC to the DTC omnibus account at DBC and by identifying the DTC participant account to which the delivered shares should be credited.[5] The receiving DTC participant can then redeliver the securities within DTC through a book-entry movement on either a free of payment or against payment basis.

If required, DBC will provide subcustody services such as income collection, maturity presentments, and reorganization processing on securities held in DTC's omnibus account at DBC in accordance with DBC procedures. Currently, DTC provides such services for securities held by DTC on behalf of DBC.

II. Comment Letters

The Commission received seven comment letters in response to the notice of the proposed rule change.[6] Five commenters, Credit Suisse First Boston Corporation, Salomon Smith Barney, Skadden Arps, Deutsche Bank, and BONY, expressed support for the proposed rule change. These comments stated generally that the proposed rule change would facilitate the efficient processing of cross-border securities transactions and would reduce risks and costs to participants of DTC and DBC.[7]

The STA expressed concern that under the proposed rule change some U.S. investors may receive transfer services from transfer agents that are not fully subject to U.S. regulation. In response to the STA's letter, Skadden Arps noted that the transfer agents for DaimlerChrysler ordinary shares, BONY and Deutsche Bank, are registered under Section 17A of the Act. Skadden Arps also stated that it believed that it is not necessary to subject all cross-border exchange links to Section 17A registration.

Thomson expressed concern that the proposed rule change might result in an expansion of the scope of certain self-regulatory organization rules governing the confirmation and affirmation of institutional securities trades. Thomson requested that the Commission clarify that the proposed rule change would not affect the exemption in those rules for trades that settle outside the United States.[8]

III. Discussion

Section 17A(b)(3)(F) of the Act[9] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds that are in its custody or control or for which it is responsible. The Commission believes that the proposed rule change is consistent with DTC's obligations under Section 17A(b)(3)(F).

The Commission believes that the rule change should increase efficiency in the movement of securities positions and in the settlement of securities transactions among participants of DTC and DBC by reducing the need for the movement of physical securities. The link should not

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 40445 (September 16, 1998), 63 FR 50950.

[3] *Infra* note 6.

[4] All deliveries of securities into or out of DBC's omnibus account at DTC are on a free of payment basis.

[5] All deliveries of securities into or out of DTC's omnibus account at DBC are on a free of payment basis.

[6] Letters from P. Howard Edelstein, President, Electronic Settlements Group, Thomson Financial Services (''Thomson'') (October 14, 1998); Joseph D. Fashano, Director, Credit Suisse First Boston Corporation (October 20, 1998); Thomas L. Montrone, President, The Securities Transfer Association, Inc. (''STA'') (October 21, 1998); Simon M. Lorne, Managing Director, Salomon Smith Barney (October 23, 1998); J. Michael Schell, Skadden, Arps, Slate, Meagher & Flom LLP (''Skadden Arps'') (October 23, 1998); Jurgen Rebouillon, Senior Vice President, and Thomas Klee, First Vice President, Deutsche Bank AG (''Deutsche Bank'') (October 23, 1998); Joseph M. Velli, Senior Executive Vice President, The Bank of New York (''BONY'') (October 23, 1998).

[7] The comment letters submitted by Skadden Arps, Deutsche Bank, and BONY addressed the rule change with reference to the merger of Daimler-Benz Aktiengesellschaft and Chrysler Corporation into DaimlerChrysler AG. Skadden Arps is counsel to Daimler-Benz, and BONY and Deutsche Bank will serve as cotransfer agents for DaimlerChrysler ordinary shares.

[8] Specifically, Thomson referenced National Association of Securities Dealers Rule 11860, New York Stock Exchange (''NYSE'') Rule 387(a)(5), Municipal Securities Rulemaking Board Rule G–15(d)(ii), American Stock Exchange Rule 423(5), Chicago Stock Exchange Article XV, Rule 5, Pacific Exchange Rule 9.12(a)(5), and Philadelphia Stock Exchange Rule 274(b). Those rules require that for certain securities transactions the facilities of a securities depository be used for the confirmation, acknowledgment, and book entry settlement of the transactions. However, those rules also state that they are not applicable to transactions that are to be settled outside the United States. *See, e.g.,* NYSE Rule 387(a)(5), Interpretation .10.

[9] 15 U.S.C. 78q–1(b)(3)(F).

only reduce the time and expense associated with physical movements of securities positions but should also reduce the risk of loss and erroneous processing that always exists with physical movements. The Commission also believes that the procedures for the link between DTC and DBC are consistent with DTC's safeguarding obligation in that all movements into or out of DTC's omnibus account at DBC and into or out of DBC's omnibus account at DTC will be on a free of payment basis.[10]

The Commission has taken account of the comment letters that it received in response to the proposed rule change. The Commission believes that the rule change should not affect the obligation of any entity to register as a transfer agent pursuant to Section 17A of the Act.[11] In addition, the Commission believes that the rule change should not have any effect on the rules of any self-regulatory organization other than DTC.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act[12] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (File No. SR–DTC–98–19) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–30826 Filed 11–17–98; 8:45 am]

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[10] In addition, DTC has obtained an opinion of counsel concerning German law and DTC's participation in DBC.

[11] The Commission notes that the entities that will perform transfer functions for shares in DaimlerChrysler are registered transfer agents.

[12] 15 U.S.C. 78q–1.

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40658; File No. SR–NASD–98–71]

Self-Regulatory Organizations; Notice of Withdrawal of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Establishment of a Pilot Program To Provide Proprietary Trading Data via NasdaqTrader.com

November 10, 1998.

On September 29, 1998, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') through its wholly-owned subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq'') 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 amend Rule 7010 of the Rules of the NASD, to establish a pilot program to provide proprietary trading data via Nasdaq's NasdaqTrader.com web site.

Notice of the proposed rule change was published on October 9, 1998 to solicit comment from interested persons.[3] The Commission received two comment letters concerning the proposed rule change.[4] On November 5, 1998, the NASD withdrew the proposal rule change.[5]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–30824 Filed 11–17–98; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Rel. No. 40542 (October 9, 1998), 63 FR 55909 (October 19, 1998).

[4] Letters from Roland Beaulieu, President, Thomason Trading Services, Inc. (''Autex''), to Jonathan G. Katz, Secretary, SEC, dated October 22, 1998 and from Mari-Anne Pisarri, Pickard and Djinis LLP, to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated October 13, 1998.

[5] Letter from Robert E. Aber, Senior Vice President and General Counsel, The Nasdaq Stock Market, Inc., to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated November 4, 1998.

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40659; File No. SR–NASD–98–69]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Mutual Fund Breakpoint Sales

November 10, 1998.

On September 10, 1998, the National Association of Securities Dealers, Inc. (''NASD''), through its regulatory subsidiary, NASD Regulation, Inc. (''NASD Regulation'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') 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] In its filing, NASD Regulation proposed to amend Interpretive Memorandum 2830–1 (''IM 2830–1'') to clarify the application of the mutual fund breakpoint sales rule to modern portfolio investment strategies. Notice of the proposal was published in the **Federal Register** on October 6, 1998 (''Notice'').[3] No comments were received on the proposal.

I. Description of the Proposal

Volume purchasers of mutual fund shares often enjoy lower sales charges when purchases reach certain levels (*e.g.*, $10,000, $25,000, $50,000, and so forth). Although funds do not have to offer such discounts under SEC or NASD rules, many funds use reduced fee schedules as a marketing tool to attract large investors. The term ''breakpoint'' refers to the amount of mutual fund shares that must be purchased before the volume sales charges are reduced. IM–2830–1 prohibits sales of mutual fund shares in amounts below breakpoints, if such sales are made to avoid the reduced volume sales charges. When the Association reviews a suspected violation, it looks at the facts and circumstances of a particular below-breakpoint sale to determine whether there is a bona fide reason for the sale.

NASD Regulation recognizes that the customers of NASD members, to meet their diversification needs and investment goals, may wish to allocate their portfolios among different assets, in a way that does not allow them to get the benefit of volume sales charge

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 40500 (September 29, 1998), 63 FR 53740 (October 6, 1998) (File No. SR–NASD–98–69).

reductions. Thus, NASD Regulation believes that, under most circumstances, below-breakpoint sales made pursuant to a bona fide asset allocation program do not constitute a breakpoint violation. Moreover, NASD Regulation does not want to discourage its members from suggesting asset allocation investment options to those customers who would benefit from such strategies.

To aid in distinguishing between bona fide and improper below-breakpoint sales, NASD Regulation proposes amendment of IM–2830–1 to more precisely identify the facts and circumstances the staff will consider when reviewing a particular below-breakpoint sale. Specifically, IM–2830–1 will be amended to provide that NASD Regulation examination staff, in reviewing a below-breakpoint sale will consider, among other things, (1) whether a member has retained records demonstrating that the transaction was executed in accordance with a bona fide asset allocation program and (2) whether the particular customer involved was informed that volume sales reductions would not be available for the particular sale due to the allocation of the total purchase among a variety of funds.

II. Discussion

The Commission has determined to approve the Association's proposal to amend IM 2830–1. The standard by which the Commission must evaluate a proposed rule change is set forth in Section 19(b) of the Act. The Commission must approve a proposed NASD rule change if it finds that the proposal is consistent with the requirements of Section 15A of the Act[4] and the rules and regulations thereunder that govern the NASD.[5] In evaluating a given proposal, the Commission examines the record before it. In addition, Section 15A of the Act establishes specific standards for NASD rules against which the Commission must measure the proposal.[6]

The Commission believes that the proposal to amend IM–2830–1 to clarify the application of the mutual fund breakpoint sales rule to modern portfolio investment strategies such as a bona fide asset allocation plan is consistent with Section 15A(b)(6) of the Act in that it is designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.[7]

The Commission agrees with NASD Regulation that the proposal promotes just and equitable principles of trade by providing enhanced guidance to both NASD members and the NASD Regulation examination staff regarding the application of the Association's breakpoint sales rule. The Commission further believes that the proposal, by drawing attention to the importance of (a) maintaining records describing the reasons for a particular asset allocation plan, and (b) disclosing breakpoint sales practices and discounts to customers, the rule should help to deter fraudulent and manipulative acts and practices by NASD members.

III. Conclusion

The Commission believes that the proposed rule change is consistent with the Act, and, particularly, with Section 15A thereof.[8] In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation.[9]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–NASD–98–69) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–30825 Filed 11–17–98; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78*o*–3.

[5] 15 U.S.C. 78s(b).

[6] 15 U.S.C. 78*o*–3.

[7] 15 U.S.C. 78*o*–3(b)(6).

[8] 15 U.S.C. 78*o*–3.

[9] 15 U.S.C. 78(c)f.

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Demonstration to Improve Enrollment in State Buy-in to Medicare for Low-Income Medicare Beneficiaries

AGENCY: Social Security Administration.

ACTION: Notice, request for comments and solicitation for demonstration participation by States.

SUMMARY: Title IV of Division A, Social Security Administration, of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Public Law 105–277, directs the Commissioner of Social Security to expend $6,000,000 for Federal-State partnerships which will evaluate means to promote the Medicare buy-in programs targeted to elderly and disabled individuals under titles XVIII and XIX of the Social Security Act (the Act). Administration of the Medicare buy-in programs described in titles XVIII and XIX of the Act is the responsibility of the Administrator of the Health Care Financing Administration (HCFA) in the Department of Health and Human Services. The Commissioner of Social Security is responsible for the Social Security and Supplemental Security Income (SSI) programs described in titles II and XVI of the Act.

The Medicare and Medicaid programs are statutorily linked to the programs administered by the Social Security Administration (SSA). Because of this linkage, SSA provides certain Medicare- and Medicaid-related services to HCFA, the States and to SSA's beneficiaries. Among these services are public service information activities about the Medicare and Medicaid programs, categorically needy Medicaid eligibility determinations in most States and referral activities for certain Medicaid benefits in all States. The scope of SSA's involvement in the Medicare and Medicaid programs is defined in the Act and in agreements between SSA and HCFA and between SSA and the States.

The demonstration project specified in Public Law 105–277 will assist SSA's low-income disabled beneficiaries and beneficiaries age 65 and over who are or could be eligible for Medicaid benefits to help pay their Medicare costs. SSA intends to work with HCFA to identify and investigate barriers and to foster enrollment of those beneficiaries in the Medicare buy-in programs. SSA is requesting public comment about these plans and soliciting States to express their interest in participating in this demonstration.

DATES: Interested persons are invited to submit comments on or before December 18, 1998. States interested in participating in this demonstration should submit expressions of interest on or before December 18, 1998 to the address below.

ADDRESSES: Written comments and expressions of State interest in participation should be addressed to Craig A. Streett, Office of Program Benefits, Social Security Administration, 6401 Security Boulevard, Room 3–M–1 Operations Building, Baltimore, MD 21235, or should be electronically mailed to the internet address Craig.Streett@ssa.gov, or should be faxed to 410–966–0980. All comments and expressions of State interest in participation received at the internet address will be acknowledged by electronic mail to confirm receipt.

FOR FURTHER INFORMATION CONTACT: Craig A. Streett, (410) 965–9793. Individuals who use a telecommunications device for the deaf (TDD) may call 1–410–966–5609 between 7:00 AM and 7:00 PM, Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 226 of the Act [42 U.S.C. 426] describes the rules for entitlement to Medicare Hospital Insurance (HI) benefits, also known as Medicare Part A. Generally, Social Security beneficiaries who have attained age 65 are entitled to Medicare Part A benefits without filing an application or other request for those benefits, as are disabled beneficiaries who have received 24 consecutive months of Social Security benefits. Under section 226A of the Act [42 U.S.C. 426–1], certain individuals who suffer from end stage renal disease can also become entitled to Medicare HI benefits. Some individuals may also be entitled to Medicare HI benefits through purchase under the rules in sections 1818 and 1818A of the Act [42 U.S.C. 1395i–2 and 1395i–2a].

Section 1840 of the Act [42 U.S.C. 1395s] describes the rules for purchase of Medicare Supplementary Medical Insurance (SMI) benefits, also known as Medicare Part B. Generally, Medicare Part B benefits will begin when Medicare Part A benefits begin unless the beneficiary declines the Part B benefits. Usually the beneficiary is responsible for the payment of a monthly premium for Medicare Part B benefits. Section 1843 of the Act [42 U.S.C. 1395v] describes the agreements States may enter into to purchase SMI benefits for some individuals. The purchase of SMI benefits by a State for an individual is referred to as ''Medicare Part B buy-in.''

Section 1902(a)(10)(E) of the Act [42 U.S.C. 1396a(a)(10)(E)] requires each State's plan for medical assistance to provide for Medicare cost-sharing (including Medicare Part B buy-in) for certain groups of low-income individuals. Some of the groups of low-income individuals are:

1. Qualified Medicare beneficiaries (QMBs). QMBs are individuals who are eligible for Medicaid payment of their Medicare premiums, deductibles and coinsurance. QMBs must be entitled to Medicare HI benefits (through their own entitlement or by purchase). QMBs must also have income that does not exceed the Federal poverty level (FPL) after application of the SSI income exclusions, and have resources with values that do not exceed twice the SSI standards after application of the SSI resources exclusions.

2. Specified low-income Medicare beneficiaries (SLMBs). SLMBs are Medicare beneficiaries who would be QMBs but for income which exceeds the FPL but is less than 120 percent of the FPL after application of the SSI income exclusions. SLMBs are eligible for Medicare Part B buy-in.

3. Qualified individuals—1 (QI–1s). Subject to the availability of funding, QI–1s are Medicare beneficiaries who would be QMBs or SLMBs but for income which exceeds the allowable limit but is less than 135 percent of the FPL after application of the SSI income exclusions. QI–1s are eligible for Medicare Part B buy-in.

