4–19–99
Vol. 64 No. 74
Pages 19017–19250

federal register

Monday
April 19, 1999

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Presidential Documents

Title 3—

The President

Proclamation 7183 of April 14, 1999

Jewish Heritage Week, 1999

By the President of the United States of America

A Proclamation

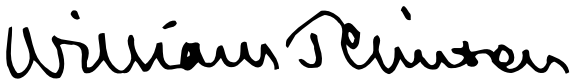
Nearly 350 years have passed since the first Jewish settlers arrived in America. The sons and daughters of a proud and ancient heritage, they brought to this new land gifts that have enriched our national life tremendously: a deep faith in God, a strong sense of morality, a devotion to family and community, a thirst for freedom, a reverence for justice, and a long tradition of philanthropy.

Millions of Jews have shared the American immigrant experience. Many came here fleeing poverty and persecution, yearning for religious or political freedom, seeking a better life for themselves and their families. Investing their dreams, ambitions, labor, and love in our country, Jewish immigrants overcame great obstacles to rise as far as their talents and effort could take them. Today their descendants continue to make extraordinary contributions to the cultural, economic, religious, and intellectual life of our Nation. In education, the arts, politics, the law, science, entertainment, technology, philanthropy, industry, and every other field of endeavor, Jewish men and women have excelled in their pursuits and strengthened America with their character and accomplishments.

As we look forward to a new century and a new millennium, let us give thanks for all that the Jewish community in America has done to keep our Nation free, strong, and prosperous. Let us celebrate the freedom of religion guaranteed by our founders in the Bill of Rights, which has done so much to attract men and women of conscience to this land. Let us recognize that our country's great diversity of races, religions, ethnicities, and cultures will prove to be among our greatest strengths in the global community of tomorrow. And let us reaffirm our sacred obligation to build a future based upon a spirit of tolerance, respect, and understanding.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 18 through April 25, 1999, as Jewish Heritage Week. I urge all Americans to observe this week with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of April, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-third.



[FR Doc. 99–9897
Filed 4–16–99; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

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

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

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 801

RIN 0580–AA62

Official Testing Service for Corn Oil, Protein, and Starch

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Final rule.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) is adopting, without change, the provisions of an interim rule extending the use of the currently approved near-infrared spectroscopy (NIRS) analyzers in its official inspection program to include testing of corn for oil, protein, and starch content as official criteria, and incorporating by reference the Corn Refiners Association Method A–20, Starch method, into the regulations. GIPSA is offering this service to meet a market demand for reliable official testing procedures created by anticipated increases in high-oil corn production.

DATES: Effective May 19, 1999.

The incorporation by reference of Analysis for Starch in Corn, Method A–20, Second Revision, April 15, 1986, Standard Analytical Methods of the Member Companies of the Corn Refiners Association, Inc., listed in this final rule, is approved by the Director of the Federal Register as of July 1, 1998.

FOR FURTHER INFORMATION CONTACT: Sharon Vassiliades, GIPSA, USDA, STOP 3649, Washington, D.C. 20250–3649; FAX to (202) 720–4628; or e-mail svassili@fgisdc.usda.gov; or John Giler, GIPSA, USDA, STOP 3632, Washington, D.C., 20250–3632; telephone (202) 720–0252; or E-mail jgiler@fgisdc.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have a retroactive effect. The United States Grain Standards Act (USGSA), as amended, provides in section 87g that no State or subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the USGSA. Otherwise, this final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this final rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this final rule.

Effect on Small Entities

The Administrator of GIPSA has determined that this final rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Currently, NIRS analyzers are being used to determine protein in wheat and protein and oil in soybeans in both domestic and export markets. This final rule expands the use of currently approved NIRS analyzers to test corn for oil, protein, and starch content; establishes tolerances for corn oil, protein, and starch analyzers. The fees for these services are identical to the fees already established for wheat protein and soybean oil and protein testing services.

There are 53 official agencies (46 private entities, 7 States) designated by GIPSA to perform official grain inspection services. In addition, there are 8 delegated States. Most of the agencies could be considered small entities under Small Business Administration criteria. The extent to which these agencies will choose to provide this service is difficult to quantify because GIPSA is offering this service as official criteria, on a request basis, and locations where service is requested infrequently may make arrangements with a neighboring agency to provide the service (7 CFR 800.196(g)(1)). GIPSA believes that offering this service would have a beneficial effect on those agencies electing to provide the service.

For the 1998 crop year, high-oil corn production is estimated at 1.5 million acres. Currently, producers, grain handlers, exporters, and feedlot operators rely primarily on private laboratories to determine percent oil, protein, and starch in corn. Further, grain handlers and exporters are using this information to determine value and premiums. While exact numbers are not known, it can be assumed that many of the value-enhanced corn producers, grain handlers, exporters, and feedlot operators could be considered small entities under Small Business criteria. The extent to which these entities will request the official testing of corn for oil, protein, and starch, or the impact of offering this service through the official system, is difficult to quantify. However, GIPSA believes users of the inspection system will rely on the official system to provide reliable testing procedures and accurate results that the market can rely on to negotiate price, value, and premium. GIPSA performed 2 million inspections for all grains in fiscal year 1998.

To recover the cost of providing this service, GIPSA will charge fees as follows: $1.50 per test when the test is performed at the applicant's facility; $8.10 per test if the test is performed elsewhere; and $15.85 for an appeal. These fees are the same as fees charged for similar tests. The impact on applicants for services will vary depending upon usage since these tests are provided on a request basis.

Information Collection and Recordkeeping Requirements

In accordance with the Paperwork Reduction Act of 1995, the recordkeeping and reporting burden imposed by Part 801 was previously approved by OMB under control number 0580–0013 and will not be affected by this final rule.

Background

In its 1997–98 report, Value-Enhanced Corn Quality Report, dated April 1998, the U.S. Feed Grains Council defined value-enhanced corn as corn with particular quality characteristics that add end-user value. Value-enhanced

corn, also referred to as speciality corn, includes waxy corn, high-lysine and other essential amino acid corn, hard endosperm corn, popcorn, sweet corn, white corn, and high-oil corn. Additionally, work is under way to develop nutritionally dense hybrid corn, which usually includes some combination of higher-oil, higher protein, and/or altered amino or fatty acid profiles.

The report estimated that value-enhanced corn is produced on 3.3 to 3.7 million acres (representing 4.5 to 5.1 percent of the U.S. harvested corn acreage). It projected the U.S. acreage of value-enhanced corn to remain essentially unchanged, with the exception of high-oil corn, which is considered the fastest growing value-enhanced corn produced in the marketplace. Approximately 1.5 million acres of high-oil corn is projected for the 1998 crop year (up from virtually none in 1993), and the acreage is expected to more than double in 1999. The report suggested that high-oil corn will continue to be a significant part of the value-enhanced corn produced and traded in the marketplace and the market potential for both high-oil and nutritionally dense corn is very high, representing the most significant growth potential for the value-enhanced corn market.

High-oil corn is used by livestock feeders to replace animal fat previously added to livestock rations and to help the animals gain weight more quickly. U.S. No. 2 corn typically averages less than 4.5 percent oil content, while high-oil corn can contain up to 8.0 percent. At this time, depending on the oil content, high-oil corn premiums range from 5 to 24 cents per bushel. High-oil corn is almost exclusively grown through contracts with livestock feeders or companies that will export the grain.

For several years, corn processors and producers have expressed an interest in having corn officially analyzed for oil, protein, and starch content. GIPSA received a calibration database from Optimum Quality Grains, Inc. Optimum Quality Grains, Inc. (a joint venture between DuPont and Pioneer Hi-Bred), is a source of high-oil corn germplasm. The calibration database consists of several hundred samples which represent germplasm from a broad range of sources.

GIPSA used the database to derive calibrations in cooperation with Optimum Quality Grains, Inc. GIPSA then tested the calibrations' performance using an additional set of 92 corn samples not used in the calibration database. The 92 corn samples represent oil, protein, and starch ranges of 4.0 to 8.5 percent, 8.0 to 12.0 percent, and 64 to 72 percent (dry basis), respectively. Data collected on the 92 corn samples were statistically analyzed.

The standard deviation of differences (SDD) between NIRS oil values and official solvent oil extraction reference results was 0.44 percent. A comparison of near-infrared transmittance (NIRT) analyzer protein values and official Combustion Nitrogen Analyzer reference results yielded an SDD of 0.40 percent. The SDD between NIRS analyzer starch predictions and reference values obtained using the Corn Refiners Association Method A–20 was 2.20 percent. GIPSA has determined that this level of accuracy is commensurate with prospective official customer needs.

To further assure the performance of the NIRT analyzer for corn measurements, GIPSA established the maintenance tolerances for corn oil content at ±0.20 percent mean deviation from the national standard NIRT analyzers, which are referenced and calibrated to the GIPSA solvent oil extraction method; for protein content at ±0.30 percent mean deviation from the national standard NIRT analyzers, which are referenced and calibrated to the Combustion method, AOAC International Method 992.23; and for starch content at ±0.35 percent mean deviation from the national standard NIRT analyzers, which are referenced and calibrated to the Starch method, Corn Refiners Association Method A–20.

On June 30, 1998, GIPSA published in the **Federal Register** (63 FR 35502) an interim rule announcing the immediate availability of official oil, protein, and starch testing service for corn as official criteria under the authority of the USGSA. The interim rule also announced the establishment of performance tolerances between NIRS and reference methods for oil, protein, and starch determinations and established fees for the service. Additionally, a 30-day comment period that ended July 30, 1998, was provided. The fees for the service established by the interim rule were revised and finalized in a rule published in the **Federal Register** December 23, 1998 (63 FR 70990), and became effective February 1, 1999.

Comment Summary

During the 30-day comment period, GIPSA received comments from Dow AgroSciences, Iowa State University (ISU), Zeltex Inc., and MBS Inc. A summary of the four comments received is as follows:

(1) Dow AgroSciences, a business unit of the Dow Chemical Co., is a supplier and developer of biotechnology seeds (e.g., nutritionally enhanced corn and high oleic/low linolenic canola). Dow AgroSciences has cooperated with ISU in the development of NIRT corn calibrations. Their concern is that the GIPSA calibration was developed from Optimum Quality Grains, Inc., data that did not include their corn. Consequently, they believe the GIPSA calibration will not accurately measure their commodity, which could put them at a competitive disadvantage.

(2) Iowa State University is a public land-grant institution that provides technical support for NIRS calibration development and operates a grain quality lab that monitors the quality of Iowa's corn production. ISU raised questions regarding the acquisition of GIPSA's calibration data, the representativeness of the calibration data set, and the performance tolerances for the instrumentation.

(3) Zeltex Inc. is an NIRS company that is developing a whole grain analyzer which they plan to submit for approval as a moisture meter under the National Conference of Weights and Measures' National Type Evaluation Program (NTEP). Zeltex Inc. has been cooperating with ISU on the development of corn and soybean calibrations for their instrument. They questioned the calibration development and the approval of a single instrument for analysis. Zeltex Inc. is concerned that the GIPSA calibration sample data set was insufficient in size and was not representative of other corn varieties traded in the marketplace. Additionally, they are concerned that the GIPSA-approved Foss instrument will prevent Zeltex Inc. from marketing their NIRS instrument in the United States.

(4) MBS Inc. is a foundation seed company that develops and markets new soybean varieties and value-enhanced corn hybrids, with characteristics targeted for specific end-users and provides NIRS calibrations and support to the grain and seed industry. They use the calibrations developed at ISU. MBS Inc.'s comments questioned the representativeness and source of the calibration data, and questioned the performance of the calibration. They also questioned how future calibrations would be developed.

Commenters suggested that GIPSA: (1) withdraw the current proposal; (2) promote dialogue among all interested parties regarding calibration development; and (3) develop an open procurement process to obtain calibration data.

Comment Review

GIPSA believes that the commenters' suggestion to withdraw the current proposal is unwarranted. For several years, high-oil corn processors and producers have expressed an interest in having corn officially analyzed for oil, protein, and starch content. Future crop production estimates identified high-oil corn as the fastest growing value-enhanced corn in the marketplace. For the 1998 crop year, high-oil corn production is estimated at 1.5 million acres and is expected to more than double in 1999. Also, the possible introduction of nutritionally dense hybrid corn makes it necessary to provide the grain industry with a reliable official testing procedure it can use to negotiate price, value, and premium. Additionally, GIPSA is offering this service upon request as official criteria which has no effect on the grade designation. Consequently, GIPSA believes that offering this service will enhance the marketability of speciality corn domestically and for export.

Commenters misinterpreted the information in the interim rule to suggest the calibrations were developed based on only 92 samples. In fact, the calibration was based on several hundred samples and validated with an additional 92 corn samples. Based on its assessment of samples in the database, GIPSA determined that the calibration database obtained from Optimum Quality Grains, Inc., was representative of current samples in the marketing system. When GIPSA explored the possibility of providing official testing of corn for oil, protein, and starch content, other NIRS calibration sources (including ISU and MBS Inc.) were contacted to enlist their cooperation. After reviewing the available sources of NIRS calibration data, GIPSA decided to use the Optimum Quality Grains, Inc., database for the following reasons: (1) Optimum Quality Grains, Inc., is the dominant source of high-oil corn in the current market; (2) their analytical procedures were reviewed and were compatible with GIPSA's procedures for calibration development; (3) their calibration data contained several hundred samples; and (4) they provided their calibration data to GIPSA at no cost and without restrictions on its use.

One commenter suggested that, because GIPSA proposes to charge fees for corn analysis, its choice of the Optimum Quality Grains, Inc. database for purposes of calibration of near-infrared transmittal (NIRT) analyzers represents procurement of an outside service by GIPSA. The commenter suggests that procurement bidding protocol for government procurements required GIPSA to evaluate other databases or request derived dry basis calibrations from other databases in an organized manner following government procurement procedures.

The Office of Federal Procurement Policy Act provides the following definition of ''procurement,'' in relevant part: ''all stages of the process of acquiring property or services.'' 41 USCA 403(2). The Federal Acquisition Regulation (FAR), 48 CFR parts 1–52, which applies to all ''acquisitions'' (except where expressly excluded) (48 CFR 1.104) defines an ''acquisition,'' in relevant part, as ''the acquiring by contract with appropriated funds of supplies or services * * * by and for the use of the Federal Government through purchase or lease, * * *'' (48 CFR 2.101).

GIPSA's choice of the Optimum Quality Grains, Inc., sample information as a data standard constitutes neither a ''procurement'' nor an ''acquisition'' under these definitions, and the applicability of government procurement laws is not predicated on the fact that the government may charge a fee for a service it may perform. Instead, GIPSA's choice is part of the policy-making process in the development of a rule which includes fees for providing official testing services. The policy basis for the fee charged is based on an already established fee for a specific method of testing. Therefore, GIPSA chose to use the Optimum Quality Grains, Inc., database for calibration purposes because their analytical methods were compatible with the methods employed by GIPSA. GIPSA's choice of an outside data source for incorporation into the regulatory action, which is a practice permitted for rulemakings by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 1, is part of the rulemaking process outlined under 5 U.S.C. 553 of the Administrative Procedure Act (APA). The adoption of an outside reference point, standard, scientific study, or other data as part of the factual basis of a rulemaking cannot be converted from a question of the sufficiency of the rulemaking under the APA into a procurement or acquisition of goods and services subject to Federal statutes applicable to government procurement.

Commenters also indicated that GIPSA's choice of the Optimum Quality Grains, Inc., database creates a monopoly for the company that created the method from which GIPSA derived the calibration. GIPSA disagrees with this comment.

The initial GIPSA calibration is intended to represent the majority of high oil corn that will be traded in the 1998 crop year. GIPSA's plan for future calibration development will expand the population of the database to other sources of value-enhanced corn. GIPSA intends to provide opportunities for interested parties to supply samples of material from other germplasm sources for inclusion in its calibration updates. Consequently, as additional hybrids reach the feed and food marketing channels, GIPSA will solicit new samples for inclusion in the calibration data set. GIPSA will then maintain and control the NIRS corn oil, protein, and starch calibrations in a similar manner as it maintains and controls other official calibrations (e.g., wheat protein and soybean oil and protein).

After receiving the already established database, GIPSA derived and tested the calibrations using its calibration development software and methodology. Commenters suggested that other calibrations are more accurate than the GIPSA calibrations. This conclusion appears to have been based on results from different sample sets. Also, some assumptions and conclusions reached by ISU regarding the GIPSA calibration performance were based on limited information. GIPSA's assessments of the relative accuracies of the available calibrations support the choice of the calibration based on the Optimum Quality Grains, Inc., database. To further assure the performance of the NIRT analyzer for corn measurements, GIPSA is establishing the maintenance tolerances of ±0.20, ±0.3, and ±0.35 percent mean deviation for oil, protein, and starch, respectively, from the national standard NIRS instruments, which are referenced and calibrated to standardized analytical methods.

GIPSA decided to use current instrument technology because it was already approved and available within the official inspection system. A single instrument model with a single calibration will provide significantly better consistency across inspection laboratories than multiple instrument types or multiple calibrations. This fact has been demonstrated by GIPSA in the past and was actually supported by one of the commenters. Further, GIPSA decided to utilize currently approved equipment because it provided an opportunity to implement a new service with minimal additional cost to the official inspection program. Cross-utilizing instruments already available in the official laboratories is reasonable and cost effective. Allowing multiple

instrument models and/or calibrations for corn measurements would greatly increase the cost of the GIPSA standardization program, would increase the cost of the overall inspection service, and would reduce the reliability of official inspection results. In addition, GIPSA does not regulate or control the use of analytical instruments outside of the official inspection system. Consequently, unofficial inspection service providers may use other instruments and/or calibrations.

This final rule also incorporates by reference the Corn Refiners Association Method A–20, Starch method, into the regulations. GIPSA will use this method as the chemical reference method for determining the starch content in corn.

GIPSA is required to collect fees for providing official testing service to cover, as nearly as practicable, GIPSA's costs for performing the service, including related administrative and supervisory costs. Testing procedures and time necessary to determine oil, protein, and starch in corn using the approved NIRT analyzers are the same as those required for NIRT wheat protein or NIRT soybean oil and protein determinations. Therefore, GIPSA has decided to collect fees identical to the fees established for NIRT wheat protein or NIRT soybean oil and protein testing services. These fees will be $1.50 per test when the service is performed at an applicant's facility in an onsite Federal Grain Inspection Service (FGIS) laboratory; $8.10 per test when an original inspection service is performed at a location other than an applicant's facility in an FGIS laboratory; and $15.85 per test when an appeal inspection service is performed at a location other than an applicant's facility in an FGIS laboratory.

GIPSA has carefully considered the comments received regarding this action and has determined that it is in the best interest of American agriculture to offer this service. This decision is based on the fact that (1) the calibration data set represents a significant part of the 1998 corn market, (2) GIPSA plans to expand the calibration data set to incorporate new germplasm sources as they are released to the commercial market, (3) future calibration enhancements will remain under the direct control of GIPSA, and (4) the performance of the NIRT instruments will continue to satisfy market needs.

Final Action

Value-enhanced corn is produced on 3.3 to 3.7 million acres. It is projected that the U.S. acreage of value-enhanced corn is to remain essentially unchanged, with the exception of high-oil corn. Approximately 1.5 million acres of high-oil corn is projected for the 1998 crop year and is expected to more than double in 1999. High-oil corn will continue to be a significant part of the value-enhanced corn produced and traded in the marketplace (the market potential for high-oil corn is very high, representing the most significant growth potential for the value-enhanced corn market). Also, the possible introduction of nutritionally dense hybrid corn makes it necessary to provide the grain industry with a reliable official testing procedure it can use to negotiate price, value, and premium. Additionally, GIPSA is offering this service upon request as an official criteria, which will have no effect on the grade designation.

For several years, corn processors and producers have expressed an interest in having corn officially analyzed for oil, protein, and starch content. When GIPSA explored the possibility of providing official testing of corn for oil, protein, and starch content, several NIRS calibration sources (including ISU and MBS Inc.) were contacted to enlist their cooperation. After reviewing the available sources of NIRS calibration data, GIPSA decided to use the Optimum Quality Grains, Inc., database for the following reasons: (1) Optimum Quality Grains, Inc., is a significant source of high-oil corn in the current market; (2) their analytical procedures were reviewed and were compatible with GIPSA's procedures for calibration development; (3) their calibration data contained several hundred samples; and (4) they provided their calibration data to GIPSA at no cost and without restrictions on its use.

The initial GIPSA calibration is intended to represent the majority of high oil corn that will be traded in 1998. GIPSA's plan for future calibration development will expand the population of the database to other sources of value-enhanced corn. GIPSA intends to provide opportunities for interested parties to supply samples of material from other germplasm sources for inclusion in its calibration updates. Consequently, as additional hybrids reach the feed and food marketing channels, GIPSA will solicit new samples for inclusion in the calibration data set.

GIPSA has carefully considered the comments received regarding this action and has determined that it is in the best interest of the corn industry to offer this service. This decision is based on the fact that (1) the calibration data set represents a significant part of the 1998 corn market, (2) GIPSA plans to expand the calibration data set to incorporate new germplasm sources as they are released to the commercial market, (3) future calibration enhancements will remain under the direct control of GIPSA, and (4) the performance of the NIRT instruments will continue to satisfy market needs. GIPSA believes that offering this service will enhance both the export and domestic marketability of speciality corn.

Therefore, GIPSA will offer corn oil, protein, and starch testing services as official criteria under the authority of the USGSA. Upon a request for service, official inspection personnel will determine corn oil, protein, and starch content. Percent corn oil, protein, and starch will be reported to the nearest tenth percent on a dry matter basis (zero moisture basis) unless another moisture basis is requested.

Based on this and other available information, GIPSA has determined that the interim rule amending Part 801 as published at 63 FR 35502 will be adopted as the final rule.

List of Subjects in 7 CFR Part 801

Grains, Incorporation by reference.

PART 801—OFFICIAL PERFORMANCE REQUIREMENTS FOR GRAIN INSPECTION EQUIPMENT

Accordingly, the interim rule amending 7 CFR Part 801 which was published at 63 FR 35502 on June 30, 1998, is adopted as a final rule without change.

James R. Baker,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 99–9518 Filed 4–16–99; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. FV99–916–2 FR]

Nectarines and Peaches Grown in California; Revision of Handling Requirements for Fresh Nectarines and Peaches

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the handling requirements for California nectarines and peaches by modifying the grade, size, maturity, and container marking requirements for fresh shipments of these fruits, beginning with 1999 season shipments. This rule also authorizes continued shipments of ''CA Utility''

quality nectarines and peaches during the 1999 season with an increased percentage of U.S. No. 1 nectarines and peaches in each container. This rule will enable handlers to continue shipping fresh nectarines and peaches meeting consumer needs in the interest of producers, handlers, and consumers of these fruits.

EFFECTIVE DATE: This final rule becomes effective April 20, 1999.

FOR FURTHER INFORMATION CONTACT: Terry Vawter, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, 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, Fax: (202) 720–5698. Small businesses may request information on compliance 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) 720–5698; or E-mail: Jay__N__Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreements Nos. 124 and 85, and Marketing Order Nos. 916 and 917 (7 CFR parts 916 and 917) regulating the handling of nectarines and peaches grown in California, respectively, hereinafter referred to as the ''orders.'' The marketing agreements and orders are 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 final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will 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 request a modification of the order or to be exempted therefrom. A 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 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.

This final rule revises the handling requirements currently prescribed for shipments of fresh nectarines and peaches under the orders.

Under the orders, grade, size, maturity, and container and pack requirements are established for fresh shipments of California nectarines and peaches. Such requirements are in effect on a continuing basis. The Nectarine Administrative Committee (NAC) and the Peach Commodity Committee (PCC) (committees), which are responsible for local administration of the orders, met on December 2, 1998, and unanimously recommended that these handling requirements be revised for the 1999 season, which begins April 1, with one exception. The Nectarine Administrative Committee voted 4 in favor and 3 opposed to continuing shipments of ''CA Utility'' quality nectarines with an increased percentage of U.S. No. 1 nectarines in boxes of ''CA Utility'' quality nectarines; and the Peach Commodity Committee voted 7 in favor and 4 opposed to continuing shipments of ''CA Utility'' quality peaches with an increased percentage of U.S. No. 1 peaches in boxes of ''CA Utility'' quality peaches. The nectarine order requires six concurring votes on recommendations for regulations and the peach order requires nine concurring votes on recommendations for regulations. As a result, these two votes did not meet the minimums prescribed to constitute official recommendations to the Secretary. Nectarine and peach handlers have been authorized to ship ''CA Utility'' quality fruit since the 1996 season, and such shipments have comprised about two percent of total shipments. Such fruit is mature but of a lower quality than U.S. No. 1 fruit and is acceptable in some markets. If shipments of ''CA Utility'' quality fruit are not permitted, only higher-quality fruit could be shipped.

Because prior season experience shows that the authority to ship ''CA Utility'' quality fruit provided additional marketing opportunities for handlers, the Department proposed continuing to allow such shipments during 1999, and invited written comments from all interested persons. One comment supporting the continued shipment of ''CA Utility'' quality fruit was received.

The changes implemented by this final rule: (1) Require that maturity and ''CA Utility'' quality marking of containers be a minimum of ⅜ inch in height; (2) require that experimental containers and 22G containers be marked with both the size and the count of fruit contained in the package; (3) require that master containers of consumer packages be marked with the minimum size fruit contained in the consumer packages; (4) add weight counts for early-season, mid-season, and late-season varieties; (5) continue shipments of ''CA Utility'' quality nectarines and peaches, and increase the percentage of U.S. No. 1 nectarines and peaches permitted in containers of ''CA Utility'' quality fruit from the current 30 percent to 40 percent, provided that the additional 10 percent of U.S. No. 1 fruit in the container has non-scoreable blemishes; and (6) revise varietal maturity and size requirements to reflect recent changes in growing conditions.

The committees meet prior to and during each season to review the rules and regulations effective on a continuing basis for California nectarines and peaches under the orders. Committee meetings are open to the public, and interested persons may express their views at these meetings. The Department reviews committee recommendations and information, as well as information from other sources, and determines whether modification, suspension, or termination of the rules and regulations would tend to effectuate the declared policy of the Act.

No official crop estimate was available at the time of the committees' meetings because the nectarine and peach trees were dormant. The committees will recommend a crop estimate at their meetings in early spring. However, the committees continue to believe that the 1999 crop will be somewhat larger in size but similar in characteristics to the 1998 crop which totaled 16,916,900 boxes of nectarines and 18,202,300 boxes of peaches.

Container Marking Requirements

Sections 916.52 and 917.41 of the orders for nectarines and peaches, respectively, authorize container marking requirements. Requirements for container markings are specified in §§ 916.350 and 917.442 of the orders' rules and regulations. Container marking requirements include marking of the commodity and variety (e.g., July Red Nectarines), the size of the fruit in the box (e.g., 80 size), the net weight, the maturity (either U.S. Mature (US MAT), or California Well-Matured (CA WELL MAT)), or the quality (i.e., ''CA Utility''), on each container of nectarines and peaches.

This final rule revises paragraphs (a)(3) of §§ 916.350 and 917.442 in the orders' rules and regulations to require that maturity markings on containers be in letters at least ⅜ inch in height. This rule also revises the current quality marking requirement in paragraphs (d) of §§ 916.350 and 917.442 for ''CA Utility'' from a minimum of ¾ inch in height to a minimum of ⅜ inch in height. These changes standardize marking requirements on containers by specifying a minimum lettering height of ⅜ inch for both maturity and quality markings. This is intended to assure that all containers shipped by nectarine and peach handlers are similarly marked.

The committees unanimously recommended that the lettering indicating fruit maturity and quality on containers be standardized at a minimum height of ⅜ inch. The ⅜ inch minimum is appropriate, given the number of other markings, required or voluntary, on each container. Such lettering is also readily legible to the Federal or Federal-State Inspection Service (Inspection Service) and compliance officers representing the committees. The ⅜ inch minimum letter height standard will also eliminate any confusion among handlers about which size is required for markings by reducing the currently-required ¾ inch minimum marking for ''CA Utility'' to a minimum ⅜ inch in height and by specifying similar requirements for maturity markings.

Sections 916.350 and 917.442 of the orders' rules and regulations also require containers to be marked with the size and/or number of pieces of fruit in the container (count).

In commonly-used containers such as the No. 22D and the No. 32 boxes, the configurations of fruit results in the fruit size and count being the same. The No. 22G standard lug box, however, has a different shape which results in a different tray-pack configuration than those of the No. 22D and the No. 32 boxes. The shape of the No. 22G container also imposes tighter limits on the number of fruit that can be tray packed in it than the No. 22D and No. 32 boxes, and the fruit size and count are not the same. Thus, handlers using it should be required to indicate the number of fruit in the container as well as the fruit size, since the fruit size and count are not always the same in this container. This is also true for some experimental packages, as well, since there are no standardized pack configurations for experimental packages, and, thus, no standardized basis for comparison against the No. 22D and No. 32 boxes is possible. Experimental containers, in addition to the No. 22G standard lug box, are required to be marked with both the size and the count of fruit contained in the package.

To lessen the chances of confusion in the marketplace with such containers, the committees unanimously recommended requiring that the No. 22G standard lug box and experimental containers be marked with both the size and count of the fruit contained in the package.

To implement this change, paragraphs (a)(4)(i) and (a)(4)(ii) of § 916.350 are revised to add the requirement that experimental containers be marked with both the size and count of nectarines contained within the containers. Paragraph (a)(4)(ii) of § 917.442 is also revised to add the requirement that the No. 22G standard lug box be marked with both the size and count of peaches contained within the container.

Sections 916.350 and 917.442 also specify markings that are required on master containers of consumer packages, consumer packages within master containers, and consumer packages not within master containers. Master containers must be marked with the net weight of each consumer package, the number of individual consumer packages, the size description of the fruit in each consumer package, and the name and address of the shipper. Consumer packages within the master containers must be marked with the name and address of the shipper and the net weight of the container. When the consumer package is not in a master container, the consumer package must also be marked with the number of fruit in the package, the name of the variety, if known, and the maturity of the fruit in the package.

Authority for consumer packages permits handlers to pack and ship nectarines and peaches in other types of containers demanded by their customers. The fruit packages are tailored to the requirements of the buyer, and the buyer may require the handler to pack consumer packages of several different sizes of fruit within the master container. For example, a master container may contain five consumer packages. One consumer package may contain size 64 nectarines, while two other consumer packages may contain size 70 nectarines. The remaining two consumer packages may contain size 60 nectarines. In this example, each consumer package contains the same size nectarines within that package, but the master container contains consumer packages with different nectarine sizes.

The committees unanimously recommended that such size variations from consumer package to consumer package within a master container should be indicated on the master container. The committees determined that the marking on the master container should accurately and clearly reflect the minimum size contained within the package containing the smallest size fruit and that the master container contains consumer packages with larger sized fruit. For example, a master container will be marked ''Minimum size 60 and larger'' or ''Minimum size 96 and larger,'' as appropriate, when the consumer packages in the master container contain different fruit sizes. This is intended to provide more accurate information to the buyers of the fruit.

According to a comment received regarding this aspect of the proposed rule issued on these regulatory changes, the intent of the committees was to ensure that when multiple sizes of consumer packages of nectarines or peaches are contained within the master container, the master container must be marked ''Minimum size 60 and larger,'' or ''Minimum size 96 and larger,'' etc., as appropriate. However, the commenter noted, the proposed rule did not specify that when the master container does not contain multiple sizes of nectarines or peaches in the consumer packages, only the size of the nectarines or peaches in the consumer packages should be marked on the master container, such as ''Size 60,'' or ''Size 96,'' etc., as appropriate. Accordingly, the clarification to the proposed rule is made.

Thus, paragraph (a)(8)(i) of § 916.350 and paragraph (a)(9)(i) of § 917.442 of the orders' rules and regulations are revised to require that the markings on master containers containing consumer packages of different sizes of nectarines and peaches specify the smallest size and the words ''and larger'' in the packages. When consumer packages contain nectarines or peaches of the same sizes, the master container shall

continue to be marked with the appropriate individual size marking.

Pack Regulations

Container markings based on weight-count standards are also specified in Tables 1 and 2 of paragraphs (a)(4)(iv) in §§ 916.350 and 917.442 of the orders' rules and regulations. The purpose of the weight-count standards is to establish the maximum number of nectarines or peaches in a 16-pound sample for each individual size designation. To facilitate the repacking of nectarines and peaches from tray-packs into volume-filled containers, the committees routinely conduct tests to determine the optimum weight-count standards for early-season, mid-season, and late-season nectarines and peaches, respectively, based on the sizes of nectarines and peaches in tray-packs. Tray-packs fit into standard nectarine and peach boxes and have molded cavities for the fruit to sit in. Trays with different cavity sizes are used, depending upon the size of the fruit being packed. Handlers have traditionally used tray-packs to securely package nectarines and peaches. However, some handlers have moved away from tray-packed configurations toward volume-filled configurations in recent years.

Handlers of nectarines and peaches have informed the committees that some larger sizes of nectarines and peaches are increasingly being converted from tray-packs to volume-filled packs. Since volume-filled containers are less costly to pack and market demands change, handlers have opted to pack a greater proportion of the larger-sized, high-quality fruit in volume-filled containers.

Size studies were performed by the NAC and PCC in 1994 and 1995, and were used as a basis for changing some of the weight counts. Because nectarines and peaches of size 44 were not packed in volume-filled containers, no weight counts were published for size 44 nectarines and peaches at that time. As the practice of converting tray-packed containers of size 44 nectarines and peaches to volume-filled containers has increased, the need to publish a weight-count standard also increased.

The committees have used the previously-conducted size studies to determine the weight-count standards for size 44 nectarine and peach sizes for inclusion in the weight-count standards. The NAC has determined that the weight-count standard for size 44 should be a maximum of 33 pieces for early-season nectarines and a maximum of 30 pieces of mid-season and late-season nectarines in a 16-pound sample. The PCC has determined that the weight count standard for size 44 should be a maximum of 33 pieces of fruit in a 16-pound sample for all peach varieties.

Therefore, the NAC and PCC unanimously recommended modifications to the weight-count standards for nectarines and peaches by the addition of weight-count standards for size 44 nectarines and peaches. To implement such a change, Tables 1 and 2 of paragraphs (a)(4)(iv) in §§ 916.350 and 917.442 of the regulations are revised by adding size 44 and the applicable weight-count standard of a maximum of 33 pieces of early-season nectarines and all peaches, and a maximum of 30 pieces of mid-season and late-season nectarines in a 16-pound sample. These changes will permit handlers to more easily convert tray-packed nectarines and peaches to volume-filled containers, decrease the handling costs associated with that conversion, and meet marketing demands.

Quality Requirements

Sections 916.52 and 917.41 of the orders authorize the establishment of grade and quality requirements for nectarines and peaches, respectively. Prior to the 1996 season, § 916.356 of the order's rules and regulations required nectarines to meet a modified U.S. No. 1 grade. Specifically, nectarines were required to meet U.S. No. 1 grade requirements, except there was a slightly tighter requirement for scarring and a more liberal allowance for misshapen fruit. Under § 917.459 of the order's rules and regulations prior to the 1996 season, peaches were also required to meet the requirements of a U.S. No. 1 grade, except there was a more liberal allowance for open sutures that were not ''serious damage.''

Under §§ 916.356 and 917.459, shipments of ''CA Utility'' quality nectarines and peaches have been permitted since the 1996 season, contingent upon the fruit in such containers meeting certain relaxed quality requirements. ''CA Utility'' quality is a lower-quality fruit than U.S. No. 1. Previously, the requirement for containers of ''CA Utility'' nectarines and peaches provided that not more than 30 percent of the fruit in any container meet or exceed the requirements of U.S. No. 1. This final rule permits handlers to continue shipping ''CA Utility'' fruit during the 1999 season, and increases the 30 percent limitation to not more than 40 percent except that the additional 10 percent of the U.S. No. 1 fruit must have non-scoreable blemishes.

Containers marked ''CA Utility'' must be inspected by the Inspection Service and certified as meeting the ''CA Utility'' quality requirements. Part of the inspection process is to evaluate the fruit in accordance with the requirements of the U.S. Standards for Grades of Nectarines, the U.S. Standards for Grade of Peaches, (Standards) and the orders. In conducting inspections, inspectors are required to evaluate various blemishes. Some blemishes are serious or severe enough to be ''scored'' against the fruit as defects which are damaging to the grade of the fruit, while some other blemishes are not serious or severe enough to affect the grade of the fruit. In the first instance, the blemishes are termed ''scoreable'' defects; and, in the second instance, the blemishes are termed ''non-scoreable'' defects. Some members of the committees supported a requirement that such non-scoreable blemishes must be present on the additional 10 percent of the fruit grading U.S. No. 1 in boxes marked ''CA Utility'' during the 1999 season.

A similar requirement was in place during the latter part of the 1998 season. At that time, unseasonal summer rains had caused increased ''non-scoreable'' defects which detracted from the overall appearance of U.S. No. 1 nectarines and peaches for some handlers. An interim final rule was published on September 22, 1998 (63 FR 50461), and a final rule was published on November 9, 1998 (63 FR 60209).

While containers marked ''CA Utility'' fruit are subject to relaxed quality requirements, all other grade and marking requirements of the orders must be met.

At the committee meetings on December 2, 1998, at least one handler complained that fruit with non-scoreable blemishes was unsightly in the type of U.S. No. 1 box he offered to the marketplace and to his customers. His preference was to place such fruit in boxes marked ''CA Utility.'' The current limitation of not more than 30 percent U.S. No. 1 fruit in containers marked ''CA Utility'' caused the Inspection Service to determine that his ''CA Utility'' containers were ''out of grade,'' because they contained more U.S. No. 1 fruit than permitted. For that reason, the handler was forced to remove the fruit from the ''CA Utility'' boxes, and either repack his U.S. No. 1 to include this fruit or discard the fruit. Therefore, the limitation of not more than 30 percent U.S. No. 1 in ''CA Utility'' quality containers became a hindrance and was eliminated by the September 22, 1998, rulemaking action.

A niche market exists for ''CA Utility'' quality fruit and an opportunity should be made available to market somewhat better quality. It was estimated by a

handler of ''CA Utility'' quality fruit that the relaxation from not more than 30 percent U.S. No. 1 in the containers to not more than 40 percent provided that the additional 10 percent U.S. No. 1 in the containers has non-scoreable blemishes will increase shipments of ''CA Utility'' quality nectarines and peaches by approximately one-half of one percent. A majority of the members of both committees supported the change, because the change had been in effect at the end of the 1998 season. However, one committee member commented that there was little merit to adding one-half of one percent to the marketplace. Another indicated that perhaps a review of the entire grade structure would address the problem and did not advocate relaxing the percentage of U.S. No. 1 in ''CA Utility'' containers. A majority of the committee members present voted to relax the percentage from 30 percent U.S. No. 1 in containers marked ''CA Utility'' to 40 percent U.S. No. 1 provided that the additional 10 percent of the U.S. No. 1 had non-scoreable blemishes. The vote by the NAC was 4 in favor and 3 opposed, and the vote by the PCC was 7 in favor and 4 opposed. The nectarine order requires six concurring votes on regulatory recommendations, and the peach order requires nine concurring votes on regulatory recommendations. As a result, these two votes did not meet the minimums prescribed to constitute official recommendations to the Secretary.

Because prior seasons' experience shows that the authority to ship ''CA Utility'' quality fruit provided additional marketing opportunities for handlers, the Department proposed continuing to allow such shipments during 1999 and invited written comments from all interested persons in the proposed rule. One comment supporting the proposal was received.

Historically, shipments of ''CA Utility'' nectarines represented 1.1 percent of all nectarine shipments, or approximately 210,000 boxes in 1996. In 1997, shipments of ''CA Utility'' nectarines represented 1.1 percent of all nectarine shipments, or approximately 230,000 boxes. In 1998, shipments of ''CA Utility'' nectarines represented 4.5 percent of all nectarine shipments, or approximately 760,000 boxes. Shipments of ''CA Utility'' peaches represented 1.9 percent of all peach shipments, or 366,000 boxes in 1996. In 1997, shipments of ''CA Utility'' peaches represented 1.0 percent of all peach shipments, or approximately 217,000 boxes. In 1998, shipments of ''CA Utility'' peaches represented 3.3 percent of all peach shipments, or approximately 602,000 boxes.

For these reasons, the Department has determined that continuing to allow shipments of ''CA Utility'' quality nectarines and peaches for the 1999 season with an increase in the percentage of U.S. No. 1 fruit permitted in each container effectuates the declared policy of the Act. Therefore, paragraphs (d) of §§ 916.350 and 917.442, and paragraphs (a)(1) of §§ 916.356 and 917.459 are revised to permit shipments of nectarines and peaches meeting revised ''CA Utility'' quality requirements during the 1999 season.

Maturity Requirements

Both orders provide (in §§ 916.52 and 917.41) authority to establish maturity requirements for nectarines and peaches, respectively. The minimum maturity level currently specified for nectarines and peaches is ''mature'' as defined in the standards. Additionally, both orders' rules and regulations provide for a higher, ''well matured'' classification. For most varieties, ''well-matured'' fruit determinations are made using maturity guides (e.g., color chips). These maturity guides are reviewed each year by the Shipping Point Inspection Service (SPI) to determine whether they need to be changed based on the most-recent information available on the individual characteristics of each variety. These maturity guides established under the handling regulations of the nectarine and peach marketing orders have been codified in the Code of Federal Regulations as Table 1 to paragraphs (a)(1)(iv) of §§ 916.356 and 917.459, for nectarines and peaches, respectively. Currently, §§ 916.356 and 917.459 include both ''Table 1'' and ''Table 1 to Paragraphs (a)(1)(iv)''. ''Table 1'' is a duplicate of ''Table 1 to Paragraphs (a)(1)(iv)'' and was proposed to be removed from both sections. In this final rule, ''Table 1'' is, therefore, removed. The latter table is referred to as ''Table 1'' in the remainder of this document.

The maturity requirements in the 1999 handling regulation are the same as those which appeared in the 1998 handling regulation with a few exceptions. Those exceptions are explained below in this final rule.

Nectarines: Requirements for ''well-matured'' nectarines are specified in § 916.356 of the order's rules and regulations. Table 1 to paragraph (a)(1)(iv) of § 916.356 is revised to add a maturity guide for one nectarine variety. Specifically, SPI recommended adding a maturity guide for the Diamond Jewel nectarine variety at a maturity guide of L.

The NAC recommended these maturity requirements based on SPI's continuing review of individual maturity characteristics and identification of the appropriate maturity guide corresponding to the ''well-matured'' level of maturity for nectarine varieties in production.

Peaches: Section 917.459 of the order's rules and regulations specifies maturity requirements for fresh peaches being inspected and certified as being ''well matured.'' Table 1 to paragraph (a)(1)(iv) of § 917.459 is revised to add maturity guides for three peach varieties. Specifically, SPI recommended adding the maturity guides for the Sweet Scarlet peach variety to be regulated at the J maturity guide, and the Lady Sue and Prima Gattie 8 peach varieties to be regulated at the L maturity guide.

The PCC unanimously recommended these maturity requirements based on SPI's continuing review of individual maturity characteristics and identification of the appropriate maturity guide corresponding to the ''well-matured'' level of maturity for peach varieties in production.

Size Requirements

Both orders provide authority to establish size requirements in §§ 916.52 and 917.41. Size regulations provide greater consumer satisfaction and encourage more repeat purchases by helping to ensure consumers are provided high-quality fruit. Size regulations, therefore, increase returns to producers and handlers by encouraging producers to leave fruit on the tree longer. The increased growing time not only improves the size of the fruit, but also increases its maturity. Increased size also results in an increased number of packed boxes of nectarines or peaches per acre. Varieties recommended for specific size regulation have been reviewed and such recommendations are based on the specific characteristics of each variety. The NAC and PCC conduct studies each season on the range of sizes reached by the regulated varieties and determine whether revisions in the size requirements are appropriate.

Nectarines: Section 916.356 of the order's rules and regulations specifies minimum size requirements for fresh nectarines in paragraphs (a)(2) through (a)(9). Section 916.356 is revised to establish variety-specific size requirements for five nectarine varieties that were produced in commercially-significant quantities of more than

10,000 packages for the first time during the 1998 season.

For example, one of the varieties recommended for addition to the variety-specific size requirements is the Sunny Red variety. Studies of the size ranges attained by the Sunny Red variety revealed that all of the nectarines of that variety met sizes in the ranges of sizes 30, 40, 50, 60, 70, and 80. While the size distribution peaked on the size 40, 100 percent of the fruit sized at a minimum of size 80.

A review of other varieties with the same harvesting period indicated that Sunny Red was also comparable to those varieties in its size ranges. Further, handlers known to ship the variety have provided additional supporting information for making this determination. Thus, the recommendation to place the Sunny Red nectarine variety in the variety-specific size regulation at a size 80 is appropriate. Historical variety data such as this provides the NAC with the information necessary to recommend the appropriate sizes at which to regulate various nectarine varieties. In addition, producers of the varieties affected are invited to comment when such size recommendations are deliberated.

Thus, to implement such size requirements, the introductory text of paragraph (a)(6) in § 916.356 is revised to include the Grand Pearl, Ruby Pearl, Sunny Red, Terra White, and 491–48 nectarine varieties.

This final rule also revises the introductory text of paragraph (a)(4) of § 916.356 to remove two nectarine varieties; and the introductory text of paragraph (a)(6) of § 916.356 is also revised to remove ten nectarine varieties from the variety-specific size requirements specified in this section because less than 5,000 packages of each of these varieties were produced during the 1998 season. The introductory text of paragraph (a)(4) is revised to remove the June Brite and Pacific Star nectarine varieties; and the introductory text of paragraph (a)(6) is revised to remove the Flamekist, Flavor Grand, Late How Red, Moon Grand, Prima Diamond XVIII, Red Free, Red Fred, Ruby Grand, September Grand, and Summer Star nectarine varieties. Nectarine varieties removed from the nectarine variety-specific list become subject to the non-listed variety size requirements specified in paragraphs (a)(7), (a)(8), and (a)(9) of § 916.356.

The NAC recommended these changes in the minimum size requirements based on a continuing review of the sizing and maturity relationships for these nectarine varieties, and consumer acceptance levels for various sizes of fruit. This final rule establishes minimum size requirements for fresh nectarines consistent with expected crop and market conditions.

Peaches: Section 917.459 of the order's rules and regulations specifies minimum size requirements for fresh peaches in paragraphs (a)(2) through (a)(5), and paragraphs (b) and (c). Section 917.459 is revised to establish variety-specific size requirements for six peach varieties that were produced in commercially-significant quantities of more than 10,000 packages for the first time during the 1998 season.

For example, one of the peach varieties recommended for addition to the variety-specific size requirements is the Morning Lord variety. Studies of the size ranges attained by the Morning Lord variety revealed that while it peaked on size 40, 100 percent of the fruit sized at a minimum of size 72.

A review of other varieties harvested during the same period indicated that Morning Lord was also comparable to those varieties in its size ranges. Further, discussions with handlers known to ship the variety provided additional information for making such determinations. Thus, the recommendation to place the Morning Lord peach variety in the variety-specific size regulation at a size 72 is appropriate. Historical variety data such as this provides the PCC with the information necessary to recommend the appropriate sizes at which to regulate various peach varieties. In addition, producers of the affected varieties are invited to comment when such size recommendations are deliberated.

Accordingly, the introductory text of paragraph (a)(3) of § 917.459 of the order's rules and regulations is revised to include the Super Rich peach variety; the introductory text of paragraph (a)(4) is revised to include the Snow Dance peach variety; and the introductory text of paragraph (a)(6) is also revised to include the Morning Lord, Prima Peach 23, Yukon King, and 1–01–505 peach varieties.

Additionally, paragraphs (a)(5) and (a)(6) of § 917.459 are revised to remove 12 peach varieties from the variety-specific size requirements specified in that section, because less than 5,000 packages of these varieties were produced during the 1998 season. Specifically, the introductory text of paragraph (a)(5) is revised to remove the Honey Red and Sweet Gem peach varieties; and the introductory text of paragraph (a)(6) of § 917.459 is revised to remove the August Sun, Autumn Crest, Autumn Gem, Belmont, Berenda Sun, Blum's Beauty, Fire Red, July Sun, Mary Anne, and Red Sun peach varieties.

Peach varieties removed from the variety-specific list become subject to the non-listed variety size requirements specified in paragraphs (b) and (c) of § 917.459.

The PCC recommended these changes in the minimum size requirements based on a continuing review of the sizing and maturity relationships for these peach varieties, and the consumer acceptance levels for various fruit sizes. This final rule establishes minimum size requirements for fresh peaches consistent with expected crop and market conditions.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

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 325 California nectarine and peach handlers subject to regulation under the orders covering nectarines and peaches grown in California, and about 1,800 producers of these fruits in California. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration [13 CFR 121.601] as those whose annual receipts are less than $5,000,000. Small agricultural producers are defined as those having annual receipts of less than $500,000.

The NAC and PCC staff have estimated that there are less than 20 handlers in the industry who could be defined as other than small entities. If the average handler price received were $9.00 per box or box equivalent of nectarines or peaches, a handler would have to ship at least 555,000 boxes to have annual receipts of $5,000,000. Small handlers represent approximately 94 percent of the handlers within the industry. In addition, the NAC and PCC staff estimates that there are approximately 400 producers who could be defined as other than small entities. If the average producer price received were $6.00 per box or box equivalent for

nectarines and $5.65 per box or box equivalent for peaches, producers would have to produce approximately 84,000 boxes or box equivalents of nectarines and approximately 89,000 boxes or box equivalents of peaches to have annual receipts of $500,000. Therefore, small producer entities represent approximately 78 percent of the producers within the industry. For those reasons, a majority of the handlers and producers may be classified as small entities.

Under §§ 916.52 and 917.41 of the orders, grade, size, maturity, and container and pack requirements are established for fresh shipments of California nectarines and peaches, respectively. Such requirements are in effect on a continuing basis. This final rule revises the current requirements to: (1) Require that maturity and ''CA Utility'' quality marking of containers be a minimum of ⅜ inch in height; (2) require that experimental containers and 22G containers be marked with both the size and the count of fruit contained in the package; (3) require that master containers of consumer packages be marked with the minimum size fruit contained in the consumer packages; (4) add weight counts for early-season, mid-season, and late-season varieties; (5) continue shipments of ''CA Utility'' quality nectarines and peaches, and increase the percentage of U.S. No. 1 nectarines and peaches permitted in containers of ''CA Utility quality'' fruit from the current 30 percent to 40 percent, provided that the additional 10 percent of U.S. No. 1 fruit in the container has non-scoreable blemishes; and (6) revise varietal maturity and size requirements to reflect recent changes in growing and marketing conditions.

In §§ 916.350 and 917.442 of the rules regulating nectarines and peaches, several container marking requirements are specified. This final rule specifies that the maturity markings U.S. Mature (US MAT) and California Well-Matured (CA WELL MAT), and the markings for ''CA Utility'' quality must be in lettering a minimum of ⅜ inch in height. This standardizes the container markings for nectarines and peaches and is consistent with those used on plum containers. Plum shipments are regulated under a State marketing order. Because nectarine and peach handlers frequently handle plums, as well, this would ensure consistency in marking requirements for all three commodities, which is expected to benefit handlers.

Sections 916.350 and 917.442 also specify markings that are required on master containers of consumer packages, consumer packages within master containers, and consumer packages not within master containers. Master containers must be marked with the net weight of each consumer package, the number of individual consumer packages, the size description of the fruit in each consumer package, and the name and address of the shipper. Consumer packages within the master containers must be marked with the name and address of the shipper and the net weight of the container. When the consumer package is not in a master container, the consumer package must also be marked with the number of fruit in the package, the name of the variety, if known, and the maturity of the fruit in the package.