For most Medicare beneficiaries, Medicare entitlement is an automatic result of Social Security entitlement when other statutory factors of Medicare eligibility are met. Thus, most Medicare beneficiaries also are beneficiaries of the Social Security program administered by SSA. Because of the linkage between Medicare entitlement and Social Security entitlement in title II of the Act and the duties of the Commissioner of SSA in title VII of the Act, both SSA and HCFA have Medicare entitlement responsibilities. In addition, SSA performs additional enrollment and other Medicare-related activities under the auspices of agreements between HCFA and SSA.

Many States have entered into agreements with SSA for SSA to make categorically needy Medicaid eligibility determinations for the State's SSI beneficiaries under the authority in section 1634 of the Act [42 U.S.C. 1383c]. Acting on behalf of States with such agreements, SSA processes Medicare Part B buy-in for SSI beneficiaries who are eligible for this assistance under the rules in section 1843 of the Act.

Although Medicare entitlement usually is a product of the Social Security entitlement process, Medicare Part B buy-in eligibility determinations are a Medicaid process. Under title XIX of the Act, Medicaid is State-administered under the terms of State plans approved by HCFA. SSA plays only a limited role in qualifying individuals for Medicare Part B buy-in. SSA does make some buy-in decisions in certain States, but only for SSI beneficiaries. SSA also publicizes the availability of the Medicare Part B buy-in programs in its field offices and through the SSA toll-free number, 1–800–SSA–1213.

A lack of awareness about the Medicare Part B buy-in programs appears to be one of the major obstacles to enrollments. Other obstacles to enrollments have also been suggested, including the confusion of potential eligibles as to how to apply for these programs and a preference for dealing with SSA field offices rather than with local welfare offices.

Because of the low enrollments in the Medicare Part B buy-in programs, SSA will conduct a Medicare Part B buy-in demonstration to assist our beneficiaries. The two-part demonstration will be designed to identify and overcome the obstacles to Medicare Part B buy-in enrollments for QMBs, SLMBs and QI–1s. Conferring with HCFA, SSA intends to implement both internal and external components of the demonstration, and SSA invites States to form Federal-State partnerships with SSA to participate in this demonstration.

As currently envisioned, the internal component of the demonstration would involve increased Medicare Part B buy-in referral activities by SSA employees when contacted by Medicare-entitled beneficiaries. An example of this type of increased referral activities may be eligibility screening and subsequent direct notification of Medicaid State agencies when a Social Security beneficiary appears to be potentially eligible for Medicare Part B buy-in. Currently, SSA suggests that beneficiaries get in touch with the Medicaid State agency to discuss eligibility for Medicare Part B buy-in without identifying those beneficiaries to the State.

Medicare-entitled Social Security beneficiaries routinely contact SSA for a number of reasons, such as reports of the death of a spouse. When informed of a spouse's death, SSA recomputes the widow(er)'s benefit to determine if the widow(er) might be entitled to a larger monthly benefit. In all States, SSA could use these contacts to screen carefully for potential Part B buy-in eligibility and both refer the caller to the Medicaid State agency and provide identifying information about potential Medicare Part B buy-in eligibility to the Medicaid State agency for State-initiated followup.

The external component of the demonstration would involve Federal-State partnerships. State partners that wish to participate in the demonstration would provide ZIP code information that relates to areas within each State with a high proportion of low-income aged and disabled Medicare beneficiaries who could be eligible but are not participating in the Medicare Part B buy-in programs. State participants would join with SSA in publicizing this demonstration in the targeted communities. Some State partners also would be involved in

educating SSA employees about the State welfare Medicare buy-in application process, and/or providing welfare workers who would be assigned to take applications in SSA field offices at certain mutually agreeable, fixed times during the demonstration.

SSA expects to implement the external part of this demonstration in no more than 15 communities. That is, SSA and its State partners would identify three sets of up to five comparable communities in several States. Each set of five comparable communities would be selected to participate in each of the following three models:

1. Screening—Publicity would direct Medicare beneficiaries who may be potentially eligible for Medicare Part B buy-in to contact a toll-free telephone number staffed by SSA employees. SSA staff would perform an in-depth Medicare Part B buy-in eligibility screening if at all possible while the caller is on the telephone. Potential eligibles would then be referred to the local welfare office to file applications for benefits, and SSA would track the progress of those applications with the State partner.

2. Co-location—In addition to the publicity and screening efforts cited in the preceding model, potential Medicare Part B buy-in eligibles also would be invited to file an application for benefits with a State welfare worker stationed (for at least some fixed part of the week) at the local SSA office.

3. Application—In addition to the publicity and screening efforts cited in the preceding two models, potential Medicare Part B buy-in eligibles would be invited to file an application for those benefits, completing the appropriate forms with an SSA employee at the local SSA office.

SSA does not envision all three of these models starting at exactly the same time. Federal information collection clearance procedures, training, logistical details and mutual convenience for both the Federal and State partners will dictate starting dates. SSA expects these models to end within nine months after implementation.

SSA intends to employ an independent contractor to consult on the design of the demonstration and to conduct an evaluation of the net outcomes (e.g., increased applications to and enrollments in the buy-in programs) of the demonstrations. The role of the contractor in the design phase of the demonstration will be to advise SSA on how to implement the three models described above. SSA will be responsible for collecting data, and SSA will develop a management information system. The contractor will assist SSA and the States in specifying key data elements to enhance data comparability across sites. This system may include existing SSA administrative data as well as data collected through the demonstration. Designs that the contractor will consider include both experimental and nonexperimental approaches. An experimental design might involve a random assignment of cases to treatment and control groups, while a nonexperimental design could include the collection of analogous data from comparison sites. Each has important implications for the implementation of the three models and for the development of the management information system. State partners will be expected to cooperate with the contractor at key points of the design and evaluation activities. The contractor will be expected to consult with HCFA on its activities. Both the internal and external components of this demonstration will be designed to avoid duplicating any other Federal efforts.

The evaluation component will include analyses of the relative effectiveness of the three models in terms of increasing Medicare Part B buy-in applications from the eligible population and increasing enrollments in the buy-in programs. The evaluation also will include a comparison of buy-in program applications and enrollments under the SSA interventions versus HCFA publicity efforts. An appropriate design is critical to proper measurement of increases in Medicare Part B buy-in enrollments.

SSA invites the public to comment on its proposed demonstration design. SSA also invites States to express interest in participating in this demonstration. State partners in the demonstration may be asked to implement any or all of the models described above; however, if a State that wishes to participate would prefer participation in less than all three models, those preferences will be honored to the extent possible.

Authority: Division A, Title IV of Public Law 105–277.

Dated: November 13, 1998.

Kenneth S. Apfel,

Commissioner of Social Security.

[FR Doc. 98–30873 Filed 11–17–98; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice No. 2932]

Nigeria; Determination Under Presidential Proclamation

I hereby make the determination provided for in section 6 of Presidential Proclamation No. 6636, of December 10, 1993, that the suspension of entry into the United States as immigrants and nonimmigrants of persons who formulate, implement or benefit from policies that impede Nigeria's transition to democracy is no longer necessary. Restrictions imposed in said proclamation, pursuant to Section 212(f) of the Immigration and Nationality Act of 1952 as amended (8 U.S.C. 1182(f)), shall therefore lapse, and said proclamation shall terminate effective immediately.

This determination will be reported to Congress and published in the **Federal Register**.

Dated: October 26, 1998.

Madeleine K. Albright,

Secretary of State.

[FR Doc. 98–30760 Filed 11–17–98; 8:45 am]

BILLING CODE 4710–10–M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice: 2924]

Extension of the Restriction on the Use of United States Passports for Travel to, in, or Through Libya

On December 11, 1981, pursuant to the authority of 22 U.S.C. 211a and Executive Order 11295 (31 FR 10603), and in accordance with 22 CFR 51.73(a)(3), all United States passports were declared invalid for travel to, in, or through Libya unless specifically validated for such travel. This restriction has been renewed yearly because of the unsettled relations between the United States and the Government of Libya and the possibility of hostile acts against Americans in Libya.

The Government of Libya still maintains a decidedly anti-American stance and continues to emphasize its willingness to direct hostile acts against the United States and its nationals. The American Embassy in Tripoli remains closed, thus preventing the United States from providing routine diplomatic protection or consular assistance to Americans who may travel to Libya.

In light of these events and circumstances, I have determined that Libya continues to be an area ''. . . where there is imminent danger to the public health or physical safety of United States travelers'' within the meaning of 22 U.S.C. 221a and 22 C.F.R. 51.73(a)(3).

Accordingly, all United States passports shall remain invalid for travel to, in, or through Libya unless specifically validated for such travel under the authority of the Secretary of State.

The Public Notice shall be effective upon publication in the **Federal Register** and shall expire at midnight November 24, 1999, unless extended or sooner revoked by Public Notice.

Dated: November 9, 1998.

Madeleine K. Albright,

Secretary of State.

[FR Doc. 98–30759 Filed 11–17–98; 8:45 am]

BILLING CODE 4710–06–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 186; Automatic Dependent Surveillance—Broadcast (ADS–B)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee (SC)–186 meeting to be held December 3, 1998, starting at 9:00 a.m. The meeting will be held at RTCA in the MacIntosh–NBAA Conference Room, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

The agenda will include: (1) Chairman's Introductory Remarks/ Review of Meeting Agenda; (2) Review and Approval of Minutes of the Previous Meeting; (3) Review of SC–186 Work Plan, Organization, and Objectives; (4) Working Group (WG) Reports: a. WG–1 (Operations and Implementation); b. WG–2 (Separation Assurance); c. WG–3 (1090 MHz Minimum Operational Performance Standards (MOPS)); d. WG–4 (Application Technical Requirements); (5) Progress of SC–186/WG–51 Joint Working Relationship; (6) RTCA Policy on Intellectual Property/Proprietary Data Rights in RTCA–Sponsored/ Supported Activities and Standards; (7) Overview of 1090 MHz ADS–B MOPS; (8) Other Business; (9) Date and Place of Next Meeting.

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 November 12, 1998.

Janice L. Peters,

Designated Official.

[FR Doc. 98–30791 Filed 11–17–98; 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 Alexandria International Airport, Alexandria, Louisiana

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposed to rule and invites public comment on the application to impose and use the revenue from a PFC at Alexandria 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) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before December 18, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610D, Fort Worth, Texas 76193–0610, (817) 222–5614.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Scott Gammel, Manager of Alexandria International Airport at the following address: Mr. Scott Gammel, Airport Manager, England Economic & Industrial Development District, 1611 Arnold Drive, Alexandria, LA 71303.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the Airport under Section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610D, Fort Worth, Texas 76193–0610, (817) 222–5614.

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 Alexandria 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) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On November 3, 1998, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Airport 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 February 11, 1999.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: May 1, 1999.

Proposed charge expiration date: November 1, 2020.

Total estimated PFC revenue: $5,378,352.00

PFC application number: 99–01–C–00–AEX.

Brief description of proposed project(s):

Projects to Impose and Use PFC's

ARFF Vehicle, New Terminal Building, and PFC Application Fees.

Proposed class of air carriers to be exempted from collecting PFC's: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Southwest Region, Airports Division Planning and Programming Branch, ASW–610D, 2601 Meacham Blvd., Fort Worth, Texas 76137–4298.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Alexandria International Airport.

Issued in Fort Worth, Texas, on November 3, 1998.

Naomi L. Saunders,

Manager, Airports Division.

[FR Doc. 98–30793 Filed 11–17–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33674]

Livonia, Avon & Lakeville Railroad Corporation—Acquisition of Control Exemption—Ontario Central Railroad Corporation

Livonia, Avon & Lakeville Railroad Corporation (LAL), a Class III rail carrier, has filed a verified notice of exemption to acquire a controlling interest, through stock purchase, of Ontario Central Railroad Corporation (ONCT), a Class III rail carrier, which operates 14 miles of rail line between West Victor and Shortsville, NY.[1]

LAL owns and operates approximately 30 miles of rail line between Genessee Junction yard in Chili, NY, immediately south of Rochester, and Lakeville, NY. LAL also separately operates approximately 35 miles of track between Hammondsport, Bath and Wayland, NY, which is owned by the Steuben County Industrial Development Authority.[2]

Under the terms of an agreement with ONCT, LAL will acquire 3,000 shares of ONCT's treasury stock and 8,900 shares of ONCT's stock, which is currently authorized but unissued.

The earliest the transaction could be consummated was October 30, 1998, the effective date of the exemption (7 days after the exemption was filed).

LAL states that: (i) the railroads do not connect with each other; (ii) the transaction is not part of a series of anticipated transactions that would connect the railroads with each other; and (iii) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33674, must be filed with the Office of the Secretary, Case Control Unit, Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of all pleadings must be served on Kevin M. Sheys, Oppenheimer Wolff Donnelly & Bayh LLP, 1350 Eye St., N.W., Suite 200, Washington, DC 20005.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: November 10, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–30652 Filed 11–17–98; 8:45 am]

BILLING CODE 4915–00–P

[1] *See Ontario Central Railroad Corporation—Operations—Between Shortsville and Victor, NY,* Finance Docket No. 29761 (ICC served Nov. 3, 1981) (Modified Rail Certificate), and *Certificate of Designated Operator-Ontario Central Railroad Corp.,* D–OP 33 (U.S.R.A. Line No. 98/1022), *Cancellation of Certificate of Designate Operation—Consolidated Rail Corporation,* D–OP 6 (U.S.R.A. Line No. 98/1022) (ICC served Sept. 28, 1979).

[2] *See Livonia, Avon & Lakeville Railroad Corp.—Acquisition and Operation Exemption—Steuben County Industrial Development Agency,* STB Finance Docket No. 32941 (STB served May 22, 1996).

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Privacy Act of 1974, as Amended; System of Records

AGENCY: Internal Revenue Service, Department of the Treasury.

ACTION: Notice of proposed new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Department of the Treasury gives notice of a new proposed system of records, the IRS Audit Trail Lead Analysis System (ATLAS).

DATES: Comments must be received no later than 30 days after the proposed system is published in the **Federal Register** (December 18, 1998). The proposed system of records will be effective 40 days after the proposed system is published in the **Federal Register** (December 28, 1998) unless the Service receives comments that would result in a contrary determination.

ADDRESSES: Comments should be sent to Office of Governmental Liaison and Disclosure, Internal Revenue Service, 1111 Constitution Ave., NW, Washington, DC. 20220. Persons wishing to review the comments should call 202–622–6240 to make an appointment with the Office of Governmental Liaison and Disclosure.

FOR FURTHER INFORMATION CONTACT: Michael Sincavage, Director, 6103/Privacy Operations, Governmental Liaison and Disclosure, Internal Revenue Service at 202–622–6240.

SUPPLEMENTARY INFORMATION: This report is to give notice of a proposed new Internal Revenue Service (IRS) system of records entitled ''IRS Audit Trail Lead Analysis System (ATLAS),'' which is subject to the Privacy Act of 1974, 5 U.S.C. 552a, as amended. The Service is establishing ATLAS to detect and counter unauthorized access, use, fraud and abuse of tax return information. This system provides protection by monitoring and tracking, through analysis of audit logs, accesses to and use of IRS electronic records. Outside of IRS Information Systems, the Office of the Chief Inspector/Treasury Office of Inspector General for Tax Administration will be the principal user of data contained in this system of records. The Office of the Chief Inspector will analyze the data contained in the system of records as part of its mission to detect and deter fraud, waste, and abuse. The Integrated Data Retrieval System Security Files, Treasury/IRS 34.018, will be incorporated into the proposed IRS ATLAS system of records. In accordance with the Office of Management and Budget Circular A–130, the notice covering Treasury/IRS 34.018 will be deleted from the IRS's inventory of systems of records on the date Treasury/IRS 34.020 becomes effective. The proposed system of records is published in its entirety below.

Dated: November 10, 1998.

Shelia Y. McCann,

Deputy Assistant Secretary (Administration).

Treasury/IRS 34.020

SYSTEM NAME:

IRS Audit Trail Lead Analysis System (ATLAS)-Treasury/IRS.

SYSTEM LOCATION:

The ATLAS is located in an IRS facility in West Virginia. The users of the system are located in a facility in Ohio.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) IRS employees and contractors who have accessed, by any means, tax return or other IRS information contained within an IRS information system (i.e., its operating system,

network, or data base) which processes taxpayer information. (2) Individual taxpayers upon whom the IRS maintains paper or electronic records and whose records have been accessed. (3) Individuals who have illegally accessed, by any means, tax return or other IRS information contained within an IRS information system (i.e., its operating system, network, or data base) which processes taxpayer information.

CATEGORIES OF RECORDS IN THE SYSTEM:

The IRS information systems create audit logs of IRS employees or contractors who have accessed or other individuals who have illegally accessed taxpayer records. The audit logs are then processed by ATLAS to determine whether the accesses are consistent with the IRS policy, standards and practices regarding tax administration, and the confidentiality statutes within the U.S. Code.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 6103, 7213, 7213A, 7214, 7608, 7801, 7802, and 18 U.S.C. 1030(a)(2)(B).

PURPOSE(S):

To enable the IRS to enhance protection of sensitive tax return information by assuring the public that its tax information is being protected in an ethical and legal manner, thereby promoting voluntary taxpayer compliance. The system is to detect and counter unauthorized access, use, fraud and abuse of tax return information. The system provides protection by monitoring and tracking, through analysis of audit logs, accesses to and use of IRS electronic records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of tax returns and tax return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to:

(1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulations;

(2) Disclose information in a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear when: (a) The agency, or (b) any employee of the agency in his or her official capacity, or (c) any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee, or (d) the United States, when the agency determines that litigation is likely to affect the agency, is a party to litigation or has an interest in such litigation, and the use of such records by the agency is deemed to be relevant and necessary to the litigation or administrative proceeding and not otherwise privileged;

(3) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(4) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(5) Provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114, the Merit Systems Protection Board, arbitrators, the Federal Labor Relations Authority, and other parties responsible for the administration of Federal labor actions or grievances or conducting administrative hearings or appeals or if needed in the performance of other authorized duties;

(6) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice; and

(7) Disclose information to the defendant in a criminal prosecution, the Department of Justice, or a court of competent jurisdiction where required in criminal discovery or by the Due Process Clause of the Constitution.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage, either by magnetic or optical media, and paper copy.

RETRIEVABILITY:

(1) Indexed by name, social security number (SSN) or other unique identifier assigned to an IRS employee or contractor who has been granted access to an IRS computer system, or other individuals who have illegally accessed an application which processes taxpayer information.

(2) Indexed by name, SSN, or other unique identifier assigned to an IRS employee or contractor who has been granted access to paper records.

(3) Retrieved by the Taxpayer Identification Number (SSN, EIN, or ITIN).

SAFEGUARDS:

Access controls will not be less than those described in TD P 71–10, Department of Treasury Security Manual, IRM 2.1.10 Internal Revenue Manual— Information Systems Security, and IRM 1(16)12 Internal Revenue Manual—Managers Security Handbook.

RETENTION AND DISPOSAL:

Records are maintained in accordance with record disposition handbooks, IRM 1(15)59.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Security Program Section, Telecommunication and Operations Division, Information Systems, Internal Revenue Service, Department of the Treasury, 1111 Constitution Ave., NW, Washington, DC 20220.

NOTIFICATION PROCEDURE:

This system of records is exempt from certain provisions of the Privacy Act.

RECORD ACCESS PROCEDURES:

This system of records is exempt from certain provisions of the Privacy Act and may not be accessed for the purpose of determining if the system contains a record pertaining to a particular individual.

CONTESTING RECORD PROCEDURES:

This system of records is exempt and may not be accessed for purposes of inspection or contest of record contents. Also, 26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

This system of records is exempt from the Privacy Act provision which requires that record source categories be reported. (See ''Exemptions Claimed for the System,'' below.)

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a(c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (H) and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). (see 31 CFR 1.36)

[FR Doc. 98–30768 Filed 11–17–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0964]

Draft ''Guidance for Industry: Content and Format of Chemistry, Manufacturing and Controls Information and Establishment Description Information for a Biological In Vitro Diagnostic Product;'' Availability

Correction

In notice document 98–30094, beginning on page 63067, in the issue of Tuesday, November 10, 1998, make the following correction:

On page 63067, in the second column, in the **DATES:** section, in the fourth line, ''1998'' should read ''1999''.

BILLING CODE 1505-01-D

Corrections

Federal Register

Vol. 63, No. 222

Wednesday, November 18, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Implementation of the Fertility Clinic Success Rate and Certification Act of 1992; Proposed Model Program for the Certification of Embryo Laboratories

Correction

In notice document 98–29374, beginning on page 60178, in the issue of Friday, November 6, 1998, make the following corrections:

1. On page 60178, in the second column, in the third full paragraph, in the second line, ''received'' should read ''receive''.

2. On the same page, in the third column, in the second full paragraph, in the fifth line, ''determines'' should read ''determine''.

3. On the same page, in the same column, in the third full paragraph, in the first line, ''is'' should read ''in''.

4. On page 60179, in the first column, in the second full paragraph, in the twelfth line from the bottom, ''**Egister**'' should read ''**Register**''.

5. On page 60181, in the second column, in the definition for ''Sperm'', in the first line, ''reproduction'' should read ''reproductive''.

6. On the same page, in the third column, in the first paragraph, in the fifth line, ''of'' should read ''or''.

7. On page 60183, in the second column, in paragraph iii., in the third line, ''to determine if the accreditation organization'' should be added after ''organization''.

8. On the same page, in the third column, in the third line from the bottom, ''following.'' should read ''following:''.

9. On page 60184, in the first column, in the third line, ''induce'' should read ''include''.

10. On the same page, in the same column, in paragraph i., in the fifth line, ''induce'' should read ''include''.

11. On page 60186, in the first column, under *C. Quality Management*, in paragraph a., in the first line, ''must'' should be added after ''manual''.

BILLING CODE 1505-01-D

federal register

Wednesday
November 18, 1998

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 36

Noise Certification Standards for Propeller-Driven Small Airplanes; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 36

[Docket No. FAA–1998–4731; Notice No. 98–16]

RIN 2120–AG65

Noise Certification Standards for Propeller-Driven Small Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: The FAA is proposing changes to the noise certification standards for propeller-driven small airplanes. These proposals are based on the joint effort of the Federal Aviation Administration (FAA), the European Joint Aviation Authorities (JAA), and Aviation Rulemaking Advisory Committee (ARAC), to harmonize the U.S. noise certification regulations and the European Joint Aviation Requirements (JAR) for propeller-driven small airplanes. These proposed changes would provide uniform noise certification standards for airplanes certificated in the United States and in the JAA countries. The harmonization of the noise certification standards would simplify airworthiness approvals for import and export purposes.

DATES: Comments must be received on or before January 19, 1999.

ADDRESSES: Comments on this proposed rulemaking should be mailed or delivered, in duplicate, to: U.S. Department of Transportation Dockets, Docket No. FAA–1998–4731, 400 Seventh Street, SW., Room Plaza 401, Washington, DC 20590. Comments may also be sent electronically to the following Internet address: 9-NPRM-CMTS@faa.dot.gov. Comments may be filed and/or examined in Room Plaza 401 between 10 a.m. and 5 p.m. weekdays except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mehmet Marsan, Office of Environment and Energy (AEE), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7703.

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. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this notice are also invited. Substantive comments should be accompanied by cost estimates. Comments must identify the regulatory docket or notice number and be submitted in triplicate to the Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel on this rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

All comments received on or before the closing date will be considered by the Administrator before taking action on this proposed rulemaking. Late-filed comments will be considered to the extent practicable. The proposals contained in this notice may be changed in light of the comments received. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a pre-addressed, stamped postcard with those comments on which the following statement is made: ''Comments to Docket No. FAA–1998–4731.'' The postcard will be date stamped and mailed to the commenter.

Availability of the NPRM

An electronic copy of this document can 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 *Government Printing Office's* electronic bulletin board service (telephone: 202–512–1661).

Internet users may reach the FAA's web page at http://www.faa.gov or the *Government Printing Office's* webpage at http://www.access.gpo.gov/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this NPRM by mail 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 the mailing list for future NPRM's should request from the FAA's Office of Rulemaking a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, that describes the application procedure.

Background

Current Regulations

Under 49 U.S.C. 44715, the Administrator of the Federal Aviation Administration is directed to prescribe ''standards to measure aircraft noise and sonic boom; * * * and regulations to control and abate aircraft noise and sonic boom.'' Part 36 of Title 14 of the Code of Federal Regulations contains the FAA's noise standards and regulations that apply to the issuance of type certificates for all types of aircraft. The standards and requirements that apply to propeller-driven small airplanes and propeller-driven commuter category airplanes are found in § 36.501 and Appendix G of Part 36. Appendix G addresses Takeoff Noise Requirements for propeller-driven small airplane and propeller-driven commuter category airplane Certification Tests on or after December 22, 1988. This appendix was added to part 36 in 1988 to require actual takeoff noise tests instead of the level flyover test that was formerly required under Appendix F, for airplanes for which certification tests were completed before December 22, 1988.

Appendix G specifies the test conditions, procedures, and noise levels necessary to demonstrate compliance with certification requirements for propeller driven small airplanes and propeller-driven, commuter category airplanes.

Government and Industry Cooperation

In June 1990 there was a meeting of the Joint Aviation Authorities (JAA) Council, which consists of JAA members from European countries, and the FAA. The FAA Administrator committed FAA to support the harmonization of the FAA regulations with the Joint Aviation Regulations (JAR). The Joint Aviation Regulations are being developed for use by the European authorities that are member countries of the JAA.

In January 1991, the FAA established the Aviation Rulemaking Advisory Committee to serve as a forum for the FAA to obtain input from outside the Government on major regulatory issues facing the agency. The FAA announced the renewal of ARAC on February 19, 1993 (58 FR 9230) and on March 1, 1995 (60 FR 11165). One area that ARAC deals with is noise certification issues. These issues involve the harmonization of 14 CFR part 36 (part 36) with JAR part 36, the associated guidance material including equivalent procedures, and the interpretation of the regulations. On May 3, 1994, the ARAC established the FAR/JAR Harmonization Working Group for Propeller-Driven Small Airplanes (59 FR 22885). The Working Group was tasked with reviewing the applicable provisions of subparts A and F, and appendices F and

G of part 36, and harmonizing them with the corresponding applicable provisions of JAR 36. The Working Group was asked to consider the current international standards and recommended practices, as issued under International Civil Aviation Organization (ICAO), Annex 16, Volume 1, and its associated Technical Manual, as the basis for development of these harmonization proposals. The Working Group was also asked to recommend a process whereby subsequent ICAO Annex 16 changes could be properly incorporated into JAR 36 and part 36.

The Working Group reviewed 16 items related to noise limits and measurement procedures in the regulations. For six of these items, the Working Group recommended that part 36 be amended to harmonize the regulations with JAR 36. For four of these items, the Working Group recommended that JAR 36 be amended to harmonize those regulations with part 36. For the six remaining items, the Working Group found that no harmonization is necessary. The Working Group also recommended changes to harmonize FAA and JAA interpretive and advisory material relating to noise limits for propeller-driven small airplanes. This NPRM reflects the six recommendations that address changes to part 36.

Discussion of Proposals

The proposed changes to appendix G would affect the provisions that establish noise measurement procedures (sec. G36.107), corrections to test results (sec. G36.201) and specific aircraft noise limits that are tied to aircraft weight (sec. G36.301).

Section G36.107 Noise Measurement Procedures

Currently, section G36.107 prescribes specific procedures for the placement of microphones, system calibration and consideration of ambient noise. The proposed changes would affect the microphone requirements of paragraph (a). Currently, microphones are required to be oriented in a known direction so that the maximum sound received arrives as nearly as possible in the direction for which the microphones are calibrated, and the microphone sensing elements must be placed four feet (1.2 m) above ground level.

The proposed change to section G36.107(a) would require the microphone to be a pressure-type microphone with a protective grid that is 12.7 mm in diameter. The microphone would have to be mounted in an inverted position so that the diaphragm is 0.7 mm above and parallel to a white-painted metal circular plate. The plate would have to be 40 cm in diameter and at least 2.5 mm thick. The plate would have to be placed horizontally and flush with the surrounding ground surface with no cavities below the plate. The microphone would have to be located three-quarters of the distance from the center to the edge of the plate along a radius normal to the line of flight of the test airplane.

The proposed changes, which would make the U.S. regulations consistent with the JAR, are supported by numerous studies, technical papers, and discussions with interested groups. The technical data indicate that an inverted microphone that measures reflected noise from a metal plate at ground level produces more consistent and reliable data. A microphone that is four feet above the ground is much more likely to be affected by variable ground reflections that can interact with the noise produced by the aircraft being measured. The microphone height reduction and the metal plate substantially eliminate these variations.

However, studies also show that measurements using the inverted microphone and metal plate technique produce consistently higher noise levels than those produced under the current procedure, with the difference being about 3 dB(A). Therefore, to maintain the present level of noise stringency, a corresponding change to section G36.301(b) is necessary as discussed below.

Section G36.201 Corrections to Test Results

Current section G36.201 prescribes corrections to be made to test results to account for the effects of differences between the conditions referenced in the prescribed procedures and existing conditions during an actual test.

Current section G36.201(b) requires atmospheric absorption correction for noise data obtained when the test conditions are outside those specified in appendix G, figure G1. Noise data collected outside the prescribed range of figure G1 are required to be corrected to 77 degrees F and 70 percent relative humidity by an FAA approved method. The FAA is proposing to change the 77 degrees F reference temperature to 59 degrees F, to be consistent with the ambient temperature requirement in current section G36.111(b)(2) that is used for performance calculations. By making the reference temperatures consistent for absorption and performance, delays and confusion that have been caused by the inconsistency in the current rule would be eliminated. The change would bring part 36 in line with Annex 16.

Current section G36.201(c) requires that helical tip Mach number and power corrections must be made if the propeller is a variable pitch type or if the propeller is a fixed pitch type and the test power is not within five percent of the reference power. The proposed change would provide an additional exception by stating that a correction is not necessary if the helical tip Mach number meets one of the following:

1. The number is at or below 0.70 and the test helical tip Mach number is within 0.014 of the reference helical tip Mach number.

2. The number is above 0.70 and at or below 0.80 and the test helical tip Mach number is within 0.007 of the reference helical tip Mach number.

3. The number is above 0.80 and the test helical tip Mach number is within 0.005 of the reference helical tip Mach number. For mechanical tachometers, if the helical tip Mach number is above 0.8 and the test helical tip Mach number is within 0.008 of the reference helical tip Mach number.

These additional proposed exceptions are based on an analysis of noise data from nine U.S.-manufactured aircraft. This analysis indicated that the proposed values are well within the Type 1 sound level meter as defined in International Electrotechnical Commission (IEC) Publication No. 651, which has been incorporated by reference in part 36. Adding this exemption would simplify some tests without degrading the results.

Current section G36.201(d)(1) requires that the measured sound levels must be corrected from the test day meteorological conditions by adding an increment equal to the result gained from the following equation:

$$\text{Delta (M)} = (\alpha - 0.7)\ H_T/1000.$$

In this equation, H_T is the height in feet of the test aircraft when directly over the noise measurement point, and α is the rate of absorption for the test day conditions at 500 Hz as referenced in Society of Automotive Engineers (SAE) Publication Aerospace Recommended Practice (ARP) 866A which has been incorporated by reference in part 36.

The equation in section G36.201(d)(1) is an approximation. The accuracy of the calculations can be improved by adopting the exact form of the equation. Therefore, the FAA proposes to change the equation to the exact form which reads as follows:

$$\text{Delta (M)} = (H_T\alpha - 0.7\ H_R)/1000.$$

In this equation H_T is the height in feet under test conditions, H_R is the height in feet under reference

conditions when the aircraft is directly over the noise measurement point, and α is the same as in the current rule, that is, the rate of absorption for the test day conditions at 500 Hz as specified in SAE ARP 866A.