In commonly-used containers, such as the No. 22D and the No. 32 boxes, the configurations of fruit result in the fruit size and count being the same. The No. 22G standard lug box, however, has a different shape which results in a different tray-pack configuration than those of the No. 22D and the No. 32 boxes. The shape of the No. 22G container also imposes tighter limits on the number of fruit that can be tray packed in it than the No. 22D and No. 32 boxes; this causes fruit size and count to be different. Thus, handlers using that container should be required to indicate the number of fruit in the container as well as the fruit size, because the fruit size and count are not always the same in this container. Differences in count and size also occur with some experimental packages, as well, because there are no standardized pack configurations for experimental packages, and, thus, no standardized basis for comparison against the No. 22D and No. 32 boxes. Experimental containers, like the No. 22G standard lug box, will be required to be marked with both the size and the count of fruit contained in the package. This requirement is expected to benefit consumers by ensuring that accurate size and count information is marked on packages of nectarines and peaches. This requirement is not expected to have a negative impact on handlers, since the No. 22G standard lug box represents less than one percent of packages of nectarines and peaches shipped annually, and no experimental containers have been used for several years. This requirement may also eliminate any confusion over fruit count and size experienced by buyers of nectarines and peaches.

Consumer packages permit handlers to pack and ship nectarines and peaches in other types of containers demanded by their customers. In this case, packaging of fruit in small boxes or bags is tailored to the requirements of the buyer, whether by weight, size, or other factor. Because the buyer's requirements may be specific for the buyer's market, the handler may pack consumer packages of several different sizes of fruit within the master container. For example, a master container may contain five consumer packages. One consumer package may contain size 64 nectarines, while two other consumer packages may contain size 70 nectarines. The remaining two boxes may contain size 60 nectarines. The sizes of the fruit within the individual consumer packages are the same, but the master container may contain packages of different fruit sizes.

Several alternatives to this action were discussed at the Grade and Size Subcommittee meeting held on November 5, 1998. Some subcommittee members suggested that the master containers be marked with the largest size fruit in the consumer packages, such as ''Minimum size 80 and smaller.'' Others felt that option might be misleading to retailers and consumers, and the alternative was rejected. Some subcommittee members suggested that the mixing of sizes in a master container should be discouraged. Others responded that such flexibility in packaging was responsive to the needs of some handlers, and those needs should be accommodated when possible, within the requirements of the orders.

This change requiring master containers containing consumer packages of different fruit sizes to be marked identifying the existence of size variations, permits handlers to continue to meet the demands of their buyers, but ensure that the fruit size within individual consumer packages contained within master containers is accurately and clearly marked on the master containers.

In §§ 916.350 and 917.442 of the orders' rules and regulations concerning nectarines and peaches, respectively, the use of pack regulations is specified. The NAC and PCC routinely conduct tests to determine the optimum weight-count standards for such early-season, mid-season, and late-season nectarines and peaches, respectively. Handlers of nectarines and peaches have informed the NAC and PCC that some larger sizes of nectarines and peaches are increasingly being converted from tray-packs to volume-filled packs. Since volume-filled containers are less costly to pack and market demands change, handlers have opted to pack a greater proportion of large, high-quality fruit in volume-filled containers. In 1998, lower market prices caused handlers to convert size 44 nectarines and peaches from tray-packed containers to volume-

filled containers. However, there are currently no weight counts published for size 44 nectarines and peaches.

In 1994 and 1995, when the NAC and PCC last conducted tests to determine the number of fruit of various sizes that weighed 16 pounds, which is the standard inspection sample weight, size 44 nectarines and peaches were not usually packed in volume-filled containers. More commonly, size 44 nectarines and peaches were packed in tray-packs. As a result, weight count requirements were not needed by the industries for this size. As the practice of converting tray-packed containers of size 44 nectarines and peaches to volume-filled containers has increased, the NAC and PCC have referred to previously-conducted size studies and determined that weight-count standards for size 44 nectarines and peaches need to be included in the weight-count standards with those for the other sizes of fruit. The NAC and PCC have also determined that the correct weight-count standard for size 44 is a maximum of 33 pieces of early-season nectarines and all peaches, and a maximum of 30 pieces of mid-season and late-season nectarines in a 16-pound sample. The addition of weight-count standards for size 44 nectarines and peaches converted from tray-packed containers to volume-filled containers is expected to benefit producers and handlers by giving handlers increased flexibility in meeting marketing demands.

Therefore, the NAC and PCC unanimously recommended modifications to the weight-count standards for nectarines and peaches by the addition of weight-count standards for size 44 nectarines and peaches. Such a change modifies Tables 1 and 2 of paragraphs (a)(4)(iv) in §§ 916.350 and 917.442 of the regulations by adding size 44 and the applicable weight-count standard of a maximum of 33 pieces of early-season nectarines and all peaches, and a maximum of 30 pieces of mid-season and late-season nectarines in a 16-pound sample. The change will permit handlers to more easily convert tray-packed nectarines and peaches to volume-filled containers. This change is expected to decrease the handling costs associated with such conversions, and permit handlers to better meet marketing demands.

In §§ 916.356 and 917.459 of the orders' rules and regulations concerning nectarines and peaches, respectively, shipments of ''CA Utility'' quality nectarines and peaches have been permitted since the 1996 season, contingent upon the fruit in such containers meeting certain relaxed quality requirements. ''CA Utility'' quality is a lower-quality fruit than U.S. No. 1. Previously, the requirement for containers of ''CA Utility'' nectarines and peaches provided that not more than 30 percent of the fruit in any container meet or exceed the requirements of U.S. No. 1. This relaxation increases that limitation from 30 percent to not more than 40 percent provided that the additional 10 percent of the U.S. No. 1 has non-scoreable blemishes. This relaxation is anticipated to benefit growers, handlers, and consumers.

Containers marked ''CA Utility'' must be inspected by the Inspection Service and certified as meeting the ''CA Utility'' quality requirements. Part of the inspection process is to evaluate the fruit in accordance with the requirements of Standards and the orders. In conducting inspections, inspectors are required to evaluate various blemishes. Some blemishes are serious or severe enough to be ''scored'' against the fruit as defects which are damaging to the grade of the fruit, while some other blemishes are either not serious or severe enough to affect the grade of the fruit. In the first instance, the blemishes are termed ''scoreable'' defects; and, in the second instance, the blemishes are termed ''non-scoreable'' defects. Some committee members supported increased percentages of U.S. No. 1 fruit in boxes of ''CA Utility'' quality nectarines and peaches provided that such non-scoreable blemishes are present on the additional 10 percent of the fruit grading U.S. No. 1 in boxes marked ''CA Utility.''

A niche market exists for ''CA Utility'' quality fruit and an opportunity should be made available to market somewhat better quality. It was estimated that the relaxation from not more than 30 percent U.S. No. 1 to not more than 40 percent provided that the additional 10 percent U.S. No. 1 fruit in the containers has non-scoreable blemishes would increase shipments of ''CA Utility'' quality nectarines and peaches by one-half of one percent.

According to comments made at the committee meetings on December 2, 1998, a majority of the members of the committees supported allowing the use of ''CA Utility'' fruit during the 1999 season, and the change in quality requirements, because those requirements solved handler problems at the end of the 1998 season. One committee member, however, commented that there was little merit to adding one-half of one percent to the marketplace. Another indicated that perhaps a review of the entire grade structure would address the problem and did not advocate relaxing the percentage of U.S. No. 1 in ''CA Utility'' containers.

The committees considered several alternatives at the meetings. One alternative was to leave the percentage of U.S. No. 1 nectarines and peaches permitted in ''CA Utility'' unchanged. It was determined that alternative would not address the problem facing the industry. The NAC and PCC also considered reviewing the entire grade structure, but that alternative was considered a long-term project which could not be accomplished in enough time to address the problem for the 1999 season. Another alternative discussed was to limit the change to handlers operating under the Partners-In-Quality (PIQ) Program and allow those handlers to pack not more than 40 percent of U.S. No. 1 provided that the additional 10 percent of U.S. No. 1 has non-scoreable blemishes. Under the PIQ Program, handlers self-inspect their nectarines and peaches against the minimum grade, size, quality, maturity, pack, and container marking requirements of the orders and the Standards, according to the procedures and requirements specified in their Inspection-Service-approved operation manuals.

Under the requirements of the program, PIQ handlers are required to meet the minimum grade, maturity, size, quality, container, and pack requirements on every container. A handler under conventional in-line inspection is required to meet the minimum grade, maturity, size, quality, container, and pack requirements on an entire lot of fruit, which is not as restrictive as meeting the requirements on every container. For example, under in-line inspection, a handler may present a lot of 1,000 containers of nectarines or peaches for inspection. The tolerance for misshapen nectarines is currently limited to 25 percent per lot. The variance in misshapen nectarines in containers within the lot could change from one container to another, provided that the average within the entire lot does not exceed 25 percent. For PIQ handlers, there is no opportunity to ''average within'' grade on lots of fruit; each container is graded on its own as though it were a lot. PIQ handlers, thus, face more rigorous requirements than handlers under conventional in-line inspection. This alternative would address PIQ handler concerns by providing them greater flexibility with regard to both U.S. No. 1 and ''CA Utility'' quality containers. However, this alternative was determined to favor a small percentage of the industry and was rejected.

Some members of the committees supported continued shipments of ''CA

Utility'' quality nectarines and peaches during the 1999 season with a relaxation of the percentage from 30 percent U.S. No. 1 in containers marked ''CA Utility'' to 40 percent U.S. No. 1, provided that the additional 10 percent of the U.S. No. 1 has non-scoreable blemishes. They believed that the additional marketing opportunities provided by allowing handlers to ship such fruit were important to the industries.

Sections 916.356 and 917.442 of the orders' rules and regulations for nectarines and peaches, respectively, currently establish minimum maturity levels. This rule makes adjustments to the ''well matured'' requirements for several varieties of nectarines and peaches. ''Well matured'' determinations are made using maturity guides (e.g., color chips). Such maturity guides provide producers, handlers, and SPI with objective tools for measuring the maturity of different varieties of nectarines and peaches. Such maturity guides are reviewed annually by SPI to determine the appropriate guide for each nectarine and peach variety. These adjustments reflect changes in the maturity patterns of nectarines and peaches as experienced over the previous seasons' inspections. Adjustments in the guides ensure that fruit has met an acceptable level of maturity, thus ensuring consumer satisfaction while benefitting nectarine and peach producers and handlers.

Currently, in § 916.356 of the order's rules and regulations for nectarines and § 917.459 of the order's rules and regulations for peaches, minimum sizes for various varieties of nectarines and peaches are established. This final rule makes adjustments to the minimum sizes authorized for various varieties of nectarines and peaches for the 1999 season. Size regulations provide greater consumer satisfaction and encourage more repeat purchases. Repeat purchases and consumer satisfaction benefit producers and handlers alike. Such adjustments to minimum sizes of nectarines and peaches are recommended each year by the NAC and PCC based upon historical data, and producer and handler information regarding sizes which the different varieties attain.

This action will not impose any additional reporting or recordkeeping requirements on either small or large nectarine and peach handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

As noted in the initial regulatory flexibility analysis, the Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule. However, as previously stated, nectarines and peaches under the orders have to meet certain requirements set forth in the standards issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 through 1627). Standards issued under the Agricultural Marketing Act of 1946 are otherwise voluntary. Further, the public comments received concerning this proposal did not specifically address the initial regulatory flexibility analysis. One comment was received from a person who identified herself as a small grower. This comment is discussed later in this document.

In addition, the committees' meetings were widely publicized throughout the nectarine and peach industries and all interested parties were invited to attend the meetings and participate in committee deliberations on all issues. These meetings are held annually in late Fall. Like all committee meetings, the December 2, 1998, meetings were public meetings and all entities, both large and small, were able to express views on these issues. The committees are composed of producers.

A proposed rule concerning this action was published in the **Federal Register** on March 8, 1999 (64 FR 11346). Copies of the rule were mailed to all committee members and handlers by the NAC and PCC staff on March 9, 1999. Finally, the rule was made available through the Internet by the Office of the Federal Register. A 20-day comment period ending March 29, 1999, was provided to allow interested persons to respond to the proposal. Three comments were received during the comment period in response to the proposal.

One commenter supported the continued shipment of ''CA Utility'' quality fruit, and the proposed changes to the ''CA Utility'' quality requirements indicating that the changes will enable shippers to better meet buyer needs; i.e., provide blemished fruit to buyers requesting such fruit, and unblemished fruit to buyers requesting unblemished fruit.

Another commenter requested a clarifying change in the size markings for master containers when multiple sizes of consumer packages are contained within the master containers. The commenter contended that the proposed rule failed to make a distinction between container marking requirements for master containers of consumer packages with only one size of fruit and container marking requirements for master containers of consumer packages with different sizes of fruit. The commenter noted that it was the intent of the committees that container marking requirements for master containers of consumer packages with only one size fruit remain unchanged. The committees' intent was to specify that when master containers contain consumer packages with different sizes of fruit, the container should be marked with the smallest size and the words ''and larger.'' Changes to clarify the intent of the committees have been made as requested by the commenter in §§ 916.350 (a)(8)(i) and 917.442 (a)(9)(i).

The third commenter, who identified herself as a small grower, indicated that fruit grown in Northern California was harvested and marketed at least 10 days later than fruit from the other parts of the State, and that the orders do not take this into account.

The regulations do reflect seasonal variations and growing conditions, as appropriate. For example, under the orders, both variety-specific and non-listed variety size requirements are established. The requirements are carefully developed based on the sizing and maturity characteristics of the various nectarine and peach varieties, and the consumer acceptance levels of the various sizes of fruit. The major commercial varieties grown in California are subject to the variety-specific requirements and account for about 99 percent of all fruit shipments. The other minor varieties are subject to the non-listed variety requirements and account for about one percent of all shipments. The variety-specific size requirements apply to all shipments of the named varieties, but for non-listed varieties, the size requirements are applied based upon when the fruit is shipped. A smaller minimum size is applied for non-listed varieties shipped earlier in the season, and a larger one for later shipments, because varieties that are harvested later in the season typically are larger when mature, and consumers generally prefer larger fruit. In addition, growing time not only improves the size of the fruit, but also increases its maturity. Maturity requirements also reflect growing conditions. Accordingly, no changes to the regulations are made based on the comment.

Changes to the regulations also have been made to reflect the effective date and change the reference to ''Prima Peach VIII'' to ''Prima Peach 13.''

After consideration of all relevant matters presented, including the comments received, the information and recommendations submitted by the committees, and other available information, it is hereby found that this

rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date on this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because: (1) Handlers have made adjustments in their handling practices to comply with the changes recommended for the 1999 shipping season; (2) the 1999 shipping season for California nectarines and peaches is expected to begin in mid-April, and these changes should apply to as many of those shipments as possible.

List of Subjects

7 CFR Part 916

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

7 CFR Part 917

Marketing agreements, Peaches, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 916 and 917 are amended as follows:

1. The authority citation for 7 CFR parts 916 and 917 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 916—NECTARINES GROWN IN CALIFORNIA

2. Section 916.350 is amended by:

(A) Revising paragraph (a)(3);

(B) Revising paragraphs (a)(4)(i) and (a)(4)(ii);

(C) Revising TABLES 1 and 2 in paragraph (a)(4)(iv);

(D) Revising paragraph (a)(8)(i); and

(E) Revising paragraph (d) to read as follows:

§ 916.350 California nectarine container and pack regulation.

(a) * * *

(3) Each package or container of nectarines, except for consumer packages in master containers and consumer packages mailed directly to consumers, shall bear on one outside end in plain sight and in plain letters at least 3/8 inch in height the words ''U.S. Mature'' or ''US MAT'' if such nectarines are mature as defined in the United States Standards for Grades of Nectarines (7 CFR 51.3145 through 51.3160); or may instead bear on one outside end in plain sight and in plain letters at least 3/8 inch in height the words ''California Well Matured'' or ''CA WELL MAT'' if such nectarines are well matured as defined in § 916.356.

(4) * * *

(i) The size of nectarines packed in molded forms (tray-packs) in the No. 22D and the No. 32 standard boxes, or consumer packages; No. 22G standard lug boxes, experimental containers; or the No. 12B fruit (peach) boxes or flats; and the size of wrapped nectarines packed in rows in No. 12B fruit (peach) boxes shall be indicated in accordance with the number of nectarines in each container, such as ''80 count,'' ''88 count,'' etc.

(ii) The size of nectarines in molded forms (tray-packs) in experimental containers, and in No. 22G standard lug boxes, shall be indicated according to the number of such nectarines when packed in molded forms in the No. 22D standard lug box or the No. 32 standard box, in accordance with the requirements of standard pack, such as ''80 size,'' ''88 size,'' etc., along with count requirements in paragraph (a)(4)(i) of this section.

* * * * *

(iv) * * *

TABLE 1.—WEIGHT-COUNT STANDARDS FOR ALL VARIETIES OF NECTARINES PACKED IN LOOSE-FILLED OR TIGHT-FILLED CONTAINERS

Column A—Tray pack size designation	Column B—Maximum number of nectarines in 16-pound sample applicable to varieties specified in paragraphs (a)(2)(ii), (a)(3)(ii), (a)(4)(ii), (a)(5)(ii), (a)(7)(ii), and (a)(8)(ii) of § 916.356
108	100
96	90
88	83
84	78
80	75
72	68
70	61
64	56
60	50
56	47
54	40
50	39
48	35
44	33
42	31
40	30
36	25
34	23
32	22
30	19

TABLE 2.—WEIGHT-COUNT STANDARDS FOR ALL VARIETIES OF NECTARINES PACKED IN LOOSE-FILLED OR TIGHT-FILLED CONTAINERS

Column A—Tray pack size designation	Column B—Maximum number of nectarines in 16-pound sample applicable to varieties specified in paragraphs (a)(6)(ii) and (a)(9)(ii) of § 916.356
108	92
96	87
88	78
84	75
80	67
72	61
70	56
64	51
60	46
56	43
54	39
50	37
48	33
44	30
42	28
40	26
36	25
34	23
32	22
30	19

* * * * *

(8) * * *

(i) The number of individual consumer packages, the net weight of each consumer package, and the size description of the contents: *Provided*, That when consumer packages of different sizes of nectarines are contained in a master container, the size description of the contents shall indicate the minimum size contained therein, using the terms ''Minimum size 60 and larger,'' or ''Minimum size 70 and larger,'' etc., as applicable.

* * * * *

(d) During the period April 20, 1999 through October 31, 1999, each container or package when packed with nectarines meeting the ''CA Utility'' quality requirements, shall bear the words ''CA Utility,'' along with all other required container markings, in letters at least 3/8 inch in height on the visible display panel. Consumer bags or packages must also be clearly marked on the consumer bags or packages as ''CA Utility,'' along with other required markings, in letters at least 3/8 inch in height.

3. Section 916.356 is amended by:

(A) Revising the introductory text of paragraph (a)(1);

(B) Removing TABLE 1 in paragraph (a)(1)(i);

(C) Revising TABLE 1 TO PARAGRAPH (a)(1)(iv); and

(D) Revising the introductory text of paragraphs (a)(4) and (a)(6) to read as follows:

§ 916.356 California nectarine grade and size regulation.

(a) * * *

(1) Any lot or package or container of any variety of nectarines unless such nectarines meet the requirements of U.S. No. 1 grade: *Provided*, That nectarines 2 inches in diameter or smaller, shall not have fairly light-colored, fairly smooth scars which exceed an aggregate area of a circle ⅜ inch in diameter, and nectarines larger than 2 inches in diameter shall not have fairly light-colored, fairly smooth scars which exceed an aggregate area of a circle ½ inch in diameter: *Provided further*, That an additional tolerance of 25 percent shall be permitted for fruit that is not well formed but not badly misshapen: *Provided further*, That all varieties of nectarines which fail to meet the U.S. No. 1 grade only on account of lack of blush or red color due to varietal characteristics shall be considered as meeting the requirements of this subpart: *Provided further*, That during the period April 20, 1999 through October 31, 1999, any handler may handle nectarines if such nectarines meet ''CA Utility'' quality requirements. The term ''CA Utility'' means that not more than 40 percent of the nectarines in any container meet or exceed the requirements of the U.S. No. 1 grade, except that when more than 30 percent of the nectarines in any container meet or exceed the requirements of U.S. No. 1 grade, the additional 10 percent shall have non-scoreable blemishes as determined when applying the U.S. Standards for Grades of Nectarines; and that such nectarines are mature and are:

* * * * *

TABLE 1 TO PARAGRAPH (A)(1)(IV)

Column A variety	Column B maturity guide
Alshir Red	J
Apache	G
April Glo	H
Arm King	B
August Glo	L
August Lion	J
August Red	J
Aurelio Grand	F
Autumn Delight	L
Autumn Grand	L
Big Jim	J
Bob Grand	L
Diamond Jewel	L
Diamond Ray	L
Earliglo	I

TABLE 1 TO PARAGRAPH (A)(1)(IV)—Continued

Column A variety	Column B maturity guide
Early Diamond	J
Early May	F
Early May Grand	H
Early Red Jim	J
Early Sungrand	H
Fairlane	L
Fantasia	J
Firebrite	H
Flamekist	L
Flaming Red	K
Flavor Grand	G
Flavortop	J
Flavortop I	K
Grand Diamond	L
Independence	H
July Red	L
June Brite	I
Juneglo	H
Kay Diamond	L
King Jim	L
Kism Grand	J
Late Le Grand	L
Late Red Jim	J
Maybelle	F
May Diamond	I
May Fire	H
Mayglo	H
May Grand	H
May Jim	I
May Kist	H
May Lion	J
Mid Glo	L
Mike Grand	H
Moon Grand	L
Niagara Grand	H
Pacific Star	G
P-R Red	L
Red Diamond	L
Red Delight	I
Red Fred	J
Red Free	L
Red Glen	J
Red Glo	I
Red Grand	H
Red Jim	L
Red May	J
Rio Red	L
Rose Diamond	J
Royal Delight	F
Royal Giant	I
Royal Glo	I
Ruby Diamond	L
Ruby Grand	J
Ruby Sun	J
Scarlet Red	K
September Grand	L
September Red	L
Sheri Red	J
Son Red	L
Sparkling June	L
Sparkling May	J
Sparkling Red	L
Spring Bright	L
Spring Diamond	L
Spring Red	H
Star Brite	J
Summer Beaut	H
Summer Blush	J
Summer Bright	J

TABLE 1 TO PARAGRAPH (A)(1)(IV)—Continued

Column A variety	Column B maturity guide
Summer Diamond	L
Summer Fire	L
Summer Grand	L
Summer Lion	L
Summer Red	L
Summer Star	G
Sunburst	J
Sun Diamond	I
Sunfre	F
Sun Grand	G
Super Star	G
Tasty Gold	H
Tom Grand	L
Zee Glo	J
Zee Grand	I

NOTE: Consult with the Federal or Federal-State Inspection Service Supervisor for the maturity guides applicable to the varieties not listed in Table 1 of this paragraph.

* * * * *

(4) Any package or container of Arctic Glo, Arctic Rose, Arctic Star, Diamond Bright, Early May, Juneglo, June Pearl, Kay Glo, May Diamond, May Grand, May Lion, Prima Diamond IV, Prima Diamond VI, Prima Diamond 13, Prince Jim, Red Delight, Red Glo, Rose Diamond, Royal Glo, Sparkling May, Star Brite, or Zee Grand variety nectarines unless:

* * * * *

(6) Any package or container of Alshir Red, Alta Red, Arctic Pride, Arctic Queen, Arctic Snow (White Jewel), Arctic Sweet, August Glo, August Lion, August Red, August Snow, Autumn Delight, Big Jim, Brite Pearl, Crystal Rose, Diamond Ray, Early Red Jim, Fairlane, Fantasia, Firebrite, Fire Pearl, Flame Glo, Flaming Red, Flavortop, Flavortop I, Grand Diamond, Grand Pearl, Honey Kist, How Red, July Red, Kay Diamond, King Jim, Late Red Jim, Mid Glo, Niagara Grand, P–R Red, Prima Diamond IX, Prima Diamond XVI, Prima Diamond XIX, Prima Diamond XXIV, Red Diamond, Red Glen, Red Jim, Rio Red, Royal Giant, Ruby Diamond, Ruby Pearl, Scarlet Red, September Red, Sparkling June, Sparkling Red, Spring Bright, Spring Diamond, Spring Red, Summer Beaut, Summer Blush, Summer Bright, Summer Diamond, Summer Fire, Summer Grand, Summer Lion, Summer Red, Sunburst, Sun Diamond, Sunny Red, Super Star, Terra White, Zee Glo, or 491–48 variety nectarines unless:

* * * * *

PART 917—FRESH PEARS AND PEACHES GROWN IN CALIFORNIA

4. Section 917.442 is amended by:

(A) Revising paragraph (a)(3);

(B) Revising paragraph (a)(4)(ii);

(C) Revising TABLES 1 and 2 in paragraph (a)(4)(iv);

(D) Revising paragraph (a)(9)(i); and

(E) Revising paragraph (d) to read as follows:

§ 917.442 California peach container and pack regulation.

(a) * * *

(3) Each package or container of peaches, except for consumer packages in master containers and consumer packages mailed directly to consumers, shall bear on one outside end in plain sight and in plain letters at least ⅜ inch in height the words ''U.S. Mature'' or ''US MAT'' if such peaches are mature as defined in the United States Standards for Grades of Peaches (7 CFR 51.1210 through 51.1223); or may instead bear on one outside end in plain sight and in plain letters at least 3/8 inch in height the words ''California Well Matured'' or ''CA WELL MAT'' if such peaches are well matured as defined in § 917.459 of this part.

(4) * * *

(ii) The size of peaches in molded forms in experimental containers and in the No. 22G standard lug box shall be indicated according to the number of such peaches when packed in molded forms in the No. 22D standard lug box or the No. 32 standard box in accordance with the requirements of standard pack, such as ''80 size,'' ''88 size,'' etc., along with the count requirements in paragraph (a)(4)(i) of this section.

* * * * *

(iv) * * *

TABLE 1.—WEIGHT-COUNT STANDARDS FOR ALL VARIETIES OF PEACHES PACKED IN LOOSE-FILLED OR TIGHT-FILLED CONTAINERS

Column A—Tray pack size designation	Column B—Maximum number of peaches in 16-pound sample applicable to varieties specified in paragraphs (a)(2)(ii), (a)(3)(ii), (a)(4)(ii), (a)(5)(ii), and (b)(3) of § 917.459
96	96
88	92
84	83
80	76
72	69
70	65
64	57
60	51
56	47
54	44
50	39
48	35

TABLE 1.—WEIGHT-COUNT STANDARDS FOR ALL VARIETIES OF PEACHES PACKED IN LOOSE-FILLED OR TIGHT-FILLED CONTAINERS—Continued

Column A—Tray pack size designation	Column B—Maximum number of peaches in 16-pound sample applicable to varieties specified in paragraphs (a)(2)(ii), (a)(3)(ii), (a)(4)(ii), (a)(5)(ii), and (b)(3) of § 917.459
44	33
42	31
40	30
36	27
34	25
32	23
30	21

TABLE 2.—WEIGHT-COUNT STANDARDS FOR ALL VARIETIES OF PEACHES PACKED IN LOOSE-FILLED OR TIGHT-FILLED CONTAINERS

Column A—Tray pack size designation	Column B—[1]
96	96
88	83
84	79
80	73
72	64
70	59
64	53
60	46
56	45
54	43
50	39
48	35
44	33
42	31
40	30
36	27
34	25
32	23
30	21

[1] Maximum number of peaches in 16-pound sample applicable to varieties specified in paragraphs (a)(6)(ii) and (c)(3) of § 917.459

* * * * *

(9) * * *

(i) The number of individual consumer packages, the net weight of each consumer package, and the size description of the contents: *Provided,* That when consumer packages of different sizes of peaches are contained in a master container, the size description of the contents shall indicate the minimum size contained therein, using the terms ''Minimum size 60 and larger,'' or ''Minimum size 70 and larger,'' etc., as applicable.

* * * * *

(d) During the period April 20, 1999 through November 23, 1999, each container or package when packed with peaches meeting ''CA Utility'' quality requirements, shall bear the words ''CA Utility,'' along with all other required container markings, in letters at least ⅜ inch in height on the visible display panel. Consumer bags or packages must also be clearly marked on the consumer bags or packages as ''CA Utility,'' along with other required markings, in letters at least ⅜ inch in height.

5. Section 917.459 is amended by:

(A) Revising the introductory text of paragraph (a)(1);

(B) Removing TABLE 1 in paragraph (a)(1)(i);

(C) Revising TABLE 1 TO PARAGRAPH (a)(1)(iv); and

(D) Revising the introductory text of paragraphs (a)(3), (a)(5), and (a)(6) and adding paragraph (a)(4) introductory text to read as follows:

§ 917.459 California peach grade and size regulation.

(a) * * *

(1) Any lot or package or container of any variety of peaches unless such peaches meet the requirements of U.S. No. 1 grade: *Provided,* That an additional 25 percent tolerance shall be permitted for fruit with open sutures which are damaged, but not seriously damaged: *Provided further,* That during the period April 20, 1999 through November 23, 1999, any handler may handle peaches if such peaches meet ''CA Utility'' quality requirements. The term ''CA Utility'' means that not more than 40 percent of the peaches in any container meet or exceed the requirements of the U.S. No. 1 grade, except that when more than 30 percent of the peaches in any container meet or exceed the requirements of U.S. No. 1 grade, the additional 10 percent shall have non-scoreable blemishes as determined when applying the U.S. Standards for Grades of Peaches; and that such peaches are mature and are:

* * * * *

(iv) * * *

TABLE 1 TO PARAGRAPH (A)(1)(IV)

Column A—variety	Column B—maturity guide
Ambercrest	G
Angelus	I
August Lady	L
August Sun	I
Autumn Crest	I
Autumn Gem	I
Autumn Lady	H
Autumn Rose	I
Belmont (Fairmont)	I

TABLE 1 TO PARAGRAPH (A)(1)(IV)—Continued

Column A—variety	Column B—maturity guide
Berenda Sun	I
Blum's Beauty	G
Cal Red	I
Carnival	I
Cassie	H
Coronet	E
Crimson Lady	J
Crown Princess	J
David Sun	I
Diamond Princess	J
Early Delight	H
Early Elegant Lady	L
Early May Crest	H
Early O'Henry	I
Early Top	G
Elberta	B
Elegant Lady	L
Fairtime	G
Fancy Lady	J
Fay Elberta	C
Fayette	I
Fire Red	I
First Lady	D
Flamecrest	I
Flavorcrest	G
Flavor Queen	H
Flavor Red	G
Franciscan	G
Goldcrest	H
Golden Crest	H
Golden Lady	F
Honey Red	G
John Henry	J
July Elberta	C
June Lady	G
June Pride	J
June Sun	H
Kern Sun	H
Kingscrest	H
Kings Lady	I
Kings Red	I
Lacey	I
Lady Sue	L
Mary Anne	G
May Crest	G
May Sun	I
Merrill Gem	G
Merrill Gemfree	G
O'Henry	I
Pacifica	G
Parade	I
Pat's Pride	D
Prima Gattie 8	L
Prima Lady	J
Queencrest	G
Ray Crest	G
Red Cal	I
Red Dancer (Red Boy)	I
Redhaven	G
Red Lady	G
Redtop	G
Regina	G
Rich Lady	J
Rich May	H
Rich Mike	H
Rio Oso Gem	I
Royal Lady	J
Royal May	G
Ruby May	H

TABLE 1 TO PARAGRAPH (A)(1)(IV)—Continued

Column A—variety	Column B—maturity guide
Ryan Sun	I
Scarlet Lady	F
September Sun	I
Sierra Crest	H
Sierra Lady	I
Sparkle	I
Springcrest	G
Spring Lady	H
Springold	D
Sugar Lady	J
Summer Lady	L
Summerset	I
Suncrest	G
Sweet Scarlet	J
Topcrest	H
Tra Zee	J
Willie Red	G
Zee Lady	L

Note: Consult with the Federal or Federal-State Inspection Service Supervisor for the maturity guides applicable to the varieties not listed in table 1 of this paragraph.

* * * * *

(3) Any package or container of Goldcrest, Super Rich, or Topcrest variety peaches unless:

* * * * *

(4) Any package or container of Snow Dance variety peaches unless:

* * * * *

(5) Any package or container of Babcock, Crimson Lady, Crown Princess, David Sun, Early May Crest, Flavorcrest, Golden Crest, June Lady, Kern Sun, May Crest, May Sun, Merrill Gemfree, Pink Rose, Prima Peach IV, Queencrest, Ray Crest, Redtop, Rich May, Rich Mike, Snow Brite, Springcrest, Spring Lady, Spring Snow, Sugar May, Sweet Scarlet, or White Dream variety of peaches unless:

* * * * *

(6) Any package or container of Amber Crest, August Lady, Autumn Flame, Autumn Lady, Autumn Rose, Cal Red, Carnival, Cassie, Champagne, Diamond Princess, Early Elegant Lady, Early O'Henry, Elegant Lady, Fairtime, Fancy Lady, Fay Elberta, Flamecrest, John Henry, June Pride, Kaweah, Kings Lady, Lacey, Late Ito Red, Madonna Sun, Morning Lord, O'Henry, Prima Gattie, Prima Peach 13, Prima Peach 20, Prima Peach 23, Red Dancer, Rich Lady, Royal Lady, Ryan Sun, Saturn (Donut), Scarlet Snow, September Snow, September Sun, Sierra Lady, Snow Diamond, Snow Giant, Snow King, Sparkle, Sprague Last Chance, Sugar Giant, Sugar Lady, Summer Lady, Summer Sweet, Summer Zee, Suncrest, Tra Zee, Vista, White Lady, Yukon King, Zee Lady, or 1–01–505 variety of peaches unless:

* * * * *

Dated: April 14, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–9678 Filed 4–14–99; 1:28 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1079

Milk in the Iowa Marketing Area

CFR Correction

In Title 7 of the Code of Federal Regulations, parts 1000 to 1199, revised as of Jan. 1, 1998, page 611, § 1079.7(b) is corrected by revising ''30 percent'' to read ''20 percent''.

[FR Doc. 99–55514 Filed 4–16–99; 8:45 am]

BILLING CODE 1505–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. 99–04]

RIN 1557–AB14

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Regulations H and Y; Docket No. R–0996]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

RIN 3064–AC14

Risk-Based Capital Standards: Market Risk

AGENCIES: Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; and Federal Deposit Insurance Corporation.

ACTION: Joint final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies) are adopting as a final rule an interim rule amending their respective risk-based capital standards for market risk applicable to

certain banks and bank holding companies with significant trading activities. The interim rule implemented a revision to the Basle Accord adopted in 1997. Prior to the revision, an institution that measured specific risk with an internal model that adequately measured such risk was subject to a minimum capital charge. An institution's capital charge for specific risk had to be at least as large as 50 percent of a specific risk charge calculated using the standardized approach. The rule will finalize the interim rule, which reduced regulatory burden for institutions with qualifying internal models because they no longer must calculate a standardized specific risk capital charge.

EFFECTIVE DATE: This final rule is effective on July 1, 1999.

FOR FURTHER INFORMATION CONTACT: *OCC:* Margot Schwadron, Risk Expert (202/874–5070), Amrit Sekhon, Risk Specialist (202/874–5070), Capital Policy Division; or Ronald Shimabukuro, Senior Attorney (202/874–5090), Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, S.W., Washington, DC 20219.

Board: James Houpt, Deputy Associate Director (202/452–3358), Barbara Bouchard, Manager (202/452–3072), T. Kirk Odegard, Financial Analyst (202/530–6225), Division of Banking Supervision; or Stephanie Martin, Senior Counsel (202/452–3198), Mark E. Van Der Weide, Attorney (202/452–2263), Legal Division. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Diane Jenkins (202/452–3544), Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551.

FDIC: William A. Stark, Assistant Director (202/898–6972), Miguel Browne, Manager (202/898–6789), John J. Feid, Chief (202/898–8649), Division of Supervision; for legal issues, Jamey Basham, Counsel (202/898–7265), Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Background

The agencies' risk-based capital standards are based upon principles contained in the July 1988 agreement entitled ''International Convergence of Capital Measurement and Capital Standards'' (Accord). The Accord, developed by the Basle Committee on Banking Supervision (Basle Committee) and endorsed by the central bank governors of the Group of Ten (G–10) countries (G–10 Governors), provides a framework for assessing an institution's capital adequacy by weighting its assets and off-balance sheet exposures on the basis of general counterparty credit risk.[1] In December 1995, the G–10 Governors endorsed the Basle Committee's amendment to the Accord (effective by year-end 1997) to incorporate a measure for exposure to market risk (market risk amendment) into the capital adequacy assessment. On September 6, 1996, the agencies issued revisions to their risk-based capital standards implementing the Basle Committee's market risk amendment (market risk rules) (61 FR 47358). In September 1997, the Basle Committee modified the market risk amendment and on December 30, 1997, the agencies issued an interim rule implementing that modification (62 FR 68064).

Under the agencies' market risk rules, banks and bank holding companies (institutions) with significant trading activities must measure and hold capital for exposure to both general market risk and specific risk. *General market risk* refers to changes in the market value of on-and off-balance-sheet items resulting from broad market movements in interest rates, equity prices, foreign exchange rates, and commodity prices. An institution must measure its general market risk using its internal risk measurement model, subject to certain qualitative and quantitative criteria, to calculate a capital charge based on the model-determined value-at-risk (VAR).[2]

Specific risk refers to changes in the market value of individual debt and equity positions in a trading portfolio due to factors other than broad market movements. Under the agencies' market risk rules, an institution may measure its specific risk by using either the standardized approach[3] or its own internal model, if the institution can demonstrate to the appropriate banking agency that the model adequately measures specific risk. When the agencies initially adopted the market risk rules, an institution using its internal model to measure specific risk was required to hold capital for specific risk equal to at least 50 percent of the specific risk charge calculated using the standardized approach (the minimum specific risk charge). If the portion of the institution's VAR attributable to specific risk did not equal the minimum specific risk charge, the institution's VAR-based capital charge was subject to an add-on charge of the difference between the two. In practice, this required an institution employing an internal model to measure specific risk to also calculate the specific risk charge using the standardized approach.

When the agencies included the minimum specific risk charge as part of the market risk rules, they recognized that dual calculations of specific risk—that is, calculating specific risk with internal models as well as using the standardized approach to establish the minimum specific risk charge—would be burdensome. However, the agencies' decision to include the minimum specific risk charge was consistent with the Basle Committee's belief that a minimum charge was necessary to ensure that modeling techniques for specific risk adequately measured that risk. After the Basle Committee adopted the market risk amendment, many institutions improved their modeling techniques and, in particular, their modeling of specific risk. Recognizing these improvements, in September 1997 the Basle Committee decided to eliminate the use of the minimum specific risk charge and the burden of a separate calculation. The Basle Committee revised the market risk amendment so that an institution using a valid internal model to measure specific risk could use the VAR measures generated by the model without comparing the model-generated results to the minimum specific risk charge calculated under the standardized approach.[4] The revisions specified that the specific risk elements of internal models would be assessed consistently with the assessment of the general market risk elements of such models through backtesting and review by the relevant agency.

To implement this revision to the market risk amendment, the agencies

[1] The G–10 countries are Belgium, Canada, France, Germany, Italy, Japan, Netherlands, Sweden, Switzerland, the United Kingdom, and the United States. The Basle Committee is comprised of representatives of the central banks and supervisory authorities from the G–10 countries and Luxembourg.

[2] The VAR-based capital charge is the higher of (i) the previous day's VAR measure, or (ii) the average of the daily VAR measures for each of the preceding 60 business days multiplied by a factor of three. Beginning no later than one year after becoming subject to the market risk rules, an institution is required to backtest its internal model. An institution may be required to apply a higher multiplication factor, up to a factor of four, based on backtesting results.

[3] The standardized approach applies a risk-weighting process developed by the Basle Committee to individual financial instruments. Under this approach, debt and equity instruments in the institution's trading account are assessed a category-based fixed capital charge.

[4] The revisions are described in the Committee's document entitled ''Explanatory Note: Modification of the Basle Capital Accord of July 1988, as Amended January 1996'' and is available through the Board's and the OCC's Freedom of Information Office and the FDIC's Public Information Center.

issued an interim rule with a request for comment (62 FR 68064) in December 1997. As discussed in the interim rule, the agencies found sufficient good cause to make the amendments effective immediately, without prior opportunity for public comment or a delayed effective date. The interim rule applied only to the calculation of specific risk under the market risk rules, and all other aspects of the market risk rules remained unchanged.

II. Comments Received

The agencies received a total of three public comments on the interim rule (two from industry trade associations and one from a financial institution). All three commenters supported the interim rule, primarily because of its reduction of regulatory burden. None of the commenters suggested any changes to the interim rule.

III. Final Rule

The agencies are adopting in final form, without substantive change, the interim rule eliminating the requirement that when an institution measures specific risk using its internal model, the total capital charge for specific risk must equal at least 50 percent of the standard specific risk capital charge. This final rule does not apply to institutions that use the standardized method to calculate specific risk.

For those institutions using internal models to calculate their specific risk charges, the agencies will continue to review the internal models to determine whether or not they adequately measure specific risk. In reviewing these internal models, the agencies will evaluate the extent to which the internal models adequately capture idiosyncratic price variations of debt and equity instruments due to circumstances unique to the issuer, as well as the instruments' exposure to event and default risk. In order to capture specific risk adequately, an institution's internal model must explain the historical price variation in the portfolio. Internal models must also be sensitive to changes in portfolio concentrations (both magnitude and changes in composition), and require additional capital for greater concentrations. The agencies likewise will take into account whether an internal model is sensitive to an adverse environment. If an institution's internal model adequately captures specific risk, the institution may base its specific risk capital charge on the internal model's estimates.

If an institution's internal model does not adequately measure specific risk, the institution must continue to calculate the standard specific risk capital charge and add that charge to its VAR-based capital charge for general market risk to produce its total regulatory capital requirement for market risk. If an institution's internal model adequately addresses idiosyncratic risk but does not adequately capture all other aspects of specific risk, including event and default risk, the institution may use its internal model to calculate specific risk, but it will have a ''specific risk add-on.'' The specific risk add-on may be calculated using either one of two approaches, both of which have the effect of subjecting the modeled specific risk to a minimum multiplier of four.[5]

Under the first approach, an institution whose internal model is able to separate its VAR measure into general market risk and specific risk components must use as its measure for market risk the total VAR-based capital charge (typically three times the internal model's general and specific risk measure), plus an add-on consisting of the isolated specific risk component of the VAR measure. Under the second approach, an institution whose internal model does not separately identify the specific and general market risk components of its VAR measure must use as its measure for market risk the total VAR-based capital charge, plus an add-on consisting of the VAR measures of the subportfolios of debt and equity positions that contain specific risk. An institution using the second approach may not alter its subportfolio structures for the sole purpose of decreasing its VAR measure.

An institution using its internal model for specific risk capital purposes must backtest the model to assess whether the model accurately explains observed price variations arising from both general market risk and specific risk. To assist in internal model validation, the institution should perform backtests on its traded debt and equity subportfolios that contain specific risk. The institution should conduct these backtests with the understanding that subportfolio backtesting is a productive mechanism for assuring that instruments with higher levels of specific risk, especially event or default risk, are modeled accurately. If subportfolio backtests indicate an unacceptable internal model, especially for unexplained price variation that may be arising from specific risk, the institution should take immediate action to improve the internal model and ensure that it has sufficient capital to protect against associated risks.

The agencies expect institutions to continue improving their internal models, particularly with respect to measuring event and default risk for traded debt and equity instruments. The agencies intend to work with the industry in these efforts and believe that, over time, market standards for measuring event and default risk will emerge. As individual modeling methods are improved and become accepted within the industry as effective measurement techniques for event and default risk, the agencies will consider permitting such models to be applied without any add-on charge. The Basle Committee may issue general guidance for capturing event and default risk for trading book instruments. Until such time as standards for measuring event and default risk are established within the industry, the agencies intend to cooperate with each other and communicate extensively with other international supervisors to ensure that the market risk capital requirements are implemented in an appropriate and consistent manner.

IV. Changes From the Interim Rule

In adopting the final rule, the Board and FDIC made certain wording changes. These changes do not alter the effect or substance of the final rule, and only conform or clarify the language.

First, both the Board and the FDIC changed their language which states that a bank that incorporates specific risk into its internal model but fails to demonstrate that its internal model adequately measures all aspects of specific risk may use its internal model to calculate specific risk subject to a ''specific risk add-on.'' This change was made to make the agencies' language more consistent. Second, the Board and the FDIC conformed their definition of ''specific risk'' to be more consistent with the OCC's language. Third, the FDIC has changed paragraph (c) of Appendix C of Part 325 Section 5 to clarify that, when an institution models the specific risk of either its covered debt positions or its covered equity positions, but not both components, the capital treatment specified for modeled specific risk will apply as to the modeled component, and the standardized approach will apply as to the non-modeled component. The add-on charge will consist of the specific risk charge determined under the

[5] The multiplier applicable to the modeled general market risk elements will not be affected. Thus, the multiplier for general market risk will continue to be three, unless a higher multiplier is indicated by virtue of the institution's backtesting results for general market risk, or unless no multiplier is applied because the previous day's VAR for general market risk is higher than the 60-day average times the multiplier.

standardized approach for the non-modeled component, plus the specific risk add-on, if any, for the modeled component (because the model does not adequately measure event and default risk). The FDIC's change in this regard is technical. The language of the interim rule also effectuated this approach, but the changes make it clearer to the reader.

V. Regulatory Flexibility Act Analysis

Pursuant to section 603 of the Regulatory Flexibility Act (RFA), RFA does not apply if any agency is not required to issue a Notice of Proposed Rulemaking. Nevertheless, the agencies have considered the impact of this final rule and determined that it will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The final rule will rarely, if ever, apply to small entities. Moreover, this final rule reduces regulatory burden, by eliminating the need for institutions that model specific risk to make dual calculations under the standardized approach in order to determine their minimum specific risk charge.

VI. Paperwork Reduction Act

The agencies have determined that the final rule does not involve a collection of information pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

VII. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Title II, Pub. L. 1004–121) provides generally for agencies to report rules to Congress for review. The reporting requirement is triggered when a federal agency issues a final rule. Accordingly, the agencies filed the appropriate reports with Congress as required by SBREFA.

The Office of Management and Budget has determined that these final rules do not constitute ''major rules'' as defined by SBREFA.

VIII. OCC Executive Order 12866 Determination

The OCC has determined that the final rule does not constitute a ''significant regulatory action'' for the purpose of Executive Order 12866.

IX. OCC Unfunded Mandates Reform Act of 1995 Determination

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. As discussed in the preamble, this final rule eliminates the minimum specific risk charge for institutions that use internal models that adequately capture specific risk. The effect of this final rule is to reduce regulatory burden by no longer requiring institutions to make dual calculations under both the institution's internal model and the standardized specific risk model. The OCC therefore has determined that the effect of the final rule on national banks as a whole will not result in expenditures by State, local, or tribal governments or by the private sector of $100 million or more. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

X. FDIC Assessment of Impact of Federal Regulation on Families

The FDIC has determined that this final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act of 1999 (Pub. Law 105–277).

List of Subjects

12 CFR Part 3

Administrative practice and procedure, Capital, National banks, Reporting and recordkeeping requirements, Risk.

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Crime, Currency, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Securities.

12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

12 CFR Part 325

Bank deposit insurance, Banks, banking, Capital adequacy, Reporting and recordkeeping requirements, Savings associations, State non-member banks.

Authority and Issuance

Office of the Comptroller of the Currency

12 CFR Chapter I

For the reasons set out in the joint preamble, the OCC's portion of the joint interim rule with request for comment amending 12 CFR part 3 titled Risk-Based Capital Standards: Market Risk, published on December 30, 1997, at 62 FR 68067 is adopted as final without change.

Dated: March 24, 1999.

John D. Hawke, Jr.,

Comptroller of the Currency.

Federal Reserve System

12 CFR Chapter II

For the reasons set forth in the joint preamble, the Board's portion of the joint interim rule with request for comment, amending 12 CFR parts 208 and 225, published on December 30, 1997, at 62 FR 68067 is adopted as final with the following changes:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for part 208 continues to read as follows:

Authority: 12 U.S.C. 24, 36, 92a, 93a, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1816, 1818, 1823(j), 1828(o), 1831o, 1831p–1, 1831r–1, 1835a, 1882, 2901–2907, 3105, 3310, 3331–3351, and 3906–3909; 15 U.S.C. 78b, 78l(b), 781(g), 781(i), 78o–4(c)(5), 78q, 78q–1, and 78w; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

2. In appendix E to part 208, the appendix heading is revised to read as follows:

Appendix E to Part 208—Capital Adequacy Guidelines for State Member Banks; Market Risk Measure

3. In appendix E to part 208, section 2., paragraph (b)(2) is revised to read as follows:

* * * * *

Section 2. Definitions

* * * * *

(b) * * *

(2) *Specific risk* means changes in the market value of specific positions due to factors other than broad market movements and includes event and default risk as well as idiosyncratic variations.

* * * * *

4. In Appendix E to part 208, section 5., paragraphs (a), (b), and the

introductory text of paragraph (c) are revised to read as follows:

* * * * *

Section 5. Specific Risk

(a) *Modeled specific risk.* A bank may use its internal model to measure specific risk. If the bank has demonstrated to the Federal Reserve that its internal model measures the specific risk, including event and default risk as well as idiosyncratic variation, of covered debt and equity positions and includes the specific risk measures in the VAR-based capital charge in section 3(a)(2)(i) of this appendix, then the bank has no specific risk add-on for purposes of section 3(a)(2)(ii) of this appendix. The model should explain the historical price variation in the trading portfolio and capture concentration, both magnitude and changes in composition. The model should also be robust to an adverse environment and have been validated through backtesting which assesses whether specific risk is being accurately captured.

(b) *Partially modeled specific risk.* (1) A bank that incorporates specific risk in its internal model but fails to demonstrate to the Federal Reserve that its internal model adequately measures all aspects of specific risk for covered debt and equity positions, including event and default risk, as provided by section 5(a), of this appendix must calculate its specific risk add-on in accordance with one of the following methods:

(i) If the model is susceptible to valid separation of the VAR measure into a specific risk portion and a general market risk portion, then the specific risk add-on is equal to the previous day's specific risk portion.

(ii) If the model does not separate the VAR measure into a specific risk portion and a general market risk portion, then the specific risk add-on is the sum of the previous day's VAR measures for subportfolios of covered debt and equity positions that contain specific risk.

(2) If a bank models the specific risk of covered debt positions but not covered equity positions (or vice versa), then the bank may determine its specific risk charge for the included positions under section 5(a) or 5(b)(1) of this appendix, as appropriate. The specific risk charge for the positions not included equals the standard specific risk capital charge under paragraph (c) of this section.

(c) *Specific risk not modeled.* If a bank does not model specific risk in accordance with section 5(a) or 5(b) of this appendix, then the bank's specific risk capital charge shall equal the standard specific risk capital charge, calculated as follows:

* * * * *

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3310, 3331–3351, 3907, and 3909.

2. In appendix E to part 225, the appendix heading is revised to read as follows:

Appendix E to Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Market Risk Measure

3. In appendix E to part 225, section 2., paragraph (b)(2) is revised to read as follows:

* * * * *

Section 2. Definitions

* * * * *

(b) * * *

(2) *Specific risk* means changes in the market value of specific positions due to factors other than broad market movements and includes event and default risk as well as idiosyncratic variations.