The proposed equation would bring appendix G absorption calculations in line with the rest of part 36 absorption calculations and Annex 16.

Current section G36.201(d)(4) requires that the measured sound levels in decibels must be corrected for engine power by algebraically adding an increment equal to:

Delta (3)=17 log (P_R/P_T)

where P_T and P_R are the test and reference engine powers respectively.

The FAA proposes that the algebraic correction for engine power be changed to:

Delta (3)=K_3 log (P_R/P_T)

where P_R and P_T are the test and reference engine powers respectively obtained from the manifold pressure/torque gauges and engine rpm. Under this proposal, the value of K_3 would be determined from approved data from the test airplane. In the absence of flight test data and at the discretion of the Administrator a value of K_3 = 17 could still be used as under the current rule.

The only difference between the current formula and the proposed formula is the power correction constant. The current regulation requires the use of 17 for this constant. The K_3=17 value is an average value that was derived from FAA tests on seven aircraft where the variation was from 1.5 to 39.3. Although the use of an average value simplifies the test plan, it could penalize an applicant who can prove lower values of K_3 by test data. Therefore, the FAA proposes a formula that allows the applicant to use a lower value for K_3 when it has test data to support that value, or to continue to use a value of 17 with the Administrator's approval when test data is not available. The proposed formula is also consistent with the JAR.

Section G36.301 Aircraft Noise Limits

Current section G36.301(b) states that the noise level must not exceed 73 dB(A) up to and including aircraft weights of 1,320 pounds (600 kg.), and that for weights greater than 1,320 pounds the noise limit increases at the rate of 1 dB/165 pounds up to 85 dB(A) at 3,300 pounds, after which it is constant at 85 dB(A) up to and including 19,000 pounds.

As previously discussed, considerations of microphone location, configuration, and resulting noise limits are interrelated. Since the proposed changes to the noise measurement procedures of section G36.107(a) would result in increases in the measured noise levels of about 3 dB(A), the FAA proposes to increase the limits in section 36.301(b) from 73 dB(A) to 76 dB(A) and from 85 dB(A) to 88 dB(A). This change would account for the revised microphone height and configuration requirements. The increased limit is not expected to result in any increase or decrease in the noise stringency requirements of the current rule.

In addition to the dB(A) changes discussed, the FAA is proposing a change to the interpolation requirement of section G36.301(b). For weights greater than 1,320 pounds, the allowable dB(A) would increase ''with the logarithm of airplane weight at the rate of 9.83 dB(A) per doubling of weight until the limit of 88 dB(A) is reached * * *,'' rather than at the rate of 1 dB/165 pounds up to 85 dB(A) at 3,300 pounds, as under the current rule. This change would harmonize interpolation under the FAA regulation with the comparable JAA regulation without change in noise stringency of the present Appendix G.

Paperwork Reduction Act

There are no requirements for information collection associated with this proposed rule that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA's policy to comply with ICAO Standards and Recommended Practices to the maximum extent practicable. For this NPRM, the FAA has reviewed part 36 Appendix G and ICAO Annex 16 Volume I, Chapter 10. The review showed that the following two items were left unharmonized: (1) For fixed pitch type propellers, part 36 section G36.201 specifies a simplified data correction procedure if the engine test power is within 5% of the reference power. The Annex 16 does not have a corresponding simplification and, (2) The part 36 section G36.111 allows the use of maximum continuous installed power during the second segment of the flight path. The power definition in Annex 16 for the second segment is defined as maximum power in Chapter 10 section 10.5.2. The maximum installed power is typically lower than the maximum power and applicable only to older engines. The above two unharmonized items only effect a small percentage of the airplanes in the fleet and therefore are not significant enough to be considered as harmonization issues.

Regulatory Evaluation Summary

Four principal requirements pertain to the economic impacts of changes to the Federal Regulations. First, Executive Order 12866 directs Federal agencies to promulgate new regulations or modify existing regulations after consideration of the expected benefits to society and the expected costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. Finally, Public Law 104–4 requires federal agencies to assess the impact of any federal mandates on state, local, tribal government, and the private sector. In conducting these analyses, the FAA has determined that this rule: (1) would generate cost savings that would exceed any costs; (2) is not ''significant'' as defined under section 3(f) of Executive Order 12866 and Department of Transportation's (DOT) policies and procedures (44 FR 11034, February 26, 1979); (3) would not have a significant impact on a substantial number of small entities; and (4) would not impose restraints on international trade. Finally, the FAA has determined that the proposal would not impose a federal mandate on state, local, or tribal governments, or the private sector of $100 million per year. These analyses, available in the docket, are summarized below.

The benefit of the proposed rule is that it would harmonize the U.S. noise certification regulations with the European Joint Aviation Requirements for propeller-driven small airplanes. The proposed changes would provide nearly uniform noise certification standards for airplanes certificated in the United States and by the European Joint Aviation Authorities (JAA). This is expected to reduce the number of noise tests that need to be conducted. The costs to implement the proposal are negligible, if any. There are no additional costs imposed by this proposal.

Regulatory Flexibility Determination

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. The RFA requires a Regulatory Flexibility Analysis if a rule would have a significant economic impact on a

substantial number of small entities. Because the costs imposed by this rule would be negligible, the Agency concludes that the proposed rule would not have a significant economic impact on a substantial number of small entities.

International Trade Impact Statement

The FAA has determined that the proposed rule would promote the sale of foreign products and services in the United States and the sale of U.S. products and services in foreign countries. This determination is based on the FAA's determination that the rule would align U.S. standards and JAA member standards for noise certification for propeller-driven small airplanes.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment (EA) or environmental impact statement (EIS). In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), regulations, standards, and exemptions (excluding those, which if implemented may cause a significant impact on the human environment) qualify for a categorical exclusion. The FAA proposes that this rule qualifies for a categorical exclusion because no significant impacts to the environment are expected to result from its finalization or implementation. In accordance with FAA Order 1050.1D, paragraph 32, the FAA proposes that there are no extraordinary circumstances warranting preparation of an environmental assessment for this proposed rule.

Federalism Implications

The proposed regulations would not have substantial direct effects on the states, on the relationship between national government and the states, or on the distribution of power and responsibilities among various levels of government. Thus, in accordance with Executive Order 12612, it is determined that such a regulation would not have federalism implications warranting the preparation of a Federalism Assessment.

Unfunded Mandates

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 would 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 rule does not contain a Federal intergovernmental or private sector mandate that exceeds $100 million a year, therefore the requirements of the Act do not apply.

List of Subjects in 14 CFR Part 36

Agriculture, Aircraft, Noise control.

The Proposed Amendments

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 36 as follows:

PART 36—NOISE STANDARDS: AIRCRAFT TYPE AND AIRWORTHINESS CERTIFICATION

1. The authority citation for part 36 continues to read as follows:

Authority: 42 U.S.C. 4321 *et seq.*; 49 U.S.C. 106(g), 40113, 44701–44702, 44704, 44715; sec. 305, Pub. L. 96–193, 94 Stat. 50, 57; E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970 Comp., p. 902.

2. Appendix G of part 36 is amended by revising sections G36.107(a), G36.201(b), including Figure G1, G36.201(c), G36.201(d)(1), G36.201(d)(4), and G36.301(b), including Figure G2, to read as follows:

Appendix G to Part 36—Takeoff Noise Requirements for Propeller-Driven Small Airplane and Propeller-Driven Commuter Category Airplane Certification Tests on or After December 22, 1988

* * * * *

Sec. G36.107 Noise Measurement Procedures.

(a) The microphone must be a pressure type, 12.7 mm in diameter, with a protective grid, mounted in an inverted position such that the microphone diaphragm is 0.7 mm above and parallel to a white-painted metal circular plate. This white-painted metal plate shall be 40 cm in diameter and at least 2.5 mm thick. The plate shall be placed horizontally and flush with the surrounding ground surface with no cavities below the plate. The microphone must be located three-quarters of the distance from the center to the back edge of the plate along a radius normal to the line of flight of the test airplane.

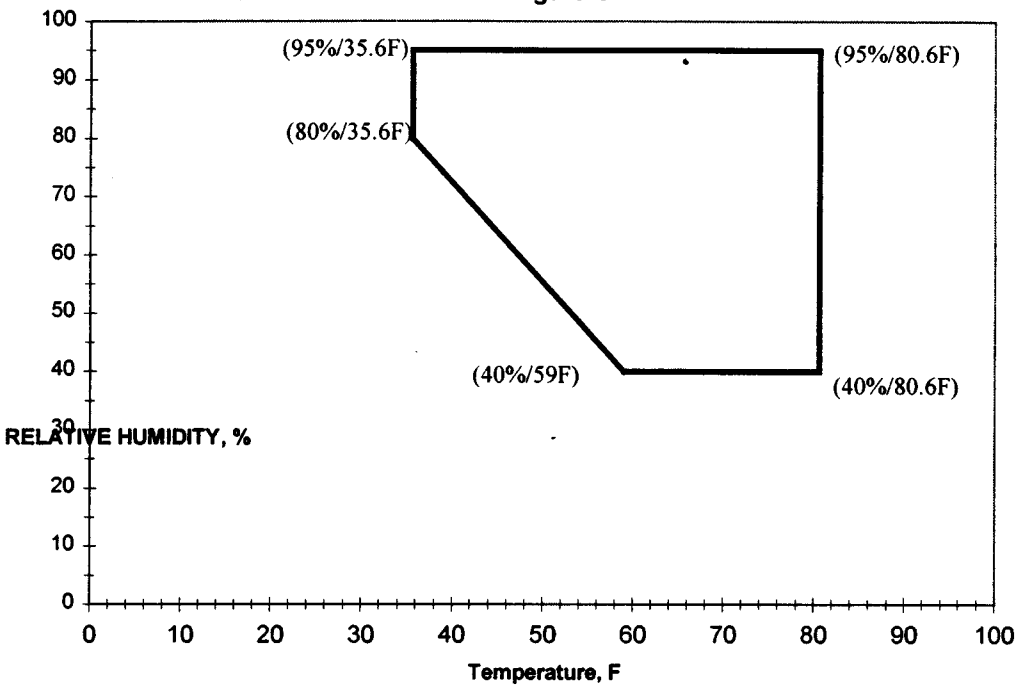
* * * * *

Sec. G36.201 Corrections to Test Results.

* * * * *

(b) Atmospheric absorption correction is required for noise data obtained when the test conditions are outside those specified in Figure G1. Noise data outside the applicable range must be corrected to 59 F and 70 percent relative humidity by an FAA approved method.

MEASUREMENT WINDOW FOR NO ABSORPTION CORRECTION Figure G1



BILLING CODE 4910–13–C

(c) Helical tip Mach number and power corrections must be made as follows:

(1) Corrections for helical tip Mach number and power corrections must be made if—

(i) The propeller is a variable pitch type; or

(ii) The propeller is a fixed pitch type and the test power is not within 5 percent of the reference power.

(2) No corrections for helical tip Mach number variation need to be made if the propeller helical tip Mach number is:

(i) At or below 0.70 and the test helical tip Mach number is within 0.014 of the reference helical tip Mach number.

(ii) Above 0.70 and at or below 0.80 and the test helical tip Mach number is within 0.007 of the reference helical tip Mach number.

(iii) Above 0.80 and the test helical tip Mach number is within 0.005 of the reference helical tip Mach number. For mechanical tachometers, if the helical tip Mach number is above 0.8 and the test helical tip Mach number is within 0.008 of the reference helical tip Mach number.

(d) * * *

(1) Measured sound levels must be corrected from test day meteorological conditions to reference conditions by adding an increment equal to—

$$\text{Delta (M)} = (H_T\,\alpha - 0.7\,H_R)/1000$$

where H_T is the height in feet under test conditions, H_R is the height in feet under reference conditions when the aircraft is directly over the noise measurement point and α is the rate of absorption for the test day conditions at 500 Hz as specified in SAE ARP 866A, entitled ''Standard Values of Atmospheric Absorption as a function of Temperature and Humidity for use in Evaluating Aircraft Flyover Noise'' as incorporated by reference under § 36.6.

* * * * *

(4) Measured sound levels in decibels must be corrected for engine power by algebraically adding an increment equal to—

$$\text{Delta}(3) = K_3 \log (P_R/P_T)$$

where P_R and P_T are the test and reference engine powers respectively obtained from the manifold pressure/torque gauges and engine rpm. The value of K_3 shall be determined from approved data from the test airplane. In the absence of flight test data and at the discretion of the Administrator, a value of $K_3 = 17$ may be used.

* * * * *

Sec. G36.301 Aircraft Noise Limits.

* * * * *

(b) The noise level must not exceed 76 dB (A) up to and including aircraft weights of 1,320 pounds (600 kg). For aircraft weights greater than 1,320 pounds, the limit increases from that point with the logarithm of airplane weight at the rate of 9.83 dB (A) per doubling of weight, until the limit of 88 dB (A) is reached, after which the limit is constant up to and including 19,000 pounds (8,618 kg). Figure G2 shows noise level limits vs airplane weight.

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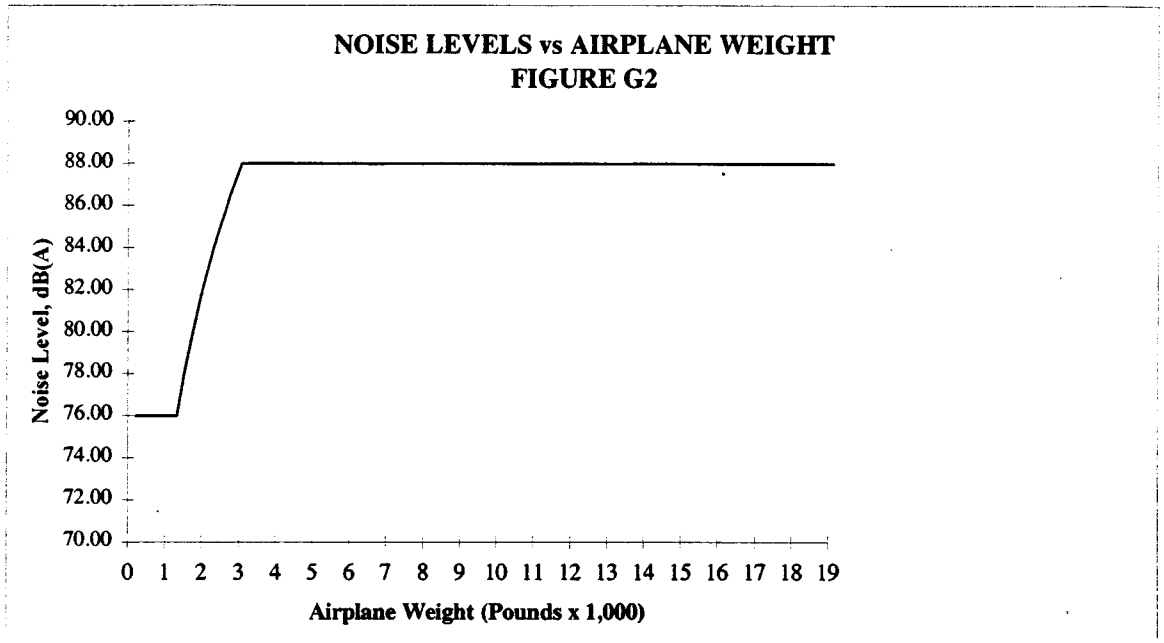

BILLING CODE 4910–13–C

Issued in Washington, DC, on November 9, 1998.

James D. Erickson,

Director of Office of Environment and Energy.

[FR Doc. 98–30578 Filed 11–17–98; 8:45 am]

BILLING CODE 4910–13–P

federal register

Wednesday
November 18, 1998

Part III

Department of the Interior

Bureau of Reclamation

43 CFR Part 428

Information Requirements for Certain Farm Operations In Excess of 960 Acres and the Eligibility of Certain Formerly Excess Land; Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

43 CFR Part 428

RIN 1006–AA38

Information Requirements for Certain Farm Operations In Excess of 960 Acres and the Eligibility of Certain Formerly Excess Land

AGENCY: Bureau of Reclamation, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would add a new part to the Bureau of Reclamation's (Reclamation) regulations to supplement the Acreage Limitation Rules and Regulations in 43 CFR part 426 that implement the Reclamation Reform Act of 1982 (RRA). The proposed rule would require certain farm operators to submit RRA forms that describe the services they perform and the land they service. The rule would also address the eligibility of certain formerly excess land held in trusts or by legal entities to receive nonfull-cost Reclamation irrigation water.

DATES: Reclamation must receive written comments on this proposed rule by January 19, 1999. We will not necessarily consider comments received after the above date during our review of the proposed rule.

ADDRESSES: If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to: Administrative Record, Commissioner's Office, Bureau of Reclamation, 1849 C Street N.W., Washington, D.C. 20240. You may also comment via the Internet to epetacchi@usbr.gov (see Public Comment Procedures under **SUPPLEMENTARY INFORMATION**). In addition, you may hand-deliver comments to Commissioner's Office, Bureau of Reclamation, 1849 C Street N.W., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Erica Petacchi, (202) 208–3368, or Richard Rizzi, (303) 445–2900.

SUPPLEMENTARY INFORMATION: This section provides the following information:

I. Public Comment Procedures
II. Introduction
III. Summary of Proposed Changes
IV. Background
V. Public Involvement
VI. Public Comments and Responses on Advance Notice of Proposed Rulemaking
VII. Detailed Analysis of Proposed 43 CFR Part 428
VIII. Procedural Matters
IX. List of Subjects in 43 CFR Part 428

I. Public Comment Procedures

Written comments on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the proposal which the commenter is addressing. We may not necessarily consider or include in the Administrative Record for the final rule comments which we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**). We will not consider anonymous comments.

If you submit your comments via the Internet, please submit as an ASCII file avoiding the use of special characters and any form of encryption. Please include in the subject line ''AA38'' and include your name and return address in the body of your Internet message. If you do not receive a confirmation that we have received your Internet message, contact us directly at (202) 208–3368.

The administrative record and all comments, including names and home addresses of respondents, will be available for public review at the address listed above (see **ADDRESSES**), during the hours of 9:00 a.m. to 4:00 p.m., Monday through Friday, except holidays. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

II. Introduction

This proposed rule would supplement the Acreage Limitation Rules and Regulations, 43 CFR part 426, that govern implementation and administration of the RRA. The proposed rule would create a separate CFR part, 43 CFR part 428, addressing information requirements for certain farm operators, and the eligibility of certain formerly excess land that is operated by a farm operator who was the landowner of that land when it was ineligible excess land or land placed under recordable contract.

We are proposing this rule to address comments raised in both the rulemaking concluded on December 18, 1996 (the Acreage Limitation Rules and Regulations) and in the Advance Notice of Proposed Rulemaking (ANPR) published in the **Federal Register** (61 FR 66827, Dec. 18, 1996). Among other things, the comments stated that although we collect information from landholders to verify compliance with the RRA, we do not collect this information from farm operators. Commenters pointed out that we, consequently, may not have adequate information to determine if the provisions of a farm operating arrangement constitute a ''lease'' under the acreage limitation provisions and thus require application of the nonfull-cost entitlements of the RRA. Other comments stated that we should analyze all farm operations in excess of 960 acres to determine compliance with the acreage limitation provisions of Federal reclamation law. Public comments from the ANPR are addressed below.

We believe that this rule balances the interests in enforcing the law with the interests of limiting paperwork burdens on the public. By limiting the applicability of the proposed rule as described below, we hope to target our resources to achieve compliance with the acreage limitation provisions of Federal reclamation law in an efficient manner. We seek comments on whether this rule will meet that goal.

III. Summary of Proposed Changes

The proposed rule would extend RRA certification and reporting forms requirements to farm operators who:

(1) Provide services to more than 960 acres held (directly or indirectly owned or leased) by one trust or legal entity, or

(2) Provide services to the holdings of any combination of trusts and legal entities that exceed 960 acres.

In addition, this part applies to the eligibility of formerly excess land held in trusts or by legal entities, that is operated by a farm operator who was the landowner of that land when it was ineligible excess land or land placed under recordable contract. The provisions of 43 CFR part 426 not specifically addressed in this rule are unchanged.

This section summarizes the differences between the existing regulations and the proposed rule. A detailed analysis can be found later in this preamble.

Certification and Reporting Requirements

Under 43 CFR part 426, landholders (direct or indirect landowners or lessees) whose total westwide landholdings exceed the RRA forms submittal thresholds must submit RRA forms. Farm operators do not now have to submit RRA forms. The new 43 CFR part 428 would extend certification and reporting requirements to farm operators who (1) provide services to more than 960 acres held by one trust or legal entity, or (2) provide services to the holdings of any combination of trusts and legal entities that exceed 960 acres. By extending the certification and reporting requirements to these farm operators, we can get information that we need to determine the following :

(1) Who has use or possession of the land being farmed under a farm operating arrangement; and

(2) Who is responsible for payment of operating expenses, and who is entitled to receive the profits from the farming operation as indicators of economic risk.

We need this information because the acreage limitation provisions apply to all owned or leased land. Use or possession of the land and who has all or a portion of the economic risk associated with the farming enterprises are the factors we use to determine if a farm operating arrangement is in fact a lease. If we determine that a farm operating arrangement is a lease, then the farm operator leasing the land will be subject to the acreage limitation provisions.

Excess Land Provisions

Part 426 provides that a seller of excess land may not receive Reclamation irrigation water if he or she again becomes the landholder of that land either voluntarily or involuntarily, with certain exceptions. This proposed rule would apply similar restrictions to farm operators who sold their excess land at an approved price, and provide services to that land if it is held in trust or by a legal entity. The only exceptions would be if the formerly excess land became exempt from application of the acreage limitation provisions or the full-cost rate was paid for deliveries of Reclamation irrigation water to the formerly excess land. This provision will not be effective until January 1, 2000, at which time all farm operating arrangements between farm operators and trusts or legal entities that meet the criteria will be affected. This includes farm operating arrangements that were in existence prior to January 1, 2000, as well as any farm operating arrangement initiated on or after that date. We believe this provision is consistent with the intent of the RRA excess land provisions, and that it parallels excess land provisions that apply to landholders.

The following example illustrates the situation this provision would address: Landowner A, a qualified recipient, owns 5,000 acres subject to the acreage limitation provisions, which is 4,040 acres more than his 960-acre ownership entitlement. Landowner A sells his excess land at a price that Reclamation approved to a trust benefitting 10 individuals who are each subject to the discretionary provisions; none of the beneficiaries' landholdings exceed their acreage limitation entitlements. The trustee of the trust then hires Landowner A to operate the land owned by the trust. Consequently, Landowner A continues to farm the entire 5,000 acres as a farm operator, and the land continues to receive Reclamation irrigation water at the nonfull-cost rate.

We do not believe the intent of the excess land provisions of Federal reclamation law has been met in the preceding example. As part of the rulemaking that was completed on December 18, 1996, we included as § 426.12(g) a provision that addresses this issue with regard to landholders. It provides that a district may not make Reclamation irrigation water available at the nonfull-cost rate to excess land disposed of by a landholder at a price Reclamation approved, whether or not under recordable contract, if the landholder later becomes a direct or indirect landholder of that land through either a voluntary or involuntary action. Section 426.12(g) provides specific exceptions to this provision.

We believe that, starting on January 1, 2000, this same concept should apply to farm operators who provide services to land held in trusts or by legal entities or any combination thereof that the farm operator formerly owned as excess and sold at an approved price. We are seeking comments on the following issues related to formerly excess land and farm operators:

- Should we apply this excess land provision more broadly or should we include other exceptions to the proposed provision?
- Should we not include either of the two exceptions provided in the proposed rule (the land is no longer subject to the acreage limitation provisions and payment of the full-cost rate for deliveries of Reclamation irrigation water to the land in question) or should we otherwise alter them in some manner?
- Is the effective date of January 1, 2000, reasonable for this excess land provision or should we apply some other date?

IV. Background

The RRA modernized Federal reclamation law, while retaining the principle of limiting the benefits of receiving Federally subsidized water to farmers with relatively small landholdings. The RRA adjusted the acreage limitations for farms eligible to receive nonfull-cost water. This change was intended to facilitate modern farming practices and to limit nonfull-cost water deliveries generally to landholdings of 960 acres or less, rather than the 160 acres established by the Reclamation Act of 1902. However, not only does the RRA provide a number of exceptions to the 960-acre limitation, such as those associated with certain involuntary acquisitions, it also provides for much lower entitlement levels for legal entities that benefit more than 25 natural persons. In addition, the RRA and the part 426 regulations include provisions that exempt trustees acting in a fiduciary capacity from application of the acreage limitation provisions if certain criteria are met.

The RRA does not force districts or landholders to conform to the new acreage limitation provisions; thus, the prior law provisions still apply to some districts and landholders. Any owned land subject to acreage limitations that exceeds a landholder's ownership entitlement is considered excess land, and must be sold to an eligible buyer at a price that Reclamation approves in order for that excess land to be eligible to receive Reclamation irrigation water at any price. Any owned or leased land subject to acreage limitations that exceeds a landholder's nonfull-cost entitlement is considered full-cost land and the landholder must pay the full-cost rate for any Reclamation irrigation water delivered to that land.

The part 426 regulations implement certain provisions of the RRA. They address the ownership and leasing of land on Federal Reclamation irrigation projects, the pricing of Reclamation irrigation water, and certain terms and conditions for delivery of Reclamation irrigation water. Under part 426, we require all landholders (individuals or legal entities that directly or indirectly own or lease land that is subject to acreage limitation provisions of Federal reclamation law) whose landholdings exceed established RRA forms submittal thresholds to file RRA forms. Landholders must provide information on RRA forms about the land they hold, and certify that they are in compliance with the acreage limitation provisions of Federal reclamation law. The

regulations also provide that a district may not make available Reclamation irrigation water to excess land disposed of by a landholder at a price Reclamation approved, whether or not under recordable contract, if the landholder subsequently becomes a direct or indirect landholder of that land through either a voluntary or involuntary action.

On December 11, 1996, the Natural Resources Defense Council (NRDC) and the Departments of Interior and Justice entered into an amended settlement contract in the case of *NRDC* v. *Underwood, No. Civ. S–88–375–LKK* (a full description of this litigation may be found in the preamble to the final rule for the Acreage Limitation Rules and Regulations (61 FR 66757, Dec. 18, 1996)). As a result, the Department of the Interior (Interior) published the ANPR and invited comments and suggestions on the following:

- Whether to limit nonfull-cost water deliveries to large trusts with landholdings in excess of 960 acres (or other applicable acreage thresholds under the RRA);
- The criteria used to determine whether landholdings in excess of 960 acres, operated under a trust agreement, should be eligible to receive nonfull-cost water deliveries;
- Whether nonfull-cost water deliveries to such landholdings are consistent with the principles of Federal reclamation law and sound public policy and, if not, how to implement a limit on such deliveries;
- What procedures might ensure fairness in transition to new regulations that would limit large trusts to 960 acres for nonfull-cost water, and what safeguards are necessary to avoid such trusts from adopting some other, as yet unregulated form, to escape acreage limitations; and
- The extent of Interior's statutory authority to address these issues, including the extent of Interior's legal authority to regulate: future trusts, trusts established from 1982 to the present, and trusts established before 1982.

Need for Applying Excess Land Provisions to Certain Farm Operators

In considering potential abuses of existing rules concerning trusts, we have focused on trusts that hold more than 960 acres westwide. In several instances, these large trusts were created by owners of excess lands who were required by Section 209 of the RRA to dispose of their interests in excess lands or face the permanent ineligibility of the lands for receipt of Reclamation irrigation water. By requiring the disposal of excess lands, the Congress was attempting to assure that the benefits of Federal irrigation water would be more widely distributed.

In some instances owners of excess lands sold or transferred their excess lands to large trusts. Then, some of these trusts, which are subject to more liberal acreage limitation provisions, entered into farm operating agreements with the former owners of such land, creating a situation where substantially the same enterprise continued to farm the same large acreage.

The foregoing practice has in fact occurred on a limited basis in the Central Valley Project in California, and we are further concerned that the practice may occur elsewhere in the future as recordable contracts under which excess lands have been temporarily made eligible to receive Reclamation irrigation water expire or other excess lands are sold.

While the foregoing arrangements are in literal conformance with existing regulations, we believe that they do not meet the intent of the law. To address this issue, we are proposing a change in how Section 209 is administered to attribute to former owners of excess lands any formerly excess land held in trusts and operated by the former owner of the excess lands. Essentially, we propose to treat the contractual relationship between the trust and the former owner of excess lands as a continuing financial interest in such lands by the former landowner, an interest that we can regulate in our rulemaking power granted by the Congress in Section 224 of the RRA. This change would eliminate any incentive for former owners of excess lands to use the large trust vehicle to maintain a continuing farming enterprise and would curb any abuse of congressional intent inherent in such arrangements.

We propose to apply this concept also to legal entities that hold formerly excess land and hire the former owner of such land under a farm operating arrangement. We do not believe there are many instances where legal entities have bought formerly excess land and then arranged for the former owner to farm the land as a farm operator. However, we are concerned that application of this concept only to trusts does not cover the full scope of possible arrangements and may result in a transfer of land ownership to various legal entities that will continue to arrange to have the land farmed in the same manner as the trust. We want to preclude such actions.

To ensure a transition and public education period, we will not implement this provision until January 1, 2000. This provides an opportunity for all trusts and legal entities that would be affected by the excess land provision (because their landholdings include formerly excess land and they have hired the former landholder to provide services to such land as a farm operator) to make other farming arrangements. In doing so, affected trusts and legal entities can avoid having to pay the full-cost rate for the delivery of Reclamation irrigation water to the formerly excess land, or even the ineligibility of such land, if they take action before January 1, 2000. Of course, affected trusts and legal entities could limit the consequences of the excess land provision at any time after January 1, 2000, by making alternative arrangements in how the formerly excess land is farmed. In addition, this proposed change will not affect the underlying trust itself. Trusts are still subject to the requirements of Section 214 of the RRA, and as such, the acreage limitation entitlements of the landholder(s) to whom the land held in trust is attributed will determine if the land is eligible to receive Reclamation irrigation water in the holdings of the trust.

Need for Certification and Reporting From Certain Farm Operators

In December 1987, the Congress amended the RRA by passing the audit provisions of the Omnibus Budget Reconciliation Act of 1987 (section 224[g] of the RRA as amended). Section 224[g] directed the Secretary of the Interior (Secretary), or his designee, to undertake audits of ''those legal entities and individuals whose landholdings or operations exceed 960 acres. * * *'' To comply with this mandate, we considered requiring all farm operators to submit RRA forms. However, by the time a proposed rule was published in the **Federal Register** (53 FR 21857, Jun. 10, 1988) we did not include that concept. Instead, we altered the general information requirements of the Acreage Limitation Rules and Regulations to make it clear that natural persons or legal entities operating land were required to provide records and information upon our request. This decision was confirmed in the final rules, which were effective on January 17, 1989 (53 FR 50530, Dec. 16, 1988). We then revised the RRA forms to require landholders to provide additional information concerning their farm operators.

Since 1989, we have learned that other approaches could be more effective and that this procedure places a greater burden on both the districts and us than if certain farm operators

were required to submit RRA forms. The current approach also greatly increases the likelihood that all farm operators providing services to more than 960 acres westwide will not be identified.