* * * * *

4. In appendix E to part 225, section 5., paragraphs (a), (b), and the introductory text of paragraph (c) are revised to read as follows:

* * * * *

Section 5. Specific Risk

(a) *Modeled specific risk.* A bank holding company may use its internal model to measure specific risk. If the organization has demonstrated to the Federal Reserve that its internal model measures the specific risk, including event and default risk as well as idiosyncratic variation, of covered debt and equity positions and includes the specific risk measures in the VAR-based capital charge in section 3(a)(2)(i) of this appendix, then the organization has no specific risk add-on for purposes of section 3(a)(2)(ii) of this appendix. The model should explain the historical price variation in the trading portfolio and capture concentration, both magnitude and changes in composition. The model should also be robust to an adverse environment and have been validated through backtesting which assesses whether specific risk is being accurately captured.

(b) *Partially modeled specific risk.* (1) A bank holding company that incorporates specific risk in its internal model but fails to demonstrate to the Federal Reserve that its internal model adequately measures all aspects of specific risk for covered debt and equity positions, including event and default risk, as provided by section 5(a) of this appendix, must calculate its specific risk add-on in accordance with one of the following methods:

(i) If the model is susceptible to valid separation of the VAR measure into a specific risk portion and a general market risk portion, then the specific risk add-on is equal to the previous day's specific risk portion.

(ii) If the model does not separate the VAR measure into a specific risk portion and a general market risk portion, then the specific risk add-on is the sum of the previous day's VAR measures for subportfolios of covered debt and equity positions that contain specific risk.

(2) If a bank holding company models the specific risk of covered debt positions but not covered equity positions (or vice versa), then the bank holding company may determine its specific risk charge for the included positions under section 5(a) or 5(b)(1) of this appendix, as appropriate. The specific risk charge for the positions not included equals the standard specific risk capital charge under paragraph (c) of this section.

(c) *Specific risk not modeled.* If a bank holding company does not model specific risk in accordance with section 5(a) or 5(b) of this appendix, then the organization's specific risk capital charge shall equal the standard specific risk capital charge, calculated as follows:

* * * * *

By order of the Board of Governors of the Federal Reserve System, April 7, 1999.

Jennifer J. Johnson,

Secretary of the Board.

Federal Deposit Insurance Corporation

12 CFR Chapter III

For the reasons set forth in the joint preamble, FDIC's portion of the joint interim final rule with request for comment amending 12 CFR part 325, published December 30, 1997, at 62 FR 66068 is adopted as final with the following changes:

PART 325—CAPITAL MAINTENANCE

1. The authority citation for part 325 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 1835, 3907, 3909, 4808; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2355, 2386 (12 U.S.C. 1828 note).

2. In appendix C to part 325, the appendix heading is revised to read as follows:

Appendix C to Part 325—Risk-Based Capital for State Non-Member Banks: Market Risk

3. In appendix C to part 325, section 2., paragraph (b)(2) is revised to read as follows:

* * * * *

Section 2. Definitions

* * * * *

(b) * * *

(2) *Specific risk* means changes in the market value of specific positions due to factors other than broad market movements and includes event and default risk as well as idiosyncratic variations.

* * * * *

4. In appendix C to part 325, section 5., paragraphs (a), (b), and (c) introductory text are revised to read as follows:

* * * * *

Section 5. Specific Risk

(a) *Modeled specific risk.* A bank may use its internal model to measure specific risk. If the bank has demonstrated to the FDIC that its internal model measures the specific risk, including event and default risk as well as idiosyncratic variation, of covered debt and equity positions and includes the specific risk measure in the VAR-based capital charge in section 3(a)(2)(i) of this appendix, then the bank has no specific risk add-on for purposes of section 3(a)(2)(ii) of this appendix. The model should explain the historical price variation in the trading portfolio and capture concentration, both magnitude and changes in composition. The model should also be robust to an adverse environment and have been validated through backtesting which assesses whether specific risk is being accurately captured.

(b) *Add-on charge for modeled specific risk.* A bank that incorporates specific risk in its internal model but fails to demonstrate to the FDIC that its internal model adequately measures all aspects of specific risk for covered debt and equity positions, including event and default risk, as provided by section 5(a) of this appendix, must calculate the bank's specific risk add-on for purposes of section 3(a)(2)(ii) of this appendix as follows:

(1) If the model is capable of valid separation of the VAR measure into a specific risk portion and a general market risk portion, then the specific risk add-on is equal to the previous day's specific risk portion.

(2) If the model does not separate the VAR measure into a specific risk portion and a general market risk portion, then the specific risk add-on is the sum of the previous day's VAR measures for subportfolios of covered debt and equity positions.

(c) *Add-on charge if specific risk is not modeled.* If a bank does not model specific risk in accordance with paragraph (a) or (b) of this section, the bank's specific risk add-on charge for purposes of section 3(a)(2)(ii) of this appendix equals the sum of the components for covered debt and equity positions. If a bank models, in accordance with paragraph (a) or (b) of this section, the specific risk of covered debt positions but not covered equity positions (or vice versa), then the bank's specific risk add-on charge for the positions not modeled is the component for covered debt or equity positions as appropriate:

* * * * *

Dated at Washington, D.C. this 23rd day of March, 1999.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 99–9185 Filed 4–16–99; 8:45 am]

BILLING CODES 4810–33–P; 6210–01–P; 6714–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR part 187

[CGD 98–050]

RIN 2115–AD35

Vessel Identification System; Effective Date Change

AGENCY: Coast Guard, DOT.

ACTION: Interim final rule; change in effective date.

SUMMARY: The Coast Guard extends the delay of the effective date of part of its regulations establishing the vessel identification system. Subpart D of these regulations addressing guidelines for State vessel titling systems was to become effective on April 24, 1999. The Coast Guard needs more time to study the costs and benefits of other possible regulatory alternatives. By extending the delay in the effective date until October 24, 1999, the Coast Guard will have more time to develop a supplemental notice of proposed rulemaking. The remainder of the regulation is unaffected by this notice.

EFFECTIVE DATES: Effective April 23, 1999, the effective date of subpart D of 33 CFR part 187 is delayed until October 24, 1999. All other provisions of the interim final rule that became effective on April 24, 1996, will remain in effect.

FOR FURTHER INFORMATION CONTACT: For questions regarding this change of effective date, call Ensign Brian Ly, Office of Information Resources, telephone 202–267–6989. This telephone is equipped to record messages on a 24-hour basis.

SUPPLEMENTARY INFORMATION:

Background

46 U.S.C. 12501 requires the Secretary of Transportation to establish a Vessel Identification System (VIS). On April 25, 1995 the Coast Guard published an interim final rule (60 FR 20310) which prescribed the manner and form for participating states to make information available for VIS, to establish vessel titling system guidelines, and to establish procedures for certifying compliance. The interim final rule was to go into full effect on April 24, 1996.

Reason for Delay

One subpart of the interim final rule prescribes the procedures for obtaining certification of compliance with guidelines for State vessel titling systems (33 CFR part 187, subpart D). The effective date of that subpart was delayed through April 23, 1999 (63 FR 19657) to allow the States and the Coast Guard more time to review the complexities of State titling systems. Since publishing the interim final rule, the Coast Guard has determined that changes resulting from the comments received over the course of this project would be so substantive that moving to a final rule without allowing another opportunity to comment would not be in the best interest of the public. The Coast Guard is currently drafting a supplemental notice of proposed rulemaking (SNPRM) which will allow for further comment. However, this process will take time to adequately research the costs and benefits of the proposed regulatory changes. Therefore, the Coast Guard is delaying the effective date of subpart D until October 24, 1999, before which time we expect to publish a SNPRM. All other provisions of the interim final rule will remain in effect.

Accordingly, under the authority of 46 U.S.C. 2103 and 49 CFR 1.46, the effective date of 33 CFR part 187, subpart D, is changed to October 24, 1999.

Dated: April 13, 1999.

R. C. North,

Assistant Commander for Marine Safety and Environmental Protection.

[FR Doc. 99–9759 Filed 4–16–99; 8:45 am]

BILLING CODE 4910–15–M

POSTAL SERVICE

39 CFR Part 20

Priority Mail Global Guaranteed

AGENCY: Postal Service.

ACTION: Interim rule with request for comment.

SUMMARY: The Postal Service, through an alliance with DHL Worldwide Express Inc., is offering an enhanced expedited service from selected locations in the United States to selected countries in Europe. This service will offer day-certain delivery with a postage refund guarantee for allowable contents.

DATES: Effective Date: April 19, 1999. Comments on the interim rule must be received on or before May 19, 1999.

ADDRESSES: Written comments should be mailed or delivered to the Manager, Pricing, Costing, and Classification, International Business Unit, U.S. Postal Service, 475 L'Enfant Plaza, SW, Room 370–IBU, Washington, DC 20260–6500. Copies of all written comments will be available for public inspection between 9 a.m. and 4 p.m., Monday through

Friday, in the International Business Unit, 10th Floor, 901 D Street SW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Walter J. Grandjean, (202) 314–7256.

SUPPLEMENTARY INFORMATION: The U.S. Postal Service, through an alliance with DHL Worldwide Express Inc., is offering an enhanced expedited service, Priority Mail Global Guaranteed, from selected locations in the United States to selected countries in Europe. This service offers day-certain delivery with a postage refund guarantee and document reconstruction coverage of $100 for allowable contents.

Service will be available from selected metropolitan areas to selected European countries. Mail is accepted at U.S. post offices and transported by the Postal Service to a designated location where it is tendered to its agent DHL Worldwide Express Inc., for transportation overseas, clearance through foreign commercial customs, and final delivery to the addressee.

Priority Mail Global Guaranteed offers day-certain delivery with 2-business day delivery to most destinations and day-specific guarantee to all other locations. If items are not delivered or available for delivery by the specified time, the mailer is entitled to a refund of the postage paid. Document reconstruction up to $100 is provided in the case of loss of, or damage to the shipment. Track and trace service and confirmation of delivery are available for shipments by calling 1–800–222–1811 or on the Internet at http://www.usps.com.

Although the Postal Service is exempted by 39 U.S.C. 410(a) from the advance notice requirements of the Administrative Procedure Act regarding proposed rulemaking (5 U.S.C. 553), the Postal Service invites public comment at the above address.

The Postal Service is amending Chapter 2, Conditions for Mailing, International Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

The Postal Service adopts the following amendments to the International Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

List of Subjects in 39 CFR Part 20

Foreign relations, International postal service.

PART 20—[AMENDED]

1. The authority citation for 39 CFR Part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

2. Chapter 2 of the International Mail Manual is amended as follows:

2 CONDITIONS FOR MAILING

* * * * *

210 Express Mail International Service

* * * * *

215 Priority Mail Global Guaranteed

215.1 Description

215.11 General

Priority Mail Global Guaranteed is an international expedited delivery service provided through an alliance with DHL Worldwide Express Inc. It provides reliable, high-speed, guaranteed, and time-definite service from certain post offices in the United States to a select number of international destinations. Service is guaranteed to meet service standards or postage is refunded. If a mail shipment is lost or damaged, liability is limited to a maximum of $100 for document reconstruction.

215.12 Allowable Contents

Only non-dutiable, general correspondence is mailable in Priority Mail Global Guaranteed service. Items may not contain merchandise, any dutiable item, or any item prohibited by the destination country. Refer to the Priority Mail Global Guaranteed Service Guide for the definition of allowable contents for each destination country. Mailers are responsible for determining if their item is allowable despite any statement made in the Priority Mail Global Guaranteed Service Guide or by a postal employee.

215.2 Service Standards

215.21 Two-Day Service

Service is available from the offices listed in 215.31 to destinations listed as 2-day destinations in the Priority Mail Global Guaranteed Service Guide within 2 business days (Monday through Friday, except holidays in the United States and the destination) as follows:

Acceptance day	Delivery day
Monday	Wednesday.
Tuesday	Thursday.
Wednesday	Friday.
Thursday	Monday.
Friday	Monday.
Saturday	Tuesday.
Sunday	Wednesday.

215.22 Other Locations

There is a day-specific guarantee to all other locations within the destination countries and territories. See the Priority Mail Global Guaranteed Service Guide for location specific guarantee.

215.3 Service Areas

215.31 Origins

Priority Mail Global Guaranteed service is available only from the following post offices:

Metropolitan Area	ZIP Code
Arizona, Phoenix	850, 852–853.
California, San Francisco/San Jose	937, 939–941, 943–944, 949–951, 954.
District of Columbia, Washington	200–203, 206–209, 220–223.
Florida, Miami	330–333.
Illinois, Chicago	600–608, 610–611.
Massachusetts, Boston	014–031, 033, 038–039, 041, 068–069.
Minnesota, Minneapolis	550–551, 553–554, 558–559.
New York, New York	100–101, 103–119, 124–127.
North Carolina, Charlotte	280–282, 286, 297.
Pennsylvania, Philadelphia	190–191, 194, 197–199.
Texas, Houston	770, 772–773, 776–778.

215.32 Destinations

Service is available only to the following countries and territories:

Austria
Belgium
Denmark
Finland
France
Germany
Gibraltar
Great Britain and Northern Ireland

Ireland
Italy
Liechtenstein
Luxembourg
Monaco
Netherlands
Norway
Portugal
Spain
Sweden
Switzerland

215.4 Service Guarantee

The Postal Services guarantees delivery within the service standards specified in the Priority Mail Global Guaranteed Service Guide or the sender is entitled to a full refund of the postage paid. For the purpose of the service guarantee, the date and time of delivery, attempted delivery, or availability for delivery constitutes delivery.

215.5 Inquiries, Postage Refunds, and Indemnity Claims

215.51 Extent of Postal Service Liability for Lost or Damaged Contents

Liability for a lost or damaged shipment is limited to the lowest of the following:

a. $100.

b. The actual amount of the loss or damage.

c. The actual value of the contents.

215.52 Inquiries

Inquiries concerning the delivery of Priority Mail Global Guaranteed items are made by calling 1–800–222–1811 or through the Internet at http://www.usps.com.

215.53 Postage Refunds

Postage is refunded if a shipment mailed at a designated post office before the specified deposit time is not delivered or delivery is not attempted in accordance with the guarantee standards in the Priority Mail Global Guaranteed Service Guide before 5 p.m. local time in the delivery location. Requests for postage refunds are made by contacting a customer service representative at 1–800–222–1811 for more details on how to file a claim. The original receipt of the Priority Mail Global Guaranteed label may be required with a claim for a postage refund or document reconstruction. Requests for postage refunds or document reconstruction must be made no later than 30 days from the date of mailing.

215.6 Postage

215.61 Rates

Weight not over lbs.	Rate
0.5	$23.00
1	31.00
2	31.00
3	50.00
4	57.00
5	63.00
6	68.00
7	73.00
8	78.00
9	82.00
10	87.00
11	90.00
12	94.00
13	97.00
14	99.00
15	104.00
16	107.00
17	110.00
18	114.00
19	117.00
20	121.00
22	128.00
23	131.00
24	134.00
25	138.00
26	141.00
27	145.00
28	148.00
29	151.00
30	155.00
31	158.00
32	162.00
33	166.00
34	169.00
35	173.00
36	176.00
37	180.00
38	183.00
39	186.00
40	190.00
41	193.00
42	197.00
43	199.00
44	203.00
45	207.00
46	210.00
47	214.00
48	217.00
49	220.00
50	224.00
51	228.00
52	230.00
53	235.00
54	237.00
55	241.00
56	244.00
57	248.00
58	251.00
59	255.00
60	257.00
61	262.00
62	264
63	268.00
64	271.00
65	275.00
66	277.00
67	282.00
68	284.00
69	290.00
70	291.00

215.62 Payment of Postage

215.621 Methods of Payment

Priority Mail Global Guaranteed items may be paid by postage stamps, postage validation imprinter (PVI) labels, or postage meter stamps.

215.623 Mailings Made by Federal Government Agencies

Postage and Fees Paid indicia may be used by federal agencies entitled to use the indicia. Penalty indicia may be used for official mail of the U.S. Postal Service.

215.7 Weight and Size Limits

215.71 Weight Limits

The maximum weight is 70 pounds.

215.72 Size Limits

215.721 Minimum Size

Items must be large enough to affix the Priority Mail Global Guaranteed label to the face of the item, approximately 5½ inches in height and 8½ inches in length.

215.722 Maximum Size

Length and girth combined may not exceed 108 inches. Individual dimensions may not exceed:

Length: 46 inches
Width: 35 inches
Height: 47 inches

215.8 Preparation Requirements

215.81 Preparation by the Sender

a. Prepare the item as a flat or package using either the Priority Mail Global Guaranteed envelope provided by the Postal Service or mailer-supplied packaging. Mailers using their own envelope or wrapping must also affix a Priority Mail Global Guaranteed sticker (Item 107RGG3X) to the front and back of the item.

b. Complete the Priority Mail Global Guaranteed mailing label (item 11FGG1X) to show the complete address of the sender and addressee. Items cannot be addressed to a post office box or an APO or FPO address. Complete the ''Shipment Details'' to show the contents in detail. A separate customs declaration is not used. Sign and date the mailer agreement. Affix the mailing label to the item and present it to a postal employee for mailing.

215.82 Preparation by Acceptance Employee

a. Check that the sender has properly completed the mailing label.

b. Complete the postage transaction if the item is not prepaid.

c. Complete the ''Origin'' information.

d. Remove the customer's copy of the mailing label and give it to the

customer. Affix the label to the item. Affix a Priority Mail Global Guaranteed sticker (Item 107RGG3X) to the front and back of a mailer-supplied package.

215.83 Customs Forms Required

The mailing label contains space for the sender to declare the contents. A separate postal customs declaration is not used.

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A transmittal letter changing the relevant pages in the International Mail Manual will be published and automatically transmitted to all subscribers. Notice of issuance of the transmittal will be published in the **Federal Register** as provided by 39 CFR 20.3.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 99–9764 Filed 4–16–99; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300843; FRL–6075–6]

RIN 2070–AB78

Clofentezine; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of clofentezine in or on apples and apple pomace. AgrEvo USA Company requested this tolerance under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective April 19, 1999. Objections and requests for hearings must be received by EPA on or before June 18, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300843], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300843], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300843]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Peg Perreault, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 209, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5417, e-mail: perreault.peg@epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 28, 1999 (64 FR 4414) (FRL–6056–3), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) announcing the filing of a pesticide petition (PP) for tolerance by AgrEvo USA Company, Little Falls Centre One, 2711 Centerville Road, Wilmington, DE 19808. This notice included a summary of the petition prepared by AgrEvo USA Company, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.446(b) be amended by establishing a tolerance for residues of the insecticide clofentezine, in or on apples at 0.5 parts per million (ppm) and apple pomace at 3.0 ppm.

I. Background and Statutory Findings

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

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of clofentezine (3,6-bis(chlorophenyl)-1,2,4,5-tetrazine) and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for residues of clofentezine on apples at 0.5 ppm and apple pomace at 3.0 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

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

1. *Acute toxicity.* Technical clofentezine has a relatively low degree of acute toxicity by the oral, dermal, and inhalation routes of exposure (Toxicity Category III for oral, dermal and inhalation toxicity). The acute oral LD_{50}

of clofentezine was determined to be > 5,200 milligrams per kilogram (mg/kg) in rats and mice, > 3,200 mg/kg in hamsters, and > 2,000 mg/kg in beagle dogs. The acute rat dermal LD_{50} was > 2,100 mg/kg. Clofentezine is considered to be a mild eye irritant (Toxicity Category IV) and practically non-irritating to the skin (Toxicity Category IV), but is considered to be a weak skin sensitizer based on a guinea pig maximization assay.

The end-use product APOLLO SC Ovicide/Miticide (42% a.i.) is classified as Toxicity Category IV for oral toxicity and skin irritation, and as Toxicity Category III for dermal toxicity and eye irritation. APOLLO SC is considered slightly irritating to eyes and skin.

2. *Subchronic toxicity.* In a 90–day feeding study, clofentezine was administered to rats at dietary concentrations of 0, 40, 400 and 4,000 ppm. Elevated cholesterol levels, increased liver weights, increased liver-to-body-weight ratios, and centrilobular hepatocyte enlargement were noted at 400 and/or 4,000 ppm. In addition, there was a depletion of thyroid colloid in all dose groups and follicular cell hypertrophy in mid- and high dose male rats. Although present in females, the thyroid effects were less marked. All thyroid effects were reversible after the recovery period. The NOAEL for this study was considered to be 40 ppm (2.8 milligrams per kilograms per day (mg/kg/day)).

Clofentezine was administered to beagle dogs for 90 days at dietary concentrations of 0, 3,200, 8,000 and 20,000 ppm. Increased liver weights were noted at all dose levels but no histopathological changes or any other treatment-related effects were observed.

3. *Chronic toxicity.* In a 12–month feeding study, clofentezine was administered to beagle dogs at dietary concentrations of 0, 50, 1,000 and 20,000 ppm. Treatment related effects were noted in dogs in the mid- (1,000 ppm) and high dose (20,000 ppm) groups. These effects included liver changes with hepatocyte enlargement concurrent with eosinophilic cytoplasm, increased liver weight (both sexes), increased thyroid weight (high dose males only), and increased adrenal weight (high dose females only). Also in the mid- and high dose groups elevated serum cholesterol and triglycerides were noted. There was a statistically significant increase in alkaline phosphatase in both sexes at the high dose primarily during the early part of the study and again at term in high dose males and mid- and high dose females. The NOAEL for this study was considered to be 50 ppm (~1.25 mg/kg/day[1]).

4. *Chronic toxicity/Carcinogenicity.* In a 27–month feeding study, clofentezine was administered to rats at dietary concentrations of 0, 10, 40 and 400 ppm. Treatment related effects were noted in the liver and thyroid at 400 ppm (primarily in males). These effects are discussed below. The NOAEL for this study was considered to be 40 ppm (~2 mg/kg/day).

In both the chronic (27–month) and the subchronic (1 and 3 month) feeding studies in rats, conducted with doses of clofentezine ranging from 0.43 to 1,500 mg/kg/day, non-neoplastic compound related effects were noted. Liver was the primary target organ with secondary effects to the thyroid and perturbations of the general metabolism. The induction of the liver enzyme, uridine-diphosphate-glucuronyl-transferase (UDPGT) and the subsequent increase in the metabolism and the excretion of the thyroid hormone thyroxine (T_4) reduced the availability of T_4 required for the general metabolism and the maintenance of homeostasis. The decreased levels of plasma T_4 resulted in the stimulation of the thyroid by the pituitary gland to raise the plasma T_4 levels. Thyroid changes in the form of colloid depletion, thyroid follicular cell hypertrophy and hyperplasia were observed as a means to regain the homeostasis. Body weights and body weight gains were decreased whereas liver weights were increased and hepatocellular enlargement was reported along with other observations on the liver. Increases in plasma cholesterol and triglyceride levels were also recorded with these effects supported by the liver and thyroid pathology. Cessation of dosing accompanied by a recovery period allowed for the attainment of normal physiological levels of T_4 and a reversal of the above noted changes.

Tumors of the thyroid were only recorded in male rats during chronic treatment indicating a sensitivity for this species and sex. The mode of action appears to be one of endocrine disruption and follows the generally recognized adaptive physiology of decreased plasma thyroxine levels followed by a positive feedback to the pituitary which then signals the thyroid to produce more thyroxine to raise the plasma thyroxine levels and regain the homeostasis. Structural changes in the thyroid in the manner of hypertrophy and hyperplasia of the thyroid cells then results. However, a chronic over stimulation of the thyroid from an inability to regain the normal levels of plasma thyroxine results in the transformation of cells at some unknown time point from a controlled state of hypertrophy and hyperplasia to an uncontrolled state of hyperplasia with the result of thyroid follicular cell tumor formation.

EPA has classified clofentezine as a likely human carcinogen [classification of C]. The doses in the rat study were, however, considered to be below the maximum tolerated dose (MTD) based on the results in the subchronic studies as well as little evidence of toxicity even at the high dose tested. It was concluded that a new study was not required but may be required at some future date to support the appropriate characterization and quantification of potential risks associated with the use of clofentezine. Biologically or statistically significant tumors were not observed in female rats and clofentezine was not carcinogenic to mice when administered for 2 years at dietary concentrations of 0, 50, 500 and 5,000 ppm. The NOAEL for the mouse study was 500 ppm (50.7 mg/kg/day). Mice were also much less sensitive to the effects of clofentezine as seen in the comparative values of the NOAELS. However the liver was also the target organ in the mouse as seen by histological changes. Decreases in body weight and body weight gain were also reported in mice. Non-neoplastic changes in the mouse thyroid were not remarkable. Increased mortality was observed in female mice at the highest dose tested with amyloidosis considered to be a contributing factor.

5. *Reproductive toxicity.* A 2–generation reproduction study in rats was conducted at dietary concentrations of 0, 4, 40 and 400 ppm (0, 0.2, 2, and 20 mg/kg/day). Systemic effects observed at 400 ppm were limited to minimal centrilobular hepatocyte hypertrophy in adult male rats. The parental NOAEL was considered to be at or above 400 ppm (20 mg/kg/day). There were no reproductive effects and no effects on offspring observed at any dose level. The reproductive NOAEL was considered to be at or above 400 ppm (20 mg/kg/day).

6. *Developmental toxicity.* In a rat developmental toxicity study, clofentezine was administered by gavage to female rats at dose levels of 0, 320, 1,280 and 3,200 mg/kg/day for days 7 through 20 of gestation. In dams, there was differential staining and slight enlargement of the centrilobular hepatocytes at 3,200 mg/kg/day. The maternal NOAEL was considered to be 1,280 mg/kg/day (above the limit test of 1,000 mg/kg/day). There were no developmental effects on offspring at any dose level. The developmental

NOAEL was considered to be at or above 3,200 mg/kg/day.

In a rabbit developmental toxicity study, clofentezine was administered by gavage to female rabbits at dose levels of 0, 250, 1,000 and 3,000 mg/kg/day for days 7 through 29 of gestation Evidence of maternal toxicity included body weight reduction throughout treatment and decreased maternal food consumption at the 3,000 mg/kg/day dose level. The maternal NOAEL was considered to be 1,000 mg/kg/day. Evidence of developmental toxicity included a reduced mean fetal weight reduction of 13% which occurred at 3,000 mg/kg/day. The developmental NOAEL was considered to be 1,000 mg/kg/day.

7. *Mutagenicity*. No evidence of mutagenicity was noted in a battery of *in vitro* and *in vivo* studies. Studies submitted included Ames Salmonella and mouse lymphoma gene mutation assays, a mouse micronucleus assay, a rat dominant lethal assay, and a gene conversion and mitotic recombination assay in yeast.

8. *Metabolism*. Male and female rats given clofentezine technical at 1,000 mg/kg manifested peak plasma levels of between 14 and 16 ppm at 6–8 hours post dosing which then declined to 3 ppm at 24 hours post dosing. Plasma half life was approximately 3.5 hours. Whole body autoradiography of rats given a 10 mg/kg dose indicated poor gastrointestinal absorption with 60–70% of the given dose excreted in the feces during the first 24 hours and about 20% excreted in the urine. Major metabolites were 3-(2′-methyl-thio-3′ hydroxy phenyl)-6-(2′-chloro-phenyl)-1,2,4,5-tetrazine and 3-,4-, and 5-hydroxyclofentezine. Both liver and kidney had the highest tissue concentration after 72 hours.

B. Toxicological Endpoints

1. *Acute toxicity*. An acute RfD was not established. No appropriate toxicological endpoint attributable to a single exposure was identified in the available toxicology studies, including the rat and the rabbit developmental studies. The study data indicate that clofentezine does not directly affect the thyroid. It induces uridine diphosphate glucuronyl transferase (UDPGT) activity in the liver, the enzyme associated with conjugation of thyroxine (T_4 with glucuronic acid prior to the excretion of the hormone. This allows the hormone to be excreted and indicates an increased excretion rate of the hormone. There is also weak evidence that clofentezine increases biliary flow and biliary excretion of T_4. Increased excretion of T_4 reduces circulating T_4 in the blood. The reduction in circulating thyroid hormone is detected by the pituitary, which in turn stimulates the thyroid to generate more thyroid hormone through cell enlargement (hypertrophy) and an increase in the cell numbers (hyperplasia). This is a well recognized and normal adaptive mechanism reacting to decreased thyroid hormone levels resulting in the reestablishment of the homeostasis process and is not considered to be an adverse effect after a single exposure.

2. *Short- and intermediate-term toxicity*. Short- and intermediate- term dermal endpoints were selected from a 90–day rat feeding study. The NOAEL of 2 mg/kg/day and the LOAEL of 20 mg/kg/day were based on increased cholesterol, increased liver weights, thyroid colloid depletion and thyroid follicular cell hypertrophy. An inhalation endpoint was not identified. Short and intermediate term risk assessments would be required for the dermal route of exposure; however, since there are no proposed residential uses of clofentezine that will result in post-application residential exposure, a risk assessment for residential non-dietary (dermal) exposure is not required. An inhalation risk assessment is not required based on the label specified maximum of one application per year per crop, the low toxicity of the chemical, and the low maximum application rate of 8 ounces per acre.

3. *Chronic toxicity*. EPA has established the Chronic RfD for clofentezine (3,6-bis(chlorophenyl)-1,2,4,5-tetrazine) at 0.013 mg/kg/day. This Reference Dose (RfD) for dietary exposure is based on a chronic dog feeding study in which liver changes and elevated serum cholesterol, triglycerides, and alkaline phosphatase were seen at 25.0 mg/kg/day (LOAEL). The NOAEL in this study was 1.25 mg/kg/day. An uncertainty factor (UF) of 100 was applied to the NOAEL to account for both inter-species extrapolation (10) and intra-species variability (10). The chronic RfD applies to all populations.

4. *Carcinogenicity*. EPA has classified clofentezine as a likely human carcinogen (classification of C). Clofentezine causes thyroid tumors only in male rats as a result of chronic over stimulation of the thyroid. This leads to failure to elevate T_4 to physiologically normal levels and regain homeostasis as noted above in the toxicological profile section. The cancer risk was quantified using a linear low dose extrapolation method resulting in a Q* of 0.0376 $(mg/kg/day)^{-1}$ (based upon male rat thyroid follicular cell adenoma and/or carcinoma combined tumor rates).

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.446(b)) for the residues of clofentezine, in or on a variety of raw agricultural commodities and in meat at 0.05 ppm and milk at 0.01 ppm. Risk assessments were conducted by EPA to assess food exposures from clofentezine (3,6-bis(chlorophenyl)-1,2,4,5-tetrazine) as follows:

Section 408(b)(2)(E) authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E), EPA will issue a data call-in for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) states that the Agency may use data on the actual percent of food treated (PCT) for assessing chronic dietary risk only if the Agency can make the following findings: That the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; that the exposure estimate does not underestimate exposure for any significant subpopulation group; and if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of percent of crop treated as required by the section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency used PCT information to conduct a routine chronic dietary exposure analysis for clofentezine based on likely maximum percent of crop treated as follows: 24% apples, 0% apricots, 6% cherries, 30% nectarines, 12.2% peaches, 16% pears, 1.4% plums and prunes, 9.2% almonds, 7.4% walnuts (walnuts were not included in the dietary exposure analysis).

The Agency believes that the three conditions, discussed in section 408

(b)(2)(F) in this unit concerning the Agency's responsibilities in assessing chronic dietary risk findings, have been met. The PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of the PCT, the Agency is reasonably certain that the percentage of the food treated is not likely to be underestimated. The regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which clofentezine may be applied in a particular area.

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. As previously stated, an Acute RfD was not established for clofentezine as no appropriate toxicological endpoint attributable to a single exposure was identified in the available toxicology studies, including the rat and the rabbit developmental studies. Therefore, an acute risk assessment was not conducted.

ii. *Chronic exposure and risk.* The chronic dietary risk assessment for clofentezine from food sources was conducted using the Chronic RfD of 0.013 mg/kg bwt/day. EPA determined that the Uncertainty Factor (UF) of 100 used to calculate the Chronic RfD is adequate for the protection of the general U.S. population including infants and children from exposure to clofentezine and that FQPA Safety Factor should be removed (refer to unit II.E. of this preamble for a detailed discussion concerning the FQPA Safety Factor with respect to clofentezine). As indicated below, the results of the chronic dietary exposure analysis indicate an acceptable chronic dietary exposure of 100% or less of the Chronic RfD for all population subgroups.

A Dietary Exposure Evaluation Model (DEEM™) analysis for clofentezine was performed in order to provide an estimate of the food exposure and associated risk for clofentezine resulting from existing tolerances and the proposed tolerance level for apples. The DEEM™ analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–91 Nationwide Continuing Surveys for Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The chronic and cancer DEEM analysis for clofentezine estimated the food exposure using ARs and PCT data for all commodities except walnuts. The chronic DEEM™ analysis used mean consumption (3 day average). EPA's level of concern for the analysis is 100% RfD. A summary of the food exposures for the U.S. general population and other subgroups is presented in the following Table 1. The other subgroups included in Table 1 represent the highest food exposures for their respective subgroups (i.e., children, females, and the other general population subgroup higher than U.S. population).

TABLE 1.—SUMMARY OF FOOD EXPOSURE AND RISK FOR CLOFENTEZINE

Subgroups	Exposure (mg/kg/day)	% RfD
U.S. Population (48 states)	0.000022	0.2
Non-Hispanic Other Than Black or White	0.000025	0.2
Non-Nursing Infants (< 1 year old)	0.00018	1.4
Females (13+ years, nursing)	0.000029	0.2

The chronic food risk does not exceed the Agency's level of concern.

iii. *Cancer risk.* The upper bound cancer risk for the U.S. population subgroup was calculated to be 8.4×10^{-7} (based on a Q_1* value of 0.0376 $(mg/kg/day)^{-1}$). EPA's level of concern for the cancer risk are risks in the range of 1×10^{-6}. The cancer risk is below the Agency's current level of concern.

2. *From drinking water.* EPA does not have sufficient ground or surface water monitoring data available to perform a quantitative risk assessment for clofentezine at this time. However, EPA determined estimated drinking water environmental concentrations (DWECs) in ground and surface water using available environmental fate data and the screening model for ground water (SCI-GROW) and the generic expected environmental concentration (GENEEC) model for surface water. The DWEC of clofentezine in ground water was estimated to be 0.04 ppb using SCI-GROW, and the DWECs for surface water were estimated to be 6.5 ppb (acute DWEC) and 0.3 ppb (chronic DWEC) using GENEEC. EPA policy allows the 90/56–day GENECC value to be divided by 3 to obtain a value for chronic risk assessment calculations. Therefore, a surface water estimate of 0.1 ppb was used in the chronic risk assessment.

i. *Acute exposure and risk.* Acute exposure and risk assessments are performed for a pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. As previously stated, an Acute RfD was not established for clofentezine as no appropriate toxicological endpoint attributable to a single exposure was identified in the available toxicology studies, including the rat and the rabbit developmental studies. Therefore, an acute risk assessment was not conducted.

ii. *Chronic exposure and chronic and cancer risk.* EPA uses the Drinking Water Level of Comparison (DWLOC) as a theoretical upper limit on a pesticide's concentration in drinking water when considering total aggregate exposure to a pesticide in food, drinking water, and through residential uses. DWLOCs are not regulatory standards for drinking water; however, EPA uses DWLOCs in the risk assessment process as a surrogate measure of potential exposure from drinking water. In the absence of monitoring data for pesticides, it is used as a point of comparison against conservative model estimates of a pesticide's concentration in water.

EPA has calculated DWLOCs for both chronic and cancer risks. The results are listed in the following Tables 2 and 3.

TABLE 2.— SUMMARY OF DWLOC CALCULATIONS - CHRONIC (NON-CANCER SCENARIO)

Population Subgroup[1]	Chronic (Non-Cancer) Scenario					
	RfD mg/kg/day	Food Exposure mg/kg/day	Maximum Water Exposure mg/kg/day[2]	SCI-GROW (ppb)[3]	GENEEC (ppb)	DWLOC (ppb)
U.S. Population	0.013	0.000022	0.01298	0.04	0.1	454
Non-Hispanic other than black or white	0.013	0.000025	0.01298	0.04	0.1	454
Non-Nursing Infants (< 1 yr old)	0.013	0.00018	0.01282	0.04	0.1	128
Females (13+/nursing)	0.013	0.000029	0.01297	0.04	0.1	389

[1] Population subgroups chosen were U.S. population (70 kg. body weight assumed), the Non-Hispanic subgroup (70 kg body weight assumed) which has higher dietary exposure than the U.S. population, the infant/child subgroup with the highest food exposure (10 kg. body weight assumed), and the female subgroup with the highest food exposure (60 kg. body weight assumed).
[2] Maximum Water Exposure (mg/kg/day) = RfD (mg/kg/day) - TMRC from DRES (mg/kg/day).
[3] The crop producing the highest level was used.

TABLE 3.— SUMMARY OF DWLOC CALCULATIONS - CHRONIC (CANCER SCENARIO)

Population Subgroup[1]	Chronic (Cancer) Scenario					
	Q_1*	Food Exposure mg/kg/day	Maximum Water Exposure mg/kg/day[2]	SCI-GROW (ppb)[3]	GENEEC (ppb)	DWLOC (ppb)
U.S. Population	0.0376	0.000022	0.000004	0.04	0.1	0.16

[1] Because there is a Q*, the U.S. population is the population of concern.
[2] Maximum Water Exposure (mg/kg/day) = RfD (mg/kg/day) - TMRC from DRES (mg/kg/day).
[3] The crop producing the highest level was used.

To calculate the DWLOC for chronic (non-cancer) exposure relative to a chronic toxicity endpoint, the chronic dietary food exposure (from DEEM) was subtracted from the RfD to obtain the acceptable chronic (non-cancer) exposure to clofentezine in drinking water. To calculate the DWLOC for chronic exposures relative to a carcinogenic toxicity endpoint, the chronic (cancer) dietary food exposure was subtracted from the ratio of the negligible cancer risk to the Q^* to obtain the acceptable chronic (cancer) exposure to clofentezine in drinking water. DWLOCs were then calculated using default body weights and drinking water consumption figures.

The estimated average concentration of clofentezine in surface water is 0.1 ppb. This value is less than EPA's DWLOCs for clofentezine as a contribution to both chronic and cancer aggregate exposures (454 ppb and 0.16 ppb, respectively). Therefore, taking into account the present uses and the proposed new use, EPA concludes with reasonable certainty that residues of clofentezine in drinking water (when considered along with other sources of exposure for which EPA has reliable data) will not result in unacceptable levels of aggregate human health risk. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, DWLOCs may vary as those uses change. If additional new uses are proposed in the future, EPA will reassess the potential impacts of clofentezine on drinking water as a part of the aggregate risk assessment process.

3. *From non-dietary exposure.* Clofentezine is not registered for residential non-food use sites. Because there are no proposed residential uses of clofentezine that will result in post-application residential exposure, risk assessments for residential non-dietary exposure are not required.

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

EPA does not have, at this time, available data to determine whether clofentezine has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, clofentezine does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that clofentezine has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

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

Because there are no proposed residential uses of clofentezine that will result in post-application residential exposure, aggregate exposure risk assessment will be limited to food and water only. The aggregate chronic and acute risk estimate will be based on the exposure from food and water only for the most highly exposed population subgroups and the general population as appropriate. The aggregate cancer risk estimate will be based on the exposure from food and water exposure for the U.S. general population.

1. *Acute risk.* As explained previously, no toxicological endpoint attributable to a single exposure was identified, and therefore, EPA concludes

that clofentazine does not pose any significant acute risk.

2. *Chronic risk.* Using the Theoretical Maximum Residue Contribution (TMRC) exposure assumptions described in this unit, EPA has concluded that aggregate exposure to clofentezine from food will utilize 0.2 percent of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is non-nursing infants, < 1 year old (1.4% of the RfD), discussed below. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to clofentezine in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to clofentezine residues.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. Since there are currently no residential uses or exposure scenarios for clofentezine, no short- and intermediate-term aggregate risk is expected.

4. *Aggregate cancer risk for U.S. population.* Clofentezine has been classified as a category C carcinogen as a result of three Cancer Peer Reviews. The upper bound cancer risk for the U.S. population subgroup was calculated to be 8.4×10^{-7} (based on a Q_1* value of 0.0376 $(mg/kg/day)^{-1}$). The cancer risk is below the Agency's current level of concern. The estimated average concentrations of clofentezine in surface and ground water are less than EPA's DWLOC for clofentezine as a contribution to cancer aggregate exposure. Therefore, EPA concludes with reasonable certainty that residues of clofentezine in drinking water do not contribute significantly to the aggregate cancer human health risk at the present time considering the present uses and uses proposed in this action.

EPA bases this determination on a comparison of estimated concentrations of clofentezine in surface waters and ground waters to DWLOCs for clofentezine. The estimates of clofentezine in surface and ground waters are derived from water quality models that use conservative assumptions regarding the pesticide transport from the point of application to surface and ground water. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, DWLOCs may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impact of clofentezine on drinking water as a part of the aggregate cancer risk assessment process.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to clofentezine residues.

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

1. *Safety factor for infants and children*—i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of clofentezine, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2–generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

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

There are no data gaps in the consideration of FQPA safety factor. The available studies showed no evidence of an increased susceptibility of fetus/pups in the developmental toxicity or reproductive studies. There was no evidence of neurotoxicity in any of the available toxicology studies. There were no exposure or toxicity data gaps critical to the assessment of the potential hazard to infants and children. The 10x factor for infants and children was removed as there were no developmental effects on offspring in developmental rat and rabbit studies at or above the limit dose of 1.0 gram/kg/day and there were no reproductive or pre- or post-developmental effects in a two-generation study. Clofentezine is not related to any known neurotoxic agent and there is no evidence in the subchronic or chronic studies that this chemical causes neurotoxic effects. Based on the current data set no developmental neurotoxicity study was required.

In conclusion, the FQPA safety factor was removed since: (1) The toxicology database is complete; (2) there is no indication of increased susceptibility of rats or rabbit fetuses to in utero and/or postnatal exposure in the developmental and reproductive toxicity studies; (3) a developmental neurotoxicity study is not required; (4) EPA screening models are used for ground and surface source drinking water exposure assessments resulting in estimates that are upper-bound concentrations; and (5) there are currently no registered residential uses of clofentezine.

2. *Acute risk.* As explained previously, no toxicological endpoint attributable to a single exposure was identified, and therefore, EPA concludes that clofentazine does not pose any significant acute risk.

3. *Chronic risk.* Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to clofentezine from food will utilize 1.4 percent of the RfD for infants and children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to clofentezine in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

4. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to clofentezine residues.

III. Other Considerations

A. Metabolism In Plants and Animals

The nature of the residue in both plants and animals is adequately understood. In plants, the only residue

of concern is the parent, clofentezine. In animals, the residues of concern are the combined residues of the parent, clofentezine, and the 4-hydroxyclofentezine metabolite.

1. *Plants.* Apple metabolism studies with radiolabeled clofentezine were conducted. C^{14}-Clofentezine was applied to apples at doses equivalent to 1.5X and 12X the maximum proposed rate. The fruit were harvested at maturity (25 and 64 days after treatments). The apples were separated into peel and flesh, and each was analyzed for clofentezine residues. Sixty-five to 84% of the extractable activity was the parent compound, 4% was 2-chlorobenzonitrile, and 8.5% was a combination of several minor polar components (no single component was greater than 4% of the activity). Approximately 90 to 96% of the TRR remained in the peel. About 4 to 11% was fiber bound, and the remainder was solvent-extractable activity. In plants, the only residue of concern is the parent, clofentezine.

2. *Animals.* A bovine metabolism study was conducted. ^{14}C-clofentezine was orally administered to a lactating cow at a rate of 2.21 mg/kg/day over a 3–day period. In milk samples radioactivity showed up within 8 hours and by 26 hours reached approximately 0.20 ppm ^{14}C-clofentezine. The residues ranged from 0.144 to 0.175 ppm over the following 3 days. The dominant metabolite was 4-hydroxyclofentezine 75% of the TRR, the remaining 25% of the TRR was not identified. Analysis of the liver, kidneys, renal fat, subcutaneous fat, and muscle showed ^{14}C-clofentezine equivalents of 0.76, 0.36, 0.26, and 0.02 ppm, respectively. Free or unbound 4-hydroxyclofentezine comprised of 67, 83, and 90% of the liver, kidney, and fat residue. The residues of concern are the combined residues of the parent and the 4-hydroxyclofentezine metabolite.

B. Analytical Enforcement Methodology

A HPLC analytical method for the determination of clofentezine residues in/on apples was submitted with PP 3F3392. A PMV was successfully completed by ACL, and the method was found acceptable. The Limit of Quantitation (LOQ) and Minimum Detection Limit (MDL) were determined to be 0.01 ppm and 0.003 ppm, respectively. EPA concluded that the method was suitable for enforcement purposes. The method was forwarded to FDA for inclusion in PAM-II.

C. Magnitude of Residues

EPA previously determined that existing meat/milk tolerances would be adequate to support a proposed 10 ppm tolerance for apple pomace (PP 9F3705). No increases in the established meat/milk tolerances are required to support the recommended tolerance of 3.0 ppm for apple pomace.

Apple pomace does not constitute a significant portion of the poultry diet; therefore, poultry feeding studies and tolerances have not been required.

Data from a crop field trial study indicated that residues ranged from < 0.01 to 0.44 ppm. Therefore, the proposed tolerance level for apples, 0.5 ppm, is appropriate.

Processed residue data showed that clofentazine can concentrate by a factor of 5.8 in wet pomace. The appropriate tolerance level for pomace is thus 3.0 ppm (5.8 x 0.44 ppm = 2.5 ppm, rounded up to 3.0).

D. International Residue Limits

There is a Codex MRL of 0.5 ppm for the parent compound clofentezine on pome fruit at 0.5 ppm. A Canadian tolerance of 0.5 ppm has been established for clofentezine and the 2-chlorobenzoyl metabolite on apples. Tolerance compatibility problems do not exist with respect to the Codex MRL, but do exist with respect to the Canadian MRL. As EPA has concluded the submitted residue chemistry data support tolerances based on the parent only, it is not appropriate to harmonize the proposed tolerance for residues of clofentezine in/on apples with the Canadian MRL.

IV. Conclusion

Therefore, the tolerance is established for residues of clofentezine in or on apples at 0.5 ppm and apple pomace at 3.0 ppm.

V. Objections and Hearing Requests

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

Any person may, by June 18, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the ''ADDRESSES'' section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this regulation. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300843] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at:

opp-docket@epa.gov.

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

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

VII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

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

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

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), 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 the mandate is unfunded, EPA must provide to OMB 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 an unfunded Federal 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 Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, 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. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

VIII. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

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

Dated: April 8, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

Authority: 21 U.S.C. 321(q), (346a), and 371.

2. Section 180.446 is amended as follows:

a. By adding a paragraph heading to paragraph (a).

b. By redesignating paragraphs (b) and (c) as paragraphs (a)(1) and (a)(2), respectively.

c. By amending newly designated paragraph (a)(1) by adding alphabetically to the table the commodity ''apple pomace'' and revising the tolerance for ''apples''.

d. By adding and reserving with paragraph headings new paragraphs (b), (c) and (d).

The added and revised portions read as follows:

§ 180.446 Clofentezine; tolerances for residues.

(a) *General.* * * *

Commodity	Parts per million
* * *	* *
Apple pomace	3.0
Apples	0.5
* * *	* *

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 99–9710 Filed 4–16–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300844; FRL–6075–4]

RIN 2070–AB78

Diflubenzuron; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of the insecticide diflubenzuron (N-[[4-chlorophenyl)amino]-carbonyl]-2,6-difluorobenzamide) and its metabolites, 4-chlorophenylurea (CPU) and 4-chloroaniline (PCA) in/on rice grain at 0.02 ppm and rice straw at 0.8 ppm. Uniroyal Chemical Company, Inc. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 requesting these tolerances.

DATES: This regulation is effective April 19, 1999. Objections and requests for hearings must be received by EPA on or before June 18, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300844], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300844], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300844]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Rita Kumar, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–8291, e-mail: kumar.rita@epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 25, 1998 (63 FR 9528) (FRL–5775–3), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) announcing the filing of a pesticide petition (PP 6G4771) from Uniroyal Chemical Company, Inc., Bethany, CT proposing to amend 40 CFR part 180 by establishing a tolerance for residues of the insect growth regulator, diflubenzuron and metabolites convertible to p-chloroaniline, expressed as diflubenzuron in or on rice at 0.02 parts per million (ppm) and rice straw at 0.8 ppm. The notice included a summary of the petition prepared by Uniroyal Chemical Company, Inc., the registrant. In the **Federal Register** of March 9, 1998 (63 FR 11445) (FRL–5777–8), a clarification of the notice of filing was published explaining that Uniroyal had submitted two petitions, 6G4771, for the establishment of a temporary tolerance in or on rice at 0.01 ppm in association with a 3,000 acre Experimental Use Permit, and 8F4925, to amend 40 CFR 180.377 to include a permanent tolerance for residues of the insect growth regulator, diflubenzuron and metabolites convertible to p-chloroaniline, expressed as diflubenzuron in or on rice at 0.02 parts per million (ppm) and rice straw at 0.8 ppm. There were no comments received in response to the notice of filing or the clarification.

I. Background and Statutory Findings

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

exposure to the pesticide chemical residue. . . .''

EPA performs a number of analyses to determine the risk from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the Final Rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of residues of the insecticide diflubenzuron (N-[[4-chlorophenyl)amino]-carbonyl]-2,6-difluorobenzamide) and its metabolites, 4-chlorophenylurea (CPU) and 4-chloroaniline (PCA) on rice grain at 0.02 parts per million (ppm) and rice straw at 0.8 ppm, and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for residues of the insecticide diflubenzuron (N-[[4-chlorophenyl)amino]-carbonyl]-2,6-difluorobenzamide) and its metabolites, 4-chlorophenylurea (CPU) and 4-chloroaniline (PCA) on rice grain at 0.02 ppm and rice straw at 0.8 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by diflubenzuron (N-[[4-chlorophenyl)amino]-carbonyl]-2,6-difluorobenzamide) and its metabolites, 4-chlorophenylurea (CPU) and 4-chloroaniline (PCA) on rice grain at 0.02 ppm and rice straw at 0.8 ppm have been fully described in the Reregistration Eligibility Decision (RED) document (EPA 738–R–97–008, August 1997), a copy of which is in the public docket.

B. Toxicological Endpoints

1. *Acute toxicity*. A risk assessment for acute dietary exposure (1 day) is not necessary. One day single dose oral studies in rats and mice indicated only marginal effects on methemoglobin levels at a dose level of 10,000 milligrams/kilograms (mg/kg) of diflubenzuron.

2. *Short- and intermediate-term toxicity*. The toxicology endpoint for short-term occupational or residential exposure (1 to 7 days) is sulfhemoglobinemia observed in the 14–day subchronic oral study in mice dosed with technical grade diflubenzuron. The no observed effect level (NOEL) in this study was 40 mg/kg/day and the lowest effect level (LEL) was 200 mg/kg/day.

The toxicology endpoint for intermediate-term occupational or residential exposure (1 week to several months) is methemoglobinemia observed in the 13–week subchronic feeding study in dogs. For the purpose of risk assessments, the NOEL of 1.64 mg/kg/day in this study should be considered to be 2 mg/kg/day so as to be consistent with the NOEL of 2 mg/kg/day in the chronic study used to calculate the RfD. The LEL in this study was 6.24 mg/kg/day. Since an oral NOAEL was selected for a dermal endpoint, a dermal absorption factor of 0.5% should be used for this risk assessment when converting dermal exposure to oral equivalents. Therefore, the dermal equivalent dose producing a NOAEL by the oral route is 400.0 mg/kg/day (i.e., 2.0 mg/kg/day divided by 0.005 = 400.0 mg/kg/day).

3. *Chronic toxicity*. The RfD was determined to be 0.02 mg/kg/day and is based on the NOEL of 2.0 mg/kg/day in the 52–week chronic oral study in dogs. Increases in methemoglobin and sulfhemoglobin were observed at the next higher dose level of 10.0 mg/kg/day. An uncertainty factor of 100 was applied to account for the interspecies extrapolation and intraspecies variability. Diflubenzuron has been reviewed by the FAO/WHO joint committee on pesticide residues and an Acceptable Daily Intake (ADI) of 0.02 mg/kg/day was established in 1985. The ADI was based upon the 1 year oral toxicity study in dogs with a NOEL of 2.0 mg/kg/day. A safety factor of 100 was applied to account for the interspecies extrapolation and intraspecies variability.

4. *Carcinogenicity*. Based on the available evidence, which included adequate carcinogenicity studies in rats and mice and a battery of negative mutagenicity studies, diflubenzuron *per se* has been classified as Group E (evidence of non-carcinogenicity for humans). However, p-chloroaniline (PCA), a metabolite of diflubenzuron, was classified as a Group B2 carcinogen (probable human carcinogen). The classification for PCA was based on the results of a National Toxicology Program (NTP) study reported in July 1989, in which p-chloroaniline hydrochloride was administered by gavage to rats and mice for 2 years. In rats, clearly increased incidences of uncommon sarcomas (fibrosarcomas, hemangiosarcomas and/or osteosarcomas) of the spleen were observed in males. In females, two additional sarcomas of the spleen were also found. Pheochromocytomas of the adrenal gland may also have been associated with the test material in male and female rats. In mice, increased incidences of hepatocellular neoplasms in the liver and of hemangiosarcomas in the spleen and/or liver were observed in males. In females, no evidence of carcinogenic activity was observed. The results of several mutagenicity studies on PCA were also included in the same NTP report. PCA was mutagenic in Salmonella strains TA98 and TA100 with metabolic activation. Gene mutations were induced by PCA in cultured mouse lymphoma cells with and without metabolic activation. In cultured Chinese hamster ovary (CHO) cells, treatment with PCA produced significant increases in sister chromatid exchanges (SCEs) with and without metabolic activation. Chromosomal aberrations were also significantly increased in CHO cells in the presence of metabolic activation.

For the purpose of calculating dietary risk assessments, the following procedure was used:

a. P-chlorophenylurea (CPU) and p-chloroacetanilide (PCAA), additional metabolites of diflubenzuron that are closely related to PCA and for which there are no adequate carcinogenicity data available, should be considered to be potentially carcinogenic and to have the same carcinogenic potency (Q1*) as PCA.

b. The sum of PCA, CPU, and PCAA residues in ingested food should be used to estimate the dietary exposure of humans to the carcinogenic metabolites of diflubenzuron.

c. In addition to ingested residues of these three metabolites, amounts of PCA, CPU, and/or PCAA formed *in vivo* following ingestion of diflubenzuron should also be included when estimating the total exposure of humans to the carcinogenic metabolites of diflubenzuron. The *in vivo* conversion of ingested diflubenzuron to PCA and/or CPU was estimated to be 2.0%, based on data in the rat metabolism study.

The Q1* (estimated unit risk) for PCA, based upon spleen sarcoma rates in male rats, was calculated to be 6.38 x 10^{-2} $(mg/kg/day)^{-1}$ in human equivalents.

It has been determined that PCAA does not occur in animal or plant tissues in significant amounts.

5. *Special sensitivity to infants and children*. In assessing the potential for additional sensitivity of infants and children to residues of diflubenzuron, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproductive toxicity study in the rat. Developmental toxicity studies are designed to evaluate adverse effects on the developing fetus resulting from maternal pesticide exposure during gestation. Reproductive toxicity studies provide information relating to pre- and post-natal effects from exposure to the pesticide, information on the reproductive capability of mating animals, and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional 10–fold margin of safety for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. In either case, EPA generally defines the level of appreciable risk as exposure that is greater than 1/100 of the NOEL in the animal study appropriate to the particular risk assessment. This 100–fold uncertainty (safety) factor/margin of exposure (safety) is designed to account for inter-species extrapolation and intra-species variability. EPA believes that reliable data support using the 100–fold margin/factor, rather than the 1,000–fold margin/factor, when EPA has a complete data base under existing guidelines, and when the severity of the effect in infants or children, the potency or unusual toxic properties of a compound, or the quality of the exposure data do not raise concerns regarding the adequacy of the standard margin/factor.

a. *Developmental toxicity studies*—i. *Rats*. In the developmental study in rats, the maternal (systemic) NOEL was 1,000.0 mg/kg/day [HDT]. The developmental (fetal) NOEL was 1,000.0 mg/kg/day, [HDT].

ii. *Rabbits*. In the developmental toxicity study in rabbits, the maternal (systemic) NOEL was 1,000.0 mg/kg/day, [HDT]. The developmental (pup) NOEL was 1,000.0 mg/kg/day, [HDT].

b. *Reproductive toxicity studies*. In the 2-generation reproductive toxicity study in rats, the maternal (systemic) NOEL was <36 males/<42 females [LDT] based on hematological effects at all dose levels tested. The reproductive (pup) NOEL was 427.0 mg/kg/day, based on decreases in the F-1 pup weight at the LEL of 2,454.0 mg/kg/day [HDT].

c. *Pre- and post-natal sensitivity*. The toxicological data base for evaluating pre- and post-natal toxicity for diflubenzuron is complete with respect to current data requirements. Based on the developmental and reproductive toxicity studies discussed above, for diflubenzuron there does not appear to be an extra sensitivity for pre- or post-natal effects. Based on the above, EPA concludes that reliable data support use of a 100–fold margin of exposure/uncertainty factor, rather than the 1,000–fold margin/factor, to protect infants and children.

C. Exposures and Risks

1. *From food and feed uses*. Tolerances have been established (40 CFR 180.377) for residues of diflubenzuron *per se*, in or on citrus, artichokes, walnuts, mushrooms, cottonseed, soybean, and associated livestock commodities. Existing tolerances range from 0.05 ppm in/on soybeans to 6.0 ppm in/on artichokes. Tolerances of 0.05 ppm have also been established for residues of diflubenzuron in animal commodities.

For the dietary risk assessment, anticipated residues levels were calculated in livestock, citrus and mushroom commodities. Anticipated residue estimates for diflubenzuron were not calculated for other raw agricultural commodities. Percent crop treated data were utilized where available.

Section 408(b)(2)(F) states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: (1) That the data used are reliable and provide a valid basis for showing the percentage of food derived from a crop that is likely to contain residues; (2) that the exposure estimate does not underestimate the exposure for any significant subpopulation and; (3) where data on regional pesticide use and food consumption are available, that the exposure estimate does not understate exposure for any regional population. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of these estimates of percent crop treated as required by section 408(b)(2)(F), EPA may require registrants to submit data on percent crop treated.

Dietary exposure estimates were based on the following percent crop treated estimates: grass/rangeland, 1%; cottonseed, 3%; grapefruit, 8%; mushrooms, 3.1%; oranges, 2%; tangerines, 4%; soybean, 1%; cattle bolus, 5%. Other commodities were assumed to be 100% treated. The Agency believes that the three conditions listed above have been met. With respect to (1), EPA finds that the percent crop treated information described above for diflubenzuron is reliable and has a valid basis. The Agency has utilized statistical data from public and proprietary sources, including DOANE, and checked these against data provided by the registrant. These are the best available sources for such information. Concerning (2) and (3), regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than data available through national food consumption surveys, EPA does not have available information on the consumption of food bearing diflubenzuron in a particular area.

Risk assessments were conducted as follows:

a. *Acute exposure and risk*. A risk assessment for acute dietary exposure (1 day) is not necessary. One day single dose oral studies in rats and mice indicated only marginal effects on methemoglobin levels at a dose level of 10,000 mg/kg of diflubenzuron.

b. *Chronic exposure and risk*. A chronic dietary risk assessment is required for diflubenzuron. The RfD used for the chronic dietary analysis for diflubenzuron is 0.02 mg/kg bwt/day. The chronic DEEM analysis used mean consumption (3–day average). Anticipated residues and percent crop treated information for select commodities were used. Since EPA determined to reduce the 10x factor to 1x, the Population Adjusted Dose (PAD) and the RfD are the same. Therefore, EPA's level of concern are values >100% RfD. Dietary exposures for the U.S. general population and other subgroups at percentage of RfD are presented below. The other subgroups included represent the highest dietary

exposures for their respective subgroups (i.e., children, females, and the other general population subgroup higher than U.S. population).

Subgroups	%RfD	Exposure (mg/kg/day)
U.S. population (48 states)	<1%	0.000027
Non-hispanic others	<1%	0.000102
Non-nursing infants (<1 year old)	<1%	0.000031
Females (20+ years, not pregnant, not nursing)	<1%	0.000032

The U.S. population and all the DEEM subgroups have ARCs for chronic dietary (non-cancer) risk from diflubenzuron well below the RfD when all uses are considered.

c. *Cancer risk from consumption of PCA and related metabolites*. The Agency has determined that there are three possible sources for dietary exposure to PCA and related compounds (CPU and PCAA): residues in plants/fungi (mushrooms), residues in animal commodities (milk and liver) and *in vivo* conversion of diflubenzuron.

i. *Mushrooms/milk/liver*. The Agency used results from metabolism studies to determine the percent of the total radioactive residue (TRR) present as PCA and related compounds in mushrooms, milk and liver. For milk and liver, anticipated residues were calculated from the results of the ruminant feeding study using tolerance level residues in animal feed items and adjusting for percent crop treated. The total levels of PCA and related compounds were estimated by multiplying the ratio of PCA/DFB by the diflubenzuron consumption (from DEEM). The PCA consumption values were calculated as follows:

Mushrooms = 0.0000062 mg/kg/day
Milk = 0.0000004 mg/kg/day
Liver = 0.00000002 mg/kg/day
Total = 0.00000066 mg/kg/day
Overall U.S.: 0.0000066 mg/kg/day (4.2 x 10^{-7} Carcinogenic Risk)

ii. *In vivo*. Based on the results of a rat metabolism study, an assumption of a 2.0% conversion of diflubenzuron to PCA in humans is assumed for PCA risk assessment. Using the above exposure estimate for rice and published uses (0.000027 mg/kg/day) the carcinogenic risk estimate (overall U.S. population) is 3.4 x 10^{-8} (0.000027 mg/kg/day x 0.02 x 0.0638 $(mg/kg/day)^{-1}$).

Total cancer risk estimate for PCA and related metabolites:

Overall U.S.: 4.5 x 10^{-7}

This cancer risk does not exceed the level of concern.

2. *From drinking water*. EPA has calculated drinking water levels of concern (DWLOCs) for chronic (non-cancer) exposure to diflubenzuron in surface and ground water for the U.S. population and children (1-6 yrs). They are 700 and 200 ppb, respectively. For chronic (cancer) exposure to CPU in surface and ground water, the DWLOC is 0.30 ppb for the U.S. population. To calculate the DWLOC for chronic (non-cancer) exposure relative to a chronic toxicity endpoint, the chronic dietary food exposure (from DEEM) was subtracted from the RfD to obtain the acceptable chronic (non-cancer) exposure to diflubenzuron in drinking water. To calculate the DWLOC for chronic exposures relative to a carcinogenic toxicity endpoint, the chronic (cancer) dietary food exposure was subtracted from the ratio of the negligible cancer risk to the Q* to obtain the acceptable chronic (cancer) exposure to diflubenzuron in drinking water. DWLOCs were then calculated using default body weights and drinking water consumption figures.

a. *Chronic risk*. Chronic RfD = 0.02 mg/kg/day. Maximum H_2O = 0.02 - Food Exposure.

Subgroup	Food Exposure to Diflubenzuron (from DEEM mg/kg/day)	Maximum H_2O Exposure (mg/kg/day)
U.S. population	0.000027	0.01997
Children (1-6 years)	0.00031	0.01997

U.S. Population: DWLOC = 700 ppb
Children (1-6 years): DWLOC = 200 ppb

b. *Cancer risk*. Q* = 6.38 x 10^{-2} (mg/kg/day) -- Maximum H_2O = 1.6 x 10^{-5} - Food Exposure

Subgroup	Food Exposure to PCA and Related Compounds (mg/kg/day)	Maximum H_2O Exposure (mg/kg/day)
U.S. population	0.0000071	0.0000089

U.S. population: DWLOC = 0.30 ppb

The PCA and related compounds value is a total of residues in food (0.0000066 mg/kg/day) + residues formed *in vivo* (0.000027 mg/kg/day DFB x 2% conversion).

The estimated average concentration of diflubenzuron in surface water sources is not expected to exceed 0.05 ppb. Estimated average concentrations of CPU in surface water sources is not expected to exceed 0.73 ppb. The estimated average concentrations of diflubenzuron in surface water are less than EPA's levels of concern for diflubenzuron in drinking water as a contribution to chronic (non-cancer) aggregate exposure. However, the estimated average concentration (0.73 ppb) of CPU in surface water exceeds EPA's levels of concern for CPU in drinking water (0.30 ppb) as a contribution to chronic (cancer) aggregate exposure.

EPA believes the estimates of CPU exposure in water derived from the PRZM-EXAMS model, particularly the estimates pertaining to chronic exposure, are significantly overstated for several reasons. The PRZM-EXAMS model was designed to estimate exposure from ecological risk assessments and thus uses a scenario of a body of water approximating the size of a 1 hectare (2.5 acres) pond. This tends to overstate chronic drinking water exposure levels for the following reasons. First, surface water source drinking water generally comes from bodies of water that are substantially larger than a 1 hectare (2.5 acres) pond. Second, the modeled scenario also assumes that essentially the whole basin receives an application of the pesticide. Yet in virtually all cases, basins large enough to support a drinking water facility will contain a substantial fraction of the area which does not receive pesticide. Third, there is often at least some flow (in a river) or turnover (in a reservoir or lake) of the water so the persistence of the pesticide near the drinking water facility is usually overestimated. Fourth, even assuming a reservoir is directly adjacent to an agricultural field, the agricultural field may not be used to grow a crop on which the pesticide in question is registered for use. Fifth, the PRZM-EXAMS modeled scenario does not take into account reductions in residue-loading due to applications of less than the maximum application rate or no treatment of the crop at all (percent crop treated data). Although there is a high degree of uncertainty to this analysis, these are the best available estimates of concentrations of CPU in drinking water. EPA believes that these numbers justify asking for field runoff monitoring for CPU in conjunction with the registered use on cotton.

EPA bases this determination on a comparison of estimated concentrations of diflubenzuron and CPU in surface waters and ground waters to back-calculated ''levels of concern'' for diflubenzuron and CPU in drinking water. These levels of concern in drinking water were determined after EPA has considered all other non-occupational human exposures for which it has reliable data, including all current uses, and uses considered in this action. The estimates of diflubenzuron and CPU in surface and ground waters are derived from water quality models that use conservative assumptions (health-protective) regarding the pesticide transport from the point of application to surface and ground water. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of concern in drinking water may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impacts of diflubenzuron and CPU on drinking water as a part of the aggregate risk assessment process.

3. *From non-occupational non-dietary exposure*. Diflubenzuron is a restricted use pesticide and therefore not available for use by homeowners. However, non-agricultural uses of diflubenzuron may expose people in residential locations. Based on the low dermal absorption rate (0.5%), and the extremely low dermal and inhalation toxicity, these uses are expected to result in insignificant risks.

4. *Cumulative exposure to substances with common mechanism of toxicity*. Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' An explanation of the current Agency approach to assessment of pesticides with a common mechanism of toxicity may be found in the Final Rule on Bifenthrin Pesticide Tolerances (62 FR 62961).

Diflubenzuron is structurally similar to other substituted benzoylurea insecticides including triflumuron and flucycloxuron. EPA does not have, at this time, available data to determine whether diflubenzuron has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, diflubenzuron does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that diflubenzuron has a common mechanism of toxicity with other substances.

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

1. *Acute risk*. There is no risk from acute dietary exposure (1 day) to diflubenzuron as there is no toxic endpoint identified.

2. *Chronic*. For the U.S. population, <1% of the RfD is occupied by food exposure. The estimated average concentrations of diflubenzuron in surface and ground water are less than EPA's levels of concern for diflubenzuron in drinking water. Therefore, EPA concludes that there is a reasonable certainty that no harm will result to infants, children, or adults from chronic aggregate (food plus water) exposure to diflubenzuron residues.

3. *Carcinogenic aggregate exposure and risk*. For the U.S. population, cancer risk resulting from food exposure is 4.5×10^{-7}. The estimated average concentration (0.73 ppb) of CPU in surface water exceeds EPA's levels of concern for CPU in drinking water (0.30 ppb) as a contribution to chronic (cancer) aggregate exposure. However, EPA believes that these PRZM-EXAMS model overestimates exposures for the reasons given above. EPA does not generally use surface water modeling values for quantitative risk assessment. However, due to the statistical uncertainties regarding the significance of cancer risks which are near 1×10^{-6}, EPA has calculated that the cancer risk resulting from 0.73 ppb of CPU in drinking water is 1.30×10^{-6}. The aggregate cancer risk is thus 1.8×10^{-6} (4.5×10^{-7} for food + 1.3×10^{-6} for water).

4. *Determination of safety*. EPA believes that the total risk estimate for CPU in food and drinking water of 1.8×10^{-6} generally represents a negligible risk, as EPA has traditionally applied that concept. EPA has commonly referred to a negligible risk as one that is at or below 1 in 1 million (1×10^{-6}). Quantitative cancer risk assessment is not a precise science. There are a significant number of uncertainties in both the toxicology used to derive the cancer potency of a substance and in the data used to measure and calculate exposure. The Agency does not attach great significance to numerical estimates for carcinogenic risk that differ by approximately a factor of 2.

III. Other Considerations

A. Metabolism in Plants and Animals

The qualitative nature of the residue in plants is adequately understood based on data from citrus, mushroom, and soybean metabolism studies. The Agency has concluded that tolerances should be expressed in terms of the combined residues of diflubenzuron and metabolites convertible to PCA (CPU and PCAA) expressed as diflubenzuron.

The nature of the residue in animals is adequately understood based on acceptable poultry and ruminant metabolism studies reflecting oral dosing. Terminal residues identified in animal tissues, milk, and eggs include diflubenzuron, 2-hydroxy-diflubenzuron (2HDFB), 2,6-difluorobenzamide (DFBAM), 2,6-difluorobenzoic acid (DFBA), N-(4-chlorophenyl)urea (CPU), and PCA. The Agency has concluded that tolerances should be expressed in terms of the combined residues of diflubenzuron and metabolites convertible to PCA (CPU and PCAA) expressed as diflubenzuron.

B. Analytical Enforcement Methodology

Adequate methods are available for the analysis of diflubenzuron in rice grain (0.01 ppm), rice straw (0.01 ppm) and water (0.001 ppm). Three enforcement methods for diflubenzuron are published in PAM, Vol. II as Methods I, II, and III. Method II is a GC/ECD method that can separately determine residues of diflubenzuron, CPU, and PCA in eggs, milk, and animal tissues. All three methods have undergone successful Agency validations and are acceptable for enforcement purposes. Individual analytical methods for rice commodities have been submitted for CPU (LOQ of 0.001 ppm in grain, 0.01 ppm in straw) and PCA (LOQ of 0.005 ppm in grain and straw). The methods and ILVs have been sent to Beltsville for Petition Method Validation. EPA will withhold a final conclusion on the adequacy of these method as analytical enforcement methods pending receipt of the PMV reports. However, these methods are based on Method II. EPA thus has no objections to a conditional registration while the PMV of the methods for PCA and CPU in rice commodities is performed.

C. Multiresidue Methods

The FDA PESTDATA data base dated January 1, 1994 (PAM Vol. I, Appendix II) contains no information on diflubenzuron recovery using Multiresidue Methods PAM, Vol. I Sections 302, 303, and 304. However, the registrant has submitted Multiresidue testing data that the Agency has forwarded to the Food and Drug Administration (FDA). Also, the results of Multiresidue Method testing of PCA and CPU have been submitted and will be forwarded to FDA.

D. Storage Stability Data

Data from a 12–month storage stability study were submitted depicting the magnitude of residue of diflubenzuron (DFB) and its metabolites CPU and PCA in/on rice grain, straw, bran and hulls (MRID # 44699202). Diflubenzuron was determined to be stable over a 12–month period with average recoveries of 78% (grain), 99% (bran), 89% (straw), and 78% (hulls). CPU exhibited the following average recoveries of a 12–month period: 76% (grain), 99% (bran), 89% (straw), and 78% (hulls). Significant declines in the PCA concentration were observed, decreasing rapidly to 56% (average) after 1 month and to 30% (average) after 12 months. The storage stability of diflubenzuron and CPU in/on rice commodities have been adequately demonstrated. PCA is unstable, degrading significantly after 1 month. Therefore, for magnitude of residue samples with storage periods greater than 1 month, correction factors must be used in order to determine the residue levels that were present at the time of sample collection.

E. Magnitude of Residues

A total of 14 acceptable field trials have been conducted: Region IV (9 trials), Region VI (2 trials), and Region X (3 trials). EPA requires that a minimum of 16 field trials be performed. The Agency suggests the following distribution for the field trials: Region IV (11 trials), Region V (1 trial), Region VI (2 trials), and Region X (2 trials) (Residue Chemistry Test Guidelines, OPPTS 860.1500 Crop Field Trials Tables 1 and 6). Additional field trials are thus required in Regions IV (1 trial) and V (1 trial). EPA has decided to issue a conditional registration for the use of diflubenzuron on rice until the necessary field trials are performed.

Residues of diflubenzuron, CPU and PCA in/on treated rice grain were <0.01 ppm, <0.001 - 0.002 ppm and <0.005 ppm, respectively, and the combined residues were <0.016 - <0.017 ppm. Residues of diflubenzuron, CPU and PCA in treated straw samples were <0.01 - 0.57 ppm, <0.01 - 0.02 ppm and <0.005 - 0.021 ppm, respectively, and the combined residues were <0.025 - <0.607 ppm. The residue data support the proposed tolerance of 0.02 ppm for diflubenzuron in/on rice grain and 0.8 ppm in/on rice straw.

F. Magnitude of the Residue in Processed Commodities

Uniroyal Chemical Company submitted data depicting the potential for concentration of diflubenzuron residues in the processed commodities of rice. Two tests were conducted in Mississippi (1) and Texas (1). At each site, rice grain was harvested at maturity, 82-85 days following a post-permanent flood application of the 2 lb/gal FlC formulation at 2 lb. ai/A (8x the proposed maximum application rate). Samples were processed according to simulated commercial procedures into hulls, bran, and polished rice. Residues of diflubenzuron were non-detectable (LOQ <0.01 ppm) and 0.26 and 0.87 ppm in four treated samples of the RAC, and did not concentrate in processed commodities of rice. As the residues of diflubenzuron did not concentrate in the hull, bran or whole rice fractions of processed rice grain, a tolerance for residues in rice processed commodities is not required.

G. Magnitude of Secondary Residues in Meat/Milk/Poultry/Eggs

Rice grain, straw, hulls and bran may be fed to livestock and/or poultry. However, the incremental exposure of diflubenzuron residues to livestock and poultry is minimal when compared to the existing exposure. EPA concludes that the current tolerances on meat, milk, poultry and eggs are adequate to cover the added residues resulting from the use on rice.

H. Magnitude of Residues in Water, Fish, and Irrigated Crops

As an adjunct to the magnitude of the residue study on rice, the petitioner also conducted residue studies to determine the magnitude of the residue of diflubenzuron in treated rice flood waters. Residue levels were determined from samples taken from the treated and untreated plots of the diflubenzuron crop field trials. Five trials were conducted in California (2), Louisiana (1), and Texas (2). Following one broadcast application of diflubenzuron as a 25% WP formulation or 2 lb./gal FlC formulation at ≈ 0.25 lb. ai/A (1x the maximum proposed application rate), one control and duplicate treated samples of water were collected from each plot at each test site at intervals of 0, 1, 3, 7, 14, 21, and 28 days following insecticide application. For the sampling intervals 0, 1, 3, and 7 days after application of diflubenzuron at 1x the maximum proposed application rate (0.25 lb. ai/A), residues of diflubenzuron in treated rice flood waters were 0.011 - 0.04 ppm, 0.0007-

0.027 ppm, <0.0003 - 0.020 ppm, and <0.0003 - 0.0014 ppm; residues were <LOQ for all samples collected 14 or more days after treatment.

The proposed label recommends the retention of flood waters for 14 days to allow for the dissipation of diflubenzuron residues. Residue data indicate that diflubenzuron residues >LOQ may be present in rice flood waters <14 days after application of diflubenzuron.

I. International Residue Limits

There are no Codex proposals, Canadian, or Mexican limits for residues of diflubenzuron on rice. A compatibility issue is not relevant to the tolerance.

J. Rotational Crop Restrictions

The nature of the residue in rotational crops is adequately understood for purposes of reregistration (residue chemistry chapters for the Reregistration Eligibility Decision (RED) document, March 16, 1995). Although EPA concluded that the available confined rotational crop study was inadequate to fully satisfy GLN 165-1 reregistration requirements, another confined rotational crop study will not be required because the study allowed EPA to make regulatory conclusions regarding the need for limited rotational crop studies (GLN 165-2) and to comment on the appropriateness of the currently established plantback interval on diflubenzuron end-use product labels.

Uniroyal has submitted data depicting diflubenzuron residues in representative rotational crops from two limited field trials. Provided the petitioner explains the discrepancy in the 0.10 ppm residue value reported for diflubenzuron in one of the wheat forage samples from CA, the limited field rotational crop study is adequate. The available data indicate that tolerances for diflubenzuron residues in rotational crops will not be required provided the diflubenzuron labels specify a restriction for the planting of rotation crops of at least 30 days.

IV. Conclusion

Therefore, tolerances are established for residues of the insecticide diflubenzuron (N-[[4-chlorophenyl)amino]-carbonyl]-2,6-difluorobenzamide) and its metabolites, 4-chlorophenylurea (CPU) and 4-chloroaniline (PCA) on rice grain at 0.02 ppm and rice straw at 0.8 ppm.

V. Objections and Hearing Requests

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

Any person may, by June 18, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the ''ADDRESSES'' section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Docket

EPA has established a record for this rulemaking under docket control number [OPP–300844] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov

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

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

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance for the residues of diflubenzuron (N-[[4-chlorophenyl)amino]-carbonyl]-2,6-difluorobenzamide) and metabolites convertible to p-chloroaniline expressed as diflubenzuron on rice grain at 0.02 ppm and rice straw at 0.8 under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Nor does it require any

prior consultation as specified by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerances for the residues of diflubenzuron (N-[[4-chlorophenyl)amino]-carbonyl]-2,6-difluorobenzamide) and metabolites convertible to p-chloroaniline expressed as diflubenzuron on rice grain at 0.02 ppm and rice straw at 0.8 in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950) and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), 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 the mandate is unfunded, EPA must provide to OMB 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 an unfunded Federal 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 Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, 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. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

VIII. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

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

Dated: April 7, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

Authority: 21 U.S.C. 321(q), 346a and 371.

2. In § 180.377, by revising paragraph (a)(2) to read as follows:

§ 180.377 Diflubenzuron; tolerances for residues.

(a) * * *

(2) Tolerances are established for residues of the insecticide diflubenzuron (N-[[4-chlorophenyl)amino]-carbonyl]-2,6-difluorobenzamide) and its metabolites 4-chlorophenylurea and 4-chloroaniline on rice grain at 0.02 ppm and rice straw at 0.8 ppm.

* * * * *

[FR Doc. 99–9711 Filed 4–16–99; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 43 and 63

[IB Docket No. 98–118, FCC 99–51]

Biennial Review of International Common Carrier Regulations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On March 18, 1999, the Federal Communications Commission adopted a Report and Order (Order) to further streamline the rules governing international common carriers. The new rules will benefit U.S. consumers because they will eliminate unnecessary regulatory delay and will facilitate entrance into the international telecommunications market. The Commission believes that the new rules will lessen the regulatory burdens on applicants, authorized carriers, and the

Commission by allowing carriers to operate more efficiently.

The Commission initiated this proceeding pursuant to section 11 of the Telecommunications Act of 1996, which directs the Commission to undertake a review every even-numbered year of all regulations that apply to providers of telecommunications services to determine whether any such regulation is no longer necessary.

DATES: Effective May 19, 1999.

FOR FURTHER INFORMATION CONTACT: Douglas Klein or Peggy Reitzel, Policy and Facilities Branch, Telecommunications Division, International Bureau, (202) 418–1470.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, FCC 99–51, adopted on March 18, 1999, and released on March 23, 1999. The full text of this Order is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY-A257) of the Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554.1919 M Street, N.W., Washington, D.C. 20554. The complete text of this Order also may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20036, (202) 857–3800.

This Order contains information collections subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other Federal agencies are invited to comment on the modified information collections contained in this proceeding.

Summary of Report and Order

1. In July 1998, the Commission adopted a Notice of Proposed Rulemaking (63 FR 41538, August 4, 1998) to consider whether to further streamline the international Section 214 authorization process and tariff requirements. This proceeding was initiated pursuant to the Telecommunications Act of l996, which directs the Commission to undertake, on every even-numbered year, a review of all regulations that apply to operations or activities of any provider of telecommunications service and to repeal or modify any regulation it determines to be no longer necessary in the public interest. Accordingly, the Commission has begun a comprehensive 1998 biennial review of telecommunications and other regulations to determine whether any are overly burdensome or no longer serve the public interest. The Commission sought comment on the proposals contained in the Notice.

2. In this proceeding, the Commission adopts a number of the proposals contained in the Notice and implements procedures that will grant regulatory relief to carriers while increasing the efficiencies of the Commission. In the Notice, the Commission proposed a blanket Section 214 authorization for international service to unaffiliated points. The Commission declines to adopt that proposal based on the comments filed in this proceeding by the Federal Bureau of Investigation (FBI) and the Department of Defense (DoD). Both the FBI and DoD argued that it is important to review some applications and transactions due to national security, law enforcement, and other considerations. The Commission agrees with the FBI and DoD that it remains important to continue to review applications prior to authorization. Thus, the Commission adopts a streamlined authorization procedure that is narrowly tailored to allow it to review applications in advance without causing needless delay or uncertainty. Under the new procedure, once an application is deemed complete and eligible for streamlined processing, the Commission will issue a public notice noting that the application has been accepted for filing and will be subject to streamlined processing. The public notice will state that the application will be deemed granted 14 days after the date of the public notice unless the applicant is notified to the contrary. The International Bureau will issue a weekly public notice of carriers newly authorized pursuant to this procedure. The new rules will eliminate the current requirement that streamlined applications be removed from streamlining in the event that an opposition is filed.

3. The new procedures apply to all international Section 214 applications that currently qualify for streamlining pursuant to § 63.12 of the Commission's rules, as well as to applicants seeking to serve affiliated routes where the affiliate has no facilities, or only mobile wireless facilities, at the foreign end of the route. Included within this class of streamlined applications are some assignments and transfers of control of international Section 214 authorizations. It is highly likely that any application that raises competitive issues would also involve assignments or transfers of control of submarine cable landing licenses or Title III radio licenses. Any application that includes an assignment or transfer of a cable landing license or a Title III license will continue to be subject to notice-and-comment procedures.

4. Although the Commission concludes that these categories of applications generally should be subject to our revised streamlined procedure, the Commission delegates to the International Bureau the authority to identify those particular applications that do warrant public comment and additional Commission scrutiny under current stated Commission policies. For example, additional scrutiny may be required where an application may present a significant potential adverse impact on competition, or where an assignment or transfer of control could eliminate a significant current or future competitor. Absent such concerns, the Commission finds that grant of Section 214 authority under these circumstances will serve the public interest, convenience, and necessity.

5. The Commission will accept petitions seeking a declaratory ruling that a foreign carrier lacks sufficient market power to affect competition adversely in the U.S. market, and such ruling may be cited in an applicant's Section 214 application for the purpose of establishing its eligibility for streamlined authorization on the affiliated route.

6. Bell Operating Companies (BOCs) are not be permitted to take advantage of the streamlined procedure to obtain authorization to provide international services from any of its in-region states until the Commission approves its section 271 application to provide interLATA services from that state. The new streamlined authorization procedure applies equally to commercial mobile radio service (CMRS) licensees as to other classes of carriers.

7. The Commission amends its rules to define *pro forma* and to allow carriers to undertake *pro forma* assignments and transfers of control of international Section 214 authorizations without Commission approval. The Commission concludes that given the mechanisms in place, many *pro forma* transfers and assignments meet the forbearance standard in § 10 of the Communications Act. So that the Commission can maintain accurate records of the entities holding Section 214 authorization, it requires that authorized carriers that undertake a *pro forma* assignment notify the Commission by letter within 30 days after consummation of the transaction. The new rule applies to all authorized international carriers.

8. The Commission adopts its proposal to allow carriers to provide their authorized services through their

wholly owned subsidiaries. Any subsidiary operating pursuant to its parent's authorization must notify the Commission by letter within 30 days after beginning to provide service. If, at any time, such a subsidiary is no longer 100-percent owned by the authorized carrier, it may not operate without first obtaining its own authorization pursuant to § 63.18.

9. Commonly owned companies (''sister'' or ''parent'' companies) may use the streamlined authorization procedure of § 63.12 to obtain authority to provide the same services, subject to the same conditions, that have already been authorized for a company with exactly the same ownership.

10. The Commission amends its rules and the exclusion list to allow any carrier with a global facilities-based authorization to use any non-U.S.-licensed submarine cable system without prior Commission approval of each cable system. The exclusion list now provides that carriers with global Section 214 authorizations to provide facilities-based service will be authorized to serve any unaffiliated market except Cuba and are permitted to use any facilities except non-U.S.-licensed satellite systems that are not specifically identified. The Commission's rules require it to publish the exclusion list in the **Federal Register**, and it is attached as Attachment A. The rule change does not affect the rules for use of non-U.S.-licensed satellite systems, which continue to be governed by the policies adopted in the Commission's *DISCO II Order* (62 FR 64167, December 4, 1997).

11. The Notice sought comment on whether to eliminate the need to apply for separate Section 214 authority to build a new common carrier cable system by including the authorization to construct new lines in the global facilities-based Section 214 authorization. The Commission declines to adopt this proposal because it would create a fee disparity. Until such time as Congress adjusts the fee schedule so that there is only one application fee for cable landing licenses and the separate application fee for overseas cable construction is eliminated, the Commission encourages applicants for common carrier cable landing licenses to file a single application seeking authority under both the Cable Landing License Act and Section 214 of the Communications Act. Information required in each application need not be repeated, and the applicant should submit both of the applicable fees with its consolidated application.

12. The Order amends the rules to reflect that the construction of new submarine cable systems will not have a significant effect on the human environment and therefore should be categorically excluded from our environmental processing requirements. The rules will have a Note to reflect this change, and applicants for a cable landing license may cite this note for the proposition that action on its application is categorically excluded from environmental processing.

13. The Order creates a new rule section 63.16, on the provision of switched basic telecommunications services using international private lines interconnected to the public switched network (sometimes called ''international simple resale'' or ''ISR''). The new rule will simplify the procedure for adding to the list of foreign destinations to which any authorized carrier may carry switched services over its authorized facilities-based or resold private lines. Currently, the Commission adds a country to this list only in response to a showing made in a Section 214 application in which an applicant seeks to provide ISR to a particular foreign country. The new rule will allow carriers to request these determinations by petition for declaratory ruling rather than by a Section 214 application. Applicants would thus be relieved of the burden of providing the detailed carrier-specific information that is required when a carrier receives authorization to provide service as well as to shorten and simplify the rules. The International Bureau staff will have the discretion to set an appropriate period for public comment and to issue a ruling by public notice on any petition for a declaratory ruling to allow ISR to a particular destination.

14. The Commission declines to raise the level of investment by foreign carriers that must be reported to the Commission. The Commission retains the requirement that applicants list every entity that directly or indirectly owns at least 10 percent of the applicant, rather than increase the threshold to 25 percent.

15. The Order adopts the majority of proposals to reorganize and simplify the rules. In order to eliminate confusion the Order clarifies the definition of affiliation and codifies it in § 63.09(e), and removes the reference to affiliation in § 63.18. The term affiliation will be used only in its broader sense, that is, when there is an interest greater than 25 percent, or a controlling interest at any level, by the U.S. carrier in a foreign carrier or by a foreign carrier in the U.S. carrier. This is the standard used to determine whether there exists an affiliation for purposes of classifying a carrier as dominant under § 63.10. The entry standard is no longer tied to a definition of affiliation. The Order adds a provision to § 63.10(a)(4) to require a carrier that is regulated as non-dominant on an affiliated route under this provision to notify the Commission if at any time it begins to provide service by reselling an affiliated facilities-based carrier's services on the affiliated route. The carrier will be deemed a dominant carrier on the route unless and until the Commission finds that the carrier qualifies for non-dominant regulation under § 63.10.

16. The Order adopts the proposal to codify a requirement that carriers notify the Commission by letter within 30 days of a name change, an assignment, or a decision not to consummate an authorized assignment. This requirement ensures that the Commission's records accurately reflect the party or parties that control the carrier's operations, particularly for purposes of enforcing Commission rules and policies.

17. The Commission defers action on the proposal to include in the rules a provision codifying the benchmark settlement rate condition that was adopted in the *Benchmarks Order* (62 FR 45758, August 29, 1997). The Order transfers the record on this issue to the *Benchmarks* reconsideration proceeding that will be addressed by the Commission in the future.

18. The Order directs the International Bureau to release the updated text of §§ 63.09 through 63.24 by June 1, 1999, and to make that document available on the Bureau's Web site at http://www.fcc.gov/ib.

19. In the proceeding, commenters raised a number of miscellaneous issues which the Commission declines to adopt. WorldCom proposed that any new rules with respect to *pro forma* assignments and transfers of control and service by wholly-owned subsidiaries apply to Title III earth station licenses and cable landing licenses. The Commission declines to adopt WorldCom's proposal because Executive Order No. 10,530 requires the Commission to obtain the approval of the State Department and advice from other Executive Branch agencies before granting any cable landing license. With respect to earth station licenses, the Commission may not have authority to forbear from reviewing any assignments or transfers of control when they involve non-common carrier licenses. Tyco requested the Commission to examine its practice of imposing separate regulatory requirements on common carrier and non-common carrier submarine cable systems. The

Commission states that it will consider initiating a proceeding to address those issues in the near future.

20. SBC raised the issue of eliminating the requirement of tariffs for international services. SBC and AT&T requested that the Commission revise the procedures of requiring advance notification of affiliations with foreign carriers. Cable & Wireless proposed that the Commission change its policies permitting the provision of switched services over private lines to recognize when foreign markets offer equivalent resale opportunities in subsets of services. Deutsche Telekom argued that the Commission should not impose dominant carrier safeguards on any carrier whose affiliated foreign carrier's settlement rates are at or below the Commission's benchmark settlement rates. Cable & Wireless also requested that the 25 percent affiliation standard should not apply to the benchmark settlement rate condition. In the Order, the Commission concludes that these arguments and proposals are outside the scope of this proceeding.

21. Cable & Wireless suggested that the Commission include in its rules applicable to international Section 214 authorizations a provision that specifically addresses frivolous filings. Under the new procedures adopted in the Order, public comment on the great majority of international Section 214 applications reduces the ability of parties to file frivolous petitions to deny. The Commission concludes that its new procedures, coupled with the Commission's existing rules, are sufficient to address this concern.

Final Regulatory Flexibility Certification

22. The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, as amended by the Contract with America Advancement Act of 1996, requires that an agency prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' In the *Notice*, we certified that the proposed rules would not have a significant economic impact on a substantial number of small entities because they would not impose any additional compliance burden on small entities dealing with the Commission. No comments were received concerning this certification. We now reaffirm this certification with respect to the rules adopted in this order. We anticipate that the rule changes we adopt here will reduce regulatory and procedural burdens on small entities. The purposes of this proceeding are to eliminate some regulatory requirements and to simplify and clarify other existing rules. The modifications do not impose any additional compliance burden on persons dealing with the Commission, including small entities. Any prospective carrier will continue to submit an application for Section 214 authorization. In most cases, the authorization will be granted expeditiously. We anticipate that the revisions we adopt here will make it easier for small entities as well as others to provide international telecommunications service without unnecessary delay. Accordingly, we certify, pursuant to § 605(b) of the RFA, that the rules adopted herein will not have a significant economic impact on a substantial number of small business entities, as defined by the RFA. The Office of Public Affairs, Reference Operations Division, shall send a copy of this Report and Order, including this certification, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this certification will also be published in the **Federal Register**.

Paperwork Reduction Act of 1995 Analysis

23. This Order contains information collections which have been submitted to the Office of Management and Budget (OMB) for approval. As part of our continuing effort to reduce paperwork burdens, the Commission invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this Order, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due [May 19, 1999.] A 60 day comment period was established when the Notice was published in the **Federal Register** [63 FR 41538, August 4, 1998]. As described above, the Commission did not adopt the blanket Section 214 authorization as proposed in the Notice. As a result, the information collections contained in the Order negate the majority of collections proposed in the Notice, and retain the collections currently approved by OMB. Comments should address the following: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: 3060–0686.

Title: Streamlining the International 214 Process and Tariff Requirements.

Form No.: N/A.

Type of Review: Revision of existing collection.

Respondents: Business or other For-Profit.

Number of Respondents: 1650.

Estimated Time Per Response: 1 to 6,056 hours (20.46 hours average).

Total Annual Burden: 73,885.

Estimated costs per respondent: $12,456,000 (Filing Fees and Attorney Services).

Frequency of Response: Annually; Semi-Annually; Quarterly: and On occasion reporting requirements.

Needs and Uses: The information collections are necessary largely to determine the qualifications of applicants to provide common carrier international telecommunications services, or to construct and operate submarine cables, including applicants that are affiliated with foreign carriers, and to determine whether and under what conditions the authorizations are in the public interest, convenience, and necessity. The information collections are necessary for the Commission to maintain effective oversight of U.S. carriers that are affiliated with, or involved in certain co-marketing or similar arrangements with, foreign carriers that have sufficient market power to affect competition adversely in the U.S. market. The information collected is necessary for the Commission to ensure that rates, terms and conditions for international service are just and reasonable, as required by the Communications Act of 1934. In addition, the Commission must maintain records that accurately reflect a party or parties that control a carrier's operations, particularly for purposes of enforcing the Commission's rules and policies.

Written comments by the public on the proposed information collections are due on or before May 19, 1999. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, S.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov.

Ordering Clauses

24. Accordingly, *it is ordered* that, pursuant to §§ 1, 4(i), 4(k), 10, 11, 201(b), 214, 303(r), 307, 309(a), and 310

of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(k), 160, 161, 201(b), 214, 303(r), 307, 309(a), 310, and the Submarine Cable Landing License Act, 47 U.S.C. 34–39, this REPORT AND ORDER is hereby ADOPTED and Parts 1, 43, 63, and 64 of the Commission's rules, 47 CFR Parts 1, 43, 63, 64, ARE AMENDED as set forth in Rule Changes.

25. *It is further ordered* that the rule changes and information collections contained herein WILL BECOME EFFECTIVE May 19, 1999 following OMB approval, unless a notice is published in the **Federal Register** stating otherwise.

26. *It is further ordered* that the record on codification of the benchmarks condition for facilities-based carriers developed in this proceeding be transferred to IB Docket 96–261 for future consideration.

27. *It is further ordered* that authority is delegated to the Chief, International Bureau, and the Chief, Common Carrier Bureau, as specified herein, to effect the decisions as set forth above.

28. *It is further ordered* that the Commission's Office of Legislative and Intergovernmental Affairs is directed to submit a legislative request to Congress as described in paragraph 63 of this order.

29. *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 regulatory flexibility certification, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with paragraph 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

30. *It is further ordered* that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Report and Order to the Council on Environmental Quality.

List of Subjects in 47 CFR Parts 1, 43, and 63

Communications common carriers, Reporting and recordkeeping requirements.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 1, 43, 63, and 64 as follows:

PART 1—PRACTICE AND PROCEDURE

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

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

2. Section 1.767 is amended by revising paragraphs (a)(5), (a)(6), (a)(7) and (e), adding new paragraphs (a)(8) and (a)(9) to read as follows:

§ 1.767 Cable landing licenses.

(a) * * *

(5) A specific description of the cable landing stations on the shore of the United States and in foreign countries where the cable will land. The description shall include a map showing specific coordinates or street addresses of each landing station as well as the identity, citizenship, and specific ownership share of each owner of each U.S. landing station. The applicant initially may file a general geographic description of the landing points; however, grant of the application will be conditioned on the Commission's final approval of a more specific description of the landing points, including all information required by this paragraph, to be filed by the applicant no later than 90 days prior to construction. The Commission will give public notice of the filing of this description, and grant of the license will be considered final if the Commission does not notify the applicant otherwise in writing no later than 60 days after receipt of the specific description of the landing points, unless the Commission designates a different time period;

(6) A statement as to whether the cable will be operated on a common carrier or non-common carrier basis;

(7) A list of the proposed owners of the cable system, their voting interests, and their ownership interests by segment in the cable;

(8) For each proposed owner of the cable system, a certification as to whether the proposed owner is, or is affiliated with, a foreign carrier (as defined in § 63.09 of this chapter). Include the information and certifications required in § 63.18(h) through (k) of this chapter; and

(9) Any other information that may be necessary to enable the Commission to act on the application.

* * * * *

(e) The application fee for a non-common carrier cable landing license is payment type code BJT. Applicants for common carrier cable landing licenses shall pay the fees for both a common carrier cable landing license (payment type code CXT) and overseas cable construction (payment type code BIT). There is no application fee for modification of a cable landing license, except that the fee for assignment or transfer of control of a cable landing license is payment type code CUT. See § 1.1107(2) of this chapter.

3. Section 1.1306 is amended by adding the following sentence to the end of Note 1:

§ 1.1306 Actions which are categorically excluded from environmental processing.

* * * * *

Note 1: * * * The provisions of § 1.1307(a) and (b) of this part do not encompass the construction of new submarine cable systems.

* * * * *

PART 43—REPORTS OF COMMUNICATION COMMON CARRIERS AND CERTAIN AFFILIATES

4. The authority citation for part 43 continues to read as follows:

Authority: 47 U.S.C. 154; Telecommunications Act of 1996, Pub. L. 104–104, secs. 402(b)(2)(B), (c), 110 Stat. 56 (1996) as amended unless otherwise noted. 47 U.S.C. 211, 219, 220 as amended.

5. Section 43.61 is amended by revising paragraph (c) to read as follows:

§ 43.61 Reports of international telecommunications traffic.

* * * * *

(c) Each common carrier engaged in the resale of international switched services that is affiliated with a foreign carrier that has sufficient market power on the foreign end of an international route to affect competition adversely in the U.S. market and that collects settlement payments from U.S. carriers shall file a quarterly version of the report required in paragraph (a) of this section for its switched resale services on the dominant route within 90 days from the end of each calendar quarter. For purposes of this paragraph, *affiliated* and *foreign carrier* are defined in § 63.09 of this chapter.

PART 63—EXTENSION OF LINES AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

6. The authority citation for Part 63 is revised to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 160, 161, 201–205, 218, 403, 533 unless otherwise noted.

7. Section 63.09 is added to read as follows:

§ 63.09 Definitions applicable to international Section 214 authorizations.

The following definitions shall apply to §§ 63.09–63.24 of this part, unless the context indicates otherwise:

(a) *Facilities-based carrier* means a carrier that holds an ownership, indefeasible-right-of-user, or leasehold interest in bare capacity in the U.S. end of an international facility, regardless of whether the underlying facility is a common carrier or non-common carrier submarine cable or a satellite system.

(b) *Control* includes actual working control in whatever manner exercised and is not limited to majority stock ownership. *Control* also includes direct or indirect control, such as through intervening subsidiaries.

(c) *Special concession* is defined as in § 63.14(b) of this part.

(d) *Foreign carrier* is defined as any entity that is authorized within a foreign country to engage in the provision of international telecommunications services offered to the public in that country within the meaning of the International Telecommunication Regulations, see Final Acts of the World Administrative Telegraph and Telephone Conference, Melbourne, 1988 (WATTC–88), Art. 1, which includes entities authorized to engage in the provision of domestic telecommunications services if such carriers have the ability to originate or terminate telecommunications services to or from points outside their country.

(e) Two entities are *affiliated* with each other if one of them, or an entity that controls one of them, directly or indirectly owns more than 25 percent of the capital stock of, or controls, the other one.

Also, a U.S. carrier is *affiliated* with two or more foreign carriers if the foreign carriers, or entities that control them, together directly or indirectly own more than 25 percent of the capital stock of, or control, the U.S. carrier and those foreign carriers are parties to, or the beneficiaries of, a contractual relation (e.g., a joint venture or market alliance) affecting the provision or marketing of international basic telecommunications services in the United States.

(f) *Market power* means sufficient market power to affect competition adversely in the U.S. market.

Note 1: The assessment of ''capital stock'' ownership will be made under the standards developed in Commission case law for determining such ownership. See, e.g., Fox Television Stations, Inc., 10 FCC Rcd 8452 (1995). ''Capital stock'' includes all forms of equity ownership, including partnership interests.

Note 2: Ownership and other interests in U.S. and foreign carriers will be attributed to their holders and deemed cognizable pursuant to the following criteria: Attribution of ownership interests in a carrier that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that wherever the ownership percentage for any link in the chain exceeds 50 percent, it shall not be included for purposes of this multiplication. For example, if A owns 30 percent of company X, which owns 60 percent of company Y, which owns 26 percent of ''carrier,'' then X's interest in ''carrier'' would be 26 percent (the same as Y's interest because X's interest in Y exceeds 50 percent), and A's interest in ''carrier'' would be 7.8 percent (0.30×0.26). Under the 25 percent attribution benchmark, X's interest in ''carrier'' would be cognizable, while A's interest would not be cognizable.

8. Section 63.10 is amended by removing the third sentence of paragraph (a) introductory text and the last sentence of paragraph (c)(5) and revising paragraph (a)(4) to read as follows:

§ 63.10 Regulatory classification of U.S. international carriers.

(a) * * *

* * * * *

(4) A carrier that is authorized under this part to provide to a particular destination an international switched service, and that provides such service solely through the resale of an unaffiliated U.S. facilities-based carrier's international switched services (either directly or indirectly through the resale of another U.S. resale carrier's international switched services), shall presumptively be classified as non-dominant for the provision of the authorized service. A carrier regulated as non-dominant pursuant to this subparagraph shall notify the Commission at any time that it begins to provide such service through the resale of an affiliated U.S. facilities-based carrier's international switched services. The carrier will be deemed a dominant carrier on the route absent a Commission finding that the carrier otherwise qualifies for non-dominant regulation pursuant to this section.

* * * * *

9. Section 63.11, paragraph (b) is amended by removing the words ''within the meaning of § 63.18(h)(1)'', in paragraph (f) revising all references to ''§ 63.18(i)'' to read ''§ 63.18(n)'', removing the Note to § 63.11 and revising the section heading, paragraph (a), (c)(1), (c)(2), (e)(1) and (e)(2) to read as follows:

§ 63.11 Notification by and prior approval for U.S. international carriers that are or propose to become affiliated with a foreign carrier.