In order for the current system to work, information concerning farm operators must be gathered from all RRA forms landholders submit annually. That information then must be collated on a westwide basis to determine if any farm operator is providing services to more than 960 acres. The collation is required because any landholder, other than a trust, whose landholding exceeds 960 acres is either (a) not receiving Reclamation irrigation water on such land or (b) paying the full-cost rate for Reclamation irrigation water received on such land. In the case of the former, we have little interest in activities farm operators may have on land that is not receiving Reclamation irrigation water. In the case of the latter, determining that a farm operator is a lessee will have little effect on the eligibility of the land in question or the rate associated with the water deliveries to that land, since the full-cost rate is already being applied. What we need to identify are those farm operators providing services to multiple landholdings, the total of which exceed 960 acres. Then we must determine if the arrangements under which the services are being provided are leases for acreage limitation purposes.

We knew in 1988 that if only the name and address of farm operators were provided by landholders, it would be difficult to collate the data. This is due to the fact that operators may be providing services under different entity names and, if the operator is an individual, landholders may know the operator by different names (e.g., J. Smith, John Smith, Johnny Smith, Jack Smith, Smith Enterprises, etc.). In addition, there may be multiple farm operators that have the same name. If we relied only on addresses, we may be faced with multiple addresses for one farm operator which we would not be able to easily determine was the same person or entity (e.g., post office boxes, business address, residential address, etc.). Thus, we tried to use telephone numbers as the unique identifier, but this effort depends on the landholder providing such on their RRA forms. Regardless, we have determined that the current process does not ensure consistent application of the regulations and is inefficient. In addition, it is extremely difficult for us to verify that a landholder has or has not provided the required farm operator information, since there are few, if any, independent sources of information concerning farm operators to cross-check information.

We have considered requiring landholders to provide more information, such as taxpayer identification numbers, for their farm operators who are legal entities. But this would require the landholders to have such knowledge, resulting in a new burden on landholders. In addition, this approach would still result in the requirement for districts to gather the data and us to collate it, thereby increasing the associated burdens to all parties involved.

Conversely, if certain farm operators were required to submit RRA forms, then many of the difficulties in administration we experience on this issue would be resolved. For example, an operator would be required to include all land on which the operator was providing services westwide; thus, no data gathering by the districts or collation by us would be required. In fact, the districts would only be required to complete a new tabulation sheet concerning farm operators and include that sheet with their annual summary forms submittal. In addition, with RRA forms being submitted by farm operators, we would have a source of verification; specifically, the RRA forms submitted by landholders to whom the farm operator is providing services.

Impacts of the Proposed Rule

We believe that the proposed rule would help to ensure that the recipients of Reclamation irrigation water comply with the laws and regulations governing Federal Reclamation irrigation projects. It is difficult to determine exactly how many entities may be affected by the proposed changes, but, for the following reasons, we do not believe that the rules will be burdensome.

If the changes proposed today were adopted as final, it is possible that certain farm operators would need to submit RRA forms starting on January 1, 2000, and, after we reviewed the associated farm operating arrangement, the pricing and availability of Reclamation irrigation water could be affected for some farms. For landholders that on January 1, 2000, have a farm operator providing services to land the farm operator formerly owned as ineligible excess land or land placed under recordable contract, we would require those landholders or farm operators to pay full cost for any Reclamation irrigation water received on now eligible land.

We published a report in 1991 (The Reclamation Reform Act of 1982 Annual Report to the Congress, February 1991) that indicated there were approximately 80 farm operators who were providing services to more than 960 acres westwide. Also in that 1991 report, we disclosed that there were 35 trusts as of the end of 1990 that held more than 960 acres. Another large trust was found shortly thereafter for a total of 36. Recently we reviewed RRA forms submitted by districts for the 1997 water year and found 75 trusts that exceed 960 acres; this represents an 108 percent increase. We have no reason to believe there has been a larger increase in the number of farm operators providing services to more than 960 acres. Therefore, starting with the 1991 figure of 80 large operators, there may be approximately 165 such operators today. When the focus is narrowed to those farm operators who provide services to more than 960 acres held in trusts or by legal entities, the number of farm operators who may be affected by the proposed rule should decline towards 100. Those farm operators providing services to land they formerly owned as excess and sold at an approved price should be an even smaller number. But even these farm operators would not be immediately affected by the proposed excess land provisions and would only be impacted if they continued, on or after January 1, 2000, to have an arrangement to provide services to land they formerly owned as ineligible excess land or land placed under recordable contract.

Without the expanded information requirements in this rule, we simply do not have data readily available as to exactly how many farm operators would be affected by these provisions. The only way we will be sure in the near term about how many farm operators are providing services to more than 960 acres held in trusts or by legal entities is through the expansion of the RRA forms submittal requirements to farm operators.

Once implemented on January 1, 2000, the only impact for all of these farm operators would be that they would have to submit RRA forms. If a farm was affected by the excess land provision in the future, there is no reason the farm has to employ as a farm operator the individual or legal entity who formerly owned the land in question as excess. Therefore, an affected farm could hire a different farm operator and continue to receive Reclamation irrigation water at the nonfull-cost rate.

Authority for the Proposed Rule

Section 224(c) of the RRA gives the Secretary the authority to publish regulations to carry out the provisions of

the RRA and other provisions of Federal reclamation law. Our authority for the proposed application of the RRA forms requirements to certain farm operators is also section 224(c), which directs the Secretary to collect all data necessary to carry out the provisions of the RRA and other provisions of Federal reclamation law.

Section 224(g) provides that the Secretary must thoroughly audit compliance with the reclamation law of the United States, including with the RRA, by legal entities and individuals subject to the law. This section specifically directs the Secretary to audit legal entities and individuals whose landholdings or operations exceed 960 acres.

One of the primary purposes of the acreage limitation provisions of Federal reclamation law is to encourage the creation and preservation of small family farms, and this is accomplished by limiting the number of acres that any one landholder may own and receive Reclamation irrigation water on at any price. Allowing the former owner of ineligible excess land (ineligible excess land is not eligible to receive Reclamation irrigation water at any price) or land placed under recordable contract to receive Reclamation irrigation water as a farm operator circumvents one of the basic principles of Federal reclamation law.

V. Public Involvement

As part of the ANPR effort, on March 14, 1997, we held a public meeting in Sacramento, California concerning the ANPR. We also received 53 letters during the public comment period on the ANPR that was open from December 18, 1996, through April 17, 1997.

VI. Public Comments and Responses on Advance Notice of Proposed Rulemaking

The following section presents general public comments on the ANPR. These include comments on authority, process, relationship with other documents, relationship with other laws and mandates, water rights and contracts, westwide action, and other general comments that were not specifically directed toward the new 43 CFR part 428.

Comment 1. The manager of an irrigation district indicated that Reclamation should be prioritizing irrevocable trust reviews to speed up the process of compliance determinations which will assist the district in its monitoring responsibilities.

Response. We initially had a large backlog of trusts to review as well as other acreage limitation implementation actions to take. We have addressed most of this backlog. Regardless, trusts are considered to be conditionally approved when submitted to us to assist trustees and districts while a trust is being reviewed.

Comment 2. The same commenter raised concerns about reviewing only one part of the RRA regulations, without revisiting other parts.

Response. We throughly reviewed all aspects of the RRA during the rulemaking process that was completed on December 18, 1996. It was determined at that time the only issues that needed further review were those relating to trusts holding more than 960 acres westwide and how such land is farmed. In addition, we recognized that if action was to be taken with regard to large landholdings held in trust, we needed to ensure the land in question was not just transferred to some other type of landholding arrangement and continued to be farmed in the same manner.

Comment 3. Another commenter indicated that Reclamation must recognize its obligations to mitigate, conserve, and protect the interest of the people as well as the purpose and intent of the RRA. Reclamation must clarify policy with reference to protection of trust resources, uses, and values to be co-equal with water development and delivery.

Response. While we recognize our various responsibilities, the purpose of this rulemaking is specific to collecting information from farm operators providing services to more than 960 acres westwide held in trusts or by legal entities to determine if such farming arrangements are in fact leases for acreage limitation purposes. In addition, this proposed rule helps ensure the intent of the excess land provisions of Federal reclamation law will be met.

Comment 4. The same commenter suggests further that the proposed rule must include 6 concerns: 1. Must continue to focus on family farms. 2. The 960-acre limit must apply to operations, as well as farms. 3. Allowing subsidies to more than 960 acres is a violation of the intent of law. 4. There must be penalties for violation of the acreage limitation. 5. Limit the water subsidy to forcefully encourage water conservation measures. 6. The taxpayer should not subsidize any farming operation or corporation.

Response. We concur that one of the primary purposes of acreage limitation is to encourage and foster small family farms. The proposed rule is intended to facilitate the gathering of information to ensure operators providing services to more than 960 acres held in trusts or by legal entities are meeting the requirements of the RRA. In addition, we are proposing that steps be taken to ensure certain farm operators do not circumvent the intent of the excess land provisions of Federal reclamation law.

We have been advised in the past by the Office of the Solicitor that legislative action would be required to assess penalties for violation of the acreage limitation provisions. In addition, the RRA is specific as to the number of acres on which legal entities may receive nonfull-cost Reclamation irrigation water.

Comment 5. A beneficiary of a trust, writing on behalf of the beneficiaries of the trust, stated that proposed new regulations are not in accordance with law and are contrary to the legislative history of RRA.

Response. Since no new regulations were included as part of the ANPR issued on December 18, 1996, we urge everyone to examine the proposed regulations published with this Preamble. We believe section 224(c) of the RRA provides the authority necessary to promulgate these proposed regulations as follows:

> The Secretary may prescribe regulations and shall collect all data necessary to carry out the provisions of this title and other provisions of Federal reclamation law.

Comment 6. The same commenter stated that the Federal program benefits were intended to be limited by the concept of beneficial ownership, not by the concept of farm size. In 1979 the Congress included a farm size limitation in an earlier version of RRA, but deleted such limitation in all subsequent reviews of Reclamation regulations.

Response. We agree that the Congress has not limited farm size. However, the Congress did address and limit how much land could be owned or leased by an individual or entity and be eligible to receive Reclamation irrigation water at the nonfull-cost rate. The collection of RRA forms from certain farm operators will help ensure this provision is being enforced by providing us with sufficient information to determine if a farm operating arrangement is in fact a lease for acreage limitation purposes. The Congress also has made it clear that the excess land provisions are to preclude the accrual of speculative gain in the disposition of excess land, assist in fostering the wide distribution of benefits associated with the Reclamation program, and encourage the creation of family farms.

Comment 7. The same commenter stated that the proposed new regulations are a dangerous misuse of administrative power.

Response. We disagree. In fact, in 1987 (Public Law 100–203, section 5302[a]) the Congress directed Interior to use its administrative tools to ensure compliance with the acreage limitation provisions of the RRA. Section 224(c) of the RRA requires the Secretary to collect all data necessary to carry out the acreage limitation program and to prescribe regulations needed to carry out those provisions.

Comment 8. Eighteen members of the Congressional Western Water Caucus expressed concerns about the ANPR stating their belief that a rulemaking for trusts is unnecessary, because Interior already has the tools through audits and other investigation techniques to ensure compliance with the acreage limitation provisions enacted by the Congress and the existing regulations.

Response. We do not have sufficient information with regard to farm operators providing services to more than 960 acres held in trusts or by legal entities to determine if the operating arrangements are in fact leases for acreage limitation purposes. In addition, we believe that these proposed regulations will help ensure the intent of the excess land provisions is not being circumvented by farm operators farming the land they previously owned as ineligible excess land or under recordable contract.

Comment 9. The general manager of a California municipal utility district stated that he and his district were concerned about again reopening the rules and regulations. They feel that it is not appropriate or necessary to proceed with rulemaking at this time. If there is a perceived problem with larger trusts, Reclamation should step up the enforcement and audit procedures of such trusts to ensure they are complying with the law, rather than reopening the process once again.

Response. We agree that it is unnecessary to reopen 43 CFR part 426 to ensure compliance with the RRA by certain farm operators providing services to more than 960 acres westwide held in trusts or by legal entities. By creating 43 CFR part 428, we hope to provide certainty to the vast majority of landholders that receive Reclamation irrigation water, while taking the necessary steps to ensure compliance with the RRA by those farm operators.

Comment 10. A representative of a national conservation group urged Reclamation to adopt policies that would ensure compliance with the intent of the RRA. Reclamation should limit irrigation subsidies to 960 acres, which will strengthen family farms, reduce the Federal deficit, and help protect the environment. Commenter urged that the current loopholes be closed and bring fairness to Federal irrigation programs.

Response. We are proposing these additional regulatory provisions to ensure compliance with the RRA by farm operators providing services to more than 960 acres westwide held in trusts or by legal entities. The proposed rule is intended to better ensure compliance by requiring certain farm operators to submit RRA forms. In addition, a perceived loophole associated with the excess land provisions would be closed.

Comment 11. The representative of a national taxpayers group stated support for strong reforms in the Federal water subsidy program. The concern is that each farming operation is only entitled to receive subsidized water on 960 acres, regardless of how many individuals benefit from the operation. In addition, they are urging encouragement of efficient use of water.

Response. We cannot change the law, but must enforce the acreage limitation provisions of the RRA. Part of this effort is to ensure farm operators providing services to more than 960 acres held in trusts or by legal entities are not lessees for acreage limitation purposes.

Comment 12. The representative of a brewery in San Francisco, California stated that he does not see why the taxpayers should subsidize large corporate farmers. He also has a concern about the impacts upon the environment in the Delta and the San Francisco Bay. Reclamation should adopt the concept of transparency to see through some of the fancy legal stuff that lets folks get around the spirit of the law.

Response. We cannot change the statute, but can take the proposed additional actions to obtain information needed to ensure compliance with the RRA by farm operators providing services to more than 960 acres westwide held in trusts or by legal entities.

Comment 13. A commenter from San Carlos, California stated that Federal water subsidies should be limited to only farming operations which meet the 960-acre limit. Rulemaking must correct the trust arrangements. Reclamation should enforce the acreage limits by determining when land owned by different parties is actually being farmed as one operation.

Response. We are taking additional steps to obtain information needed to ensure compliance with the acreage limitation provisions of Federal reclamation law by farm operators providing services to more than 960 acres westwide held in trusts or by legal entities.

Comment 14. The same commenter stated that Reclamation should penalize those who do not abide by the acreage limits. Improper water subsidies only aggravate our water shortages and encourage the inefficient use of resources.

Response. We vigorously enforce the acreage limitation provisions as defined by the Congress. However, we have been advised in the past by the Office of the Solicitor that legislative action would be required to assess penalties for violations of the acreage limitation provisions.

Comment 15. A commenter representing a water conservation group urged a strong stand in implementing the acreage limitation provisions of the RRA. Reclamation should write regulations that minimize the exceptions to the 960-acre limit on subsidized project water.

Response. We agree and the current Acreage Limitation Rules and Regulations (43 CFR part 426) only allow those exceptions to the 960-acre limit provided by statute.

Comment 16. The same commenter stated that Reclamation must take action to limit corporate welfare and reduce environmental impacts.

Response. Our proposed rule will not change the law, but it should help to ensure compliance with the RRA by those farm operators who provide services to more than 960 acres westwide held in trusts or by legal entities.

Comment 17. A commenter representing two irrigation districts in central Arizona stated that farmers of both districts thought that all RRA matters were laid to rest with the issuance of the revised regulations.

Response. Because of the concern over trusts holding more than 960 acres westwide, we chose to create a new 43 CFR part 428 to gather information from farm operators providing services to such trusts or legal entities or combination thereof. We are also concerned about whether the intent of the excess land provisions is being met in association with the practices of certain farm operators to provide services to the land the farm operator formerly owned as ineligible excess land or under recordable contract. Therefore, we have proposed in 43 CFR part 428 that action is taken to ensure such farm operators are in compliance with the intent of the excess land provisions.

Comment 18. The same commenter stated that the key question is whether Interior has the authority to regulate

trusts. It would take an act of the Congress to change section 214 of the RRA. Changing the application to trusts would undermine what farmers in Arizona have relied upon for more than 10 years. To now change the law through regulation is not consistent with sound public policy.