(a) Any carrier authorized to provide international communications service under this part shall notify the Commission sixty days prior to the consummation of either of the following acquisitions of direct or indirect interests in or by foreign carriers:

(1) Acquisition of a controlling interest in a foreign carrier by the authorized carrier, or by any entity that controls the authorized carrier, or that directly or indirectly owns more than 25 percent of the capital stock of the authorized carrier; or

(2) Acquisition of a direct or indirect interest greater than 25 percent, or a controlling interest, in the capital stock of the authorized carrier by a foreign carrier or by an entity that controls a foreign carrier.

* * * * *

(c) * * *

(1) The carrier also should specify, where applicable, those countries named in response to paragraph (c) of this section for which it provides international switched services solely through the resale of the international switched services of unaffiliated U.S. facilities-based carriers.

(2) The carrier shall also submit with its notification:

(i) The name, address, citizenship and principal businesses of any person or entity that directly or indirectly owns at least ten percent of the equity of the applicant, and the percentage of equity owned by each of those entities (to the nearest one percent). The applicant shall also identify any interlocking directorates with a foreign carrier.

(ii) A certification that the applicant has not agreed to accept special concessions directly or indirectly from any foreign carrier with respect to any U.S. international route where the foreign carrier possesses market power on the foreign end of the route and will not enter into such agreements in the future.

* * * * *

(e) * * *

(1) In the case of a notification filed under this section, the Commission, if it deems it necessary, will by written order at any time before or after the deadline for submission of public comments impose dominant carrier regulation on the carrier for the affiliated routes based on the provisions of § 63.10 of this part.

(2) The Commission will presume the investment to be in the public interest unless the Commission notifies the

carrier that the investment raises a substantial and material question of fact as to whether the investment serves the public interest, convenience and necessity. Such notification shall be in writing within 30 days of the issuance of the public notice. If notified that the investment raises a substantial and material question, then the carrier shall not consummate the planned investment until it has filed a complete application under § 63.18, including § 63.18(k) of this part, and the Commission has approved the application by formal written order.

* * * * *

10. Section 63.12, paragraph (c)(2) is amended by removing the words ''within the meaning of § 63.18(h)(1)'', redesignating paragraph (c)(5) as paragraph (c)(4) and revising paragraphs (a), (b), (c)(1) and (c)(4) to read as follows:

§ 63.12 Processing of international Section 214 applications.

(a) Except as provided by paragraph (c) of this section, a complete application seeking authorization under § 63.18 of this part shall be granted by the Commission 14 days after the date of public notice listing the application as accepted for filing.

(b) The applicant may commence operation on the 15th day after the date of public notice listing the application as accepted for filing, but only in accordance with the operations proposed in its application and the rules, regulations, and policies of the Commission. The public notice of the grant of the authorization shall represent the applicant's Section 214 certificate.

(c) * * *

(1) The applicant is affiliated with a foreign carrier in a destination market, unless the applicant clearly demonstrates in its application at least one of the following:

(i) The Commission has previously determined that the affiliated foreign carrier lacks market power in that destination market;

(ii) The applicant qualifies for a presumption of non-dominance under § 63.10(a)(3);

(iii) The affiliated foreign carrier owns no facilities, or only mobile wireless facilities, in that destination market. For this purpose, a carrier is said to own facilities if it holds an ownership, indefeasible-right-of-user, or leasehold interest in bare capacity in international or domestic telecommunications facilities (excluding switches);

(iv) The affiliated destination market is a WTO Member country and the applicant qualifies for a presumption of non-dominance under § 63.10(a)(4)of this part;

(v) The affiliated destination market is a WTO Member country and the applicant agrees to be classified as a dominant carrier to the affiliated destination country under § 63.10, without prejudice to its right to petition for reclassification at a later date; or

(vi) An entity with exactly the same ultimate ownership as the applicant has been authorized to provide the applied-for services on the affiliated destination route, and the applicant agrees to be subject to all of the conditions to which the authorized carrier is subject for its provision of service on that route; or

* * * * *

(4) The Commission has informed the applicant in writing, within 14 days after the date of public notice listing the application as accepted for filing, that the application is not eligible for streamlined processing.

(d) If an application is deemed complete but, pursuant to paragraph (c) of this section, is deemed ineligible for the streamlined processing procedures provided by paragraphs (a) and (b) of this section, the Commission will issue public notice indicating that the application is ineligible for streamlined processing. Within 90 days of the public notice, the Commission will take action upon the application or provide public notice that, because the application raises questions of extraordinary complexity, an additional 90-day period for review is needed. Each successive 90-day period may be so extended. The application shall not be deemed granted until the Commission affirmatively acts upon the application. Operation for which such authorization is sought may not commence except in accordance with any terms or conditions imposed by the Commission.

11. Section 63.14 is amended by removing the last sentence of paragraph (a) and revising paragraph (b) introductory text to read as follows:

§ 63.14 Prohibition on agreeing to accept special concessions.

* * * * *

(b) A special concession is defined as an exclusive arrangement involving services, facilities, or functions on the foreign end of a U.S. international route that are necessary for the provision of basic telecommunications services where the arrangement is not offered to similarly situated U.S.-licensed carriers and involves:

* * * * *

§ 63.15 [Removed]

12. Section 63.15 is removed.

13. Section 63.16 is added to read as follows:

§ 63.16 Switched services over private lines.

(a) Except as provided in § 63.22(f)(2) of this part, a carrier may provide switched basic services over its authorized private lines if and only if the country at the foreign end of the private line appears on a Commission list of destinations to which the Commission has authorized the provision of switched services over private lines. The list of authorized destinations is available from the International Bureau's World Wide Web site at http://www.fcc.gov/ib.

(b) An authorized carrier seeking to add a foreign market to the list of markets for which carriers may provide switched services over private lines must make the following showing:

(1) If seeking a Commission ruling to permit the provision of international switched basic services over private lines between the United States and a WTO Member country, the applicant shall demonstrate either that settlement rates for at least 50 percent of the settled U.S.-billed traffic between the United States and the country at the foreign end of the private line are at or below the benchmark settlement rate adopted for that country in IB Docket No. 96–261 *or* that the country affords resale opportunities equivalent to those available under U.S. law (see paragraph (c) of this section).

(2) If seeking a Commission ruling to permit the provision of international switched basic services over private lines between the United States and a non-WTO Member country, the applicant shall demonstrate that settlement rates for at least 50 percent of the settled U.S.-billed traffic between the United States and the country at the foreign end of the private line are at or below the benchmark settlement rate adopted for that country in IB Docket No. 96–261 that the country affords resale opportunities equivalent to those available under U.S. law (see paragraph (c) of this section).

(c) With regard to showing under paragraph (b) of this section that a destination country affords resale opportunities equivalent to those available under U.S. law, an applicant shall include evidence demonstrating that equivalent resale opportunities exist between the United States and the subject country, including any relevant bilateral or multilateral agreements between the administrations involved. The applicant must demonstrate that the foreign country at the other end of the

private line provides U.S.-based carriers with:

(1) The legal right to resell international private lines, interconnected at both ends, for the provision of switched services;

(2) Reasonable and nondiscriminatory charges, terms and conditions for interconnection to foreign domestic carrier facilities for termination and origination of international services, with adequate means of enforcement;

(3) Competitive safeguards to protect against anticompetitive and discriminatory practices affecting private line resale; and

(4) Fair and transparent regulatory procedures, including separation between the regulator and operator of international facilities-based services.

(d) The showing required by paragraph (b) of this section may be made in a Section 214 application filed pursuant to § 63.18 of this part or in a petition for declaratory ruling addressed to the attention of the International Bureau and indicating clearly the name of the party seeking the declaration and the destination points for which the declaration is sought. The Commission will issue public notice of the filing of the request and may, in each case, determine an appropriate deadline for filing comments. Unopposed requests may be granted by public notice.

Note 1 to § 63.16: The Commission's benchmark settlement rates are available in International Settlement Rates, IB Docket No. 96–261, *Report and Order,* FCC 97–280, 12 FCC Rcd 19,806, 62 FR 45758 (August 29, 1997).

14. Section 63.17 is amended by revising paragraph (b)(4) to read as follows:

§ 63.17 Special provisions for U.S. international carriers.

* * * * *

(b) * * *

(4) No U.S. common carrier may engage in switched hubbing to or from a third country where it has an affiliation with a foreign carrier unless and until it has received authority to serve that country under § 63.18(e)(1), (e)(2), or (e)(4) of this part.

15. Section 63.18 is amended by redesignating paragraphs (j) and (k), as paragraphs (o) and (p), revising paragraphs (e), (g), (h), and (i), and adding new paragraphs (j) through (n) to read as follows:

§ 63.18 Contents of applications for international common carriers.

* * * * *

(e) One or more of the following statements, as pertinent:

(1) *Global facilities-based authority.* If applying for authority to become a facilities-based international common carrier subject to § 63.22 of this part, the applicant shall:

(i) State that it is requesting Section 214 authority to operate as a facilities-based carrier pursuant to § 63.18(e)(1) of this part of the Commission's rules;

(ii) List any countries for which the applicant does not request authorization under this paragraph (see § 63.22(a) of this part); and

(iii) Certify that it will comply with the terms and conditions contained in §§ 63.21 and 63.22 of this part.

(2) *Global resale authority.* If applying for authority to resell the international services of authorized U.S. common carriers subject to § 63.23 of this part, the applicant shall:

(i) State that it is requesting Section 214 authority to operate as a resale carrier pursuant to § 63.18(e)(2) of this section of the Commission's rules;

(ii) List any countries for which the applicant does not request authorization under this paragraph (see § 63.23(a) of this part); and

(iii) Certify that it will comply with the terms and conditions contained in §§ 63.21 and 63.23 of this part.

(3) *Transfer of control or assignment.* If applying for authority to transfer control of a common carrier holding international Section 214 authorization or to acquire, by assignment, another carrier's existing international Section 214 authorization, the applicant shall complete paragraphs (a) through (d) of this section for both the transferor/assignor and the transferee/assignee. Only the transferee/assignee needs to complete paragraphs (h) through (p) of this section. At the beginning of the application, the applicant should also include a narrative of the means by which the transfer or assignment will take place. The Commission reserves the right to request additional information as to the particulars of the transaction to aid it in making its public interest determination. An assignee or transferee shall notify the Commission no later than 30 days after either consummation of the assignment or transfer or a decision not to consummate the assignment or transfer. The notification may be by letter and shall identify the file numbers under which the initial authorization and the authorization of the assignment or transfer were granted. See also § 63.24 of this part (*pro forma* assignments and transfers of control).

(4) *Other authorizations.* If applying for authority to acquire facilities or to provide services not covered by paragraphs (e)(1) through (e)(3), the applicant shall provide a description of the facilities and services for which it seeks authorization. The applicant shall certify that it will comply with the terms and conditions contained in § 63.21 and § 63.22 and/or § 63.23 of this part, as appropriate. Such description also shall include any additional information the Commission shall have specified previously in an order, public notice or other official action as necessary for authorization.

* * * * *

(g) Where the applicant is seeking facilities-based authority under paragraph (e)(4) of this section, a statement whether an authorization of the facilities is categorically excluded as defined by § 1.1306 of this chapter. If answered affirmatively, an environmental assessment as described in § 1.1311 of this chapter need not be filed with the application.

(h) The name, address, citizenship and principal businesses of any person or entity that directly or indirectly owns at least ten percent of the equity of the applicant, and the percentage of equity owned by each of those entities (to the nearest one percent). The applicant shall also identify any interlocking directorates with a foreign carrier.

(i) A certification as to whether or not the applicant is, or is affiliated with, a foreign carrier. The certification shall state with specificity each foreign country in which the applicant is, or is affiliated with, a foreign carrier.

(j) A certification as to whether or not the applicant seeks to provide international telecommunications services to any destination country for which any of the following is true. The certification shall state with specificity the foreign carriers and destination countries:

(1) The applicant is a foreign carrier in that country; or

(2) The applicant controls a foreign carrier in that country; or

(3) Any entity that owns more than 25 percent of the applicant, or that controls the applicant, controls a foreign carrier in that country.

(4) Two or more foreign carriers (or parties that control foreign carriers) own, in the aggregate, more than 25 percent of the applicant and are parties to, or the beneficiaries of, a contractual relation (e.g., a joint venture or market alliance) affecting the provision or marketing of international basic telecommunications services in the United States.

(k) For any destination country listed by the applicant in response to paragraph (j) of this section, the applicant shall make one of the following showings:

(1) The named foreign country (i.e., the destination foreign country) is a

Member of the World Trade Organization; or

(2) The applicant's affiliated foreign carrier lacks market power in the named foreign country; or

(3) The named foreign country provides effective competitive opportunities to U.S. carriers to compete in that country's market for the service that the applicant seeks to provide (facilities-based, resold switched, or resold non-interconnected private line services). An effective competitive opportunities demonstration should address the following factors:

(i) If the applicant seeks to provide facilities-based international services, the legal ability of U.S. carriers to enter the foreign market and provide facilities-based international services, in particular international message telephone service (IMTS);

(ii) If the applicant seeks to provide resold services, the legal ability of U.S. carriers to enter the foreign market and provide resold international switched services (for switched resale applications) or non-interconnected private line services (for non-interconnected private line resale applications);

(iii) Whether there exist reasonable and nondiscriminatory charges, terms and conditions for interconnection to a foreign carrier's domestic facilities for termination and origination of international services or the provision of the relevant resale service;

(iv) Whether competitive safeguards exist in the foreign country to protect against anticompetitive practices, including safeguards such as:

(A) Existence of cost-allocation rules in the foreign country to prevent cross-subsidization;

(B) Timely and nondiscriminatory disclosure of technical information needed to use, or interconnect with, carriers' facilities; and

(C) Protection of carrier and customer proprietary information;

(v) Whether there is an effective regulatory framework in the foreign country to develop, implement and enforce legal requirements, interconnection arrangements and other safeguards; and

(vi) Any other factors the applicant deems relevant to its demonstration.

(l) Any applicant that proposes to resell the international switched services of an unaffiliated U.S. carrier for the purpose of providing international telecommunications services to a country where it is a foreign carrier or is affiliated with a foreign carrier shall either provide a showing that would satisfy § 63.10(a)(3) of this part or state that it will file the quarterly traffic reports required by § 43.61(c) of this chapter.

(m) With respect to regulatory classification under § 63.10 of this part, any applicant that is or is affiliated with a foreign carrier in a country listed in response to paragraph (i) of this section and that desires to be regulated as non-dominant for the provision of particular international telecommunications services to that country should provide information in its application to demonstrate that it qualifies for non-dominant classification pursuant to § 63.10 of this part.

(n) A certification that the applicant has not agreed to accept special concessions directly or indirectly from any foreign carrier with respect to any U.S. international route where the foreign carrier possesses market power on the foreign end of the route and will not enter into such agreements in the future.

* * * * *

16. Section 63.20 is amended by revising paragraphs (b), (c) and the first sentence of paragraph (d) to read as follows:

§ 63.20 Copies required; fees; and filing periods for international service providers.

* * * * *

(b) No application accepted for filing and subject to the provisions of §§ 63.18, 63.62 or 63.505 of this part shall be granted by the Commission earlier than 28 days following issuance of public notice by the Commission of the acceptance for filing of such application or any major amendment unless said public notice specifies another time period, or the application qualifies for streamlined processing pursuant to § 63.12 of this part.

(c) No application accepted for filing and subject to the streamlined processing provisions of § 63.12 of this part shall be granted by the Commission earlier than 14 days following issuance of public notice by the Commission of the acceptance for filing of such application or any major amendment unless said public notice specifies another time period.

(d) Any interested party may file a petition to deny an application within the time period specified in the public notice listing an application as accepted for filing and ineligible for streamlined processing. * * *

17. Section 63.21 is amended by revising the section heading, paragraph (a), and adding new paragraphs (i) and (j) to read as follows:

§ 63.21 Conditions applicable to all international Section 214 authorizations.

* * * * *

(a) Each carrier is responsible for the continuing accuracy of the certifications made in its application. Whenever the substance of any such certification is no longer accurate, the carrier shall as promptly as possible and in any event within thirty days file with the Secretary in duplicate a corrected certification referencing the FCC file number under which the original certification was provided. The information may be used by the Commission to determine whether a change in regulatory status may be warranted under § 63.10 of this part. See also § 63.11 of this part.

* * * * *

(i) Subject to the requirement of § 63.10 of this part that a carrier regulated as dominant along a route must provide service as an entity that is separate from its foreign carrier affiliate, and subject to any other structural-separation requirement in Commission regulations, an authorized carrier may provide service through any wholly owned direct or indirect subsidiaries. The carrier shall, within 30 days after the subsidiary begins providing service, file a letter with the Secretary in duplicate referencing the authorized carrier's name and the FCC file numbers under which the carrier's authorizations were granted and identifying the subsidiary's name and place of legal organization. This provision shall not be construed to authorize the provision of service by any entity barred by statute or regulation from itself holding an authorization or providing service.

(j) An authorized carrier, or a subsidiary operating pursuant to paragraph (i) of this section, that changes its name (including the name under which it is doing business) shall notify the Commission by letter filed with the Secretary in duplicate within 30 days of the name change. Such letter shall reference the FCC file numbers under which the carrier's authorizations were granted.

18. Section 63.22 is added to read as follows:

§ 63.22 Facilities-based international common carriers.

The following conditions apply to authorized facilities-based international carriers:

(a) A carrier authorized under § 63.18(e)(1) of this part may provide international facilities-based services to international points for which it qualifies for non-dominant regulation as set forth in § 63.10 of this part, except in the following circumstance: If the carrier is, or is affiliated with, a foreign carrier in a destination market and the Commission has not determined that the

foreign carrier lacks market power in the destination market (see § 63.10(a) of this part), the carrier shall not provide service on that route unless it has received specific authority to do so under § 63.18(e)(4) of this part.

(b) The carrier may provide service using half-circuits on any appropriately licensed U.S. common carrier and non-common carrier facilities (under either Title III of the Communications Act of 1934, as amended, or the Submarine Cable Landing License Act, 47 U.S.C. 34–39) that do not appear on an exclusion list published by the Commission. Carriers may also use any necessary non-U.S.-licensed facilities, including any submarine cable systems, that do not appear on the exclusion list. Carriers may not use U.S. earth stations to access non-U.S.-licensed satellite systems unless the Commission has specifically approved the use of those satellites and so indicates on the exclusion list, and then only for service to the countries indicated thereon. The exclusion list is available from the International Bureau's World Wide Web site at http://www.fcc.gov/ib.

(c) Specific authority under § 63.18(e)(4) of this part is required for the carrier to provide service using any facilities listed on the exclusion list, to provide service between the United States and any country on the exclusion list, or to construct, acquire, or operate lines in any new major common carrier facility project.

(d) The carrier may provide international basic switched, private line, data, television and business services.

(e)(1) Except as provided in paragraph (e)(2) of this section, the carrier may provide switched basic services over its authorized facilities-based private lines if and only if the country at the foreign end of the private line appears on a Commission list of countries to which the Commission has authorized the provision of switched services over private lines. See § 63.16 of this part. If at any time the Commission removes the country from that list or finds that market distortion has occurred in the routing of traffic between the United States and that country, the carrier shall comply with enforcement actions taken by the Commission.

(2) The carrier may use its authorized private line facilities to provide switched basic services in circumstances where the private line facility is interconnected to the public switched network on only one end—either the U.S. end or the foreign end—and where the carrier is not operating the facility in correspondence with a carrier that directly or indirectly owns the private line facility in the foreign country at the other end of the private line.

(f) The carrier shall file annual international circuit status reports as required by § 43.82 of this chapter.

(g) The authority granted under this part is subject to all Commission rules and regulations and any conditions or limitations stated in the Commission's public notice or order that serves as the carrier's Section 214 certificate. See §§ 63.12, 63.21 of this part.

19. Section 63.23 is added to read as follows:

§ 63.23 Resale-based international common carriers.

The following conditions apply to carriers authorized to resell the international services of other authorized carriers:

(a) A carrier authorized under § 63.18(e)(2) of this part may provide resold international services to international points for which the applicant qualifies for non-dominant regulation as set forth in § 63.10, except that the carrier may not provide either of the following services unless it has received specific authority to do so under § 63.18(e)(4) of this part:

(1) Resold switched services to a non-WTO Member country where the applicant is, or is affiliated with, a foreign carrier; and

(2) Switched or private line services over resold private lines to a destination market where the applicant is, or is affiliated with, a foreign carrier and the Commission has not determined that the foreign carrier lacks market power in the destination market (see § 63.10(a) of this part).

(b) The carrier may not resell the international services of an affiliated carrier regulated as dominant on the route to be served unless it has received specific authority to do so under § 63.18(e)(4) of this part.

(c) Except as provided in paragraph (b) of this section, the carrier may resell the international services of any authorized common carrier, pursuant to that carrier's tariff or contract duly filed with the Commission, for the provision of international basic switched, private line, data, television and business services to all international points.

(d) The carrier may provide switched basic services over its authorized resold private lines if and only if the country at the foreign end of the private line appears on a Commission list of countries to which the Commission has authorized the provision of switched services over private lines. See § 63.16 of this part. If at any time the Commission removes the country from that list or finds that market distortion has occurred in the routing of traffic between the United States and that country, the carrier shall comply with enforcement actions taken by the Commission.

(e) Any party certified to provide international resold private lines to a particular geographic market shall report its circuit additions on an annual basis. Circuit additions should indicate the specific services provided (e.g., IMTS or private line) and the country served. This report shall be filed on a consolidated basis not later than March 31 for the preceding calendar year.

(f) The authority granted under this part is subject to all Commission rules and regulations and any conditions or limitations stated in the Commission's public notice or order that serves as the carrier's Section 214 certificate. See §§ 63.12, 63.21 of this part.

Section 63.24 is added to read as follows:

§ 63.24 Pro forma assignments and transfers of control.

(a) *Definition.* An assignment of an authorization granted under this part or a transfer of control of a carrier authorized under this part to provide an international telecommunications service is a *pro forma* assignment or transfer of control if it falls into one of the following categories and, together with all previous *pro forma* transactions, does not result in a change in the carrier's ultimate control:

(1) Assignment from an individual or individuals (including partnerships) to a corporation owned and controlled by such individuals or partnerships without any substantial change in their relative interests;

(2) Assignment from a corporation to its individual stockholders without effecting any substantial change in the disposition of their interests;

(3) Assignment or transfer by which certain stockholders retire and the interest transferred is not a controlling one;

(4) Corporate reorganization that involves no substantial change in the beneficial ownership of the corporation (including reincorporation in a different jurisdiction or change in form of the business entity);

(5) Assignment or transfer from a corporation to a wholly owned direct or indirect subsidiary thereof or vice versa, or where there is an assignment from a corporation to a corporation owned or controlled by the assignor stockholders without substantial change in their interests; or

(6) Assignment of less than a controlling interest in a partnership.

(b) Except as provided in paragraph (c) of this section, a *pro forma* assignment or transfer of control of an authorization to provide international telecommunications service is not subject to the requirements of § 63.18 of this part. A *pro forma* assignee or a carrier that is the subject of a *pro forma* transfer of control is not required to seek prior Commission approval for the transaction. A *pro forma* assignee must notify the Commission no later than 30 days after the assignment is consummated. The notification may be in the form of a letter (in duplicate to the Secretary), and it must contain a certification that the assignment was *pro forma* as defined in paragraph (a) of this section and, together with all previous *pro forma* transactions, does not result in a change of the carrier's ultimate control. A single letter may be filed for an assignment of more than one authorization if each authorization is identified by the file number under which it was granted.

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

21. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 160, 201, 218, 226, 228, 332 unless otherwise noted.

§ 64.1002 [Amended]

22. Section 64.1002, revise all references to ''63.18(h)(1)(i)'' to read ''63.09(e)'' and ''63.18(h)(5)(iii)'' to read ''63.18(k)(3)''.

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

Attachment A—Exclusion List for International Section 214 Authorizations

Last Adopted on March 18, 1999

The following is a list of countries and facilities not covered by grant of global Section 214 authority under § 63.18(e)(1) of the Commission's Rules, 47 CFR 63.18(e)(1). In addition, the facilities listed shall not be used by U.S. carriers authorized under § 63.18 of the Commission's Rules unless the carrier's Section 214 authorization specifically lists the facility. Carriers desiring to serve countries or use facilities listed as excluded hereon shall file a separate Section 214 application pursuant to § 63.18(e)(4) of the Commission's Rules. *See generally* 47 CFR 63.22.

Countries

Cuba (Applications for service to Cuba shall comply with the separate filing requirements of the Commission's Public Notice Report No. I–6831, dated July 27, 1993, ''FCC to Accept Applications for Service to Cuba.'')

Facilities:

All non-U.S.-licensed satellite systems

This list is subject to change by the Commission when the public interest requires. Before amending the list, the Commission will first issue a public notice giving affected parties the opportunity for comment and hearing on the proposed changes. The Commission may then release an order amending the exclusion list. This list also is subject to change upon issuance of an Executive Order. See Streamlining the Section 214 Authorization Process and Tariff Requirements, IB Docket No. 95–118, FCC 96–79, 11 FCC Rcd 12884, released March 13, 1996 (61 FR 15724, April 9, 1996). A current version of this list is maintained at http://www.fcc.gov/ib/td/pf/exclusionlist.html.

For additional information, contact the International Bureau's Telecommunications Division, Policy & Facilities Branch, (202) 418–1460.

[FR Doc. 99–9480 Filed 4–16–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–2, RM–9217]

FM Broadcasting Services; Hawesville and Whitesville, Kentucky

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In MM Docket No. 98–2, the Chief, Allocations Branch, granted the rulemaking proposal (RM–9712) filed by WLME, Inc. and set forth in *Notice of Proposed Rulemaking*, 63 FR 4206, published January 28, 1998, to change the community of license of Station WCXM(FM), Hawesville, Kentucky, by reallotting Channel 246A from Hawesville to Whitesville, Kentucky as that community's first local aural transmission service, and to modify that station's license by specifying Whitesville as the new community of license. The Branch Chief granted RM–9712. With this action, the proceeding is terminated.

DATES: Effective May 17, 1999.

FOR FURTHER INFORMATION CONTACT: J. Bertron Withers, Jr., Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the *Report and Order*, MM Docket 98–2, adopted March 24, 1999, and released April 2, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (room 239), 1919 M Street, NW, Washington, DC 20554. The complete text of this decision may be also purchased from the Commission's copy contractor, International Transcription Service, 1231 20th Street, NW, Washington, DC 20036, (202) 857–3800.

Channel 246A can be allotted to Whitesville, Kentucky in compliance with the Commission's minimum distance separation requirements without a site restriction at reference coordinates North Latitude 37° 48′39″ and West Longitude 86°53′18″.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 reads continues to read as follows:

Authority: Sections 47 U.S.C. 154, 303, 334, and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, under Kentucky , is amended by adding an entry ''Whitesville, 246A'' and by removing the entry for Hawesville.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–8847 Filed 4–16–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR part 660

[I.D. 103098A]

RIN 0648–AL49

Fisheries Off West Coast States and in the Western Pacific; Pelagic Fisheries, Amendment 8; Crustacean Fisheries, Amendment 10; Bottomfish and Seamount Groundfish Fisheries, Amendment 6; Precious Corals Fisheries, Amendment 4

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

ACTION: Notification of agency decision.

SUMMARY: NMFS announces the partial approval of a ''comprehensive amendment'' that addresses essential fish habitat (EFH), overfishing definitions, bycatch, fishing sectors, and fishing communities in the Western Pacific Fishery Management Council's

(Council) four fishery management plans.

DATES: This agency decision is effective February 3, 1999.

ADDRESSES: Copies of the Amendments and Environmental Assessment may be obtained from the Western Pacific Regional Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Alvin Z. Katekaru, Fishery Management Specialist, Pacific Islands Area Office, NMFS, at 808– 973–2985.

SUPPLEMENTARY INFORMATION:

Background

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires each regional fishery management council to submit any fishery management plan or amendment to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an amendment, immediately publish a document in the **Federal Register** stating that the amendment is available for public review and comment. On November 5, 1998, NMFS published a notice of availability (NOA) of the Western Pacific amendments in the **Federal Register** and requested public comments through January 4, 1999 (63 FR 59758).

On February 3, 1999, after considering comments received, NMFS partially approved the Western Pacific comprehensive amendment. NMFS approved the definitions of EFH for each of the four FMPs. All of the amendments identify and describe EFH for the species managed under these FMPs. EFH-related research and information needs are consistent with NMFS goals. The non-fishing impacts on EFH are described, and mitigation measures to address adverse impacts of fishing on EFH already implemented are appropriate. No new measures would be practicable at this time. NMFS will work with the Council to better understand and minimize impacts of gear not originating in local fisheries, such as high seas driftnets, trawl gear, and lost fishing line that float into the Council's area from outside the Western Pacific exclusive economic zone. Disapproved sections of the comprehensive amendment include the bycatch provisions of Amendment 6 to the FMP for Bottomfish and Seamount Groundfish, as well as those for Amendment 8 to the Pelagics FMP. Although both amendments adequately describe reporting procedures in place and provide a general description of bycatch, quantification of bycatch by all sectors of the fisheries managed by the Council is needed, as is a description of the adequacy and identification of any shortfalls in the data. Both amendments should include a more detailed discussion of specific measures taken to minimize bycatch and minimize the mortality of bycatch once taken.

Amendment 8 to the Pelagics FMP also fails to address the fact that the catch of sea turtles has remained relatively consistent for the last several years. The Magnuson-Stevens Act requires FMPs to address measures to reduce this take, through modification of gear or fishing effort. There should also be a discussion of data and estimates of seabird incidental catch in the fishery.

Also disapproved were the criteria for identifying when overfishing would occur in the bottomfish, pelagics, and crustaceans fisheries. The Council's use of spawning potential ratio (SPR) percentages or ranges as a proxy for maximum sustainable yield (MSY) in determining minimum stock size threshold as described in the amendment is not acceptable. SPR is not an appropriate proxy for MSY, because it does not provide a measure of stock biomass as required by the Magnuson-Stevens Act to determine the status of each stock. Further, the discussion of these fisheries uses the term ''control rule'' incorrectly. A control rule should contain two elements: A precautionary target (meaning a reference point that is precautionary with respect to the limit reference point and stocks status), which triggers action before the limit reference point is reached, and the action to be taken to expediently control (reduce) fishing mortality if such a point is reached. The identification of fishing communities is acceptable, with the exception of the categorization of the State of Hawaii as a fishing community. This categorization is overly broad. The Council needs to revisit its determination, specifically focusing on the definition of ''fishing community'' in the Magnuson-Stevens Act, including the requirement to identify communities that are '' * * *substantially dependent on or substantially engaged in the harvest or processing of fishery resources to meet social and economic needs * * *'' [Sec. 3(16)]. The NMFS National Standard Guidelines (63 FR 24212, May 1, 1998), further stipulate a fishing community as an economic or social group that resides in a specific location and shares a common dependency on fishing or related fisheries dependent industries and services. Although NMFS recognizes that there are cases in which an island may be appropriately designated as a community, the Council should have provided additional background and analysis to justify the designations. In the case of Hawaii, a more narrow categorization needs to be developed.

Comments and Responses

NMFS received two comments from the Marine Fish Conservation Network (MFCN) during the comment period on the NOA.

Comment 1: The MFCN commented that the comprehensive amendment fails to evaluate the effects of all 35 gear types listed (63 FR 4030, January 27, 1999) as used in the Western Pacific, fails to evaluate the effect of the take of prey species as an effect on EFH, fails to minimize any identified adverse effects of fishing activities on EFH, and fails to establish research closure areas to evaluate further the impacts of fishing activities on EFH.

Response: The amendment focuses on gear types predominantly used in the Western Pacific waters under Federal jurisdiction, the majority of which were defined as EFH. The amendment identifies these gears as longline, handline, troll, all variations of hook-and-line gear, and lobster traps. Examination of catch data from Hawaii, Guam, American Samoa, and the Northern Mariana Islands indicates that more than 88 percent (by weight) of the 1997 catch from Federal waters (seaward of state waters) were landed by hook-and-line, longline, and trolling gear. Other gear types such as manned submersibles used to harvest precious corals, or harvest by hand (e.g., spear or small throw net) are unlikely to adversely affect habitat. The actual and potential effects of the predominant fishing gears on habitat within Federal waters were evaluated and found by the Council not to warrant additional measures at this time.

The Council, however, previously took action to minimize the adverse impacts of fishing activities on EFH. For example, the Council evaluated several potentially destructive gear types and banned their use in Federal waters. These include bottomfish trawls, bottom-set gillnets, explosives, poisons, and tangle net dredges. Current Federal regulations also prohibit unattended lobster traps in order to prevent ghost fishing and to minimize the potential for lost gear that could have an adverse effect on EFH.

Regarding the take of prey species resulting from fishing activities, no managed fisheries target such species. Although some prey species are taken as bycatch by tuna purse seiners operating around certain remote U.S. Pacific

island areas such as Palmyra Atoll, and the islands of Howland, Baker, and Jarvis, the quantity harvested annually is less than 10 mts. NMFS believes that this level of catch of prey species will not have an adverse effect on EFH.

According to NMFS' EFH Guidelines (62 FR 66531, December 19, 1997), the establishment of research closure areas is not a mandatory element of fishery management plans. Even though the Council did not create specific research closure areas, currently established refugia, protected species study zones, and longline closed areas could be used as research closure areas for that purpose under experimental fishing permits.

Comment 2: The MFCN also commented that the comprehensive amendment fails to comply with statutory mandates to create a standardized reporting methodology for bycatch and to minimize to the extent practicable bycatch and bycatch mortality in its fisheries.

Response: NMFS recognized the shortcomings of the sections of the comprehensive amendment regarding bycatch in the bottomfishing and pelagics fisheries and disapproved them. Although the bycatch sections of the crustaceans and precious corals amendments could be strengthened by more specific discussion and analysis of all fishing gears used in the Western Pacific, NMFS has determined that they are adequate, but will work with the Council to improve them. No new management measures to address bycatch appear to be practicable at this time.

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

Dated: April 13, 1999.

Gary C. Matlock,

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

[FR Doc. 99–9728 Filed 4–16–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304062–9062–01; I.D. 041299B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod in the Western Regulatory Area in the Gulf of Alaska

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

ACTION: Modification of a closure.

SUMMARY: NMFS is opening directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to fully utilize the total allowable catch (TAC) of Pacific cod in that area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), April 18, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907–481–1780 or tom.pearson@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(a)(6)(iii), the Final 1999 Harvest Specifications for Groundfish (64 FR 12094, March 11, 1999), and subsequent reserve apportionment (64 FR 16362, April 5, 1999) established the allowance of the 1999 Pacific cod TAC apportioned for vessels catching Pacific cod for processing by the offshore component in the Western Regulatory Area of the GOA as 2,363 metric tons (mt).

The offshore component fishery for Pacific cod in the GOA was closed to directed fishing under § 679.20(d)(1)(iii) on January 20, 1999 (64 FR 3658, January 25, 1999).

NMFS has determined that as of April 3, 1999, approximately 2,000 mt remain in the offshore component directed fishing allowance. Therefore, NMFS is terminating the previous closure and is opening directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Western Regulatory Area of the GOA.

Classification

All other closures remain in full force and effect. This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to allow full utilization of the Pacific cod TAC. Providing prior notice and opportunity for public comment for this action is impracticable and contrary to the public interest. Further delay would only disrupt the FMP objective of providing the Pacific cod TAC for harvest. NMFS finds for good cause that implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

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

Dated: April 13, 1999.

Bruce Morehead,

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

[FR Doc. 99–9699 Filed 4–14–99; 4:07 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 697

[Docket No. 990119023–9023–01; I.D. 111898B]

RIN 0648–AL38

Atlantic Sturgeon Fishery; Moratorium in Exclusive Economic Zone

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

ACTION: Direct final rule; notification of effective date.

SUMMARY: NMFS issues this notification of the effective date for a direct final rule prohibiting the possession in, or harvest from, the exclusive economic zone (EEZ) of Atlantic sturgeon from Maine through Florida.

DATES: This rule is effective May 27, 1999.

FOR FURTHER INFORMATION CONTACT: Paul Perra, 301–427–2014.

SUPPLEMENTARY INFORMATION:

Background

On February 26, 1999, a direct final rule for Atlantic sturgeon was published (64 FR 9449), which had a comment period ending on March 29, 1999. The rule was to become effective on May 27, 1999, if no adverse comments or a notice of intent to submit adverse comments were received by March 29, 1999. Since no adverse comments or a notice of intent to submit adverse comments were received during the comment period, this rule becomes effective May 27, 1999, without further action. This direct final rule does not exclude the submission of a request, under 50 CFR 600.745, to conduct experimental, scientific, or educational fishing on Atlantic sturgeon.

Dated: April 9, 1999.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 99–9609 Filed 4–16–99; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 74
Monday, April 19, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1079

[DA–99–02]

Milk in the Iowa Marketing Area; Proposed Revision of Supply Plant Shipping Percentage

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document invites written comments on a proposal to reduce the percentage of a supply plant's receipts that must be delivered to fluid milk plants to qualify a supply plant for pooling under the Iowa Federal milk order. The applicable percentage would be decreased by 10 percentage points from 20 percent to 10 percent for the months of April through August 1999. The action was requested by Beatrice Cheese, Inc., a proprietary manufacturer of dairy products in Fredericksburg, Iowa. The proponent contends that the action would allow the milk of dairymen who historically have supplied the market to continue to be pooled under the Federal order and is needed to prevent uneconomic milk movements.

DATES: Comments must be submitted on or before April 26, 1999.

ADDRESSES: Comments (two copies) should be sent to USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456. Advance, unofficial copies of such comments may be faxed to (202) 690–0552 or e-mailed to OFB__FMMO__Comments@usda.gov. Reference should be made to the title of action and docket number.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 720–2357, e-mail address connie__m__brenner@usda.gov.

SUPPLEMENTARY INFORMATION: The Department is issuing this proposed rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. If adopted, this proposed rule will not preempt any state or local laws, regulations, or policies unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), 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 request modification or exemption from such order by filing 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 the law. A handler is afforded the opportunity for a hearing on the petition. After a 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 its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Small Business Consideration

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a ''small business'' if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a ''small business'' if it has fewer than 500 employees. For the purposes of determining which dairy farms are ''small businesses,'' the $500,000 per year criterion was used to establish a production guideline of 326,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most ''small'' dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

For the month of February 1999, 3,788 dairy farmers were producers under the Iowa order. Of these, 3,714 producers (i.e., 98 percent) were considered small businesses, having monthly milk production under 326,000 pounds. A further breakdown of the monthly milk production of the producers on the order during February 1999 was as follows: 2,804 produced less than 100,000 pounds of milk; 776 produced between 100,000 and 200,000; 134 produced between 200,000 and 326,000; and 74 produced over 326,000 pounds. During the same month, 11 handlers were pooled under the order. Five were considered small businesses.

Interested parties are invited to submit comments on the probable regulatory and informational impact of this proposed rule on small entities. Also, parties may suggest modifications of this proposal for the purpose of tailoring their applicability to small businesses.

The reduction of the required supply plant shipping percentage for the months of April through August 1999 would allow the milk of producers traditionally associated with the Iowa market to continue to be pooled and priced under the order. The revision would lessen the likelihood that more milk shipments to pool plants might be required under the order than are actually needed to supply the fluid milk needs of the market and would result in savings in hauling costs for handlers and producers.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act and the provisions of § 1079.7(b)(1) of the Iowa Federal milk order, the temporary revision of certain provisions of the order regulating the handling of milk in the Iowa marketing area is being considered for the months of April through August 1999.

All persons who desire to submit written data, views or arguments about the proposed revision should send two

copies of their views to USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456 by April 26, 1999. The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures and include April in the temporary revision period.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Programs offices during regular business hours (7 CFR 1.27(b)).

Statement of Consideration

The provision proposed to be revised is the percentage of a supply plant's receipts required to be shipped to pool distributing plants pursuant to § 1079.7(b) of the Iowa Federal milk marketing order (Order 79). As proposed, the percentage of a supply plant's receipts that must be shipped to pool distributing plants (fluid milk plants) if the supply plant is to be considered a pool plant would be decreased by the maximum allowable 10 percentage points, from 20 percent to 10 percent, for the period April 1, 1999, through August 31, 1999.

Section 1079.7(b)(1) of the Iowa milk marketing order allows the Deputy Administrator, Dairy Programs, to reduce or increase a pool supply plant's minimum shipping requirement by up to 10 percentage points to prevent uneconomic milk shipments or to assure an adequate supply of milk for fluid use.

Beatrice Cheese, Inc. (Beatrice), a proprietary manufacturer of dairy products in Fredericksburg, Iowa, is regulated under Order 79 as a pool supply plant. Beatrice requested that the shipping percentage be reduced by 10 percentage points for the months of April through August 1999. The handler's request states that this decrease is warranted due to the fact that current raw milk supplies available for fluid use from outside of Iowa's traditional procurement area exceed the needs of the fluid milk plants in Federal Order 79 and that these available supplies have replaced milk shipped to distributing plants by Beatrice. Beatrice states that if the pool supply shipping percentages remain unchanged, the milk of dairymen who historically have supplied the Iowa market will not be able to continue to be pooled under the Federal Order, and Beatrice will be forced to move milk uneconomically.

In view of the current supply and demand relationship, it may be necessary to decrease the shipping percentage requirements for pool supply plants as proposed to provide for the efficient and economic marketing of milk during the months of April through August 1999.

List of Subjects in 7 CFR Part 1079

Milk marketing orders.

The authority citation for 7 CFR Part 1079 continues to read as follows:

Authority: 7 U.S.C. 601–674.

Dated: April 14, 1999.

Richard M. McKee,

Deputy Administrator, Dairy Programs.

[FR Doc. 99–9850 Filed 4–16–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1205

[CN–99–002]

1999 Proposed Amendment to Cotton Board Rules and Regulations Adjusting Supplemental Assessment on Imports

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) is proposing to amend the Cotton Board Rules and Regulations by lowering the value assigned to imported cotton for the purpose of calculating supplemental assessments collected for use by the Cotton Research and Promotion Program. This adjustment is required by this regulation on an annual basis to ensure that the assessments collected on imported cotton and the cotton content of imported products remain similar to those paid on domestically produced cotton.

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

ADDRESSES: Comments may be mailed to USDA, AMS Cotton Program, STOP 0224, 1400 Independence Avenue, SW, Washington, DC 20250–0224. All comments received will be available for public inspection at this address during the hours 8:00 a.m. to 4:00 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Whitney Rick, (202) 720–2259.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be ''not significant'' for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This proposed rule would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Cotton Research and Promotion Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 12 of the Act, any person subject to an order may file with the Secretary a petition stating that the order, any provision of the plan, 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 exempted therefrom. Such person 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 person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling, provided a complaint is filed within 20 days from the date of the entry of ruling.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) AMS has considered the economic impact of this action on small entities and has determined that its implementation will not have a significant economic impact on a substantial number of small businesses.

There are an estimated 16,000 importers who are presently subject to rules and regulations issued pursuant to the Cotton Research and Promotion Order. This proposed rule would affect importers of cotton and cotton-containing products. The majority of these importers are small businesses under the criteria established by the Small Business Administration. This proposed rule would lower the assessments paid by the importers under the Cotton Research and Promotion Order. Even though the assessment would be lowered, the decrease is small and will not significantly affect small businesses.

The current assessment on imported cotton is $0.011850 per kilogram of imported cotton. The proposed assessment is $0.011397, a decrease of $0.000453 or a 3.8 percent decrease from the current assessment. From January through December 1998 approximately $20.9 million was collected at the $0.011850 per kilogram

rate. Should the volume of cotton products imported into the U.S. remain at the same level in 1999, one could expect the decreased assessment to generate $20.1 million or a 3.8 percent decrease from 1998.

Paperwork Reduction

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*) the information collection requirements contained in the regulation to be amended have been previously approved by OMB and were assigned control number 0581–0093.

Background

The Cotton Research and Promotion Act Amendments of 1990 enacted by Congress under Subtitle G of Title XIX of the Food, Agriculture, Conservation and Trade Act of 1990 on November 28, 1990, contained two provisions that authorized changes in the funding procedures for the Cotton Research and Promotion Program.

These provisions are: (1) the assessment of imported cotton and cotton products; and (2) termination of the right of cotton producers to demand a refund of assessments.

An amended Cotton Research and Promotion Order was approved by producers and importers voting in a referendum held July 17–26, 1991 and the amended Order was published in the **Federal Register** on December 10, 1991, (56 FR 64470). Proposed rules implementing the amended Order were published in the **Federal Register** on December 17, 1991, (56 FR 65450). Implementing rules were published on July 1 and 2, 1992, (57 FR 29181) and (57 FR 29431), respectively.

This proposed rule would decrease the value assigned to imported cotton in the Cotton Board Rules and Regulations (7 CFR 1205.510(b)(2)). This value is used to calculate supplemental assessments on imported cotton and the cotton content of imported products. Supplemental assessments are the second part of a two-part assessment. The first part of the assessment is levied on the weight of cotton produced or imported at a rate of $1 per bale of cotton which is equivalent to 500 pounds or $1 per 226.8 kilograms of cotton.

Supplemental assessments are levied at a rate of five-tenths of one percent of the value of domestically produced cotton, imported cotton, and the cotton content of imported products. The agency has adopted the practice of assigning the calendar year weighted average price received by U.S. farmers for Upland cotton to represent the value of imported cotton. This is done so that the assessment on domestically produced cotton and the assessment on imported cotton and the cotton contend of imported products remain similar. The source for the average price statistic is ''Agricultural Prices'', a publication of the National Agricultural Statistics Service (NASS) of the Department of Agriculture. Use of the weighted average price figure in the calculation of supplemental assessments on imported cotton and the cotton content of imported products yields an assessment that approximates assessments paid on domestically produced cotton in the prior calendar year.

The current value of imported cotton as published in the **Federal Register** (63 FR 27818) on May 21, 1998, for the purpose of calculating supplemental assessments on imported cotton is $1.4881 per kilogram. This number was calculated using the annual weighted average price received by farmers for Upland cotton during the calendar year 1997 which was $0.675 per pound and multiplying by the conversation factor 2.2046. Using the Average Weighted Price Received by U.S. farmers for Upland cotton for the calendar year 1998, which is $0.634 per pound, the new value of imported cotton is $1.3977 per kilogram. The amended value is $0.0904 per kilogram less than the previous value.

An example of the complete assessment formula and how the various figures are obtained is as follows:

One bale is equal to 500 pounds.

One kilogram equals 2.2046 pounds.

One pound equals 0.453597 kilograms.

One Dollar Per Bale Assessment Converted to Kilograms

A 500 pound bale equals 226.8 kg. (500×.453597).

$1 per bale assessment equals $0.002000 per pound (1÷500) or $0.004409 per kg. (1÷226.8)

Supplemental Assessment of 5/10 of One Percent of the Value of the Cotton Converted to Kilograms

The 1998 calendar year weigthed average price received by producers for Upland cotton is $0.634 per pound or $1.3977 per kg. (0.634×2.2046)=1.3977.

Five tenths of one percent of the average price in kg. equals $0.006988 per kg. (1.3977×.005).

Total Assessment

The total assessment per kilogram of raw cotton in obtained by adding the $1 per bale equivalent assessment of $0.004409 per kg. and the supplemental assessment $0.006988 per kg. which equals $0.011397 per kg.

The current assessment on imported cotton is $0.011850 per kilogram of imported cotton. The proposed assessment is $0.011397, a decrease of $0.000453 per kilogram. This decrease reflects the decrease in the Average Weighted Price of Upland Cotton Received by U.S. Farmers during the period January through December 1998.

Since the value of cotton is the basis of the supplemental assessment calculation and the figures shown in the right hand column of the Import Assessment Table 1205.510(b)(3) are a result of such a calculation, the figures in this table have been revised. These figures indicate the total assessment per kilogram due for each Harmonized Tariff Schedule (HTS) number subject to assessment.

One HTS number subject to assessment pursuant to this regulation and found in the assessment table has been changed. In order to maintain consistency between the HTS and the assessment table, the changes to this one number have been incorporated into the assessment table. The last two digits of this number were changed to provide for statistical reporting purposes and involve no physical change to the products they represent. Therefore, the assessment rate is not affected by the change. The assessment rate for the one number has been applied to each of the new replacement numbers in the assessment table. The following table represents the changes:

Old number	New number	Conversion factor	Assessment cents/kg.
6302100010	6302100005	1.1689	1.3322
	6302100008	1.1689	1.3322
	6302100015	1.1689	1.3322

A thirty day period is provided to comment on the changes to the Cotton Board Rules and Regulations proposed herein. This period is deemed appropriate because this proposal would lower the assessments paid by importers under the Cotton Research and Promotion Order. Accordingly, the change proposed in this rule, if adopted, should be implemented as soon as possible.

List of Subjects in 7 CFR Part 1205

Advertising, Agricultural research, Cotton, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 1205 is proposed to be amended as follows:

PART 1205—COTTON RESEARCH AND PROMOTION

1. The authority citation for part 1205 continues to read as follows:

Authority: 7 U.S.C. 2101–2118.

2. In § 1205.510, paragraph (b)(2) and the table in paragraph (b)(3)(ii) are revised to read as follows:

§ 1205.510 Levy of assessments.

* * * * *

(b) * * *

(2) The 12-month average of monthly weighted average prices received by U.S. farmers will be calculated annually. Such weighted average will be used as the value of imported cotton for the purpose of levying the supplemental assessment on imported cotton and will be expressed in kilograms. The value of imported cotton for the purpose of levying this supplemental assessment is $1.3977 per kilogram.

(3) * * *

(ii) * * *

IMPORT ASSESSMENT TABLE

[Raw Cotton Fiber]

HTS No.	Conventional factors	Cents/kg.
5201000500	0	1.1397
5201001200	0	1.1397
5201001400	0	1.1397
5201001800	0	1.1397
5201002200	0	1.1397
5201002400	0	1.1397
5201002800	0	1.1397
5201003400	0	1.1397
5201003800	0	1.1397
5204110000	1.1111	1.2663
5204200000	1.1111	1.2663
5205111000	1.1111	1.2663
5205112000	1.1111	1.2663
5205121000	1.1111	1.2663
5205122000	1.1111	1.2663
5205131000	1.1111	1.2663
5205132000	1.1111	1.2663
5205141000	1.1111	1.2663
5205210020	1.1111	1.2663
5205210090	1.1111	1.2663
5205220020	1.1111	1.2663
5205220090	1.1111	1.2663
5205230020	1.1111	1.2663
5205230090	1.1111	1.2663
5205240020	1.1111	1.2663
5205240090	1.1111	1.2663
5205310000	1.1111	1.2663
5205320000	1.1111	1.2663
5205330000	1.1111	1.2663
5205340000	1.1111	1.2663
5205410020	1.1111	1.2663
5205410090	1.1111	1.2663
5205420020	1.1111	1.2663
5205420090	1.1111	1.2663
5205440020	1.1111	1.2663
5205440090	1.1111	1.2663
5206120000	0.5556	0.6332
5206130000	0.5556	0.6332
5206140000	0.5556	0.6332
5206220000	0.5556	0.6332
5206230000	0.5556	0.6332
5206240000	0.5556	0.6332
5206310000	0.5556	0.6332
5207100000	1.1111	1.2663
5207900000	0.5556	0.6332
5208112020	1.1455	1.3055
5208112040	1.1455	1.3055
5208112090	1.1455	1.3055
5208114020	1.1455	1.3055
5208114060	1.1455	1.3055
5208114090	1.1455	1.3055

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS No.	Conventional factors	Cents/kg.
5208118090	1.1455	1.3055
5208124020	1.1455	1.3055
5208124040	1.1455	1.3055
5208124090	1.1455	1.3055
5208126020	1.1455	1.3055
5208126040	1.1455	1.3055
5208126060	1.1455	1.3055
5208126090	1.1455	1.3055
5208128020	1.1455	1.3055
5208128090	1.1455	1.3055
5208130000	1.1455	1.3055
5208192020	1.1455	1.3055
5208192090	1.1455	1.3055
5208194020	1.1455	1.3055
5208194090	1.1455	1.3055
5208196020	1.1455	1.3055
5208196090	1.1455	1.3055
5208224040	1.1455	1.3055
5208224090	1.1455	1.3055
5208226020	1.1455	1.3055
5208226060	1.1455	1.3055
5208228020	1.1455	1.3055
5208230000	1.1455	1.3055
5208292020	1.1455	1.3055
5208292090	1.1455	1.3055
5208294090	1.1455	1.3055
5208296090	1.1455	1.3055
5208298020	1.1455	1.3055
5208312000	1.1455	1.3055
5208321000	1.1455	1.3055
5208323020	1.1455	1.3055
5208323040	1.1455	1.3055
5208323090	1.1455	1.3055
5208324020	1.1455	1.3055
5208324040	1.1455	1.3055
5208325020	1.1455	1.3055
5208330000	1.1455	1.3055
5208392020	1.1455	1.3055
5208392090	1.1455	1.3055
5208394090	1.1455	1.3055
5208396090	1.1455	1.3055
5208398020	1.1455	1.3055
5208412000	1.1455	1.3055
5208416000	1.1455	1.3055
5208418000	1.1455	1.3055
5208421000	1.1455	1.3055
5208423000	1.1455	1.3055
5208424000	1.1455	1.3055
5208425000	1.1455	1.3055
5208430000	1.1455	1.3055
5208492000	1.1455	1.3055
5208494020	1.1455	1.3055
5208494090	1.1455	1.3055
5208496010	1.1455	1.3055
5208496090	1.1455	1.3055
5208498090	1.1455	1.3055
5208512000	1.1455	1.3055
5208516060	1.1455	1.3055
5208518090	1.1455	1.3055
5208523020	1.1455	1.3055
5208523045	1.1455	1.3055
5208523090	1.1455	1.3055
5208524020	1.1455	1.3055
5208524045	1.1455	1.3055
5208524065	1.1455	1.3055
5208525020	1.1455	1.3055
5208530000	1.1455	1.3055
5208592025	1.1455	1.3055
5208592095	1.1455	1.3055
5208594090	1.1455	1.3055

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS No.	Conventional factors	Cents/kg.
5208596090	1.1455	1.3055
5209110020	1.1455	1.3055
5209110035	1.1455	1.3055
5209110090	1.1455	1.3055
5209120020	1.1455	1.3055
5209120040	1.1455	1.3055
5209190020	1.1455	1.3055
5209190040	1.1455	1.3055
5209190060	1.1455	1.3055
5209190090	1.1455	1.3055
5209210090	1.1455	1.3055
5209220020	1.1455	1.3055
5209220040	1.1455	1.3055
5209290040	1.1455	1.3055
5209290090	1.1455	1.3055
5209313000	1.1455	1.3055
5209316020	1.1455	1.3055
5209316035	1.1455	1.3055
5209316050	1.1455	1.3055
5209316090	1.1455	1.3055
5209320020	1.1455	1.3055
5209320040	1.1455	1.3055
5209390020	1.1455	1.3055
5209390040	1.1455	1.3055
5209390060	1.1455	1.3055
5209390080	1.1455	1.3055
5209390090	1.1455	1.3055
5209413000	1.1455	1.3055
5209416020	1.1455	1.3055
5209416040	1.1455	1.3055
5209420020	1.0309	1.1749
5209420040	1.0309	1.1749
5209430030	1.1455	1.3055
5209430050	1.1455	1.3055
5209490020	1.1455	1.3055
5209490090	1.1455	1.3055
5209516035	1.1455	1.3055
5209516050	1.1455	1.3055
5209520020	1.1455	1.3055
5209590025	1.1455	1.3055
5209590040	1.1455	1.3055
5209590090	1.1455	1.3055
5210114020	0.6873	0.7833
5210114040	0.6873	0.7833
5210116020	0.6873	0.7833
5210116040	0.6873	0.7833
5210116060	0.6873	0.7833
5210118020	0.6873	0.7833
5210120000	0.6873	0.7833
5210192090	0.6873	0.7833
5210214040	0.6873	0.7833
5210216020	0.6873	0.7833
5210216060	0.6873	0.7833
5210218020	0.6873	0.7833
5210314020	0.6873	0.7833
5210314040	0.6873	0.7833
5210316020	0.6873	0.7833
5210318020	0.6873	0.7833
5210414000	0.6873	0.7833
5210416000	0.6873	0.7833
5210418000	0.6873	0.7833
5210498090	0.6873	0.7833
5210514040	0.6873	0.7833
5210516020	0.6873	0.7833
5210516040	0.6873	0.7833
5210516060	0.6873	0.7833
5211110090	0.6873	0.7833
5211120020	0.6873	0.7833
5211190020	0.6873	0.7833
5211190060	0.6873	0.7833

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS No.	Conventional factors	Cents/kg.
5211210025	0.6873	0.7833
5211210035	0.4165	0.4747
5211210050	0.6873	0.7833
5211290090	0.6873	0.7833
5211320020	0.6873	0.7833
5211390040	0.6873	0.7833
5211390060	0.6873	0.7833
5211490020	0.6873	0.7833
5211490090	0.6873	0.7833
5211590025	0.6873	0.7833
5212146090	0.9164	1.0444
5212156020	0.9164	1.0444
5212216090	0.9164	1.0444
5509530030	0.5556	0.6332
5509530060	0.5556	0.6332
5513110020	0.4009	0.4569
5513110040	0.4009	0.4569
5513110060	0.4009	0.4569
5513110090	0.4009	0.4569
5513120000	0.4009	0.4569
5513130020	0.4009	0.4569
5513210020	0.4009	0.4569
5513310000	0.4009	0.4569
5514120020	0.4009	0.4569
5516420060	0.4009	0.4569
5516910060	0.4009	0.4569
5516930090	0.4009	0.4569
5601210010	1.1455	1.3055
5601210090	1.1455	1.3055
5601300000	1.1455	1.3055
5602109090	0.5727	0.6527
5602290000	1.1455	1.3055
5602906000	0.526	0.5995
5604900000	0.5556	0.6332
5607902000	0.8889	1.0131
5608901000	1.1111	1.2663
5608902300	1.1111	1.2663
5609001000	1.1111	1.2663
5609004000	0.5556	0.6332
5701104000	0.0556	0.0634
5701109000	0.1111	0.1266
5701901010	1.0444	1.1903
5702109020	1.1	1.2537
5702312000	0.0778	0.0887
5702411000	0.0722	0.0823
5702412000	0.0778	0.0887
5702421000	0.0778	0.0887
5702913000	0.0889	0.1013
5702991010	1.1111	1.2663
5702991090	1.1111	1.2663
5703900000	0.4489	0.5116
5801210000	1.1455	1.3055
5801230000	1.1455	1.3055
5801250010	1.1455	1.3055
5801250020	1.1455	1.3055
5801260020	1.1455	1.3055
5802190000	1.1455	1.3055
5802300030	0.5727	0.6527
5804291000	1.1455	1.3055
5806200010	0.3534	0.4028
5806200090	0.3534	0.4028
5806310000	1.1455	1.3055
5806400000	0.4296	0.4896
5808107000	0.5727	0.6527
5808900010	0.5727	0.6527
5811002000	1.1455	1.3055
6001106000	1.1455	1.3055
6001210000	0.8591	0.9791
6001220000	0.2864	0.3264
6001910010	0.8591	0.9791

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS No.	Conventional factors	Cents/kg.
6001910020	0.8591	0.9791
6001920020	0.2864	0.3264
6001920030	0.2864	0.3264
6001920040	0.2864	0.3264
6002203000	0.8681	0.9894
6002206000	0.2894	0.3298
6002420000	0.8681	0.9894
6002430010	0.2894	0.3298
6002430080	0.2894	0.3298
6002921000	1.1574	1.3191
6002930040	0.1157	0.1319
6002930080	0.1157	0.1319
6101200010	1.0094	1.1504
6101200020	1.0094	1.1504
6102200010	1.0094	1.1504
6102200020	1.0094	1.1504
6103421020	0.8806	1.0036
6103421040	0.8806	1.0036
6103421050	0.8806	1.0036
6103421070	0.8806	1.0036
6103431520	0.2516	0.2867
6103431540	0.2516	0.2867
6103431550	0.2516	0.2867
6103431570	0.2516	0.2867
6104220040	0.9002	1.026
6104220060	0.9002	1.026
6104320000	0.9207	1.0493
6104420010	0.9002	1.026
6104420020	0.9002	1.026
6104520010	0.9312	1.0613
6104520020	0.9312	1.0613
6104622006	0.8806	1.0036
6104622011	0.8806	1.0036
6104622016	0.8806	1.0036
6104622021	0.8806	1.0036
6104622026	0.8806	1.0036
6104622028	0.8806	1.0036
6104622030	0.8806	1.0036
6104622060	0.8806	1.0036
6104632006	0.3774	0.4301
6104632011	0.3774	0.4301
6104632026	0.3774	0.4301
6104632028	0.3774	0.4301
6104632030	0.3774	0.4301
6104632060	0.3774	0.4301
6104692030	0.3858	0.4397
6105100010	0.985	1.1226
6105100020	0.985	1.1226
6105100030	0.985	1.1226
6105202010	0.3078	0.3508
6105202030	0.3078	0.3508
6106100010	0.985	1.1226
6106100020	0.985	1.1226
6106100030	0.985	1.1226
6106202010	0.3078	0.3508
6106202030	0.3078	0.3508
6107110010	1.1322	1.2904
6107110020	1.1322	1.2904
6107120010	0.5032	0.5735
6107210010	0.8806	1.0036
6107220015	0.3774	0.4301
6107220025	0.3774	0.4301
6107910040	1.2581	1.4339
6108210010	1.2445	1.4184
6108210020	1.2445	1.4184
6108310010	1.1201	1.2766
6108310020	1.1201	1.2766
6108320010	0.2489	0.2837
6108320015	0.2489	0.2837
6108320025	0.2489	0.2837

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS No.	Conventional factors	Cents/kg.
6108910005	1.2445	1.4184
6108910015	1.2445	1.4184
6108910025	1.2445	1.4184
6108910030	1.2445	1.4184
6108920030	0.2489	0.2837
6109100005	0.9956	1.1347
6109100007	0.9956	1.1347
6109100009	0.9956	1.1347
6109100012	0.9956	1.1347
6109100014	0.9956	1.1347
6109100018	0.9956	1.1347
6109100023	0.9956	1.1347
6109100027	0.9956	1.1347
6109100037	0.9956	1.1347
6109100040	0.9956	1.1347
6109100045	0.9956	1.1347
6109100060	0.9956	1.1347
6109100065	0.9956	1.1347
6109100070	0.9956	1.1347
6109901007	0.3111	0.3546
6109901009	0.3111	0.3546
6109901049	0.3111	0.3546
6109901050	0.3111	0.3546
6109901060	0.3111	0.3546
6109901065	0.3111	0.3546
6109901090	0.3111	0.3546
6110202005	1.1837	1.3491
6110202010	1.1837	1.3491
6110202015	1.1837	1.3491
6110202020	1.1837	1.3491
6110202025	1.1837	1.3491
6110202030	1.1837	1.3491
6110202035	1.1837	1.3491
6110202040	1.1574	1.3191
6110202045	1.1574	1.3191
6110202065	1.1574	1.3191
6110202075	1.1574	1.3191
6110909022	0.263	0.2997
6110909024	0.263	0.2997
6110909030	0.3946	0.4497
6110909040	0.263	0.2997
6110909042	0.263	0.2997
6111201000	1.2581	1.4339
6111202000	1.2581	1.4339
6111203000	1.0064	1.147
6111205000	1.0064	1.147
6111206010	1.0064	1.147
6111206020	1.0064	1.147
6111206030	1.0064	1.147
6111206040	1.0064	1.147
6111305020	0.2516	0.2867
6111305040	0.2516	0.2867
6112110050	0.7548	0.8602
6112120010	0.2516	0.2867
6112120030	0.2516	0.2867
6112120040	0.2516	0.2867
6112120050	0.2516	0.2867
6112120060	0.2516	0.2867
6112390010	1.1322	1.2904
6112490010	0.9435	1.0753
6114200005	0.9002	1.026
6114200010	0.9002	1.026
6114200015	0.9002	1.026
6114200020	1.286	1.4657
6114200040	0.9002	1.026
6114200046	0.9002	1.026
6114200052	0.9002	1.026
6114200060	0.9002	1.026
6114301010	0.2572	0.2931
6114301020	0.2572	0.2931

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS No.	Conventional factors	Cents/kg.
6114303030	0.2572	0.2931
6115198010	1.0417	1.1872
6115929000	1.0417	1.1872
6115936020	0.2315	0.2638
6116101300	0.3655	0.4166
6116101720	0.8528	0.9719
6116926420	1.0965	1.2497
6116926430	1.2183	1.3885
6116926440	1.0965	1.2497
6116928800	1.0965	1.2497
6117809510	0.9747	1.1109
6117809540	0.3655	0.4166
6201121000	0.948	1.0804
6201122010	0.8953	1.0204
6201122050	0.6847	0.7804
6201122060	0.6847	0.7804
6201134030	0.2633	0.3001
6201921000	0.9267	1.0562
6201921500	1.1583	1.3201
6201922010	1.0296	1.1734
6201922021	1.2871	1.4669
6201922031	1.2871	1.4669
6201922041	1.2871	1.4669
6201922051	1.0296	1.1734
6201922061	1.0296	1.1734
6201931000	0.3089	0.3521
6201933511	0.2574	0.2934
6201933521	0.2574	0.2934
6201999060	0.2574	0.2934
6202121000	0.9372	1.0681
6202122010	1.1064	1.261
6202122025	1.3017	1.4835
6202122050	0.8461	0.9643
6202122060	0.8461	0.9643
6202134005	0.2664	0.3036
6202134020	0.333	0.3795
6202921000	1.0413	1.1868
6202921500	1.0413	1.1868
6202922026	1.3017	1.4835
6202922061	1.0413	1.1868
6202922071	1.0413	1.1868
6202931000	0.3124	0.356
6202935011	0.2603	0.2967
6202935021	0.2603	0.2967
6203122010	0.1302	0.1484
6203221000	1.3017	1.4835
6203322010	1.2366	1.4094
6203322040	1.2366	1.4094
6203332010	0.1302	0.1484
6203392010	1.1715	1.3352
6203399060	0.2603	0.2967
6203422010	0.9961	1.1353
6203422025	0.9961	1.1353
6203422050	0.9961	1.1353
6203422090	0.9961	1.1353
6203424005	1.2451	1.419
6203424010	1.2451	1.419
6203424015	0.9961	1.1353
6203424020	1.2451	1.419
6203424025	1.2451	1.419
6203424030	1.2451	1.419
6203424035	1.2451	1.419
6203424040	0.9961	1.1353
6203424045	0.9961	1.1353
6203424050	0.9238	1.0529
6203424055	0.9238	1.0529
6203424060	0.9238	1.0529
6203431500	0.1245	0.1419
6203434010	0.1232	0.1404
6203434020	0.1232	0.1404

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS No.	Conventional factors	Cents/kg.
6203434030	0.1232	0.1404
6203434040	0.1232	0.1404
6203498045	0.249	0.2838
6204132010	0.1302	0.1484
6204192000	0.1302	0.1484
6204198090	0.2603	0.2967
6204221000	1.3017	1.4835
6204223030	1.0413	1.1868
6204223040	1.0413	1.1868
6204223050	1.0413	1.1868
6204223060	1.0413	1.1868
6204223065	1.0413	1.1868
6204292040	0.3254	0.3709
6204322010	1.2366	1.4094
6204322030	1.0413	1.1868
6204322040	1.0413	1.1868
6204423010	1.2728	1.4506
6204423030	0.9546	1.088
6204423040	0.9546	1.088
6204423050	0.9546	1.088
6204423060	0.9546	1.088
6204522010	1.2654	1.4422
6204522030	1.2654	1.4422
6204522040	1.2654	1.4422
6204522070	1.0656	1.2145
6204522080	1.0656	1.2145
6204533010	0.2664	0.3036
6204594060	0.2664	0.3036
6204622010	0.9961	1.1353
6204622025	0.9961	1.1353
6204622050	0.9961	1.1353
6204624005	1.2451	1.419
6204624010	1.2451	1.419
6204624020	0.9961	1.1353
6204624025	1.2451	1.419
6204624030	1.2451	1.419
6204624035	1.2451	1.419
6204624040	1.2451	1.419
6204624045	0.9961	1.1353
6204624050	0.9961	1.1353
6204624055	0.9854	1.1231
6204624060	0.9854	1.1231
6204624065	0.9854	1.1231
6204633510	0.2546	0.2902
6204633530	0.2546	0.2902
6204633532	0.2437	0.2777
6204633540	0.2437	0.2777
6204692510	0.249	0.2838
6204692540	0.2437	0.2777
6204699044	0.249	0.2838
6204699046	0.249	0.2838
6204699050	0.249	0.2838
6205202015	0.9961	1.1353
6205202020	0.9961	1.1353
6205202025	0.9961	1.1353
6205202030	0.9961	1.1353
6205202035	1.1206	1.2771
6205202046	0.9961	1.1353
6205202050	0.9961	1.1353
6205202060	0.9961	1.1353
6205202065	0.9961	1.1353
6205202070	0.9961	1.1353
6205202075	0.9961	1.1353
6205302010	0.3113	0.3548
6205302030	0.3113	0.3548
6205302040	0.3113	0.3548
6205302050	0.3113	0.3548
6205302070	0.3113	0.3548
6205302080	0.3113	0.3548
6206100040	0.1245	0.1419

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS No.	Conventional factors	Cents/kg.
6206303010	0.9961	1.1353
6206303020	0.9961	1.1353
6206303030	0.9961	1.1353
6206303040	0.9961	1.1353
6206303050	0.9961	1.1353
6206303060	0.9961	1.1353
6206403010	0.3113	0.3548
6206403030	0.3113	0.3548
6206900040	0.249	0.2838
6207110000	1.0852	1.2368
6207199010	0.3617	0.4122
6207210010	1.1085	1.2634
6207210030	1.1085	1.2634
6207220000	0.3695	0.4211
6207911000	1.1455	1.3055
6207913010	1.1455	1.3055
6207913020	1.1455	1.3055
6208210010	1.0583	1.2061
6208210020	1.0583	1.2061
6208220000	0.1245	0.1419
6208911010	1.1455	1.3055
6208911020	1.1455	1.3055
6208913010	1.1455	1.3055
6209201000	1.1577	1.3194
6209203000	0.9749	1.1111
6209205030	0.9749	1.1111
6209205035	0.9749	1.1111
6209205040	1.2186	1.3888
6209205045	0.9749	1.1111
6209205050	0.9749	1.1111
6209303020	0.2463	0.2807
6209303040	0.2463	0.2807
6210109010	0.2291	0.2611
6210403000	0.0391	0.0446
6210405020	0.4556	0.5192
6211111010	0.1273	0.1451
6211111020	0.1273	0.1451
6211118010	1.1455	1.3055
6211118020	1.1455	1.3055
6211320007	0.8461	0.9643
6211320010	1.0413	1.1868
6211320015	1.0413	1.1868
6211320030	0.9763	1.1127
6211320060	0.9763	1.1127
6211320070	0.9763	1.1127
6211330010	0.3254	0.3709
6211330030	0.3905	0.4451
6211330035	0.3905	0.4451
6211330040	0.3905	0.4451
6211420010	1.0413	1.1868
6211420020	1.0413	1.1868
6211420025	1.1715	1.3352
6211420060	1.0413	1.1868
6211420070	1.1715	1.3352
6211430010	0.2603	0.2967
6211430030	0.2603	0.2967
6211430040	0.2603	0.2967
6211430050	0.2603	0.2967
6211430060	0.2603	0.2967
6211430066	0.2603	0.2967
6212105020	0.2412	0.2749
6212109010	0.9646	1.0994
6212109020	0.2412	0.2749
6212200020	0.3014	0.3435
6212900030	0.1929	0.2198
6213201000	1.1809	1.3459
6213202000	1.0628	1.2113
6213901000	0.4724	0.5384
6214900010	0.9043	1.0306
6216000800	0.2351	0.2679

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS No.	Conventional factors	Cents/kg.
6216001720	0.6752	0.7695
6216003800	1.2058	1.3743
6216004100	1.2058	1.3743
6217109510	1.0182	1.1604
6217109530	0.2546	0.2902
6301300010	0.8766	0.9991
6301300020	0.8766	0.9991
6302100005	1.1689	1.3322
6302100008	1.1689	1.3322
6302100015	1.1689	1.3322
6302215010	0.8182	0.9325
6302215020	0.8182	0.9325
6302217010	1.1689	1.3322
6302217020	1.1689	1.3322
6302217050	1.1689	1.3322
6302219010	0.8182	0.9325
6302219020	0.8182	0.9325
6302219050	0.8182	0.9325
6302222010	0.4091	0.4663
6302222020	0.4091	0.4663
6302313010	0.8182	0.9325
6302313050	1.1689	1.3322
6302315050	0.8182	0.9325
6302317010	1.1689	1.3322
6302317020	1.1689	1.3322
6302317040	1.1689	1.3322
6302317050	1.1689	1.3322
6302319010	0.8182	0.9325
6302319040	0.8182	0.9325
6302319050	0.8182	0.9325
6302322020	0.4091	0.4663
6302322040	0.4091	0.4663
6302402010	0.9935	1.1323
6302511000	0.5844	0.666
6302512000	0.8766	0.9991
6302513000	0.5844	0.666
6302514000	0.8182	0.9325
6302600010	1.1689	1.3322
6302600020	1.052	1.199
6302600030	1.052	1.199
6302910005	1.052	1.199
6302910015	1.1689	1.3322
6302910025	1.052	1.199
6302910035	1.052	1.199
6302910045	1.052	1.199
6302910050	1.052	1.199
6302910060	1.052	1.199
6303110000	0.9448	1.0768
6303910000	0.6429	0.7327
6304111000	1.0629	1.2114
6304190500	1.052	1.199
6304191000	1.1689	1.3322
6304191500	0.4091	0.4663
6304192000	0.4091	0.4663
6304910020	0.9351	1.0657
6304920000	0.9351	1.0657
6505901540	1.181	1.346
6505902060	0.9935	1.1323
6505902545	0.5844	0.666

* * * * *

Dated: April 13, 1999.

Enrique E. Figueroa,

Administrator, Agricultural Marketing Service.

[FR Doc. 99–9634 Filed 4–16–99; 8:45 am]

BILLING CODE 3410–02–P

NORTHEAST DAIRY COMPACT COMMISSION

7 CFR Parts 1306 and 1309

Over-Order Price Regulation

AGENCY: Northeast Dairy Compact Commission.

ACTION: Proposed rule; notice of hearing.

SUMMARY: The Northeast Dairy Compact Commission proposes to amend the over-order price regulation to establish a supply management program. The proposed program is an assessment/refund plan under which the Commission would withhold up to the sum of three million dollars per calendar year, at the rate of $250,000 from each Compact monthly pool. At the end of the Commission's fiscal (calendar) year, the Commission would refund the withheld funds to compact eligible producers who had either reduced their production or only increased production at a rate of one percent or less, as compared to the prior calendar year's production. All eligible producers would receive a flat rate refund amount. In addition to the flat rate refund amount, eligible producers who decreased production would receive a refund based on the hundredweight of milk that the current year's production was less than the prior year's production.

DATES: A public hearing will be held on May 5, 1999 to commence at 9:00 a.m. and to conclude no later than 12:00 p.m. Sworn and notarized written testimony, comments and exhibits may be submitted until 5:00 p.m. on May 19, 1999.

ADDRESSES: The public hearing will be held at Wayfarer Inn, 121 S. River Road, U.S. Route 3, Bedford, New Hampshire. Mail, or deliver, sworn and notarized testimony, comments and exhibits to: Northeast Dairy Compact Commission, 34 Barre Street, Suite 2, Montpelier, Vermont 05602.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Becker, Executive Director, Northeast Dairy Compact Commission at the above address or by telephone at (802) 229–1941, or by facsimile at (802) 229–2028.

SUPPLEMENTARY INFORMATION:

I. Background

The Northeast Dairy Compact Commission (''Commission'') was established under authority of the Northeast Interstate Dairy Compact (''Compact''). The Compact was enacted into law by each of the six participating New England states as follows: Connecticut—Pub. L. 93–320; Maine—Pub. L. 89–437, as amended, Pub. L. 93–274; Massachusetts—Pub. L. 93–370; New Hampshire—Pub. L. 93–336; Rhode Island—Pub. L. 93–106; Vermont—Pub. L. 93–57. In accordance with Article I, Section 10 of the United States Constitution, Congress consented to the Compact in Pub. L. 104–127 (FAIR Act), Section 147, codified at 7 U.S.C. 7256. Subsequently, the United States Secretary of Agriculture, pursuant to 7 U.S.C. 7256(1), authorized implementation of the Compact.

Pursuant to its rulemaking authority under Article V, Section 11 of the Compact, the Commission concluded an informal rulemaking process and voted to adopt a compact over-order price regulation on May 30, 1997.[1] The Commission subsequently amended and extended the compact over-order price regulation.[2] In 1998, the Commission further amended specific provisions of the over-order price regulation.[3] The current compact over-order price regulation is codified at 7 CFR Chapter XIII.

On November 27, 1998, the Commission issued a notice of proposed rulemaking proceedings on several subjects and issues, including whether additional supply management policies and provisions should be incorporated into the over-order price regulation.[4] The Commission held a public hearing to receive testimony on December 11, 1998 in Boxborough, Massachusetts and comments were received until 5:00 p.m. on December 31, 1998.

On January 13, 1999, the Commission held its deliberative meeting, pursuant to 7 CFR 1361.8, to consider all oral and written comments received at the public hearing and the additional comments received by the Commission's published comment deadline of December 31, 1998, and to deliberate and act on the proposed subjects and issues rulemaking regarding whether additional supply management policies and provisions should be incorporated into the over-order price regulation.[5] At that meeting, the Commission referred the supply management issue to its Committee on Regulations and Rulemaking for further study. The Committee was asked to report back to the full Commission no later than the May 1999 meeting with recommendations for addressing supply management and the requirement in Article IV, Section 9(f) of the Compact. That provision requires the Commission, when establishing a compact over-order price, to ''take such action as necessary and feasible to ensure that the over-order price does not create an incentive for producers to generate additional supplies of milk.''

Since promulgation of the Compact Over-order Price Regulation in 1997, the Commission has closely monitored milk production levels in New England. One of the main goals in initially promulgating the Over-order Price Regulation was to at least stabilize the dairy industry supplying the New England consumer milk markets and to increase the local supply of milk.[6]

In the spring of 1998, the Commission recognized that production levels in New England had increased. The Commission's Committee on Regulations and Rulemaking held five public meetings around New England, to receive informal public comment on various supply management proposals and the Commission's responsibilities under Section 9(f) of the Compact. The Commission also conducted a comprehensive rulemaking proceeding beginning in June 1998, held public hearings in July and September 1998 and promulgated a rule in November to be effective January 1, 1999 which limits the payment of the Compact Over-order producer price to milk disposed of within the Compact regulated area, with a seasonally adjusted allowance for diverted and transferred milk.[7]

Also in 1998, the Commission paid 1.762 million dollars to the Commodity Credit Corporation (CCC), as required by condition 5 of the authorization of the Compact, 7 U.S.C. 7256(5). That provision requires the Commission to compensate the CCC for the cost of any purchases of milk and milk products that result from the projected rate of increase in milk production in the Compact regulated area in excess of the national average rate of the increase in milk production.[8] The Commission

[1] 62 FR 29626 (May 30, 1997)

[2] 62 FR 62810 (Nov. 25, 1997)

[3] 63 FR 10104 (Feb. 27, 1998); 63 FR 46385 (Sept. 1, 1998); and 63 FR 65517 (Nov. 27, 1998).

[4] 63 FR 65563 (Nov. 27, 1998).

[5] 64 FR 533 (Jan. 5, 1999).

[6] 62 FR 23039–40 (April 28, 1997); 62 FR 29635 (May 30, 1997); 62 FR 62814 (Nov. 25, 1997).

[7] 63 FR 65517 (Nov. 27, 1998).

[8] During federal fiscal year 1998, the Compact region enjoyed some of the best milk production conditions in many years, weather was warm and feed prices were low. Many other milk producing areas of the country experienced some of the worst

began setting aside funds in an escrow account from the monthly producer pool in March 1998, for February milk, to meet this potential obligation. After the payment to the CCC was made, the CCC escrow account had a balance of approximately $400,000, which the Commission returned to those producers whose production in federal fiscal year 1998 was less than or equal to their production during federal fiscal year 1997. The CCC refund payments were based on the eligible producer's total production for the year.

Based on the oral testimony and written comments and exhibits received in the December 1998 subjects and issues rulemaking proceeding, the informal public comment provided to the Committee on Regulations in the public meetings in the spring of 1998 and the Commission's experience with the CCC refund program, the Commission proposes to implement a supply management program through an assessment and refund payment to producers who either reduce production or maintain their milk production within one percent of the prior year's production level. The proposed program is described in detail below.

II. Proposed Supply Management Program

The proposed supply management program is designed to meet the Commission's responsibilities under Article IV, Section 9(f) of the Compact. That provision provides that ''[w]hen establishing a compact over-order price, the commission shall take such action as necessary and feasible to ensure that the over-order price does not create an incentive for producers to generate additional supplies of milk.'' The proposed supply management program is relatively straightforward to administer and implement and therefore would be a feasible method of addressing supply management. The proposed supply management program is necessary to ensure that the compact over-order price does not create an incentive for producers to increase milk production, as required by section 9(f) of the Compact.

The proposed program would require the Commission to reduce the producer pool by the sum of $250,000 per month, in order to accumulate a total of three million dollars per calendar year in the supply management-settlement fund.[9] By taking an equal sum from each producer pool, the impact on the monthly producer pay price would be minimized, thereby continuing to ensure a sufficient pay price to producers to cover their costs of production. These funds would be accumulated in an escrow account throughout the calendar year in a supply management-settlement fund.

At the conclusion of the calendar year, producers would have 45 days to submit an application to the Commission for a refund from the supply management-settlement fund. There would be two categories of producers eligible for the refund: (1) producers who reduced their production as compared to their prior year's production level; and (2) producers who maintained their production milk level at a rate of increase not more than 1% compared to the prior year's production. All eligible producers would receive a refund based on a flat rate per producer. One-half of the supply management-settlement fund would be distributed to eligible producers on a per producer basis. The amount of the flat rate refund would be determined by dividing the total number of eligible producers into one-half the value of the supply management-settlement fund.

In addition, producers who reduced their milk production, compared to the prior year's production, would receive a refund amount based on a price per hundredweight of reduced production of milk. The assessment/refund program would provide a reward to those producers who reduce their milk production and create an incentive for all producers to maintain a stable, local supply of milk for the New England milk market.

All producers would share equally in the burden of funding this program through a reduction in the producer pay price. Only those producers who reduce or maintain their production level would be eligible for a refund. However, the program would not otherwise restrict the milk production of those producers who, for business reasons unrelated to the compact payments, chose to increase their milk production at a rate greater than 1% per year.

The Commission would also change the regulation regarding any balance left in an account established to meet a potential liability to the Commodity Credit Corporation. The supply management program would be designed to meet the Commission's responsibilities under section 9(f) of the Compact, and therefore, any balance in a CCC escrow account would be returned to the producer-settlement fund for distribution to all producers in the next producer pool.

It is the intention and judgment of the Commission that the combination of the proposed supply management assessment/refund program and the recently promulgated rules limiting compact payments on diverted and transferred milk will operate in coordination to regulate the supply of milk in New England relative to the consumer demand and to ensure that the compact payments do not create an incentive to generate supplies of milk in excess of the tolerance levels prescribed for diverted and transferred milk.

Tables 1 and 2 show how the proposed supply management program would be implemented using the actual figures for the May 1998 and July 1998 compact producer pools. As Tables 1 and 2 demonstrate, setting aside $250,000 from each pool to fund the supply management-settlement fund, would have reduced the producer price by four cents.

TABLE 1.—MAY 1998 COMPACT OVER-ORDER PRODUCER PRICE WITH PROPOSED SUPPLY MANAGEMENT ASSESSMENT

Compact Over-order Obligation		$0.89	
Compact Class I	43.49%	252,572,087	$2,247,891.58
Less: WIC 3%			67,436.75
Less: Supply Management Assessment			250,000.00
Total Producer Milk	100%	580,786,219	1,930,454.83
Add: ½ Unobligated Balance			257,942.40
Adjusted Pool Value		0.376799097	2,188,397.23
Less: Reserve		.046799097	271,802.14
Total Pool Value			1,916,595.09

weather and, as a result, the rate of production in New England exceeded that of the national average. The Commission notes, too, however, that in promulgating the Over-order Price Regulation it intended to stabilize or increase milk production in the region. See discussions at 62 FR 23039–40 (April 28, 1997); 62 FR 29635 (May 30, 1997); and 62 FR 62814 (Nov. 25, 1997)

[9] If there is no producer pool in a particular month, the sum owed to the refund pool would be carried forward and paid from the next available producer pool.

TABLE 1.—MAY 1998 COMPACT OVER-ORDER PRODUCER PRICE WITH PROPOSED SUPPLY MANAGEMENT ASSESSMENT—Continued

Over-order Producer Price		$0.33	
Announced Over-order Producer Price		$0.37	
Reduction due to SM Assessment		$0.04	

TABLE 2.—JULY 1998 COMPACT OVER-ORDER PRODUCER PRICE WITH PROPOSED SUPPLY MANAGEMENT ASSESSMENT

Compact Over-order Obligation		$2.82	
Compact Class I	43.70%	248,178,437	$6,998,631.91
Less: WIC 3%			209,958.96
Less: Supply Management Assessment			250,000.00
Total Producer Milk	100%	567,929,595	6,538,672.95
Add: ½ Unobligated Balance			229,215.01
Adjusted Pool Value		1.191677281	6,767,887.96
Less: Reserve		.041677281	236,697.15
Total Pool Value			6,531,190.81
Over-order Producer Price		$1.15	
Announced Over-order Producer Price		$1.19	
Reduction due to SM Assessment		$0.04	

The Commission offers the following examples to assist interested persons in evaluating the proposed supply management program. Table 3 shows the cost per producer of a reduction in the producer pay price of $.04 per hundredweight on a monthly and annual basis. As discussed above, the $.04 reduction is the cost of setting aside $250,000 per month from the producer pool to fund the supply management-settlement fund.

TABLE 3.—COST OF SUPPLY MANAGEMENT ASSESSMENT TO SELECTED SIZE FARMS

No. cows	Pounds	Reduced rate/cwt	Cost per month	Cost per year
40	700,000	.$04	$23	$280
57	1,000,000	.04	33	400
86	1,500,000	.04	50	600
286	5,000,000	.04	167	2,000

The examples in Tables 4 and 5 assume that each size farm reduces production by five percent compared to the prior year's production. The proposed supply management program would pay one-half of the supply management-settlement fund on a per producer, flat rate basis, and the other half on a rate per hundredweight of the producer's reduced milk production. The values used in the examples are determined by assuming that 1,000 producers are eligible for the supply management refund, and eligible producers reduced milk production by 91 million pounds. These assumptions result in a per producer refund payment of $1,500 and a per hundredweight rate of $1.64.

Table 4 shows the yearly refund different size farms would receive under the proposed supply management program.

TABLE 4.—YEARLY REFUND FROM SUPPLY MANAGEMENT PROGRAM, SELECTED SIZE FARMS

No. Cows	Pounds	Reduced pounds	Reduced rate/cwt	Rate/cwt refund	Per farm refund	Total refund
40	700,000	35,000	$1.64	$574	$1,500	$2,074
57	1,000,000	50,000	1.64	820	1,500	2,320
86	1,500,000	75,000	1.64	1,230	1,500	2,730
286	5,000,000	250,000	1.64	4,100	1,500	5,600

Table 5 shows the yearly financial benefit to different size farms of the proposed supply management program.

TABLE 5.—YEARLY BENEFITS FROM SUPPLY MANAGEMENT PROGRAM, SELECTED SIZE FARMS

No. Cows	Total refund	Less cost	Net refund
40	$2,074	$280	$1,794
57	2,320	400	1,920
86	2,730	600	2,130

TABLE 5.—YEARLY BENEFITS FROM SUPPLY MANAGEMENT PROGRAM, SELECTED SIZE FARMS—Continued

No. Cows	Total refund	Less cost	Net refund
286	5,600	2,000	3,600

Table 6 shows the increased income a producer would have received in 1998, on only the volume of milk produced in excess of the prior year's production, due to the compact producer price. The table uses the assumption that the rate of increased production was 1.8%. This is the rate of increased production in the compact region the Commodity Credit Corporation used to set the amount due from the Compact Commission in 1998. The table also applies the average compact over-order producer price for 1998 of $.286. The last column shows the compact payment to the producer for the increased milk production.

TABLE 6.—YEARLY INCREASED INCOME ON AVERAGE PERCENTAGE INCREASED PRODUCTION

No. Cows	Pounds	% Increase	Increase lbs.	Av. Price	Increase $
40	700,000	1.8	12,600	$.286	$36
57	1,000,000	1.8	18,000	.286	51
86	1,500,000	1.8	27,000	.286	77
285	5,000,000	1.8	90,000	.286	257

Table 7 shows the comparison between the income (reduced income) a producer would not receive due to decreasing production by five (5) percent, and the financial benefit for that production decrease under the proposed supply management program. The table applies the average compact producer price of $.286 for 1998 to compute the value of reduced income and applies the same assumptions as used in Table 5 to show the effect of the proposed supply management program (SMP).

TABLE 7.—COMPARISON OF REDUCED COMPACT INCOME TO SUPPLY MANAGEMENT BENEFITS FOR 5% PRODUCTION DECREASE

No. Cows	Reduced pounds	Average price	Reduced income	Net SMP refund	Net income increase
40	35,000	$.286	$100	$1794	$1694
57	50,000	.286	143	1920	1777
86	75,000	.286	214	2130	1916
285	250,000	.286	715	3600	2885

The Commission is especially interested in comments regarding the level of refund payment that would best meet the purposes of the supply management program.

III. Proposed Technical Amendments to the Over-Order Price Regulation

The Commission proposes to amend §§ 1306.3 (c) and (e) and to add a new Part 1309 to provide the necessary regulations to implement the proposed supply management assessment/refund program. The Commission also proposes to make corresponding technical changes required by the specific amendments and additions to the current regulations.

The Commission proposes to amend § 1306.3(c) to delete subsections (1) and (2) and to specify that any surplus remaining in an escrow account established to meet a potential obligation to the Commodity Credit Corporation (CCC) would be returned to the producer-settlement fund for distribution to all producers. These changes eliminate the current provisions for returning the surplus funds to only those producers who did not increase production in the federal fiscal year. The Commission proposes this change because, with the implementation of the supply management assessment/refund program and the corresponding reduction of the producer pool, the limitation on the CCC refund of a surplus to only those producers who did not increase production would no longer be appropriate.

The Commission proposes to amend § 1306.3, by first redesignating existing paragraphs (e) through (g) as paragraphs (f) through (h) and adding a new paragraph (e). The new paragraph will allow the Commission to withhold $250,000 from the producer pool to fund the supply management-settlement fund. In months when there either is no producer pool or the amount of the pool is insufficient, then the obligation will accrue to the next available pool. This provision will allow the Commission to fund the supply management-settlement fund at an amount up to three million dollars per calendar year.

A new Part 1309 is proposed to provide the regulations to implement the supply management program. Section 1309.1 defines producer qualifications for the refund program. Section 1309.2 defines the procedure for computing the refund prices to be paid to qualified producers. Section 1309.3 would provide the authority for the establishment of a supply management-settlement fund. Finally, § 1309.4 would describe the procedure for issuing payments to producers eligible for a refund under the supply management program.

Official Notice of Technical, Scientific or Other Matters

Pursuant to the Commission regulations, 7 CFR 1361.5(g)(5), the Commission hereby gives public notice that it may take official notice, at the public hearing May 5, 1999, or afterward, of relevant facts, statistics,

data, conclusions, and other information provided by or through the United States Department of Agriculture, including, but not limited to, matters reported by the National Agricultural Statistics Service, the Market Administrators, the Economic Research Service, the Agricultural Marketing Service and information, data and statistics developed and maintained by the Departments of Agriculture of the States or Commonwealth within the Compact regulated area.

The Commission will also receive into the record of this rulemaking proceeding the entire record, including the public hearing transcript and written comments and submissions, of the subjects and issues rulemaking proceeding regarding whether additional supply management policies and provisions should be incorporated into the Over-order Price Regulation.

Public Participation in Rulemaking Proceedings

The Commission seeks and encourages oral and written testimony and comments from all interested persons regarding these proposed rules. The Commission continues to benefit from the valuable insights and active participation of all segments of the affected community including consumers, processors and producers in the development and administration of the Over-order Price Regulation.

Date, Time and Location of the Public Hearing

The Northeast Dairy Compact Commission will hold a public hearing to commence at 9:00 a.m., and to conclude no later than 12:00 p.m., on May 5, 1999 at the Wayfarer Inn, 121 S. River Road, U.S. Route 3, Bedford, New Hampshire.

Request for Pre-filed Testimony and Written Comments

Pursuant to the Commission rules, 7 CFR 1361.4, any person may participate in the rulemaking proceeding independent of the hearing process by submitting written comments or exhibits to the Commission. Comments and exhibits may be submitted at any time before 5:00 p.m. on May 19, 1999.

Please note: Comments and exhibits will be made part of the record of the rulemaking proceeding only if they identify the author's name, address and occupation, and if they include a sworn and notarized statement indicating that the comment and/or exhibit is presented based upon the author's personal knowledge and belief. Facsimile copies will be accepted up until the 5:00 p.m. deadline, but the original must then be sent by ordinary mail.

The Commission is requesting pre-filed testimony from any interested person. Pre-filed testimony must include the name, address and occupation of the witness and a sworn notarized statement indicating that the testimony is presented based upon the author's personal knowledge and belief. Pre-filed testimony must be received in the Commission office no later than 5:00 p.m. April 26, 1999 to insure distribution to Commission members prior to the public hearing.

Pre-filed testimony, comments and exhibits should be sent to: Northeast Dairy Compact Commission, 34 Barre Street, Suite 2, Montpelier, Vermont 05602 or by facsimile to (802) 229–2028.

List of Subjects in 7 CFR Parts 1306 and 1309

Milk.

Codification in Code of Federal Regulations

For reasons set forth in the preamble, the Northeast Dairy Compact Commission proposes to amend 7 CFR part 1306 and to add a new part 1309 as follows:

PART 1306—COMPACT OVER-ORDER PRODUCER PRICE

1. The authority citation for part 1306 continues to read as follows:

Authority: 7 U.S.C. 7256.

2. In section 1306.3 revise paragraph (c), redesignate paragraphs (e) through (g) as paragraphs (f) through (h), and add new paragraph (e) to read as follows:

§ 1306.3 Computation of basic over-order producer price.

* * * * *

(c) In any month when the average percentage increase in production in the regulated area comes within 0.25 of the average percentage increase in production for the nation, subtract from the total value computed pursuant to paragraph (a) of this section, for the purpose of retaining a reserve, an amount estimated by the commission in consultation with the USDA for anticipated cost to reimburse the Commodity Credit Corporation (CCC) at the end of its fiscal year for any surplus milk purchases. Should those funds not be needed because no surplus purchases were made by the CCC at the end of its fiscal year or there is a surplus in the fund, it is to be returned to the producer-settlement fund.

* * * * *

(e) Subtract $250,000 from the total value computed pursuant to paragraph (a) of this section and deposit that amount in the supply management-settlement fund, in the event there is no monthly pool because there is no over-order obligation or there is insufficient funds available, the obligation under this section will accrue to the next available pool;

* * * * *

3. A new part 1309 is added to read as follows:

PART 1309—SUPPLY MANAGEMENT REFUND PROGRAM

Sec.

1309.1 Producer qualification for supply management refund program.
1309.2 Computation of supply management refund prices.
1309.3 Supply management-settlement fund.
1309.4 Payment to producers of supply management refund.

Authority: 7 U.S.C. 7256.

§ 1309.1 Producer qualification for supply management refund program.

A dairy farmer who is a qualified producer pursuant to § 1301.11 of this chapter for the entire refund year and the dairy farmer's milk production during the refund year is less than or the increase is not more than 1% of the milk production of the preceding calendar year.

§ 1309.2 Computation of supply management refund prices.

The compact commission shall compute the supply management refund prices applicable to all qualified milk as follows:

(a) Combine into one total the values, including all interest earned, deducted pursuant to § 1306.3(e) of this chapter for the refund year;

(b) Subtract 50% from the total value computed pursuant to paragraph (a) of this section to be used for the per farm payments to producers who submitted documentation pursuant to § 1309.4(a);

(c) Add the unobligated balance of the supply management-settlement fund;

(d) Divide the resulting amount by the sum of all milk production reduction reported by producers qualified pursuant to § 1309.1 and who submitted documentation pursuant to § 1309.4(a); and

(e) Subtract not less than one (1) cent nor more than two (2) cents for the purpose of retaining a cash balance in the supply management-settlement fund. The result shall be the supply management refund price for the year.

§ 1309.3 Supply management-settlement fund.

(a) The compact commission shall establish and maintain a separate fund

known as the supply management-settlement fund. It shall deposit into the fund all amounts deducted pursuant to § 1306.3(e) of this chapter and the amount subtracted under § 1309.2(e). It shall pay from the fund all amounts due producers pursuant to § 1309.4 and the amount added pursuant to § 1309.2(c);

(b) All amounts subtracted under § 1309.2(e), including interest earned thereon, shall remain in the supply management-settlement fund as an obligated balance until it is withdrawn for the purpose of effectuating § 1309.2(c);

(c) The compact commission shall place all monies subtracted under § 1306.3(e) of this chapter and § 1309.2(e) in an interest-bearing bank account or accounts in a bank or banks duly approved as a Federal depository for such monies, or invest them in short-term U.S. Government securities.

§ 1309.4 Payment to producers of supply management refund.

(a) All producers who are qualified pursuant to § 1309.1 shall become eligible to receive payment of the supply management refund computed pursuant to § 1309.2 by submitting to the compact commission documentation that the producer milk production during the refund year is less than or the increase is not more than 1% of the milk production of the preceding calendar year. Such documentation shall be filed with the commission not later than 45 days after the end of the calendar year.

(b) The commission will make payment to all producers qualified pursuant to § 1309.1 and eligible pursuant to paragraph (a) of this section in the following manner:

(1) A per farm payment computed by dividing the amount subtracted pursuant to § 1309.2(b) by the total eligible producers; and

(2) The value determined by multiplying the supply management refund price computed pursuant to § 1309.2(e) by the producer's reduced milk pounds.

Date: April 12, 1999.

Kenneth M. Becker,

Executive Director.

[FR Doc. 99–9521 Filed 4–16–99; 8:45 am]

BILLING CODE 1650–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 39

RIN 3150–AG14

Energy Compensation Sources for Well Logging and Other Regulatory Clarifications

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations governing licenses and radiation safety requirements for well logging. The proposed rule would modify NRC regulations dealing with: low activity energy compensation sources; tritium neutron generator target sources; specific abandonment procedures in the event of an immediate threat; changes to requirements for inadvertent intrusion on an abandoned source; the codification of an existing generic exemption; the removal of an obsolete date; and updating regulations to be consistent with the Commission's metrication policy. The proposed amendments are necessary to reflect developments that have occurred in well logging technology since the existing regulations were adopted.

DATES: The comment period expires July 5, 1999. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Send comments by mail or addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Rulemakings and Adjudications Staff.

Hand-deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking web site through the NRC home page (http://www.nrc.gov). From the NRC home page, select ''Rulemaking'' from the tool bar. The interactive rulemaking website can then be accessed by selecting ''Rulemaking Forum.'' This site provides the availability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, (301) 415–5905; e-mail CAG@nrc.gov.

Certain documents related to this rulemaking, including comments received and the environmental assessment and finding of no significant impact, may be examined at the NRC Public Document Room, 2120 L Street NW., (Lower Level), Washington, DC. These same documents also may be viewed and downloaded electronically via the interactive rulemaking website established by NRC for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Mark Haisfield, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6196, e-mail MFH@nrc.gov.

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission is proposing to amend its regulations to acknowledge and accommodate the use of well logging technology that has been developed since the NRC issued the current well logging regulations (March 17, 1987; 52 FR 8234). This new technology allows licensees to lower a logging tool down a well at the same time that the hole for the well is being drilled instead of requiring drilling to stop, removing drilling pieces, and lowering a logging tool down the well. This technology is commonly referred to as ''logging while drilling.'' This process uses a relatively small radioactive source within the logging tool in addition to the larger radioactive sources currently used in logging a well. The existing regulations were based on the use of larger radioactive sources. These regulations include provisions which are unnecessary and potentially burdensome for the additional small sources. The proposed changes would have no significant impact on public health and safety and the environment while reducing potential burdens to licensees. Licensees would no longer need to comply with unnecessary regulatory requirements for these small sources or to request licensing exemptions from the NRC for actions dealing with these small sources. Other changes are also being proposed to improve, clarify, and update well logging regulations to reduce confusion. These changes may also reduce the need for licensees to request exemptions from unnecessary requirements.

Introduction

Oil and gas come from accumulations in the pore spaces of reservoir rocks (usually sandstone, limestone, or dolomites) and are removed via a well. Because the amount of oil and gas in these pore spaces is dependent upon the rock's characteristics, the oil and gas industry often needs to determine the characteristics of underground formations to predict the commercial viability of a new or existing well.

Licensed radioactive materials are used to obtain information on certain properties of an underground formation, such as type of rock, porosity, hydrocarbon content, and density. These properties are important in the evaluation of oil and gas reservoirs.

One method to obtain information about oil and gas reservoirs is by using well logging tools. Licensed radioactive materials (sealed radioactive sources with associated radiation detectors) are contained in well logging tools. Americium-241 and cesium-137 are the radioactive materials most frequently used for this purpose. Traditionally, these tools are lowered into a well on a wireline. The depth of the well could range from several hundred feet to greater than 30,000 feet. Information collected by the detectors is sent to the surface through the wireline and plotted on a chart as the logging tool is slowly raised from the bottom of the well. Licensed radioactive materials are also used for similar purposes in coal and mineral exploration.

The licensing and radiation safety requirements for well logging are provided in 10 CFR part 39. When the regulations for well logging were promulgated in 1987 (52 FR 8225, March 17, 1987), the well logging process required drilling to stop while parts of the drilling pieces were removed before lowering a logging tool down a well. More recent technology, referred to as logging while drilling (LWD), allows well logging to be accomplished during drilling. This technology employs an additional low activity radioactive source within the well logging tool known as an energy compensation source, or ECS. The ECS is used to calibrate the well logging tool while the well is being drilled.

LWD provides real time data during drilling operations. It has also provided the ability for improved evaluation of geologic formations and can reduce drilling costs. The real-time information can aid in decision making because formation evaluation can be planned as soon as the drill bit reaches a formation.