Response. We are seeking to enforce the RRA, including section 214, by adding a new 43 CFR part 428 to extend the information requirements to farm operators providing services to more than 960 acres westwide held in trusts or by legal entities. We also want to ensure the intent of the excess land provisions is being met. No new provisions directly regulating trusts are being proposed.

Comment 19. The president of a water district in California stated that the law should be left alone, as the regulations work well and no change is necessary. This is important so that those working under the law can operate with some degree of certainty.

Response. We agree that certainty is important and so we have chosen to create a new 43 CFR part 428 to extend the information requirements to certain farm operators and to address an excess land issue, which will provide greater certainty for all water users.

Comment 20. A member of the Congress from California expressed concern that Reclamation use all its power to revise regulations so as to apply the 960-acre limit to all farms, including farms managed or operated through trusts, leases, creative management agreements, limited partnerships, or other devices used to evade the subsidy limit.

Response. We agree that the regulations must be equitably applied and, accordingly, have proposed provisions to obtain information concerning farm operators providing services to more than 960 acres westwide held in trusts or by legal entities. In addition, we want to ensure that the intent of the excess land provisions is met by those farm operators.

Comment 21. The manager of an irrigation district indicated that he was concerned about reopening the rules and regulations. Trusts are not a problem in his district, but he sees Reclamation being able to step up enforcement and audit procedures regarding trusts to solve any problems and does not need to issue new regulations.

Response. We agree that enforcement is a key element in ensuring compliance with the RRA by certain farm operators. We intend the proposed rule to provide us with additional information needed for our enforcement activities and to address certain excess land concerns without disturbing the provisions of 43 CFR part 426.

Comment 22. A commenter representing a community alliance of small farmers expressed concerns that no farm operation should receive subsidized water for more than 960 acres.

Response. A key to any application of the acreage limitation provisions is in how certain terms are defined. The RRA defines landholding to include directly or indirectly owned or leased land. Any farm operator that is determined to be a landholder is subject to application of the acreage limitation provisions.

Comment 23. The same commenter stated that providing Federal water at less than full cost to large farm operations results in degradation of the communities and the well-being of farm workers.

Response. The Congress recognized the need to preserve small family farms when they limited the availability of nonfull-cost water.

Comment 24. Legal counsel for a trust in California commented that any attempt by Interior to: classify a trust as a ''legal entity'' under RRA; treat trustees as the owner of real property held in trust; or exempt *only* trustees from ownership/pricing limitations, would be inconsistent with common law of trusts and RRA.

Response. The proposed rule does not attempt to: classify a trust as a ''legal entity'' under RRA; treat trustees as the owner of real property held in trust; or exempt only trustees from ownership and pricing limitations.

Comment 25. The same commenter stated that Reclamation should stick to the following interpretation of RRA: that no one person can receive nonfull-cost water on more than 960 acres, no matter whether the land is owned, leased, involved in a trust or other entity.

Response. We have not altered that interpretation of the RRA; with the understanding that the acreage limitation provisions apply to legal entities as well as to individuals. Sections 214 of the RRA and 426.7 of the Acreage Limitation Rules and Regulations include provisions that exempt trustees acting in a fiduciary capacity from application of the acreage limitation provisions if certain criteria are met. These proposed rules have no impact on those provisions.

Comment 26. The same commenter stated that Reclamation has adequate tools to ensure compliance, and should ''follow the money'' to determine recipient of benefit of the nonfull-cost water.

Response. We generally do have adequate tools to ensure compliance. However, we believe we need additional information regarding farm operators involved in farming more than 960 acres westwide held in trusts or by legal entities. We also need additional information to determine if farm operators for trusts or legal entities formerly owned the land they are providing service to as ineligible excess land or under recordable contract. The new RRA forms requirements for farm operators are intended to address these issues.

Comment 27. The same commenter stated that nonfull-cost water to trusts should not be limited in any manner, and that Reclamation has no statutory authority to restrict the exemption on trusts in RRA section 214.

Response. We are required by statute to limit nonfull-cost water deliveries to land held in trust if the individuals or entities to whom the land held in trust is attributed exceed their acreage limitation entitlements. This requirement is addressed in 43 CFR part 426. The proposed rule would also limit such deliveries starting on January 1, 2000, if the land held in trust is being farmed by a farm operator and that farm operator formerly owned the land as ineligible excess or under recordable contract.

Comment 28. A national conservation group stated that no matter how many individuals benefit from a farming operation, the operation is only entitled to receive subsidized water on 960 acres. The limit applies both to the farm, and to each individual.

Response. The acreage limitation provisions are fully applied to any farm operation that is determined to be a landholder. The proposed rule does seek to ensure congressional intent associated with excess land is met by farm operators providing services to trusts or legal entities.

Comment 29. The same commenter stated that the proposed rule must address all large farming operations, not just trusts, because if Reclamation only regulates trusts, the trusts will find some other way to escape acreage limits.

Response. We recognize this possibility and included farm operators providing services to legal entities in both the proposed information requirements and the excess land provisions.

Comment 30. The same commenter stated that trusts are a ''glaring loophole'' in RRA's acreage limitations, and Reclamation must ''close the loophole'' in order to preserve the purpose of RRA. Reclamation should treat trusts like any other legal entity,

limiting them to subsidized water on no more than 960 acres for qualified recipients. The trusts provision of the RRA was intended to protect banks or other institutions acting in a purely fiduciary capacity.

Response. We are limiting this proposed rule to extending the information requirements to farm operators providing services to more than 960 acres westwide held in trusts or by legal entities. In addition, an excess land provision involving farm operators is included.

Comment 31. The same commenter stated that established precedent requires Reclamation to interpret the RRA trust exception narrowly to preserve the central purpose of the RRA. The regulations should read:

> An individual or corporate trustee holding land in a fiduciary capacity is not subject to the ownership or pricing limitation imposed by title II nor any other provisions of Reclamation law. However, the interest of each beneficiary (qualified or limited recipients) in trust land in combination with other land he/she may own shall not exceed the ownership limitation of title II. Moreover, the quantity of land in a trust receiving irrigation water cannot exceed the ownership entitlement of title II.

Response. 43 CFR part 426 already addresses attribution of land held in trust to, generally, beneficiaries, and under certain circumstances to grantors or trustees. Acreage limitations clearly are applicable under those attribution requirements. There is no evidence that there have been any problems associated with those provisions and further clarification is not needed as part of this rulemaking.

Comment 32. The same commenter urged that the regulations must specifically address situations where the trustee serves as the farm operator of the trust property, clearly applying acreage limitations to the trustee as well as the trust.

Response. By requiring farm operators providing services to more than 960 acres westwide held in trusts or by legal entities to submit RRA forms annually, we will be better able to determine if a trustee who is also acting as a farm operator for the land held in trust is in fact a lessee of the land.

Comment 33. The same commenter stated that Reclamation should revise the rules governing ''leases'' to use criteria or indicators to determine whether a landholding is actually part of a larger farming operation. The commenter suggests that Reclamation use indicators similar to those suggested by the General Accounting Office (GAO).

Response. We already use the indicators suggested by the GAO in their 1989 report as indicators of economic risk, use, or possession, which are then used to determine if an operating arrangement is in fact a lease.

Comment 34. The same commenter stated that there are many reasons why limiting subsidies to large corporate farms is sound public policy, consistent with Federal reclamation law, including: (1) The purpose of the subsidy is to assist small family farms, not individual shareholders in large corporate farms or investors in a large business trust; (2) Limiting subsidies can benefit the environment, something Reclamation is required to do under a variety of statutes and treaties; and (3) Irrigation subsidies create economic inefficiencies and poor allocation of natural resources.

Response. The Congress was very clear as to how acreage limitations are to be applied to ''large corporate farms.'' Specifically, under the discretionary provisions corporations that benefit more than 25 natural persons are to be limited recipients with a 640-acre ownership entitlement and a 320-acre nonfull-cost entitlement, if the corporation received Reclamation irrigation water on or before October 1, 1981. If the corporation first received such water after that date, they are to pay the full-cost rate for any Reclamation irrigation water received. For those ''large corporate farms'' that remain under prior law, they continue to have 160-acre ownership and nonfull-cost entitlements. We have no authority to further limit subsidies to such entities.

VII. Detailed Analysis of Proposed 43 CFR Part 428

Section 428.1

This section provides a statement of the purpose of these regulations.

Section 428.2

This section includes a statement of applicability. Rather than repeating provisions found in 43 CFR part 426, paragraph (b) of this section specifies that 43 CFR part 428 supplements part 426.

Section 428.3

This section defines the terms ''Custom operator,'' ''Farm operator,'' ''we or us,'' and ''you'' for purposes of part 428.

Section 428.4

This section expands the RRA forms requirements to farm operators who provide services to more than 960 nonexempt acres westwide held by a single trust or legal entity, or any combination of trusts and legal entities. These requirements also apply to any indirect owner of a legal entity that is a farm operator that must submit RRA forms. Exemptions to this requirement are provided in § 426.18(g)(2) and (3) of this chapter.

Section 428.5

This section establishes how the information collection will occur. Paragraph (a) of this section specifies that we will determine what forms will be used.

Paragraph (b) of this section establishes that information must be provided by the farm operator for all nonexempt land to which the farm operator provides services westwide.

This section provides in paragraph (c) the types of information we would require to be submitted by each farm operator.

Section 428.6

This section specifies that farm operators required to submit forms must submit them to each district westwide that is subject to the acreage limitation provisions, and in which the farm operator provides services.

Section 428.7

This section describes what will happen if a farm operator fails to meet the RRA forms requirements. Paragraph (a) of this section provides that the district is not to deliver water to the land in question until the farm operator submits the required forms for that water year. In addition, the farm operator, landholder, or trustee of the land in question must not accept delivery of such water.

Paragraph (b) provides that after the farm operator submits the forms, we would restore eligibility for the land.

Paragraph (c) specifies that we will assess administrative costs as described in § 426.20(e) of this chapter if Reclamation irrigation water is delivered to land that is ineligible because the farm operator failed to submit required forms.

Section 428.8

This section provides that we could prosecute a farm operator for submitting false information on the required forms, and suspend the farm operator's eligibility to receive Reclamation irrigation water.

Section 428.9

This section addresses the eligibility of formerly excess land being farmed by certain farm operators. Paragraph (a) of this section provides (1) if a landholder

disposed of excess land at a price Reclamation approved, (2) the land is held in trust or by a legal entity, and (3) that former landholder is the direct or indirect farm operator of that land, then the farm operator and landholder may not receive water on such land.

Paragraph (b) of this section includes the following exceptions to the provisions included in paragraph (a) of this section: (1) The land becomes exempt from the acreage limitation provisions of Federal reclamation law or (2) the landholder or farm operator pays the full-cost rate for any Reclamation irrigation water delivered to the land in question, assuming the formerly excess land is otherwise eligible to receive Reclamation irrigation water. If a part owner of a legal entity that is the farm operator is the party that held the land as ineligible excess or under recordable contract and the full-cost rate is to be paid, then application of that rate will be based on the proportional share the part owner has in the legal entity.

Section 428.10

This section specifies that districts must not make water available to formerly excess land to which the former owner who sold it at an approved price is now providing services as a farm operator. Reference is made to the exceptions provided in § 428.9(b).

Section 428.11

This section establishes an effective date of January 1, 2000, for 43 CFR part 428. This section also specifies that on January 1, 2000, the excess land provisions found in § 428.9 will apply to any farm operating arrangements between farm operators and trusts or legal entities then in place and any future farm operating arrangements.

VIII. Procedural Matters

National Environmental Policy Act

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act of 1969 (NEPA) and Departmental Manual 516 DM. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under NEPA is not required. The rule is categorically excluded from NEPA review under 40 CFR 1508.4, Departmental Manual 516 DM 2, Appendix 1, paragraph 1.6, and 516 DM 6, Appendix 9, paragraph 9.4A.1. In addition, the proposed rule does not meet any of the 10 criteria for exceptions to categorical exclusions listed in 516 DM 2, Appendix 2.

As provided in 516 DM 2, Appendix 1, paragraph 1.6, an action is excluded from review if it is a ''Non-destructive data collection, inventory (including field, aerial and satellite surveying and mapping), study, research and monitoring activities.'' This rule requires an information collection, and would not have a significant effect on the human environment. As provided in 516 DM 6, Appendix 9, paragraph 9.4A.1, the following is excluded from review: ''Changes in regulations or policy directives and legislative proposals where the impacts are limited to economic and/or social effects.'' The only impacts associated with the excess land provisions would be that certain farm operators that meet the criteria in the proposed regulations or the associated landholders would have to pay full cost for Reclamation irrigation water delivered to land to which the farm operator is providing services, the landholder would have to hire a different farm operator to provide the services, or the landholder and farm operator could not receive Reclamation irrigation water on that land. This provision will not be effective until January 1, 2000.

Executive Order 12866, Regulatory Planning and Review

Under Executive Order (E.O.) 12866, (58 FR 51735, Oct. 4, 1993), an agency must determine whether a regulatory action is significant and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. E.O. 12866 defines a ''significant regulatory action'' as a regulatory action meeting any one of four criteria specified in the Executive Order. This rulemaking is considered a significant regulatory action under criterion number 4, because it raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. We have therefore submitted the proposed rule to the OMB for review.

Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We provide some 140,000 Western farmers with irrigation water. We estimate that out of this number, fewer than 200 entities, not necessarily small entities, could be affected by the rule. The effect on most of these entities starting on January 1, 2000, would be limited to the annual completion of RRA forms. For some of these entities, the farm operator was also the owner of the land in question when the land was ineligible excess or under recordable contract. In cases where such a farm operating arrangement is still in place on January 1, 2000, or is implemented on or after that date, the full-cost rate would be applicable to all deliveries of Reclamation irrigation water to such land. However, the landholder in question could avoid paying the full-cost rate by hiring a different farm operator who did not formerly own the land in question as excess. Therefore, we have determined that the proposed rule will not have a significant economic effect on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(1) Will not have an annual effect on the economy of $100 million or more. The rule could affect up to an estimated 200 farms, but the effects would not approach $100 million or more.

(2) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. There could be an economic effect on fewer than an estimated 200 farms, but we do not anticipate that this will cause any noticeable increase in costs or prices.

(3) Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The rule would only affect at most a small sector of the farming industry, and would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Paperwork Reduction Act

This regulation requires an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is required. This information collection is described below.

Existing Information Collection Under the Acreage Limitation Rules and Regulations

Sections 206, 224(c), and 228 of the RRA (43 U.S.C. 390ff, 390ww(c), and 390zz) require, among other things, that (1) as a condition to the receipt of Reclamation irrigation water, each

landholder must annually certify, in a form suitable to the Secretary, that they are in compliance with the provisions of the RRA, and (2) districts must annually submit to us, in a form suitable to the Secretary, records and information necessary to implement the RRA. These mandatory requirements are addressed in 43 CFR 426.18. To comply with these requirements, we provide forms for the landholders' and districts' use. The landholder forms have been approved by OMB under control number 1006–0005. The district summary forms have been approved under control number 1006–0006. Both clearances expire on December 31, 1999.

Information Collection Under the Proposed Rule

The proposed rule contains a change that would increase the reporting burden by requiring certain farm operators to submit RRA forms starting on January 1, 2000. We estimate that the reporting burden would be increased by less than 200 hours as a result of this change. The primary purpose of requiring those farm operators who provide services to more than 960 acres westwide held in trusts or by legal entities to complete and submit RRA forms would be to provide us with sufficient information to determine if the farm operating arrangement is a lease as defined in section 426.2 of this chapter.

As with all acreage limitation information collections, we would require farm operators to provide identifier information; such as name, address, telephone number, etc., and if the farm operator is an entity, information concerning the entity's organizational structure and part owners. In addition, farm operators would be required to provide information concerning the land to which they are providing services; such as legal descriptions, number of acres, etc. We would also require farm operators to provide information concerning the specific services they are providing, who decides when such services are needed, how the farm operator is compensated for the services, the control the farm operator has over the daily operation of the land in question, etc. If different services are provided to different land parcels, such distinctions would need to be specified.