Background

Based on the changing technology in the well logging industry, the NRC developed a Rulemaking Plan to consider the need to update 10 CFR part 39. On May 28, 1997, the NRC provided a draft Rulemaking Plan entitled, ''Energy Compensation Sources for Well Logging and Clarifications—Changes to 10 CFR part 39'' to the Agreement States for their comment. The draft Rulemaking Plan was contained in SECY–97–111, also dated May 28, 1997. Comments were received from the States of Utah, Illinois, and Washington. These States generally supported the proposal and provided specific information and comments. Where appropriate, these comments were incorporated into the final Rulemaking Plan which was contained in SECY–98–105, dated May 12, 1998.

In the final Rulemaking Plan, the NRC proposed to modify the existing regulations in 10 CFR part 39 to account for the newer technology. The changes would reduce regulatory burden on NRC and Agreement State licensees with no significant impact to public health and safety. In addition, there are other sections within 10 CFR part 39 that should be changed to improve, clarify, and update the regulations. The final Rulemaking Plan provides the rationale used in the development of this proposed rule.

Proposed Regulatory Action

The NRC is proposing seven specific changes to improve, clarify, and update the requirements in 10 CFR part 39.

1. The principal objective of the proposed rulemaking is to amend 10 CFR part 39 to accommodate the radioactive ECSs that are now used in some well logging applications. The ECS is a low activity source, typically less than 1.85 MBq (50 microcuries), compared to the normal 110 GBq to 740 GBq (3 to 20 curies) sources used in well logging. Because this is an emerging technology, 10 CFR part 39, originally promulgated in 1987, does not provide any specific provisions for these low activity sources. Many of the requirements in 10 CFR part 39, when applied to an ECS, are not appropriate or necessary to protect public health and safety and the environment. Therefore, the NRC believes the regulations should be changed.

Because the existing regulations do not allow for variations based on the activity of the source, licensees who use an ECS must meet all the requirements for larger sources found in 10 CFR part 39. Examples of requirements which are overly burdensome for licensees using ECSs include those addressing well abandonment (§§ 39.15 and 39.77), leak testing (§ 39.35), design and performance criteria for sealed sources (§ 39.41), and monitoring of sources lodged in a well (§ 39.69). The NRC is proposing that only those sections dealing with leak testing (a proposed revised § 39.35 specifically addresses ECSs), physical inventory (§ 39.37), and records of material use (§ 39.39) should apply to the use of an ECS.

Oil and gas wells use a surface casing to protect fresh water aquifers. However, if a surface casing is not used, the NRC would retain the well abandonment requirements. Requirements established in other parts of NRC regulations (e.g., 10 CFR parts 20, 30, 40, and 70) would still apply to the possession and use of licensed material and are adequate to protect public health and safety and the environment.

Therefore, the NRC is proposing to amend 10 CFR part 39 to accommodate the use of an ECS in well logging and to provide requirements governing its use. These provisions would include radioactivity limits on the ECS and leak testing requirements. The most significant change would exclude an ECS from the costly procedures for well abandonment in the event an ECS is lost within the well. Current requirements for well abandonment, in addition to specific reporting and approval requirements, require the source to be immobilized and sealed in place with a cement plug which must be protected from inadvertent intrusion, and the mounting of a permanent plaque at the surface of the well. In the draft Regulatory Analysis (RA) conducted for this proposed rule, a survey of ECS users indicated that about eight ECSs are abandoned per year. Although estimated abandonment costs varied significantly by survey respondent, the estimated savings to the industry to avoid eight abandonments per year is $5 million.

The NRC is proposing to establish 3.7 MBq (100 microcuries) as the limit for an ECS. Current ECSs typically use up to 1.85 MBq (50 microcuries) of americium-241 (cesium-137 sources are smaller). The 3.7 MBq (100 microcuries) limit would allow licensees flexibility in designing new sources of this kind while maintaining their radioactivity within an environmentally safe level. In addition, the sources would be required to be registered pursuant to 10 CFR 32.210 as ECSs for use in well logging applications. These sources would not be required to meet the requirements in § 39.41. However, they would be expected to meet the general requirements for calibration sources as established in American National Standard Institute (ANSI) standards.

Because ECSs are used for logging oil and gas wells, they use surface casings to protect fresh water aquifers. Hence, the only potential exposure hazard these sources would present is to workers, and worker exposure could only occur if an ECS were ruptured. If ruptured, workers could be exposed to the radionuclide through ingestion or by absorption through the skin. However, if the source were ruptured, it would be contained within hundreds to thousands of cubic feet of drilling mud

which also contains hazardous chemicals and is controlled and monitored to protect workers as part of drilling operations.

The draft Environmental Assessment (EA) conducted for this proposed rulemaking demonstrates that there would be no significant impact to public health and safety or the environment resulting from this amendment. The EA evaluated a worst case scenario of a 3.7 MBq (100 microcuries) source ruptured by a drill bit and brought to the surface in the drilling mud. The most significant exposure from this scenario would be from ingestion of the drilling mud. The most dangerous radionuclide considered for this worst case scenario was curium-250. This radionuclide was used because the rule, as proposed, does not restrict the radionuclide used for ECS sources. Also, the scenario involved a source twice as large as any in current use. For this worst case scenario, the estimated dose would be about 56 millirem, which is below the Federal annual dose limit to an individual member of the public of 0.1 rem (100 millirem) or 1 millisievert (see 10 CFR 20.1301). For a 3.7 MBq (100 microcuries) source of americium or cesium (the actual radionuclides used, but with larger activity) the estimated dose would be less than 3 millirem and 1 millirem respectively. Therefore, the NRC believes that eliminating potential costly requirements for these sources, in the event that such sources become unretrievable, would not impact public health and safety or the environment.

Section 39.35 specifies leak testing requirements for sealed sources. Because of the small amount of radioactive material in an ECS (by definition less than 3.7 MBq (100 microcuries)) less specific leak testing requirements are being proposed for ECSs. Also, the ECS is contained within a logging tool that is designed to withstand significant stress and pressure. The ECS is mounted inside a steel pressure housing in the interior of the logging tool, thereby providing additional encapsulation to protect the ECS from operational impacts. The NRC believes that it is unnecessary and overly burdensome to require that drilling operations stop because an ECS has exceeded the current 6-month time interval requirement to be leak tested. The draft Regulatory Analysis conducted for this proposed rulemaking surveyed a sample of the drilling industry to determine a normal maintenance period at which time a licensee would take a logging tool out of service for routine maintenance or other servicing. The NRC believes this maintenance period would be an appropriate time to conduct any necessary leak testing on an ECS. Although the survey results varied, these tools generally receive some type of out-of-field servicing every 18 months.

Based on this information and the NRC's belief that ECSs should normally only be leak tested during normal maintenance or when a logging tool is out of service for other repairs, the NRC is requiring that a leak test be performed at a minimum of every three years. This requirement should not be a burden for licensees if the logging tool is being properly maintained and, in fact, should provide licensees some flexibility. This is also consistent with an extended leak test frequency that has been established by license conditions for certain other sealed sources and devices.

Many ECSs are already exempt from all leak testing requirements. Section 39.35 exempts all beta or gamma emitting radioactive material with an activity of 3.7 MBq (100 microcuries) or less. Because cesium-137 is a beta/gamma emitter, all of these types of ECSs are already exempt from the existing leak testing requirements in § 39.35.

2. The NRC is proposing to revise 10 CFR part 39 requirements for tritium neutron generator target sources. Tritium neutron generators help determine the porosity of the reservoir rock formation, which indicates the amount of liquid in the reservoir and the reservoir's permeability. Tritium neutron generator target sources are not used in logging while drilling tools. These sources are used in the more traditional well logging procedure where drilling is stopped and the tool is lowered downhole. Because tritium neutron generator target sources produce a significant neutron stream only when a voltage is applied, tritium neutron generator target sources are less hazardous than the typical americium or cesium sources currently being used in well logging applications.

For well logging applications, the NRC is proposing that tritium neutron generator target sources be subject to the requirements of 10 CFR part 39 except for the sealed source design and performance criteria (§ 39.41), and the well abandonment procedures (§§ 39.15 and 39.77) when a surface casing is used to protect fresh water aquifers, a practice that is standard for oil and gas wells. The potential hazard of these sources when a surface casing is used does not warrant the existing requirements for well abandonment in the event that the source becomes lost. The design and performance criteria associated with sealed sources for well logging were not intended for tritium neutron generator target sources. However, 10 CFR part 39 does not make this intent or distinction clear.

The NRC is proposing to establish 1,110 GBq (30 curies) of tritium as the limit for a tritium neutron generator target source. Current tritium neutron generator target sources typically contain less than 740 GBq (20 curies) of tritium. The 1,110 GBq (30 curies) limit would allow licensees flexibility in designing new sources of this type while maintaining their radioactivity within an environmentally safe level.

When these sources are used for logging oil and gas wells, a surface casing is used to protect fresh water aquifers. The only exposure hazard these sources present are to workers and worker exposure could only occur if such sources were ruptured and the tritium was ingested. If a tritium source were ruptured, it would be contained within hundreds to thousands of cubic feet of drilling mud. As mentioned, this drilling mud contains hazardous chemicals and is controlled and monitored as part of drilling operations.

The draft EA conducted for this proposed rulemaking demonstrates that there would be no significant impact to public health and safety or the environment resulting from this change. The draft EA evaluated the worst case scenario of a 1,110 GBq (30 curies) tritium source ruptured by a drill bit and brought to the surface in the drilling mud. The most significant exposure would be through ingestion of this drilling mud. For this worst case scenario, the estimated dose would be 14 millirem, which is well below the Federal annual dose limit to an individual member of the public of 100 millirem or 1 millisievert (see 10 CFR 20.1301). Therefore, the NRC believes that eliminating potential costly requirements for these sources, in the event that such sources become unretrievable, would not impact public health and safety or the environment.

3. Section 39.77 provides the requirements for notification and procedures for abandoning irretrievable well logging sources. This section specifies that the NRC must approve implementation of abandonment procedures before abandonment. In some circumstances, such as high well pressures that could lead to fires or explosions, the delay required to notify NRC could cause an immediate threat to public health and safety. The NRC believes that this section should be modified to allow licensees to use their judgement to abandon a well immediately, without prior NRC approval, if the licensee believes a delay

could cause such a non-radiological threat. This modification would allow licensees greater procedural latitude. In the proposed rule, the language has been modified to allow licensees to notify the NRC and justify the need for an immediate abandonment after the fact.

4. Section 39.15 provides requirements for abandoning irretrievable sealed sources. The NRC believes that this section should be modified to provide performance-based criteria for inadvertent intrusion on the source. This modification would allow licensees greater procedural latitude while continuing to ensure source integrity. The current requirements may be more restrictive than is necessary to protect an abandoned source, depending upon the individual well abandonment. For example, if a significant amount of drilling equipment is abandoned with the well, the equipment itself may be effective in preventing inadvertent intrusion on the source. However, the abandoned equipment would not meet the current requirements of § 39.15. Paragraph (a)(5)(ii) of § 39.15 has prescriptive requirements for irretrievable well logging sources, specifying the use of a mechanical device to prevent inadvertent intrusion on the source, at a specific location within the abandoned well.

The NRC is proposing that licensees ''prevent inadvertent intrusion on the source.'' This would require that the source be protected but allow licensees the flexibility to determine the best method. The proposed change would not affect the requirement in § 39.15(a)(5)(i) that a well logging source be immobilized with a cement plug or the requirement in § 39.15(a)(5)(iii) that a permanent identification plaque be mounted at the surface of the well.

5. Two changes are being proposed for § 39.41, ''Design and performance criteria for sealed sources.'' The first would incorporate within NRC regulations an existing generic exemption for sealed sources that were manufactured before 1989 and met older standards. The second would add an optional acceptable standard by referencing oil-well logging requirements in ANSI/HPS N43.6–1997. The existing requirements would also remain as an option within this section.

The NRC issued a generic exemption from the current design and performance criteria for sealed sources in 1989. This exemption allows the use of older sealed sources which were not tested against the current criteria, but which were tested in accordance with an earlier standard used for well logging sources. This exemption is currently in practice, but is not included in 10 CFR part 39. The NRC is proposing to modify the regulations to include this existing generic exemption within 10 CFR part 39.

Sealed sources that were manufactured before July 14, 1989, may use design and performance criteria from the United States of America Standards Institute (USASI) N5.10–1968, ''Classification of Sealed Radioactive Sources'' or the criteria in § 39.41. The use of the USASI standard is based on an NRC Notice of Generic Exemption published on July 25, 1989 (54 FR 30883). NRC regulations have not incorporated the USASI N5.10–1968 requirements for older sealed sources. The primary difference between the USASI standard and the existing requirements is that the existing requirements includes a vibration test that is consistent with current national standards. The USASI standard considered a vibration test and concluded that, to pass the other requirements, the source would be so rugged there was no reason to include a vibration test.

The exemption allowing the use of the USASI standard was intended to avoid a situation in which well logging licensees might be unnecessarily forced out of business and have to dispose of their sources. This situation could arise because the original source manufacturers tested against the USASI standard, but did not retest these sources against the standards that became effective in 1989. The NRC determined that those sealed source models meeting the USASI standard would not adversely affect public health and safety. These sources had been used for years in operational situations and had demonstrated through actual use that vibration from drilling operations had not caused failure. The survey of licensees conducted for the RA and EA for this proposed rulemaking confirmed that these older sources have not presented a problem during actual use. Therefore, the NRC is proposing to codify within this section the existing practice to use, as an option, the USASI standards for sealed sources that were manufactured before July 14, 1989. Because many of these older sealed sources contain radioactive material with half-lives that allow their continued use (i.e., americium-241 and cesium-137 have half-lives of 458 and 30 years respectively), this modification to the regulations is appropriate.

However, a vibration test has been included in ANSI standards since 1977, and by existing NRC regulations which were promulgated in 1987. Based on survey information done for this rulemaking, it is estimated that the cost to test a source to see if it meets the vibration requirement in § 39.41 is $2,400. Only the prototype for each design requires testing. The number of prototype designs each year is small. The only survey respondent on this topic indicated that they produce, at most, one new prototype per year and they did not indicate that vibration testing is burdensome. The NRC believes that the cost for vibration testing is not overly burdensome and is consistent with (1) ANSI N542–1977, ''Sealed Radioactive Sources, Classification,'' published by the National Bureau of Standards [(NBS) currently the National Institute of Standards and Technology] in the 1978 NBS Handbook 126 and (2) ANSI/HPS N43.6–1997, ''Sealed Radioactive Sources—Classification'' approved in November 1997. ANSI/HPS N43.6–1997 is the revised update to ANSI N542–1977. However, the oil-well logging requirements have not changed between the two ANSI standards and the NRC has decided to retain the current requirements for vibration testing.

The second proposed change to this section is to meet Public Law 104–113, ''National Technology and Transfer Act of 1995'' and Office of Management and Budget Circular A–119, ''Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities.'' This law encourages agencies to use ''voluntary consensus standards'' (i.e., standards developed by a voluntary consensus body and made available to all interested parties). The existing NRC requirements are based on the older ANSI N542–1977 standard, and allow licensees flexibility in determining how to conduct testing and ensuring integrity of the source. The NRC is proposing to add an optional method of meeting the design requirements by referencing the newer, current ANSI standard (ANSI/HPS N43.6–1997) within 10 CFR part 39. Although the current NRC requirements and ANSI/HPS N43.6–1997 are quite similar, the NRC does not want to eliminate the ability to meet the existing NRC regulatory requirements; that could result in a problem similar to that experienced in 1989. That is, existing approved sealed sources might not have been tested or evaluated exactly as specified in ANSI/HPS N43.6–1997, which could result in well logging licensees having to dispose of acceptable sealed sources.

The NRC is inviting public comment on whether adding this voluntary consensus standard (ANSI/HPS N43.6–1997) to 10 CFR part 39 is appropriate

for use by manufacturers of sealed sources for use in well logging.

6. For clarity and to avoid confusion, the NRC is proposing to update § 39.49 because it contains a date that has passed and is no longer appropriate. This section would be amended to remove the obsolete date.

7. The NRC is proposing to update §§ 39.15, 39.35, and 39.41 to conform with the agency's metrification policy published on June 19, 1996 (61 FR 31169) by stating parameter values in dual units with International System of Units (SI) first and with English units in brackets.

Specific Changes in Regulatory Text

The following section is provided to assist the reader regarding the specific changes made to each section or paragraph in 10 CFR part 39. For clarity and content, a substantial portion of a particular section or paragraph may be repeated, while only a minor change is being made. This approach will allow the reader to effectively review the specific changes without cross-reference to existing material that has been included for content, but has not been significantly changed.

Section 39.2: Two new definitions are being added for ECS and tritium neutron generator target source.

Section 39.15(a)(5)(ii): This is being revised to allow a more performance-based approach to prevent inadvertent intrusion on an abandoned source.

Section 39.15(a)(5)(iii): This is being revised to meet the NRC's metrification policy.

Section 39.35(b): This is being revised to meet the NRC's metrification policy.

Section 39.35(c)(1): This essentially repeats the existing paragraph on leak testing frequency, but notes that ECSs are not included in this paragraph.

Section 39.35(c)(2): This is a new paragraph allowing a 3 year leak testing interval for ECSs.

Section 39.35(d): This is being revised to meet the NRC's metrification policy.

Section 39.35(e)(1): This is an editorial change to indicate that hydrogen-3 and tritium are the same.

Sections 39.35(e)(4) and (5): This is being revised to meet the NRC's metrification policy.

Section 39.41 has been significantly revised as described below:

Section 39.41(a): This is a new paragraph describing the applicable requirements for a sealed source which includes requirements from the existing § 39.41(a)(1) and (2).

Section 39.41(b): This is a new paragraph to allow pre-1989 sources to meet USASI standards.

Section 39.41(c): This is a new paragraph providing for the use of current ANSI standards.

Section 39.41(d): This is the existing § 39.41(a)(3).

Section 39.41(d)(1)(v): This is being revised to meet the NRC's metrification policy (the old § 39.41(a)(3)(v)).

Section 39.41(e): This is the old § 39.41(b) and is edited to be consistent with the above changes.

Section 39.41(f): This is a new paragraph clarifying that this section does not apply to ECSs.

Section 39.49: This is being revised to eliminate an obsolete date.

Section 39.53: This is a new section providing requirements for ECSs.

Section 39.55: This is a new section providing requirements for tritium neutron generator target sources.

Sections 39.77(c)(1)(i) and (ii): This is being revised to allow an option to immediately abandoning a well without receiving prior NRC approval when the licensee believes there is an immediate threat to public health and safety.

Section 39.77(d)(9): This is a new paragraph requiring the licensee to justify in writing why it was necessary to immediately abandon a well without prior NRC approval.

Compatibility of Agreement State Regulations

The compatibility of the provisions in 10 CFR part 39 have been determined in accordance with the NRC's ''Statement of Principle and Policy for the Agreement State Program; Policy Statement on Adequacy and Compatibility of Agreement State Programs'' that was published on September 3, 1997 (62 FR 46517). The NRC is adding definitions for an ''Energy compensation source'' and a ''Tritium neutron generator target source'' to § 39.2 and adding two new sections to 10 CFR part 39. The definitions for an ECS and a tritium neutron generator target source are assigned Compatibility Category B. The new § 39.53, *Energy compensation source,* and § 39.55, *Tritium neutron generator target source,* are assigned Compatibility Category C. The NRC is not proposing compatibility changes for those sections of 10 CFR Part 39 that are being modified. The present Compatibility Categories for the modified sections are: Section 39.41, Compatibility Category B; §§ 39.15, 39.35, 39.49, 39.77(c) and (d), Compatibility Category C.

Specific information about the NRC's Compatibility Policy and the levels of compatibility assigned to the present rule may be found at the Special Documents area of the Office of State Program's Web site, *http://www.hsrd.ornl.gov/nrc/home.html.*

Plain Language

The Presidential Memorandum dated June 1, 1998, entitled, ''Plain Language in Government Writing,'' directed that the Federal government's writing be in plain language. The NRC requests comments on the proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed above.

Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment, and therefore, an environmental impact statement is not required. The proposed rule would modify NRC regulations dealing with: (1) Low activity energy compensation sources; (2) tritium neutron generator target sources; (3) specific abandonment procedures in the event of an immediate threat; (4) changes to requirements for inadvertent intrusion on an abandoned source; (5) the codification of an existing generic exemption; (6) the removal of an obsolete date; and (7) updating 10 CFR Part 39 to be consistent with the Commission's metrification policy. The draft environmental assessment evaluated the maximum annual public health risk to members of the public as a result of these proposed changes and determined that there is no significant environmental impact as a result of the proposed changes.

The NRC has sent a copy of the environmental assessment and this proposed rule to every State Liaison Officer and requested their comments. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the environmental assessment and the finding of no significant impact are available from Mark Haisfield, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6196.

Paperwork Reduction Act Statement

This proposed rule increases the burden on licensees to justify in writing

the immediate threat to public health and safety that resulted in the implementation of abandonment procedures prior to NRC approval. The burden to include the justification in the existing report required in 10 CFR 39.77(d) will increase from 4 hours to 4.25 hours per impacted report. Because the burden for this information collection requirement is insignificant, Office of Management and Budget (OMB) clearance is not required. Existing requirements were approved by the OMB, approval number 3150–0130.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The draft analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the draft analysis may be obtained from Mark Haisfield, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6196.

The Commission requests public comment on the draft regulatory analysis. Comments on the draft analysis may be submitted to the NRC as indicated under the **ADDRESSES** heading.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule, if adopted, will not have a significant economic impact upon a substantial number of small entities. All of the proposed amendments are to 10 CFR part 39 and are intended to either reduce regulatory burdens from unnecessary requirements or to clarify and update regulations to reduce confusion. Therefore, any economic impact to a small entity using 10 CFR part 39 should be either neutral or positive.

Any small entity subject to this regulation which determines that, because of its size, it is likely to bear a disproportionate adverse economic impact should notify the Commission of this in a comment that indicates the following:

(a) The licensee's size and how the proposed regulation would result in a significant economic burden upon the licensee as compared to the economic burden on a larger licensee.

(b) How the proposed regulations could be modified to take into account the licensee's differing needs or capabilities.

(c) The benefits that would accrue, or the detriments that would be avoided, if the proposed regulations were modified as suggested by the licensee.

(d) How the proposed regulation, as modified, would more closely equalize the impact of regulations or create more equal access to the benefits of Federal programs as opposed to providing special advantages to any individual or group.

(e) How the proposed regulation, as modified, would still adequately protect public health and safety.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule, and therefore, a backfit analysis is not required because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 39

Byproduct material, Criminal penalties, Nuclear material, Oil and gas exploration—well logging, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR part 39.

PART 39—LICENSES AND RADIATION SAFETY REQUIREMENTS FOR WELL LOGGING

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

Authority: Secs. 53, 57, 62, 63, 65, 69, 81, 82, 161, 182, 183, 186, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

2. Section 39.2 is amended by adding definitions, in their proper alphabetic order, of the terms *energy compensation source* and *tritium neutron generator target source* to read as follows:

§ 39.2 Definitions.

Energy compensation source (ECS) means a small sealed source, with an activity not exceeding 3.7 MBq [100 microcuries], used within a logging tool, or other tool components, to provide a reference standard to maintain the tool's calibration when in use.

* * * * *

Tritium neutron generator target source means a tritium source used within a neutron generator tube to produce neutrons for use in well logging applications.

* * * * *

3. Section 39.15 is amended by revising paragraph (a)(5)(ii) and the introductory text of paragraph (a)(5)(iii) to read as follows:

§ 39.15 Agreement with well owner or operator.

(a) * * *

(5) * * *

(ii) A means to prevent inadvertent intrusion on the source, unless the source is not accessible to any subsequent drilling operations; and

(iii) A permanent identification plaque, constructed of long lasting material such as stainless steel, brass, bronze, or monel, must be mounted at the surface of the well, unless the mounting of the plaque is not practical. The size of the plaque must be at least 17 cm [7 inches] square and 3 mm [⅛-inch] thick. The plaque must contain—

* * * * *

4. Section 39.35 is amended by revising paragraphs (b), (c), (d)(1), (e)(1), (e)(4) and (e)(5) to read as follows:

§ 39.35 Leak testing of sealed sources.

* * * * *

(b) *Method of testing.* The wipe of a sealed source must be performed using a leak test kit or method approved by the Commission or an Agreement State. The wipe sample must be taken from the nearest accessible point to the sealed source where contamination might accumulate. The wipe sample must be analyzed for radioactive contamination. The analysis must be capable of detecting the presence of 185 Bq [0.005 microcuries] of radioactive material on the test sample and must be performed by a person approved by the Commission or an Agreement State to perform the analysis.

(c) *Test frequency.* (1) Each sealed source (except an energy compensation source (ECS)) must be tested at intervals not to exceed 6 months. In the absence of a certificate from a transferor that a test has been made within the 6 months before the transfer, the sealed source may not be used until tested.

(2) Each ECS that is not exempt from testing in accordance with paragraph (e) of this section must be tested at intervals not to exceed 3 years. In the absence of a certificate from a transferor that a test has been made within the 3 years before the transfer, the ECS may not be used until tested.

(d) *Removal of leaking source from service.* (1) If the test conducted pursuant to paragraphs (a) and (b) of this section reveals the presence of 185 Bq [0.005 microcuries] or more of removable radioactive material, the licensee shall remove the sealed source from service immediately and have it decontaminated, repaired, or disposed of by an NRC or Agreement State licensee that is authorized to perform these functions. The licensee shall check the equipment associated with the leaking source for radioactive contamination and, if contaminated, have it decontaminated or disposed of by an NRC or Agreement State licensee that is authorized to perform these functions.

* * * * *

(e) * * *

(1) Hydrogen-3 (tritium) sources;

* * * * *

(4) Sources of beta- or gamma-emitting radioactive material with an activity of 3.7 MBq [100 microcuries] or less; and

(5) Sources of alpha- or neutron-emitting radioactive material with an activity of 0.37 MBq [10 microcuries] or less.

5. Section 39.41 is revised to read as follows:

§ 39.41 Design and performance criteria for sources.

(a) A licensee may use a sealed source for use in well logging applications if—

(1) The sealed source is doubly encapsulated;

(2) The sealed source contains licensed material whose chemical and physical forms are as insoluble and nondispersible as practical; and

(3) Meets the requirements of paragraph (b), (c), or (d) of this section.

(b) For a sealed source manufactured on or before July 14, 1989, a licensee may use the sealed source, for use in well logging applications if it meets the requirements of USASI N5.10–1968, ''Classification of Sealed Radioactive Sources,'' or the requirements in paragraph (c) or (d) of this section.

(c) For a sealed source manufactured after July 14, 1989, a licensee may use the sealed source, for use in well logging applications if it meets the oil-well logging requirements of ANSI/HPS N43.6–1997, ''Sealed Radioactive Sources—Classification.''

(d) For a sealed source manufactured after July 14, 1989, a licensee may use the sealed source, for use in well logging applications, if—

(1) The sealed source's prototype has been tested and found to maintain its integrity after each of the following tests:

(i) *Temperature.* The test source must be held at −40° C for 20 minutes, 600° C for 1 hour, and then be subject to a thermal shock test with a temperature drop from 600° C to 20° C within 15 seconds.

(ii) *Impact test.* A 5 kg steel hammer, 2.5 cm in diameter, must be dropped from a height of 1 m onto the test source.

(iii) *Vibration test.* The test source must be subject to a vibration from 25 Hz to 500 Hz at 5 g amplitude for 30 minutes.

(iv) *Puncture test.* A 1 gram hammer and pin, 0.3 cm pin diameter, must be dropped from a height of 1 m onto the test source.

(v) *Pressure test.* The test source must be subject to an external pressure of 1.695×10^7 pascals [24,600 pounds per square inch absolute].

(e) The requirements in paragraphs (a), (b), (c), and (d) of this section do not apply to sealed sources that contain licensed material in gaseous form.

(f) The requirements in paragraphs (a), (b), (c), and (d) of this section do not apply to energy compensation sources (ECS). ECSs must be registered with the Commission under § 32.210 of this chapter or with an Agreement State.

6. Section 39.49 is revised to read as follows:

§ 39.49 Uranium sinker bars.

The licensee may use a uranium sinker bar in well logging applications only if it is legibly impressed with the words ''CAUTION—RADIOACTIVE-DEPLETED URANIUM'' and ''NOTIFY CIVIL AUTHORITIES (or COMPANY NAME) IF FOUND.''

7. Section 39.53 is added to read as follows:

§ 39.53 Energy compensation source.

The licensee may use an energy compensation source (ECS) which is contained within a logging tool, or other tool components, only if the ECS contains quantities of licensed material not exceeding 3.7 MBq (100 microcuries).

(a) For well logging applications with a surface casing for protecting fresh water aquifers, use of the ECS is only subject to the requirements of §§ 39.35, 39.37 and 39.39.

(b) For well logging applications without a surface casing for protecting fresh water aquifers, use of the ECS is only subject to the requirements of §§ 39.15, 39.35, 39.37, 39.39, 39.51, and 39.77.

8. Section 39.55 is added to read as follows:

§ 39.55 Tritium neutron generator target source.

(a) Use of a tritium neutron generator target source, containing quantities not exceeding 1,110 MBq [30 curies] and in a well with a surface casing to protect fresh water aquifers, is subject to the requirements of this part except §§ 39.15, 39.41, and 39.77.

(b) Use of a tritium neutron generator target source, containing quantities exceeding 1,110 MBq [30 curies] or in a well without a surface casing to protect fresh water aquifers, is subject to the requirements of this Part except § 39.41.

9. Section 39.77 is amended by revising paragraph (c)(1), redesignating paragraphs (d)(9) and (d)(10) as paragraphs (d)(10) and (d)(11), and adding a new paragraph (d)(9) to read as follows:

§ 39.77 Notification of incidents and lost sources; abandonment procedures for irretrievable sources.

* * * * *

(c) * * *

(1) Notify the appropriate NRC Regional Office by telephone of the circumstances that resulted in the inability to retrieve the source and—

(i) Obtain NRC approval to implement abandonment procedures; or

(ii) That the licensee implemented abandonment before receiving NRC approval because the licensee believed there was an immediate threat to public health and safety; and

* * * * *

(d) * * *

(9) The immediate threat to public health and safety justification for implementing abandonment if prior NRC approval was not obtained in accordance with paragraph (c)(1)(ii) of this section;

* * * * *

Dated at Rockville, MD., this 31st day of March, 1999.

For the Nuclear Regulatory Commission.

Frank J. Miraglia, Jr.,

Acting Executive Director for Operations.

[FR Doc. 99–9746 Filed 4–16–99; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–ANE–51–AD]

Airworthiness Directives; AlliedSignal Inc. TFE731 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to revise an existing airworthiness directive (AD), applicable to AlliedSignal Inc. TFE731 series turbofan engines, that currently requires the installation of an improved flexible (flex) fuel tube. This action would clarify that installation of the improved flex fuel tube and that the use of a clamp on the original rigid fuel tube are optional for engines installed on Learjet 35, 36, and 55 series airplanes. This proposal is prompted by confusion from operators regarding the applicability of these Learjet engine installations. The actions specified by the proposed AD are intended to prevent cracking of the fuel tube and the subsequent leakage of fuel on or around electrical components, which can cause an engine fire.

DATES: Comments must be received by May 19, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–ANE–51–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9-ad-engineprop@faa.gov.'' Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from AlliedSignal Aerospace, Attn: Data Distribution, M/S 64–3/2101–201, P.O. Box 29003, Phoenix, AZ 85038–9003; telephone (602) 365–2493, fax (602) 365–5577. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Joseph Costa, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712; telephone (562) 627–5246, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–ANE–51–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–ANE–51–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On August 3, 1998, the Federal Aviation Administration (FAA) issued AD 98–17–01, Amendment 39–10703 (63 FR 42691, August 11, 1998), to require installation of an improved flexible (flex) fuel tube. That action was prompted by reports of fuel leaks from a cracked fuel tube in engines that have already installed a clamp assembly in accordance with a superseded AD. That condition, if not corrected, could result in cracking of the fuel tube and the subsequent leakage of fuel on or around electrical components, which can cause an engine fire.

Since the issuance of that AD, the FAA has received reports from operators expressing confusion as to the applicability of engines installed on Learjet 35, 36, and 55 series airplanes. That AD did not affect the AlliedSignal engine Model TFE731–2–2B and engine series TFE731–3A and –3AR installed on Learjet Models 35, 36, and 55 because starter generators are not used on these airplanes. In addition, for this application, there have been no reported fuel line failures.

The FAA has reviewed and approved the technical contents of AlliedSignal Inc. Alert Service Bulletin (ASB) No. TFE731–A73–3128, dated February 26, 1997, and AlliedSignal Inc. ASB No. TFE731–A73–3132, dated April 9, 1997, that describe procedures for installing an improved flex fuel tube, and AlliedSignal Inc. SB No. TFE731–73–3107, Revision 4, dated April 20, 1994, that describes procedures for installing a clamp assembly on the rigid fuel tube.

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 revise AD 98–17–01 to clarify that the installation of the improved flex fuel tube and the use of a clamp on the original rigid fuel tube are optional for engines installed on Learjet 35, 36, and 55 series airplanes.

As this revision is merely a clarification, there would be no additional economic impact on operators. In addition, this revision corrects the docket number for this AD, which appears as ''98–ANE–36–AD'' in the current AD. The correct docket number for this AD is ''97–ANE–51–AD.''

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

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

action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–10703 (63 FR 42691, August 11, 1998), and by adding a new airworthiness directive, to read as follows:

AlliedSignal Inc.: Docket 97–ANE–51–AD. Revises AD 98–17–01, Amendment 39–10703.

Applicability: AlliedSignal Inc. (formerly Allied-Signal Aerospace Company, Garrett Engine Division and Garrett Turbine Engine Co.) TFE731–2, –3, and –4 series turbofan engines with fuel tubes, part numbers (P/Ns) 3071051–1, 3073729–1, or 3072886–1, installed. These engines are installed on but not limited to the following airplanes: Avions Marcel Dassault Falcon 10, 50, and 100 series; Cessna Model 650, Citation III, VI, and VII; Learjet 31 (M31) 35, 36 and 55 series, Raytheon British Aerospace HS–125 series; and Sabreliner NA–265–65.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent cracked fuel tubes and the subsequent leakage of fuel on and around electrical components, which can cause an engine fire, accomplish the following:

(a) Except for engines installed on Learjet 35, 36, and 55 airplanes, within 160 hours time in service (TIS) after the effective date of this AD, or prior to December 20, 1999, whichever occurs first, install an improved flexible fuel tube, as follows:

(1) For engines installed on Cessna airplanes, install in accordance with the Accomplishment Instructions of AlliedSignal Inc. Alert Service Bulletin (ASB) No. TFE731–A73–3132, dated April 9, 1997.

(2) For engines installed on all other airplanes except for the Learjet 35, 36 and 55 series, install in accordance with the Accomplishment Instructions of AlliedSignal Inc. ASB No. TFE731–A73–3128, dated February 26, 1997.

(b) For engines installed on Learjet 35, 36, and 55, the improved flex tube and the clamp assembly installed on the original rigid fuel tube are optional. If the clamp assembly is used, install the clamp assembly in accordance with the Accomplishment Instructions of AlliedSignal Inc. SB No. TFE731–73–3107, Revision 4, dated April 20, 1994.

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

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

Issued in Burlington, Massachusetts, on April 12, 1999.

Ronald L. Vavruska,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–9657 Filed 4–16–99; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–6324–5]

Project XL Site-Specific Rulemaking for Andersen Corporation's Facility in Bayport, Minnesota

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; request for comments on draft final project agreement.

SUMMARY: The Environmental Protection Agency (''EPA'') is proposing to implement a project under the Project XL program for the Andersen Corporation (''Andersen'') facility located in Bayport, Minnesota. The terms of the project are defined in a draft Final Project Agreement (''FPA'') which is being made available for public review and comment by this document. In addition, EPA is proposing a site-specific rule, applicable only to the Andersen Bayport facility, to facilitate implementation of the project. By this document, EPA solicits comment on the proposed rule, the draft FPA, and the project generally.

This proposed site-specific rule is intended to provide regulatory changes under the Clean Air Act (''CAA'' or the ''Act'') to implement Andersen's XL project, which will result in superior environmental performance and, at the same time, provide Andersen with greater operational flexibility. The proposed site-specific rule would change some of the CAA requirements which apply to the Andersen Bayport facility for the Prevention of Significant Deterioration (''PSD'') program, in particular existing synthetic minor limits that apply to some VOC sources in the Bayport facility. ''Synthetic minor'' limits are operational and control limitations which serve to limit the net emissions increase associated with proposed new or modified units or systems to less than the applicable significance level and thereby keep them out of PSD review.

DATES: *Comments.* All public comments must be received on or before May 19, 1999. If a public hearing is held, the public comment period would remain open until June 3, 1999

Public Hearing. A public hearing will be held, if requested, to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning this proposed rule to implement Andersen's XL project. If anyone contacts the EPA requesting to speak at a public hearing by April 29, 1999, a public hearing will be held on May 3, 1999. Additional information is provided in the section entitled **ADDRESSES**.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact Ms. Rachel Rineheart at the EPA by April 29, 1999. Additional information is provided in the section entitled **ADDRESSES**.

ADDRESSES: *Comments.* Written comments should be submitted in duplicate to: Ms. Rachel Rineheart, U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77

West Jackson Boulevard (AR–18J), Chicago, IL, 60604–3590.

Docket. A docket containing supporting information used in developing this proposed rulemaking is available for public inspection and copying at U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590, (312) 886–7017, 8:30 am–4:30 pm business days, and U.S. EPA, 401 M Street, SW, Room 3802, Washington, D.C. 20460, (202) 260–2601, during normal business hours, and at the Bayport Public Library, 582 North Fourth Street, Bayport, Minnesota 55003, (651) 439–7454. A reasonable fee may by charged for copying.

Public Hearing. If a public hearing is held, it will be held in Bayport, Minnesota. Persons interested in attending the hearing should contact Ms. Rachel Rineheart at (312) 886–7017 to verify that a hearing will be held.

FOR FURTHER INFORMATION CONTACT: Ms. Rachel Rineheart, U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard (AR–18J), Chicago, IL 60604–3590, (312) 886–7017.

SUPPLEMENTARY INFORMATION:

Outline of This Document

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I. Authority

This regulation is being proposed under the authority of sections 101(b)(1), 110, 111, 161–169, and 301(a)(1) of the CAA. EPA has determined that this rulemaking is subject to the provisions of section 307(d) of the CAA.

II. Background

A. Overview of Project XL

This proposed site-specific regulation will implement a project developed under Project XL, an EPA initiative to allow regulated entities to achieve better environmental results at less cost. Project XL—''eXcellence and Leadership''—was announced on March 16, 1995, as a central part of the National Performance Review and the EPA's effort to reinvent environmental protection. See 60 FR 27282 (May 23, 1995). Project XL provides a limited number of private and public regulated entities an opportunity to develop their own pilot projects to provide regulatory flexibility that will result in environmental protection that is superior to what would be achieved through compliance with current and reasonably anticipated future regulations. These efforts are crucial to the Agency's ability to test new regulatory strategies that reduce regulatory burden and promote economic growth while achieving better environmental and public health protection. The Agency intends to evaluate the results of this and other Project XL projects to determine which specific elements of the project(s), if any, should be more broadly applied to other regulated entities for the benefit of both the economy and the environment.

Under Project XL, participants in four categories—facilities, industry sectors, governmental agencies and communities—are offered the flexibility to develop common sense, cost-effective strategies that will replace or modify specific regulatory requirements, on the condition that they produce and demonstrate superior environmental performance. To participate in Project XL, applicants must develop alternative pollution reduction strategies pursuant to eight criteria: superior environmental performance; cost savings and paperwork reduction; local stakeholder involvement and support; test of an innovative strategy; transferability; feasibility; identification of monitoring, reporting and evaluation methods; and avoidance of shifting risk burden. They must have full support of affected Federal, state and tribal agencies to be selected. For more information about the XL criteria, readers should refer to the two descriptive documents published in the **Federal Register** (60 FR 27282, May 23, 1995 and 62 FR 19872, April 23, 1997), and the December 1, 1995 ''Principles for Development of Project XL Final Project Agreements'' document.

The XL program is intended to allow the EPA to experiment with untried, potentially promising regulatory approaches, both to assess whether they provide benefits at the specific facility affected, and whether they should be considered for wider application. Such pilot projects allow the EPA to proceed more quickly than would be possible when undertaking changes on a nationwide basis. As part of this experimentation, the EPA may try out approaches or legal interpretations that depart from or are even inconsistent with longstanding Agency practice, so long as those interpretations are within the broad range of discretion enjoyed by the Agency in interpreting statutes that it implements. The EPA may also modify rules, on a site-specific basis, that represent one of several possible policy approaches within a more general statutory directive, so long as the alternative being used is permissible under the statute.

Adoption of such alternative approaches or interpretations in the context of a given XL project does not, however, signal the EPA's willingness to adopt that interpretation as a general matter, or even in the context of other XL projects. It would be inconsistent with the forward-looking nature of these pilot projects to adopt such innovative approaches prematurely on a widespread basis without first determining whether or not they are viable in practice and successful in the particular projects that embody them. Furthermore, as EPA indicated in announcing the XL program, the Agency expects to adopt only a limited number of carefully selected projects. These pilot projects are not intended to be a means for piecemeal revision of entire programs. Depending on the results in these projects, EPA may or may not be willing to consider adopting the alternative interpretation again, either generally or for other specific facilities.

The EPA believes that adopting alternative policy approaches and interpretations, on a limited, site-specific basis and in connection with a carefully selected pilot project, is consistent with the expectations of Congress about EPA's role in implementing the environmental statutes (so long as the Agency acts within the discretion allowed by the statute). Congress' recognition that there is a need for experimentation and research, as well as ongoing re-evaluation of environmental programs, is reflected in a variety of statutory

provisions, such as sections 101(b) and 103 of the CAA.

B. Overview of the Andersen XL Project

1. Introduction

This proposed site-specific rule will facilitate issuance of a consolidated permit which will contain Federal and State permits as outlined in the Andersen Windows Project XL draft FPA. The draft FPA was developed by the Andersen Community Advisory Committee (''CAC''), Andersen, the Minnesota Pollution Control Agency (''MPCA''), Washington County, and the EPA. The draft FPA is available for review in the docket for today's action and also is available on the world wide web at http://www.epa.gov/projectxl. The draft FPA outlines how the project addresses the eight Project XL criteria, in particular how the project will produce, measure, monitor, report, and demonstrate superior environmental benefits. In today's action, the Agency is soliciting comment on proposed site-specific regulatory changes to implement the project.

The draft FPA contemplates issuance of a consolidated permit which will contain Federal and State permits for Andersen's Bayport facility, which MPCA would issue subsequent to the promulgation of a final rule. The Andersen XL consolidated permit would be composed of a minor new source review permit under the Minnesota State Implementation Plan (''SIP''), a Title V permit under the Minnesota Title V program approved under 40 CFR part 70, and a PSD permit under 40 CFR 52.21, as proposed to be modified and made applicable to Andersen at 40 CFR 52.1246. Any such consolidated permit would be issued in accordance with applicable public notice and comment, and administrative appeal and petition provisions. In issuing a PSD permit, MPCA will be acting as EPA's delegatee in accordance with 40 CFR 52.21(u) and 40 CFR part 124. EPA will send direct and timely notification of the public comment period for the Andersen XL permit to any person who either comments on this proposed rule, the draft FPA, or otherwise requests such notice.

EPA also seeks comment on the draft FPA (which is available on the world wide web, in the docket file for today's action, and upon request) in light of the criteria outlined in the Agency's May 23, 1995, **Federal Register** document (60 FR 27282) regarding Regulatory Reinvention (XL) Pilot Projects. Those criteria are: (1) environmental performance superior to what would be achieved through compliance with current and reasonably anticipated future regulations; (2) cost savings or economic opportunity, and/or decreased paperwork burden; (3) stakeholder support; (4) test of innovative strategies for achieving environmental results; (5) approaches that could be evaluated for future broader application; (6) technical and administrative feasibility; (7) mechanisms for monitoring, reporting, and evaluation; and (8) consistency with Executive Order 12898 on Environmental Justice (avoidance of shifting of risk burden).

2. Andersen XL Project Description

a. Background. The Andersen Corporation is a leading manufacturer of durable, energy efficient, high performance clad wood windows and patio doors. Andersen's main manufacturing plant is at 100 Fourth Avenue North in Bayport, Minnesota (Fourth Avenue Site), along the St. Croix River, a federally designated ''Wild and Scenic River,'' which forms the border between Minnesota and Wisconsin.

Operating in the St. Croix Valley since 1903, Andersen has demonstrated a long-term ethic of stewardship. This ethic is reinforced by the high level of environmental performance of the current Andersen operations. Andersen employs approximately 3,000 people at its Fourth Avenue Site. Existing Fourth Avenue Site manufacturing facilities are located on 110 acres, consisting of 78 buildings, most of which are interconnected. Manufacturing and related processes at Andersen include wood cutting and milling, wood preservative application, painting, vinyl processing, adhesive operations, by-product transfer, wood-fired boilers, assembly operations, technology development, production support and maintenance functions.

The Andersen West Site is located at 4001 Stagecoach Road North, on the western boundary of Bayport. The Andersen West Site is located approximately one mile West of the Fourth Avenue Site and is intended, in part, to be a support operation for the Fourth Avenue Site. The property was purchased by Andersen in 1994 to provide expansion space for its various operations. The site is 245 acres in total size. Of that acreage, approximately 150 acres are suitable for development. The remaining acreage not able to be developed includes a wetland, a bluffland tract that the Company has placed in a conservation easement, and 3 probable Native American Burial sites. A site suitability study is currently underway to identify the best possible use(s) for the site.

Except as specifically described in this proposed rule and the draft FPA, nothing in this proposed rule, draft FPA, or the Andersen XL permits will waive, modify, or otherwise affect any obligations Andersen may have under local, State, and Federal law with respect to development of the Andersen West property.

b. Project Details. Andersen plans to expand its production capacity for window components made using its special Fibrex™ technology, which is a combination of reclaimed sawdust and vinyl that can be extruded into a variety of shapes without the need for extensive milling or preservation treatment. In addition, Andersen plans to expand the use of its waterborne treatment processes. Both of these processes result in substantially fewer VOC emissions per unit than traditional solvent-based wood treatment. To expedite this expansion, Minnesota and EPA plan to allow Andersen to modify and add VOC and milling and non-milling PM/PM_{10} sources without additional PSD approvals and eliminate certain existing VOC synthetic minor limits. Today's proposed rule would authorize, only within the context of the Andersen XL project, the elimination of certain VOC synthetic minor limits and establish a ten year contemporaneous period for VOC and non-milling PM/PM_{10} emissions for the purpose of determining net emission increases under the PSD program. All other elements of the project will be incorporated in Andersen's XL permit without the need for any change in applicable requirements.

The cornerstone of this project is the creation of a novel performance ratio approach to the regulation of VOCs which limits VOC emissions per unit of production. This approach, which could not be imposed under existing law, is intended to ''lock-in'' existing efficient manufacturing methods and processes while encouraging continued improvement.

On a per period basis (13 periods per year) Andersen will calculate the ratio of pounds VOC emitted per cubic foot of product shipped (performance ratio) for the preceding 13 periods. That calculation will be compared to the following series of tiered limits established as part of this project:

CAC Limit—The CAC limit shall serve as the main limit for evaluating Andersen's ongoing environmental performance. The CAC limit is the average of the prior five years' performance ratios. The CAC limit will be recalculated once every three years, will decline if appropriate, but will increase only if the CAC approves the

change, with the concurrence of EPA and MPCA. If Andersen's annual performance ratio exceeds the CAC limit, Andersen will be required to provide a specific explanation of the exceedance to the CAC as well as establish a CAC—approved corrective action plan to bring the performance ratio back below the limit.

Enforcement Limit—A static enforcement limit for the ten-year duration of the project will be established utilizing the initial CAC limit plus two standard deviations. If the facility's annual performance ratio exceeds the enforcement limit the company would potentially be subject to the enforcement actions that are available under current law.

Project Limit—The adjusting project limit will be set at two standard deviations above the CAC limit. It will be the same as the enforcement limit for the initial three-year period, but will be adjusted at the same time as the CAC limit. The project limit will never exceed the enforcement limit. If Andersen's performance ratio exceeds the project limit (but is below the enforcement limit) the project will end unless Andersen demonstrates to the satisfaction of the CAC, EPA, and MPCA, each acting in its independent capacity, why the project should continue.

Reward Limit—The reward limit will be set at two standard deviations below the CAC limit. The reward limit will not increase and will only decline if Andersen remains below it for three consecutive years. The CAC limit could never go below the reward limit. If the facility operates below the reward limit, it will potentially receive rewards, depending upon the duration of reward performance, such as formal recognition by U.S. EPA and MPCA, addition of Mini-Projects (to be accomplished in accordance with the Section VI amendment provision of the FPA, including any applicable public notice and comment requirements), and extension of the Project duration which would be treated as a modification of Andersen's XL Permit and be subject to applicable rulemaking and permitting requirements.

Beyond the performance ratio, Andersen will accept enforceable caps on VOC emissions at its Bayport facility and an enforceable cap on non-milling PM/PM10 emissions. In exchange for accepting these caps, as well as making the other project commitments discussed in this section, Andersen will gain greater flexibility to make facility modifications . This is especially important to a company such as Andersen that is subject to fast-changing market conditions. Through greater flexibility, Andersen will be able to quickly change its processes based on changes in demand for its products.

Andersen's Title V permit, which will be included in the Minnesota XL permit, will contain provisions approving in advance some changes anticipated at the facility. An example of possible permit provision for a pre-approved change is included in Attachment D to the FPA. Any such provision will include sufficiently detailed descriptions of the preauthorized changes for compliance purposes and to give the public sufficient notice of the types of changes that will be authorized. The descriptions will also identify all applicable requirements that would apply to the proposed change, including requirements for periodic monitoring and recordkeeping. Pre-approving changes will provide Andersen with the advantage of being able to make modifications without delay and respond to the fast-paced market conditions in the construction industry. This privilege is subject to conditions that will ensure that Andersen's facility modifications are documented for purposes of Agency oversight and public accountability, and will result in superior environmental performance.

In addition, Andersen will control all wood milling operations with BACT baghouse units and monitor HAPs to ensure that they remain below risk-based levels. Andersen will commit that new paint and preservative processes will be at least as clean as their best performing existing processes. If sufficient Fibrex and waterborne capacity exists, Andersen will remove one of its two dip tanks within five years of the project start.

Andersen is making a voluntary commitment to reduce its generation of solid and hazardous waste. Minnesota plans to provide Andersen with flexibility from State requirements relating to decommissioning and disposal of certain process units. Andersen is committing to enhance its existing groundwater remediation system.

3. Environmental Benefits

One of the primary purposes of this project is to allow Andersen to continue to convert production of window and door components to more environmentally efficient processes, such as extrusion of Fibrex composite window components (versus milled and preservative treated wood components), waterborne preservative treatment (versus solvent based preservative treatment), and higher solids paint coatings. These types of processes result in fewer VOC emissions per unit of production than traditional solvent-based processes.

The Fibrex process, as compared to conventional wood milling and preservation treatment processes, is environmentally beneficial for several reasons. First, it reduces dependence on virgin wood materials because it allows for the use of wood byproduct materials, rather than the use of virgin wood. Second, the Fibrex process requires no wood preservation treatment. Wood preservation treatment accounts for a substantial amount of VOC air emissions from the Andersen facility. Thus, expansion of the Fibrex process within Andersen's Bayport facility will result in substantial reductions in the emissions of Volatile Organic Compounds (''VOCs'') per unit of production. Refer to Table 1 for a comparison of air emissions for the traditional vinyl clad wood parts versus Fibrex composite produced parts.