In order to effectively administer and enforce the proposed excess land provisions, we would require farm operators to provide information as to whether the land to which services are being provided was formerly owned by the farm operator as ineligible excess land or under recordable contract.

At this time, we would like comments on the planned RRA forms requirements for farm operators. Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of our functions, including whether the information will have practical utility; (b) the accuracy of our burden estimate for the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology. In addition, we would like comments on specific issues related to the proposed information collection including:

- Should the RRA forms submittal threshold for farm operators be 960 acres westwide held in trusts or by legal entities as provided in the proposed rules or some other figure (e.g., 40 acres, 240 acres, etc.)?
- Is the proposed definition of ''farm operator'' sufficient or should it be altered? For example, is there a way to define ''farm operator'' that reduces how many additional RRA forms would need to be submitted, other than through application of the forms submittal threshold.
- Is the definition of and exemption for ''custom operator'' included in the proposed rule sufficient?
- Should certain specific questions be asked of farm operators on the RRA forms? Examples of such include: Whether the farm operator is authorized to use his agreements with a landholder as collateral in any loan; whether the farm operator can sue or be sued in the name of the landholding; and whether the farm operator is authorized to apply for any Federal assistance from the United States Department of Agriculture in the name of the landholding.

In considering the issues associated with certain farm operators being required to submit RRA forms, we would also like comments as to whether current RRA forms should be modified to accommodate the additional information requirements applicable to farm operators, or if an entirely new form only to be completed by farm operators providing services to more than 960 acres westwide held in trusts or by legal entities should be developed.

Submit comments on the RRA information collection changes to us along with written comments on the proposed rule, or separately (see **DATES, ADDRESSES,** and Public Comment Procedures under **SUPPLEMENTARY INFORMATION**, above).

Executive Order 12612, Federalism

In accordance with Executive Order 12612, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. A Federalism Assessment is not required. This proposed rule would supplement existing provisions for administering the RRA. The regulation would not significantly change the relationship or relative roles of the Federal and State Government. It would not lead to Federal control over traditional State responsibilities, or decrease the ability of the States to make policy decisions with respect to their own functions. This regulation would not affect the distribution of power and responsibilities among the various levels of government and does not preempt State law. In summary, this regulation would not have a significant impact on Federalism as described by E.O. 12612.

Executive Order 12630, Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. This proposed rule would not result in imposition of undue additional fiscal burdens on the public. The rule would not result in physical invasion or occupancy of private property or substantially affect its value or use. Specifically, the rule would not result in the taking of contractual rights to storage water in Reclamation reservoirs or water rights established under State law.

Unfunded Mandates Reform Act of 1995

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required. The rule would require certain farm operators, which are not small governments, to submit RRA forms. The excess land provision of the rule will not affect small governments. These potential effects would not amount to costs of more than $100 million per year.

Executive Order 12988, Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has

determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following:

(1) Are the requirements in the rule clearly stated?

(2) Does the rule contain technical language or jargon that interferes with its clarity?

(3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?

(4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A ''section'' appears in bold type and is preceded by the symbol ''§'' and a numbered heading; for example, *§ 428.4 Who must submit forms under this part.*)

(5) Is the description of the rule in the ''Supplementary Information'' section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule 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 this address: Exsec@ios.doi.gov

IX. List of Subjects in 43 CFR Part 428

Agriculture, Irrigation, Reclamation, Reporting and recordkeeping requirements, Water resources.

Dated: November 10, 1998.

Patricia J. Beneke,

Assistant Secretary—Water and Science.

For the reasons stated in the preamble, the Bureau of Reclamation proposes to add a new part 428 to title 43 of the Code of Federal Regulations as follows:

PART 428—INFORMATION REQUIREMENTS FOR CERTAIN FARM OPERATIONS IN EXCESS OF 960 ACRES AND THE ELIGIBILITY OF CERTAIN FORMERLY EXCESS LAND

Sec.

428.1 Purpose of this part.
428.2 Applicability of this part.
428.3 Definitions used in this part.
428.4 Who must submit forms under this part.
428.5 Required information.
428.6 Where to submit required forms and information.
428.7 What happens if a farm operator does not submit required forms.
428.8 What can happen if a farm operator makes false statements on the required forms.
428.9 Farm operators who are former owners of excess land.
428.10 Districts' responsibilities concerning certain formerly excess land.
428.11 Effective date.

Authority: 5 U.S.C. 301; 5 U.S.C. 553; 16 U.S.C. 590z-11; 31 U.S.C. 9701; and 32 Stat. 388 and all acts amendatory thereof or supplementary thereto including, but not limited to, 43 U.S.C. 390aa to 390zz-1, 43 U.S.C. 418, 43 U.S.C. 423 to 425b, 43 U.S.C. 431, 434, 440, 43 U.S.C. 451 to 451k, 43 U.S.C. 462, 43 U.S.C. 485 to 485k, 43 U.S.C. 491 to 505, 43 U.S.C. 511 to 513, and 43 U.S.C. 544.

§ 428.1 Purpose of this part.

This part addresses Reclamation Reform Act of 1982 (RRA) forms requirements for certain farm operators and the eligibility of formerly excess land that is operated by a farm operator who was the landowner of that land when it was excess.

§ 428.2 Applicability of this part.

(a) This part applies to farm operators who provide services to:

(1) More than 960 acres held (directly or indirectly owned or leased) by one trust or legal entity; or

(2) The holdings of any combination of trusts and legal entities that exceed 960 acres.

(b) This part also applies to farm operators who provide services to formerly excess land held in trusts or by legal entities if the farm operator previously owned that land when the land was ineligible excess or under recordable contract.

(c) This part supplements the regulations in part 426 of this chapter.

§ 428.3 Definitions used in this part.

Custom operator means an individual or legal entity that provides a specialized, farm-related service that a farm owner, lessee, sublessee, or farm operator employs for agreed-upon payments. This includes, for example, crop dusters, custom harvesters, grain haulers, and any other such services.

Farm operator means an individual or legal entity other than the owner, lessee, or sublessee that performs any portion of the farming operation. This includes farm managers, but does not include spouses, minor children, employees for whom the employer pays social security taxes, or custom operators.

We or us means the Bureau of Reclamation.

You means a farm operator.

§ 428.4 Who must submit forms under this part.

(a) You must submit RRA forms to us annually if:

(1) You provide services to more than 960 nonexempt acres westwide, held by a single trust or legal entity or any combination of trusts and legal entities; and

(2) You are not covered by the exceptions found in § 426.18(g)(2) and (3).

(b) Anyone who is the indirect owner of a legal entity that is a farm operator meeting the criteria of paragraph (a) of this section must submit forms to us annually.

§ 428.5 Required information.

(a) We will determine which forms you must use to submit the information required by this section.

(b) You must declare all nonexempt land to which you provide services westwide.

(c) You must give us other information about your compliance with Federal reclamation law, including but not limited to:

(1) Identifier information, such as your name, address, telephone number;

(2) If you are a legal entity, information concerning your organizational structure and part owners;

(3) Information about the land to which you provide services, such as a legal description, and the number of acres;

(4) Information about whether you formerly owned, as ineligible excess land or under recordable contract, the land to which you are providing services;

(5) Information about the services you provide, such as what they are, who decides when they are needed, and how much control you have over the daily operation of the land;

(6) If you provide different services to different land parcels, a list of services that you provide to each parcel;

(7) Whether you can use your agreement with a landholder as collateral in any loan;

(8) Whether you can sue or be sued in the name of the landholding; and

(9) Whether you are authorized to apply for any Federal assistance from the United States Department of Agriculture in the name of the landholding.

§ 428.6 Where to submit required forms and information.

You must submit the appropriate completed RRA form(s) to each district westwide that is subject to the acreage limitation provisions and in which you provide services.

§ 428.7 What happens if a farm operator does not submit required forms.

(a) If you do not submit required RRA form(s) in any water year, then:

(1) The district must not deliver irrigation water before you submit the required RRA form(s); and

(2) You, the trustee, or the landholder(s) who holds the land (including to whom the land held in trust is attributed) must not accept delivery of irrigation water before you submit the required RRA form(s).

(b) After you submit all required RRA forms to the district, we will restore eligibility.

(c) If a district delivers irrigation water to land that is ineligible because you did not submit RRA forms as required by this part, we will assess administrative costs against the district as specified in § 426.20(e). We will determine these costs under § 426.20(a)(1) through (3).

§ 428.8 What can happen if a farm operator makes false statements on the required forms.

If you make a false statement on the required RRA form(s), Reclamation can prosecute you under the following statement:

Under the provisions of 18 U.S.C. 1001, it is a crime punishable by 5 years imprisonment or a fine of up to $10,000, or both, for any person knowingly and willfully to submit or cause to be submitted to any agency of the United States any false or fraudulent statement(s) as to any matter within the agency's jurisdiction. False statements by the farm operator will also result in loss of eligibility. Eligibility can only be regained upon the approval of the Commissioner.

§ 428.9 Farm operators who are former owners of excess land.

(a) You or a landholder may not receive irrigation water on land held in trust or by a legal entity if:

(1) You owned the land when the land was excess, whether or not under recordable contract;

(2) You sold the land at a price approved by Reclamation; and

(3) You are the direct or indirect farm operator of that land.

(b) This section does not apply if:

(1) The formerly excess land becomes exempt from the acreage limitations of Federal reclamation law; or

(2) You or the landholder pays the full-cost rate for any irrigation water delivered to your formerly excess land that is otherwise eligible to receive irrigation water. If you are a part owner of a legal entity that is the direct or indirect farm operator of the land in question, then the full-cost rate will apply to the proportional share of the land that reflects your interest in that legal entity.

§ 428.10 Districts' responsibilities concerning certain formerly excess land.

Districts must not make irrigation water available to formerly excess land that meets the criteria under § 428.9(a), unless an exception provided in § 428.9(b) applies.

§ 428.11 Effective date.

This part will be effective beginning on January 1, 2000. On that date the provisions of § 428.9 will apply to all farm operating arrangements between farm operators and trusts or legal entities that:

(a) Are then in effect; or

(b) Are initiated on, or after, January 1, 2000.

[FR Doc. 98–30756 Filed 11–17–98; 8:45 am]

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federal register

Wednesday
November 18, 1998

Part IV

Department of Education

High School Equivalency Program; College Assistance Migrant Program; Notice

DEPARTMENT OF EDUCATION

[CFDA Nos.: 84.141A—(HEP) and CFDA No. 84.149A—(CAMP)]

High School Equivalency Program; College Assistance Migrant Program

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year (FY) 1999 for the High School Equivalency Program (HEP) and the College Assistance Migrant Program (CAMP).

Purpose of Programs: The purpose of the HEP and CAMP programs is to provide grants to institutions of higher education (IHEs), or to private non-profit agencies working in cooperation with IHEs, to help migrant and seasonal farmworkers complete high school and succeed in postsecondary education.

Eligible Applicants—HEP and CAMP: The Secretary invites applications from IHEs or from private non-profit agencies working in cooperation with IHEs.

Deadline for Transmittal of Applications: January 25, 1999.

Applications Available: November 23, 1998.

Deadline for Intergovernmental Review: March 26, 1999.

Available funds: HEP FY 1999: $9,000,000.

Estimated Range of Awards: HEP $150,000–$495,000.

Estimated Average Size of Awards: HEP $375,000.

Estimated Number of Awards: HEP 25.

Available Funds: CAMP FY 1999: $4,000,000.

Estimated Range of Awards: CAMP $150,000–$450,000.

Estimated Average Size of Awards: CAMP $325,000.

Estimated Number of Awards: CAMP 12.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

SUPPLEMENTARY INFORMATION: The HEP program assists migrant and seasonal farmworkers to obtain a general education diploma (GED) and to be placed in postsecondary education or training, career positions, or the military. By locating the programs at IHEs, migrant and seasonal farmworkers also have opportunities to attend cultural events, academic programs, and other educational and cultural activities usually not available to them. The CAMP program assists migrant and seasonal farmworkers to successfully complete the first academic year of study in the college or university, and provides follow-up services to help students continue in postsecondary education.

Applicants should be aware that the selection criteria for awarding grants, and the 15 points for prior performance, have changed since the last grant competition. The selection criteria used to review applications, including the criterion for awarding points for prior performance, as required by the program statute are included in the application package.

The Congress has appropriated $9,000,000 for HEP and $4,000,000 for CAMP for FY 1999, which is an increase of approximately 18% for HEP and 92% for CAMP over the 1998 appropriation.

Applicable Regulations

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR Part 74 (Administration of Grants and Agreements with Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) 34 CFR Part 75 (Direct Grant Programs).

(3) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR Part 82 (New Restrictions on Lobbying).

(6) 34 CFR Part 85 (Governmentwide Debarment and Suspension) Non-procurement and Governmentwide Requirements for Drug-Free Workplace (Grants).

(7) 34 CFR Part 86 Drug-Free Schools and Campuses).

(b) 34 CFR Part 206 (Special Education Programs for Students Whose Families are Engaged in Migrant and Other Seasonal Farmwork.

(c) The definitions of a migratory child, a migratory agricultural worker and a migratory fisher contained in 34 CFR 200.40 and the definitions of farmwork, migrant farmworker and seasonal farmworker contained in 20 CFR 633.104.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the application or to obtain information on the program, call or write Mary L. Suazo, U.S. Department of Education, Office of Elementary and Secondary Education, Office of Migrant Education, 400 Maryland Avenue, SW, Room 3E317, FOB 6, Washington, D.C. 20202–6135. Telephone Number: (202) 260–1396. Inquiries may be sent by e-mail to mary__suazo@ed.gov or by FAX at (202) 205–0089. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

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Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 1070d–2.

Dated: November 16, 1998.

Gerald N. Tirozzi,

Assistant Secretary, Office of Elementary and Secondary Education.

[FR Doc. 98–30955 Filed 11–17–98; 8:45 am]

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H.R. 2263/P.L. 105–371

To authorize and request the President to award the congressional Medal of Honor posthumously to Theodore Roosevelt for his gallant and heroic actions in the attack on San Juan Heights, Cuba, during the Spanish-American War. (Nov. 12, 1998; 112 Stat. 3376)

H.R. 3267/P.L. 105–372

Salton Sea Reclamation Act of 1998 (Nov. 12, 1998; 112 Stat. 3377)

H.R. 4083/P.L. 105–373

To make available to the Ukrainian Museum and Archives the USIA television program ''Window on America''. (Nov. 12, 1998; 112 Stat. 3382)

H.R. 4164/P.L. 105–374

To amend title 28, United States Code, with respect to the enforcement of child custody and visitation orders. (Nov. 12, 1998; 112 Stat. 3383)

S. 759/P.L. 105–375

To amend the State Department Basic Authorities Act of 1956 to require the Secretary of State to submit an annual report to Congress concerning diplomatic immunity. (Nov. 12, 1998; 112 Stat. 3385)

S. 1132/P.L. 105–376

Bandelier National Monument Administrative Improvement and Watershed Protection Act of 1998 (Nov. 12, 1998; 112 Stat. 3388)

S. 1134/P.L. 105–377

Granting the consent and approval of Congress to an interstate forest fire protection compact. (Nov. 12, 1998; 112 Stat. 3391)

S. 1408/P.L. 105–378

To establish the Lower East Side Tenement National Historic Site, and for other purposes. (Nov. 12, 1998; 112 Stat. 3395)

S. 1733/P.L. 105–379

To amend the Food Stamp Act of 1977 to require food stamp State agencies to take certain actions to ensure that food stamp coupons are not issued for deceased individuals, to require the Secretary of Agriculture to conduct a study of options for the design, development, implementation, and operation of a national database to track participation in Federal means-tested public assistance programs, and for other purposes. (Nov. 12, 1998; 112 Stat. 3399)

S. 2129/P.L. 105–380

Hawaii Volcanoes National Park Adjustment Act of 1998 (Nov. 12, 1998; 112 Stat. 3401)

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