TABLE 1.—AIR EMISSIONS COMPARISON: VINYL CLAD WOOD TO FIBREX COMPOSITE

[Based on 1,000,000 standard size window pieces]

Type of emission	Vinyl-clad profile air emissions (tons)	Fibrex profile air emissions (tons)
VOC	96.2	5.6
PM/PM_{10}	0.69	1.88
HAP	0.19	0.03

In an effort to move away from solvent based wood preservation treatment processes, Andersen worked with suppliers to develop water-borne wood preservative formulations that provide the same product performance as their solvent-based predecessors. The VOC content of water-borne formulations is typically 10–30% that of the traditional solvent based formulations. Since 1990, Andersen has converted or installed 12 waterborne preservative wood treatment systems to replace older solvent-based preservative processes. Greater than 50% of the wood window and door frame components are now preserved with a waterborne wood preservative formulation, which has reduced VOC emissions by over 350 tons annually. This agreement will facilitate increased use of existing waterborne wood treatment systems by removing certain synthetic minor limits which restrict use of those systems and the installation of additional waterborne wood treatment systems, as well as the

possible phase-out of one of two of the company's remaining solvent based wood preservation diptanks. Refer to Table 2 for a comparison of air emissions per unit of production from traditional solvent based wood preservation processes versus waterborne processes.

TABLE 2.—AIR EMISSIONS COMPARISON: SOLVENT-BASED TO WATERBORNE WOOD TREATMENT

[(Based on 1,000,000 standard size window pieces]

Type of emission	Solvent-based wood treatment air emissions (tons)	Waterborne wood treatment air emissions (tons)
VOC	87.0	13.3
HAP	0.16	0

Andersen window components manufactured from Fibrex composite offer performance characteristics similar to the existing vinyl-clad wood components. Currently, Andersen is using Fibrex composite technology in their Renewal™ replacement window product line and has introduced Fibrex composite components into some core product lines. This Project XL agreement facilitates further expansion of Fibrex composite production.

Fibrex composite creates a high value usage of certain Andersen byproduct materials, and is itself completely recyclable into new Fibrex composite components, thus completing a product stewardship circle of Fibrex composite to Fibrex composite.

Andersen's conversion from VOC based processes to Fibrex and waterborne preservation processes is, in part, limited by market acceptance of Fibrex. The flexibility provided in this Project XL pilot will allow Andersen to quickly react to increases in market demand or to install additional waterborne preservation processes, whichever may be most appropriate. In addition, removing the VOC synthetic minor limits on the existing waterborne preservation processes will allow Andersen to maximize use of those environmentally superior processes while limiting the use of existing VOC-based preservation processes.

4. Stakeholder Involvement

Stakeholder involvement and participation is vital to the success of the Andersen Project XL program. Andersen will continue to work with the CAC which was established in December 1997. The CAC serves as the primary contact with the community and other stakeholder groups, conveying concerns to the community and forging an accountability link between the community and the company.

In addition, the CAC will serve in an oversight role. For example, if Andersen's annual performance ratio exceeds the CAC limit, Andersen will be required to provide a specific explanation of the exceedance to the CAC as well as establish a CAC—approved corrective action plan to bring the performance ratio back below the limit.

The work of the CAC is based on the Stakeholder Involvement Plan, which is included as an attachment to the draft FPA. Andersen will continue outreach work with all Stakeholders using the strategies and tactics contained in the plan. Andersen will also continue to be responsive to community inquiries on operational matters including traffic, noise and odor.

III. Clean Air Act Requirements

A. Summary of Regulatory Requirements for the Andersen XL Project

Implementation of the Andersen Project XL pilot requires only limited regulatory changes. Specifically, Andersen's use of its waterborne inline wood treatment systems is currently restricted by certain VOC ''synthetic minor'' limits. The PSD program for the State of Minnesota would prohibit relaxation of permit operating restrictions which were established for the purpose of limiting potential to emit without first meeting the requirements of the PSD program, which includes the installation of Best Available Control Technology (BACT) and an air quality impacts analysis. For the reasons discussed in this preamble, EPA proposes to allow relaxation of certain VOC ''synthetic minor'' limits as a part of the Andersen Project XL pilot.

In addition, the PSD program for the State of Minnesota would limit the effectiveness of a plantwide applicability limit (PAL), referred to as an emissions cap in the FPA, to 5 years. As described in the FPA, the expected duration of the Andersen XL project, including the VOC and non-milling PM/PM_{10} PALs, is 10 years. As explained below (Section III.B.), EPA proposes to allow establishment of VOC and non-milling PM/PM_{10} PALs for Andersen, which would be effective in avoiding PSD for a 10 year period.

All other elements of the Andersen Project XL pilot, including the ability to add or modify sources so long as emissions remain below the VOC and non-milling PM/PM_{10} PALs which will be set at levels to assure that no significant net emission increase will occur, would not require regulatory amendments. The regulatory changes under this proposed site-specific rule address only VOC and PM/PM_{10} emissions including the length of the contemporaneous period used to determine the VOC and PM/PM_{10} PALs. Andersen will fully comply with normally applicable regulations for all other pollutants. In addition, Andersen will fully comply with provisions of any New Source Performance Standards, the State Implementation Plan, including minor New Source Review (''NSR''), and the Title V operating permit program, that apply to its operations, and with all requirements for the control of hazardous air pollutants (HAPs), including any Maximum Achievable Control Technology standards that would apply to the facility. Andersen will also comply with all existing and future environmental requirements not specifically amended pursuant to EPA's site-specific rulemaking for this project or pursuant to the permits expected to be issued by the MPCA.

While the draft FPA outlines the requirements that will be included in the State of Minnesota XL permit (which will include the PSD permit), a draft of that permit and the accompanying modeling and analysis required by section 165 of the CAA have not been completed. Therefore, a determination of whether the draft permit satisfies the statutory PSD permitting criteria in section 165(a) of the Act will be deferred until such time as the draft permit is made available for public notice and comment. Because many of the details of the Andersen Project XL pilot will necessarily be deferred until issuance of the draft permit and in order to enhance participation in the Project XL process, EPA will compile a list of persons wishing to receive direct notice of the availability of the draft permit for review. Persons desiring such notice may now submit a written request to EPA at the address in the section entitled **ADDRESSES.**

Once the public comment period on this proposed rule has closed, EPA will review any comments received and determine in consultation with Andersen, MPCA, and stakeholders whether to proceed to development of the draft permit and whether any changes are necessary to the draft FPA. In any event, EPA does not intend to take final action on this proposed rule until such time as the draft permit has been public noticed and any comments are available for consideration in this rulemaking.

B. Prevention of Significant Deterioration

As explained above, a determination of whether the draft Andersen PSD permit meets the PSD requirements of the Act will be deferred to such time as the draft permit is available for public review and comment. However, for the purposes of this proposed rule which would modify certain requirements of the PSD program, a brief description of the PSD requirements may be useful to reviewers.

The PSD program is a preconstruction review and permitting program applicable to new or modified major stationary sources of air pollutants regulated under the Act. In attainment areas (i.e., areas meeting the National Ambient Air Quality Standards (''NAAQS'')) and unclassifable areas, the requirements for the PSD program found in part C of title I of the Act apply. The PSD provisions are a combination of air quality planning and air pollution control technology program requirements. Each SIP is required to contain a preconstruction review program for the construction and modification of any major stationary source of air pollution to assure that the NAAQS are achieved and maintained; to protect areas of clean air; to protect Air Quality Related Values (''AQRVs'') (including visibility) in national parks and other natural areas of concern; to assure appropriate emission controls are applied; to maximize opportunities for economic development consistent with the preservation of clean air resource; and to ensure that any decision to increase air pollution is made only after full public consideration of all the consequences of such a decision. See sections 101(b)(1), 110(a)(2)(C) and 160 of the Act. The Andersen Bayport facility is located in an area that meets the NAAQS for all criteria air pollutants except carbon monoxide (CO). The PSD program under part C of title I of the Act applies to those criteria air pollutants other than carbon monoxide (attainment area) while the major non-attainment NSR program under part D of title I of the Act applies to carbon monoxide.

Because the SIP for the State of Minnesota did not meet the PSD requirements of section 160–165 of the Act, EPA promulgated a PSD program for the State by incorporating by reference the provisions of 40 CFR 52.21(b) through (w) into the applicable state plan for the State of Minnesota (*see* 40 CFR 52.1234). In addition, EPA delegated authority to the MPCA as the PSD permitting agency in Minnesota. Therefore, MPCA will, with EPA oversight, draft, accept public comment on, and issue any Andersen PSD permit, subject to procedural requirements in 40 CFR 52.21 and 40 CFR part 124.

C. Proposed Regulatory Changes

1. Synthetic Minor Limits

During the period from 1990 to 1995, Andersen developed and installed 12 waterborne inline wood treatment systems and, within the door subplant, three solventborne paint systems. In order to avoid PSD review, Andersen obtained two minor new source review permits from MPCA containing operational and control limitations on each of these systems. These limitations are sometimes called ''synthetic minor'' limits because they serve to limit the net emissions increase associated with the proposed new units or systems to less than the applicable significance level and thereby keep them out of PSD review. As part of the Andersen Project XL pilot, Andersen seeks to replace certain synthetic minor VOC limits with the tiered per unit of production limits and the VOC PAL, as well as all the other aspects of the project described in the draft FPA.

In order to meet the goals embodied in the tiered per unit of production limits, Andersen needs to utilize its waterborne inline wood treatment systems at a capacity level higher than presently allowed under the synthetic minor limits. Accordingly, Andersen seeks relief from the synthetic VOC operational limits on its waterborne inline wood treatment systems. Andersen's existing waterborne systems are superior in terms of VOC emissions per unit of production as compared to the solvent-based systems (see Table 2).

Andersen also needs to fully utilize the three solventborne paint systems within the door subplant, which are subject to both operational and control limits (a catalytic oxidizer). According to information provided by Andersen, assuming the catalytic oxidizer is in use, the door plant paint lines emit approximately 1.6 pounds of VOCs for each gallon of combined coatings applied. Other paint lines, which are not subject to synthetic minor limits, emit approximately 4.5 pounds of VOCs for each gallon of combined coatings applied. So, with respect to use limits, the door subplant paint lines are lower emitting than Andersen's other paint lines.

Under its existing permits, Andersen is required to control VOC emissions from the door subplant paint lines by operating a catalytic oxidizer. Andersen requests that it be allowed to shut the catalytic oxidizer off so long as it is able to maintain compliance with the VOC PAL and per unit of production limits. Andersen believes that beyond any cost savings, this would give them the flexibility to use the catalytic oxidizer to more effectively control VOCs elsewhere in the facility or to address community concerns about odors, which may or may not be associated with use of the catalytic oxidizer.

Andersen has explained that in order to maintain compliance with the per unit of production limit it will need to reduce VOC emissions on a per unit basis prior to shutting down the catalytic oxidizer. For example, Andersen intends to convert the solvent based preservative application systems, which account for approximately sixty percent of VOC emissions from the door plant paint lines, to in-line waterborne treatment systems. Still, Andersen believes that it will have to further reduce VOC emissions from other sources within the facility prior to shutting down the catalytic oxidizer.

EPA believes that under the following permit and FPA conditions, Andersen may be allowed to shut down the catalytic oxidizer:

(1) Andersen must obtain MPCA's approval prior to shutting down the catalytic oxidizer by demonstrating that:

(a) in accordance with the MPCA Health Risk Assessment described in section II.D.1.e. of the FPA, shut down of the catalytic oxydizer will not present an unacceptable risk to public health;

(b) Andersen's overall reduction of VOC emissions on a per unit basis is sufficient to ensure continued compliance with the per unit of production limit and the VOC cap; and

(c) the CAC has agreed to the shut down of the oxidizer.

(2) Once the oxidizer is shut down, Andersen may use it to control VOC emissions elsewhere at the facility, leave it in place and available for use on door plant paint line emissions, or, with MPCA approval, dismantle it. If Andersen elects to dismantle the oxidizer, it does so with the express understanding that it may be required to reinstall the oxidizer or other appropriate control equipment if necessary to comply with project emission limits during the project term or applicable emission limits at the end of the project term. In addition, costs associated with retrofitting or installing an oxidizer, if necessary, will not be factors in determining whether an oxidizer is appropriate or required.

(3) Cost savings associated with shutting down the oxidizer must be shown to be reinvested in VOC emission reduction projects.

The applicable PSD regulations would not allow Andersen to relax the

synthetic minor limits, unless Andersen subjected the systems to PSD review. (*See* 40 CFR 52.21(r)(4), which has been incorporated into the Minnesota SIP at 40 CFR 52.1234(b)). When a source or modification that is minor because of enforceable operating limits later applies for a relaxation of those limits, 52.21(r)(4) requires that PSD apply to the source or modification as if the source or modification had not yet been constructed.

The primary purpose of 52.21(r)(4) is to prevent a source from circumventing PSD and NSR permitting requirements by obtaining a synthetic minor limit for a new or modified emission unit and thereafter seeking to relax the limit, without undergoing PSD review. *See* 45 FR 52676, 52689 (Aug. 7, 1980). The provision is a broadly designed safeguard to prevent sources from improperly disaggregating a major modification into two separate parts—an initial synthetic minor modification and a subsequent relaxation of the synthetic minor limit—neither of which would be subject to PSD.

EPA believes it has broad discretion to tailor the safeguard embodied in section 52.21(r)(4) based on relevant factors. Specifically, the Andersen XL project will contain several distinctive features which assure EPA that Andersen is not circumventing the PSD requirements. In this context, EPA believes it may eliminate the section 52.21(r)(4) safeguard, as it applies to certain synthetic minor VOC limits at the Andersen facility. First, Andersen is voluntarily adopting a plantwide cap of 2397 tpy of VOC emissions, which is based on lower than actual emissions levels from a period representative of normal source operation. The plantwide cap eliminates the historic problem in the PSD program that sources sometimes are able to increase emissions above representative actual emissions levels without undergoing PSD review by adding small projects which by themselves do not trigger PSD and are not subject to any cumulative plantwide limit on emissions. The fact that Andersen's VOC cap is based on actual emissions places it on an even footing with respect to sources which do not take a PAL and ensures that Andersen does not gain emissions credits merely for reducing allowable emissions. Second, Andersen's annual VOC emissions have declined steadily and significantly over time since 1990, so EPA believes it is important to recognize that Andersen likely could have adopted a plantwide, actual emissions-based VOC PAL immediately prior to the 1990 synthetic minor permits (when its actual VOC emissions level was 3,753 tpy) and thereby avoided the need to obtain and accept synthetic minor limits for each new waterborne system and the door plant paint lines in 1990 and 1995. Although determining what could have happened or would have happened if different choices were made is always difficult, EPA believes with reasonable certainty that the 2397 tpy VOC PAL is at least equivalent to what Andersen could have done outside of Project XL and is overall better for the environment. Third, the tiered performance ratio approach will serve to provide incentives for Andersen to reduce emissions further. Finally, EPA reserves the right to terminate the project if there is no environmental improvement.

This limited replacement of the section 52.21(r)(4) safeguard is an approach to preventing circumvention of the PSD program that, while not the one generally adopted by the Agency, merits consideration on a pilot project basis. If the project demonstrates that such an approach leads to superior environmental and economic results and if EPA determines that such an approach is transferable to other situations, it could be considered for broader application. EPA emphasizes that this innovative approach is not being adopted at this time for any source other than the Andersen Bayport facility and indeed is being adopted for Andersen only as to certain identified synthetic VOC limits.

2. Duration of PALs

The expected duration of the Andersen Project XL pilot is 10 years. Therefore, Andersen's XL project contemplates an effective period of 10 years for the PALs under the project. However, as discussed in further detail below, applicable PSD requirements would limit the effectiveness of Andersen's PAL to 5 years. Therefore, in order to implement the Andersen Project XL pilot the PSD requirements must be modified to allow the PAL to remain effective for 10 years.

In addition, the Minnesota XL permit will include Andersen's Title V permit. The Title V permit term may not exceed 5 years. As a result, EPA anticipates that the Title V permit will be renewed after the initial five-year term. EPA also anticipates that the VOC and PM/PM_{10} PALs will continue unchanged in the new permit.

Under present regulations, a source that adds or modifies a unit that would result in a significant emissions increase may ''net'' that particular change out of review if the new emission increase plus the sum of all other contemporaneous credible increases and decreases at the source is less than significant. Under current requirements, PALs are considered a form of netting whereby a range of future changes at a source is determined beforehand not to result in a net emissions increase, such that these changes may occur without triggering PSD requirements. The Federal PSD requirements at 40 CFR 52.21(b)(3)(ii)(a) limit the period within which changes may be considered contemporaneous to 5 years and, therefore, limit the effectiveness of a PAL to 5 years. States implementing a PSD or nonattainment NSR program under an EPA-approved SIP may define a different reasonable contemporaneous period.

The current regulatory requirement regarding contemporaneity derives from the interpretation of the Act's provisions governing modifications set forth in *Alabama Power Co.* v. *Costle*, 636 F.2d 323 (D.C. Cir. 1979). Among other things, the court interpreted the statute as providing for plantwide netting limited, however, to substantially contemporaneous changes. The court explained that EPA retains discretion to define ''substantially contemporaneous.'' Id. at 402. Thereafter, EPA codified contemporaneity as a regulatory requirement. See 45 FR 52676, 52700–52702 (August 7, 1980).

In the specific context of the Andersen Project XL pilot, EPA is proposing a 10 year contemporaneous period to facilitate the 10 year duration of the Andersen Project XL pilot. When issuing permits to implement the VOC and non-milling PM/PM_{10} caps, MPCA will set the cap limits so that any changes during the project term do not result in a significant net emissions increase. Consequently, complying with the cap would demonstrate that no significant net emissions increase is occurring at the facility. In addition, EPA recognizes that Andersen is voluntarily making several important commitments which will result in superior environmental performance: (1) the VOC and non-milling PM/PM_{10} caps, (2) the VOC performance ratio, (3) control of all existing and future milling operations with baghouse filters, (4) emission limits for new or reconstructed paintline or preservative application equipment based on the current best performing processes at Andersen, and (5) the health risk analysis for toxic air emissions. Under these circumstances, EPA believes that a 10 year contemporaneous period for the VOC and non-milling PM/PM_{10} PALs is appropriate.

3. Duration of Flexibility

This site specific rule will expire 10 years from the date it is promulgated. The parties have described in the FPA a process for winding down the Andersen Project XL pilot. At least two years prior to the project's expected conclusion, Andersen, MPCA, and EPA will initiate a process to evaluate the project. The goal of the evaluation will be to establish a process to evaluate the project and to determine the terms of the final permit for the facility at the end of the 10-year project term. This evaluation shall conclude by no later than 18 months prior to the project's expected conclusion. The evaluation will review the project's environmental results and impact, Andersen's performance, and other relevant factors, as determined by all parties. If the evaluation proves the project a success, Andersen may propose to MPCA, EPA and the CAC to extend the project term and the XL permit conditions described in this FPA through issuance of a final permit. The final permit may incorporate limits similar to the limits applicable during the project. If the parties do not agree to extend the project, Andersen will submit an implementation schedule (as discussed below) to achieve compliance with all requirements applicable at the end of the 10-year project term.

If, based on the evaluation, the project should not be extended, Andersen will submit to EPA and MPCA an implementation schedule specifying how Andersen will transition into compliance with all then applicable requirements at the end of the 10-year project term. No later than 12-months prior to the expiration of the project term, the parties will agree to a 12-month implementation schedule. The implementation schedule is intended to reflect Andersen's best efforts to transition into compliance with all then applicable requirements as quickly as practicable within the 12-month transitional period. In no event will the implementation schedule extend beyond the end of the 10-year project term. The implementation schedule submitted by Andersen must contain interim calendar, or milestone, dates for the purchase and installation of any necessary equipment, performance testing, and other necessary measures.

The enforceable limits established as part of the project (i.e., the VOC and PM/PM_{10} emissions caps, as well as the per unit of production limit) will continue to be enforceable during the project evaluation process and any transitional period as described above. In any event, a final permit will be issued to either (1) extend the project through the issuance of a final permit, or (2) transition Andersen to compliance with all requirements applicable at the end of the 10-year project term. The final permit will be based on the permitting requirements, which are applicable at the conclusion of the project. The applicable requirements that will govern the facility at the end of the project's 10-year term will be included in the final permit.

In addition, the Parties have agreed to include rewards as incentives for Andersen to achieve superior environmental performance. For performance below the reward limit for 13 tracking periods or more, Andersen may request an extension of the duration of the current project. If Andersen chooses this reward, Andersen would have to demonstrate to U.S. EPA and MPCA that extension is not only consistent with the goals of the current project, but also that the extension is consistent with EPA rules and policy concerning the duration of plant-wide applicability limit permits. Any such extension would be treated as a modification of Andersen's Minnesota XL Permit which would be accompanied by any necessary rulemaking by EPA. Both the modification and rulemaking would be subject to applicable public notice and comment requirements.

4. Summary

Therefore, under the specific circumstances at Andersen, within the limited context of Project XL, and in advancement of the overall purpose of the PSD program of the CAA, EPA proposes to modify the applicable federally promulgated state plan for Minnesota so that MPCA may issue Andersen a PSD (as EPA's delegatee), minor NSR, and Title V permit: (1) relaxing certain existing synthetic minor VOC limits without requiring PSD review, within the context of the Andersen XL project, and (2) imposing VOC and PM/PM_{10} PALs based on 10 year contemporaneous periods.

IV. Additional Information

A. Public Hearing

A public hearing will be held, if requested, to provide opportunity for interested persons to make oral presentations regarding the proposed regulation in accordance with section 307(d)(5) of the Clean Air Act. Persons wishing to make oral presentation on the draft FPA or proposed rule to implement the Andersen XL project should contact the EPA at the address given in the **ADDRESSES** section of this document. Any member of the public may file a written statement before, during, or within 30 days after the hearing. Written statements should be sent to EPA at the addresses given in the **ADDRESSES** section of this document. If a public hearing is held, a verbatim transcript of the hearing and written statements will be available for inspection and copying during normal business hours at the EPA addresses given in the **ADDRESSES** section of this document.

B. Executive Order 12866

Because this rule affects only one facility, it is not a rule of general applicability and therefore not subject to OMB review and Executive Order 12866. In addition, OMB has agreed that review of site specific rules under Project XL is not necessary.

C. Regulatory Flexibility

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 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 proposed rule would not have a significant impact on a substantial number of small entities because it only affects one source, the Andersen Bayport facility, which is not a small entity. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

This action applies only to one company, and therefore requires no information collection activities subject to the Paperwork Reduction Act, and therefore no information collection request (ICR) will be submitted to OMB for review in compliance with the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local,

and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why the alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

As noted above, this rule is limited to Andersen's facility in Bayport, Minnesota. EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. Nevertheless, in developing this rule, EPA worked closely with MPCA and received meaningful and timely input in the development of this rule. EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

F. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

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 Executive Order 12866; and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety 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.

The EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposed action is not subject to E.O. 13045 because it is not economically significant as defined in E.O. 12866, and it is based on technology performance and implements previously promulgated health or safety-based ozone and particulate matter Federal National Ambient Air Quality Standards (NAAQS). The effects of ozone and particulate matter on children's health was addressed in detail in EPA's rulemaking to establish these NAAQS, and EPA is not revisiting those issues here.

G. Executive Order 12875: Enhancing Intergovernmental Partnerships

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 Executive Order 12875 do not apply to this rule. Nevertheless, in developing this rule, EPA worked closely with MPCA and received meaningful and timely input in the development of this rule.

H. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities. Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. There are no communities of Indian tribal governments located in the vicinity of the Andersen facility. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

I. National Technology Transfer and Advancement Act of 1995 (''NTTAA'')

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

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental Relations, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds

Dated: April 8, 1999.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, part 52 of chapter I of title 40 of the Code of Federal Regulations is proposed to be 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 Y—Minnesota

2. Subpart Y is amended by adding a new § 52.1246 to read as follows:

§ 52.1246 Prevention of significant deterioration of air quality for Andersen Corporation's facility in Bayport, Minnesota.

(a) *Applicability.* (1) This section applies only to the window and patio door manufacturing facility, commonly referred to as Andersen Windows, located at 4001 Stagecoach Trail and 100 Fourth Avenue, North, Bayport, Minnesota.

(2) This section sets forth the prevention of significant deterioration of air quality preconstruction review requirements for volatile organic compound (''VOC'') and non-milling PM/PM_{10} emissions.

(3) For all other units and pollutants not specifically identified in this section which are subject to regulation under the Act, the preconstruction review requirements of § 52.1234 still apply.

(b) *Regulations for Preventing Significant Deterioration of Air Quality.*

(1) The provisions of 40 CFR 52.21(b) through (w) are applicable and made a part of the state plan for the State of Minnesota, with the exceptions and additions set forth in paragraphs (b)(2), (b)(3), and (b)(4) of this section.

(2) For the purposes of this Section, and in addition to paragraph (b)(1) of this section:

(i) ''Existing waterborne inline treatment units'' shall mean the following specific units at the Andersen facility:

(A) Five waterborne inline wood treatment systems in the main facility, permit number 549–90–I/O–2.

(B) Five waterborne inline wood treatment systems in the door subplant, permit number 549–90–I/O–2.

(C) Two waterborne inline wood treatment systems, permit number 16300001–017.

(ii) ''Existing door subplant paint lines'' shall mean the three solventborne paint and pretreatment systems located in the Andersen facility door subplant, permit number 549–90–I/O–2.

(iii) ''Milling operations'' shall be all those activities which involve the cutting and shaping of wood or Fibrex except that shaping by extrusion shall not be considered milling.

(iv) ''Non-milling operations'' shall be all those activities that generate PM/PM_{10} emissions and which are not milling operations.

(3) With respect to existing inline waterborne treatment units and existing door subplant paint lines only:

(i) ''An increase in the hours of operation or in the production rate.'' applies instead of 40 CFR 52.21(b)(2)(iii)(*f*).

(ii) The requirements of 40 CFR 52.21(r)(4) shall not apply.

(4) With respect to VOC and non-milling PM/PM_{10} emissions, ''The date 10 years before construction on the particular change commences; and'' applies instead of 40 CFR 52.21(b)(3)(ii)(*a*).

(c) This rule expires [date 10 years from effective date of the final rule].

[FR Doc. 99–9723 Filed 4–16–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA 99–5403]

RIN 2127–AH22 and RIN 2127–AH20

Denial of Petition for Rulemaking; Federal Motor Vehicle Safety Standards

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of petitions for rulemaking.

SUMMARY: This document denies petitions, submitted jointly by the American Automobile Manufacturers Association (AAMA) and the Association of International Automobile Manufacturers (AIAM) to amend two Federal motor vehicle safety standards (FMVSSs), one on windshield defrosting and defogging and one on windshield wiping and washing, by accepting a European Union (EU) Directive as an optional ''functionally equivalent'' alternative to each safety standard. NHTSA has determined that both EU Directives require windshield minimum cleared areas which are smaller by up to 20 percent than those required by the counterpart Federal motor vehicle safety standards. The agency has concluded that the requirements of the European regulations provide less driving visibility and cannot assure equivalent safety performance. However, the agency believes that harmonization of windshield wiping, washing, defrosting and defogging regulations is possible using worldwide best practices in the context of a Global Technical Regulation developed under the UN/ECE Working Party 29, and it is pursuing such an approach.

FOR FURTHER INFORMATION CONTACT: Mr. Patrick Boyd, Office of Safety Performance Standards, NHTSA, 400 Seventh Street, SW, Washington, DC 20590. Mr. Boyd's telephone number is: (202) 366–6346. His facsimile number is (202) 366–4329.

SUPPLEMENTARY INFORMATION: The harmonization of product standards has become a matter of increasing importance in the last several decades. The manufacturing and marketing of products have become increasingly globalized. In response to that trend, countries and regions have moved to adjust and coordinate their regulatory practices to the extent consistent with consumer protection policies. Efforts to coordinate regulatory practices on a global scale have resulted in several international agreements that seek to promote and guide the process of harmonization, while taking care to preserve the right of countries and regions to adopt and maintain standards they believe necessary to address safety, environmental and other needs within their respective jurisdictions.

The United States is a party to several international agreements, including the General Agreement on Tariffs and Trade. That agreement was most recently amended by the Uruguay Round Agreements. One of those agreements is the Agreement on Technical Barriers to Trade (TBT). The TBT Agreement seeks to avoid creating unnecessary obstacles to trade, while recognizing the right of signatory countries to establish and maintain technical regulations for the protection of human, animal and plant life and health and the environment. Among other things, the TBT Agreement also provides that a party to the Agreement will consider accepting as equivalent the technical regulations of other party nations, provided they adequately fulfill

the objectives of the party's existing domestic standards.

On May 13, 1998, the National Highway Traffic Safety Administration (NHTSA) amended 49 CFR Part 553, *Rulemaking Procedures,* by adding a new Appendix B setting forth a statement of policy about the process that it intends to follow in considering whether to commence a rulemaking proceeding based on a claim that a foreign motor vehicle safety standard is better than or at least functionally equivalent to its counterpart among the FMVSSs and in making determinations about relative benefits and functional equivalence (63 FR 26508). The amendment reaffirmed the agency's policy of focusing its international harmonization activities on identifying and adopting those foreign vehicle safety standards that clearly reflect best practices, i.e., that require significantly higher levels of safety performance than the counterpart U.S. standards. It also announced the agency's policy regarding those instances in which the agency's comparison of standards indicates that the safety performance required by a foreign standard is not significantly higher, but is still better than or at least as good as that required by the counterpart U.S. standard.

The amendment also emphasized that the agency's policy is to deny any rulemaking petition seeking to have a foreign standard added to its counterpart U.S. standard as a compliance alternative or to harmonize the U.S. standard with the foreign standard if the petition does not contain an analysis of the relative benefits of the two standards. This policy is necessary to minimize the impact that NHTSA's consideration of such rulemaking petitions might otherwise have on the agency's use of its resources to upgrade its safety standards.

In a submission dated August 13, 1997, the American Automobile Manufacturers Association (AAMA) and the Association of International Automobile Manufacturers, Inc. (AIAM), petitioned the agency to amend several FMVSSs to permit vehicle manufacturers to choose to comply with either the existing requirements of those FMVSSs or the counterpart requirements of vehicle safety standards recognized in most European countries. These European standards are in the form of European Union Directives and often are taken from a body of standards developed by the United Nations Economic Commission for Europe (UN/ECE). In this case, the petitions asked that the requirements of EU Directives EEC 78/317 and EEC 78/318 be accepted as optional alternatives to the requirements of FMVSS No. 103, *Windshield Defrosting and Defogging Systems,* and FMVSS No. 104, *Windshield Wiping and Washing Systems,* respectively. At present, there are no Economic Commission for Europe (ECE) model regulations for windshield defrosting/defogging and wiping/washing. The common safety objective of both the EU Directives and the FMVSSs is to maintain driving visibility under conditions which would otherwise obscure vision through the windshield.

During the development of NHTSA's policies on ''functional equivalence'' rulemakings, the European windshield defrosting/defogging and wiping/washing regulations were considered model candidates. In a public meeting on functional equivalence, the agency mentioned them as examples of foreign standards which differed in the coordinate system and points of reference for geometric measurements of vehicles but which appeared to require essentially identical performance. Both the U.S. and European windshield wiping regulations define a large area of the windshield which must be swept at least 80% and a much smaller area directly in front of the driver which must be swept at least 99% (98% in the European regulation). The U.S. wiping regulation also measures performance in another intermediate sized area of the windshield, but the third swept area requirement is not carried over to the defrosting requirements. Both the U.S. and European defrosting regulations have identical requirements for the clearing time and cleared percentages of the small area in front of the driver defined in the wiping regulation, of a symmetric area on the passenger side, and of the large area defined in the wiping regulation. The principal requirements of the corresponding U.S. and European regulations would be the same if the windshield test areas were identical.

The U.S. and European regulations both define the various areas on the windshield by means of fields of view originating from driver vision reference points. The U.S. regulation defines ellipsoids containing the probable eye locations of drivers in a range of statures referenced to the seating position. The fields of view are defined by lines drawn tangent to the eye position ellipsoids at specified angles. The European regulation defines two distinct points, which represent average eye positions for tall and short drivers referenced to a vehicle coordinate system and a seat back angle. The fields of view are defined by lines drawn at specified angles directly intersecting the two vision reference points. The European method of defining critical windshield areas is a simplification of the method of the U.S. regulations.

The petitioners described the test zone differences as follows:

> The test zones used by each standard are generated using different methods. The European test zones use the ISO (International Organization for Standardization) ''V'' points while the US zones are based on the SAE (Society of Automotive Engineers) eye-ellipse. However, the ISO ''V'' points are a derivative of the SAE eye-ellipse, and generate substantially similar zones. While the zones are not identical, the differences are insignificant and do not affect real world safety.

NHTSA asked the petitioners to develop detailed comparisons overlaying the U.S. and European test zones on actual example vehicles to quantify the differences. The petitioners supplied comparisons using the 1997 Cadillac Seville, 1997 Ford Contour and 1998 Chrysler Sebring as examples. In every case, the European test zone was smaller than the corresponding U.S. test zone. On average, the test zone representing the critical area in front of the driver generated by the European method was only 81.3 percent as large as the corresponding area generated by the U.S. method. The larger European test zone representing the bulk of the windshield averaged 88.3 percent of the area of the corresponding U.S. test zone. The petitioners did not supply information addressing the effects on vision or safety of the reductions in minimum area represented by the European regulations.

NHTSA does not agree with the petitioners that the differences in minimum cleared areas for windshield wiping and defrosting between the U.S. and European regulations are insignificant. The petitioners have provided no evidence to rebut the obvious presumption that sizable reductions in cleared area will reduce visibility and provide less safety. The agency does not find European directives EEC 78/317 and EEC 78/318 functionally equivalent to Federal Motor Vehicle Safety Standards Nos. 103 and 104, respectively.

In accordance with 49 CFR part 552, this completes the agency's review of the petitions. The agency has concluded that there is no reasonable possibility that the amendments requested by the petitioners would be issued at the conclusion of a rulemaking proceeding. Accordingly, it denies the AAMA/AIAM petitions dealing with FMVSS Nos. 103 and 104.

However, the agency believes that harmonization of windshield wiping,

washing, defrosting and defogging regulations is possible using worldwide best practices. AAMA has informed the agency that a European organization is preparing a proposal for a Global Technical Regulation on the subject for consideration by the UN/ECE Working Party 29. The agency participates in Working Party 29 and will support a Global Technical Regulation that incorporates best practices to resolve the issue of minimum cleared areas.

Authority: 49 U.S.C. 30103, 30162; delegation of authority at 49 CFR 1.50 and 501.8.

Issued on: April 14, 1999.

Stephen R. Kratzke.

Acting, Associate Administrator for Safety Performance Standards.

[FR Doc. 99–9705 Filed 4–16–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF35

Endangered and Threatened Wildlife and Plants; Extension of Comment Period and Announcement of Public Hearings on Proposal To List the Mountain Plover as a Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; public hearings and extension of comment period.

SUMMARY: On February 16, 1999, the Fish and Wildlife Service proposed listing the mountain plover as a threatened species, without critical habitat, under authority of the Endangered Species Act (64 FR 7587). The Fish and Wildlife Service (Service) gives notice that five public hearings will be held on the proposal, and that the comment period will be extended 60 days. During the breeding season, the mountain plover is widely distributed in shortgrass prairie, shrub steppe, and cultivated landscapes from Montana south to Texas. Most breeding birds occur in Colorado, Montana, and Wyoming; fewer breeding birds occur in Arizona, Kansas, New Mexico, Oklahoma, Texas, and Utah. Wintering plovers are most numerous in California; some winter in Arizona, Texas, and Mexico.

DATES: The comment period on the proposal is extended to June 21, 1999. The public hearings will be held at the following cities, dates, and times.

Malta, Montana: Tuesday, May 25, 1999; 4:00 p.m.–8:00 p.m.

Billings, Montana: Wednesday, May 26, 1999; 2:00 p.m.–4:00 p.m. and 6:00 p.m.–8:00 p.m.

Casper, Wyoming: Wednesday, June 2, 1999; 2:00 p.m.–4:00 p.m. and 6:00 p.m.–8:00 p.m.

Greeley, Colorado: Tuesday, May 25, 1999; 6:00 p.m.–9:00 p.m.

Lamar, Colorado: Wednesday, May 26, 1999: 6:00 p.m.–9:00 p.m.

ADDRESSES: The following lists the locations of the meetings cited above:

Malta, Montana: Malta High School, #1 High School Lane.

Billings, Montana: MSU-Billings, 1500 N. 30th Street, Ballroom.

Casper, Wyoming: Holiday Inn, I–25 and Center Street.

Greeley, Colorado: Weld County Centennial Center, 915 10th Street.

Lamar, Colorado: Lamar Community College, 2401 South Main Street, Bowman 138 Lecture Hall.

Written comments and materials should be sent to the Assistant Field Supervisor, U.S. Fish and Wildlife Service, 764 Horizon Drive, South Annex A, Grand Junction, Colorado 81506–3946. We will make comments and materials we receive available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Robert Leachman at the above address, telephone 970–243–2778; facsimile 970–245–6933.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(5)(E) of the Endangered Species Act requires that public hearings regarding proposals for listing be held promptly when requested by the public within 45 days of the proposal's publication in the **Federal Register**. Public hearing requests were received during the allotted time period from Ken Blunt, Phillips County Prairie Ecosystem Action Council (Montana); Francis V. Jacobs, Board of County Commissioners, Phillips County, Montana; John Sidle, USDA Forest Service, Nebraska; and Park County Wyoming County Commissioners. While we received no formal requests for hearings in Colorado, we have had numerous discussions with interested parties in Colorado who have asked that meetings occur. Therefore we have scheduled the five hearings listed above in Montana, Wyoming, and Colorado.

Anyone expecting to make an oral presentation at these hearings is encouraged to provide a written copy of their statement to the hearing officer prior to the start of the hearing. In the event there is a large attendance, the time allotted for oral statements may have to be limited. Oral and written statements receive equal consideration. There are no limits to the length of written comments presented at these hearings or mailed to us.

Author: The primary author of this notice is Robert Leachman (see **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act (16 U.S.C. 1531–1544).

Dated: April 13, 1999.

Ralph O. Morgenwech,

Regional Director.

[FR Doc. 99–9664 Filed 4–16–99; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants: 90-Day Finding for a Petition to List the Ambrosia pumila (San Diego Ambrosia) as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding and initiation of status review.

SUMMARY: We have made a 90-day finding on a petition to list the *Ambrosia pumila* (San Diego ambrosia) pursuant to the Endangered Species Act of 1973, as amended (Act). We find that the petition presents substantial scientific or commercial information indicating that listing *Ambrosia pumila* as endangered may be warranted. We are initiating a status review to determine if listing is warranted.

DATES: The finding announced in this document was made on April 13, 1999. To be considered in the 12-month finding, comments and information must be submitted to us by May 19, 1999.

ADDRESSES: Submit data, information, comments, or questions concerning the petition and this 90-day finding to the Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 2730 Loker Avenue West, Carlsbad, California 92008. You may inspect the petition, 90-day finding, supporting data, comments and related documents, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Douglas Krofta, biologist, U.S. Fish and

Wildlife Service at the above address or telephone 760–431–9440.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. To the maximum extent practicable, we are to make this finding within 90 days of receipt of the petition, and we are to publish the finding promptly in the **Federal Register**. If the finding is that substantial information was presented, we must promptly commence a review of the status of the species.

We have made a 90-day finding on a petition to list *Ambrosia pumila* (San Diego ambrosia). Mr. David Hogan, of the Southwest Center for Biological Diversity, and Ms. Cindy Burrascano, of the San Diego Chapter of the California Native Plant Society, submitted the petition, dated November 12, 1996, which we received on January 9, 1997. The petition requested the listing of *A. pumila* as endangered pursuant to section 4 of the Act. Additionally, the petitioners appealed for the emergency listing of *A. pumila* pursuant to section 4(b)(7) of the Act, and further requested the designation of critical habitat for this plant taxon. The letter clearly identified itself as a petition and contained the names, signatures, and addresses of the petitioners. Accompanying the petition was supporting information relating to taxonomy, ecology, threats, and distribution of *A. pumila*. On November 21, 1997, we received a 60-day notice of intent to sue from the petitioners over the failure to issue the administrative 90-day finding for *A. pumila*. The petitioners filed a lawsuit in the United States District Court on October 1, 1998, citing that we had failed to produce the administrative 90-day and 12-month findings for *A. pumila*.

We have reviewed the petition, supporting documentation, and other information available in our files to determine if substantial information is available to indicate that the requested action may be warranted. On the basis of the best scientific and commercial information available, we find that the petitioned action may be warranted for *Ambrosia pumila* because of the magnitude of ongoing and threatened impacts to existing populations. We will commence a status review in accordance with the final listing priority guidance for fiscal years 1998 and 1999 (63 FR 25502) published on May 8, 1998.

At the time the petition was received on January 9, 1997, we were operating under our final listing priority guidance for fiscal year 1997, which was published December 5, 1996 (61 FR 64475) in the **Federal Register**. The guidance clarified the order in which we would continue to process the backlog of rulemakings following two related events—(1) the lifting, on April 26, 1996, of the moratorium on final listings imposed on April 10, 1995 (Pub. L. 104–6); and (2) the restoration of significant funding for listing through passage of the omnibus budget reconciliation law on April 26, 1996, following severe funding constraints imposed by a number of continuing resolutions between November 1995 and April 1996. Based on biological considerations, the guidance established a ''multi-tiered approach that assigned relative priorities, on a descending basis, to actions to be carried out under section 4 of the Act'' (61 FR 64479). The guidance called for giving highest priority (Tier 1) to handling emergency situations, second highest priority (Tier 2) to resolving the listing status of the outstanding proposed listings, third priority (Tier 3) to resolving the conservation status of candidate species and processing administrative findings on petitions, and lowest priority (Tier 4) to preparation of proposed or final critical habitat designations, and processing delistings and reclassifications from endangered to threatened status.

On January 23, 1997, we notified the petitioners that based on the listing priority guidance for fiscal year 1997, we would conduct a preliminary review of the petition to determine whether *Ambrosia pumila* faced a significant risk to its well-being under the emergency listing provisions of section 4(b)(7) of the Act (61 FR 64479). We indicated that if such an emergency existed and the species fell within Tier 1, we would immediately process an emergency listing and proposed rule; if an emergency did not exist, the petitioned action would fall within Tier 3 of the guidance. On July 15, 1997, we made a determination that an emergency did not exist (i.e., the immediacy of threats to *A. pumila* were not so great to a significant proportion of the population that the routine listing process was insufficient to prevent large losses that might result in extinction). Therefore, the processing of the petition fell under Tier 3. Our Carlsbad Office (which was assigned the responsibility for processing the petition) continued to direct personnel and budget toward accomplishment of ongoing Tier 2 and Tier 3 activities for species judged to be in greater need of the Act's protection than *A. pumila*. As these higher priority activities were accomplished, and personnel and funds became available, we proceeded with a 90-day finding on the petition for *A. pumila*.

On May 8, 1998, final listing priority guidance for fiscal years 1998 and 1999 (63 FR 25502) was published. This new guidance changed the four tier priority system to a three tier system. The three tier system described our first priority (Tier 1) as completion of emergency listings for species facing the greatest risk to their well-being. Our second priority (Tier 2) was processing final decisions on pending proposed listings; processing new proposals to add species to the lists; processing 90-day and 12-month administrative findings on petitions to add species to the lists and petitions to delist or reclassify species; and delisting or downlisting actions on species that have achieved or are moving towards recovery. Our third priority (Tier 3) described in the guidance was processing petitions for critical habitat designations and preparing proposed and final critical habitat designations. Under this current guidance, the processing of this petition fell under Tier 2.

Ambrosia pumila is a clonal perennial herb restricted to upper terraces of rivers and drainages, but has been identified growing in open, flat grasslands; dry lake beds; open patches in coastal sage scrub habitat; and disturbed sites such as fuel breaks and roadway rights-of-way. Populations of San Diego ambrosia occur on federal, state, and private lands located in southwestern Riverside and San Diego counties, California, and Baja California, Mexico. The range of *A. pumila* is known from an estimated 53 documented historical and current populations from Riverside and San Diego counties, California, and central Baja California, Mexico from Colonet south to Lake Chapala. The distribution of *A. pumila* is centralized in San Diego County, where approximately 48 distinct populations have been reported. Recently, two populations of *A. pumila* were discovered in southwestern Riverside County. Although limited information is available concerning current populations of *A. pumila* in Baja California, three disjunct populations are presumed extant.

San Diego County

Of the 48 reported populations of *Ambrosia pumila* in San Diego County, 23 have been extirpated, and an

additional 11 populations were misidentified and are actually a similar species *A. confertiflora.* This leaves 14 populations extant in San Diego County. Two populations consist of plants that were transplanted from sites where the taxon was extirpated due to roadway construction or development. Although these populations are extant, their long-term viability is in question due to unsuccessful attempts at transplanting the taxon in the past. Eleven of the remaining 12 populations have been recently field verified and are known to be extant. Insufficient information exists to make a determination on the status and viability of the twelfth population due to the inadequacy of data on the original collection and difficulty in site access. The long-term viability of at least 5 of the remaining 11 populations is in question due to population size, fragmentation, past and potential impacts, extent of suitable habitat in the immediate area, current land use practices and land-ownership. These apparently nonviable populations range in extent from a single plant growing up through a crack in a sidewalk in National City to a population consisting of several hundred or more stems at Gillespie Field. The six remaining populations in San Diego County are considered to have a greater degree of long-term persistence or viability primarily due to larger population sizes and current land use practices or ownership. These six populations include one population in Mission Trails Regional Park, two populations on the San Diego National Wildlife Refuge, one population on a dirt road off of Del Dios Highway, one population within a San Diego Gas and Electric (SDGE) gas line easement along State Route (SR) 76, and one population within a SDGE electrical transmission line easement adjacent to Jamul Drive.

The Mission Trails population is considered to be the largest and most viable population of *Ambrosia pumila* in the United States. It is located in Mission Trails Regional Park and on adjacent private property. Although road construction and adjacent urban development have historically fragmented the population, the core population consists of several thousand stems and several small colonies scattered throughout the general area. The petitioners asserted that the persistence of this core population is apparently essential to the survival of this taxon in the United States (Hogan and Burrascano 1996). A minimum 90 percent of the core population in Mission Trails Regional Park is protected under the provisions of the Multiple Species Conservation Plan (MSCP) for southwestern San Diego County. Other populations within MSCP boundaries, such as the Del Dios Highway population, will receive protection under specific sub-area/sub-regional plans addressing conservation measures on an individual project/population basis. The two populations located within the San Diego National Wildlife Refuge are conserved and managed as part of the National Wildlife Refuge System, and are not likely to be threatened. The two San Diego populations found within SDGE easements have the potential for long-term persistence but are currently outside the San Diego County MSCP boundaries. These two populations are protected by a habitat conservation plan with SDGE. Under this plan, the species is covered by special mitigation measures that involve avoidance of impacts as a first priority, and mitigation of impacts as a second priority.

Riverside County

The two populations of *Ambrosia pumila* recently recorded in southwestern Riverside County are in the vicinity of Skunk Hollow and Lake Elsinore. The Skunk Hollow population consists of approximately 500 stems and is located on private lands within a wetland mitigation bank. The Lake Elsinore population has an estimated 250–500 stems and is also located on private lands. The long-term persistence or viability of the Lake Elsinore population is in question due to current development threats.

Mexico

The current documented range of *Ambrosia pumila* in Baja California, Mexico extends from Colonet south to Lake Chapala. Three disjunct populations are recorded. Although additional sites may occur in Baja, the taxon is not considered to be widespread due to the lack of appropriate habitat and impacts resulting from agriculture and urban development, especially in coastal areas. Recent field reconnaissance (Hogan and Burrascano 1996) of two of the three documented sites has confirmed that the recorded populations are extant, but estimates on population size and long-term viability are inconsistent. All three of the known and presumed extant Baja California populations are threatened by agricultural practices and urban development. Further evaluation of these populations is necessary to determine their status and the immediacy of threats.

Summary

All populations of *Ambrosia pumila* appear vulnerable to random, environmental or demographic events. Fire, natural or human-induced, could destroy one or more populations. Competition from other plant taxa is also a serious threat. While *Ambrosia pumila* is considered tenacious in appropriate habitat, it is thought to be a weak competitor with invasive herbaceous and non-native grass species.

Of the 16 populations of *Ambrosia pumila* presumed extant in the United States, only six populations in San Diego County and one population in Riverside County are considered secure and protected. These seven populations are expected to persist, provided that adequate protection and management measures are established, implemented, and maintained. The permanent protection and management of *A. pumila* populations under multiple species conservation plans will contribute to long-term habitat viability for *A. pumila.*

We have reviewed the petition, as well as other available information in our files. On the basis of the best scientific and commercial information available, we find that there is sufficient information to indicate that the petitioned action, listing *Ambrosia pumila* as endangered, may be warranted. The petitioners also requested that critical habitat be designated for this species. Designation of critical habitat is not petitionable under the Act. However, if we determine in the 12-month finding that the petitioned action is warranted, we will address the designation of critical habitat in the subsequent proposed rule.

Additional Information Solicited

When we make a finding that substantial information exists to indicate that listing a species may be warranted, we are also required to promptly commence a review of the status of the species. To ensure that the status review is complete and based on the best available scientific and commercial data, we are soliciting information concerning the following:

(1) information on historic and current distribution;
(2) habitat conditions;
(3) basic biology of the species;
(4) ongoing efforts to protect the species and its habitat; and
(5) threats to the species and its habitat.

References Cited

You may request a complete list of all references cited in this document from

the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

Author. The primary author of this document is Douglas Krofta, biologist, Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: April 13, 1999.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 99–9783 Filed 4–15–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 648

[I.D. 040999B]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Applications for Experimental Fishing Permits

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

ACTION: Notification of experimental fishery proposal; request for comments.

SUMMARY: NMFS announces that the Regional Administrator, Northeast Region, NMFS, is considering approval of an experimental fishing proposal that would permit vessels to conduct operations otherwise restricted by regulations governing the Fisheries of the Northeastern United States, 50 CFR part 648. The experimental fishery would involve fishing for, retention, and landing of Atlantic sea scallops with modified dredge gear in the Georges Bank and Nantucket Lightship Closed Areas. Regulations implementing the Magnuson-Stevens Fishery Conservation and Management Act provisions require publication of this notification to provide interested parties the opportunity to comment on the proposed experimental fishery.

DATES: Comments on this document must be received by May 4, 1999.

ADDRESSES: Comments should be sent to Jon Rittgers, Acting Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark on the outside of the envelope: ''Comments on Proposed Scallop Experimental Fishery.''

FOR FURTHER INFORMATION CONTACT: David Gouveia, Fishery Management Specialist, 978–281–9280.

SUPPLEMENTARY INFORMATION: The NMFS Northeast Fisheries Science Center (NEFSC) submitted an application on April 12, 1999, to map the distribution and estimate the abundance of Atlantic sea scallops, and to determine the rate and distribution of finfish and invertebrate bycatches to sea scallop dredges in portions of the Georges Bank and Nantucket Lightship Closed Areas. The proposed experimental fishery would also provide information on the potential habitat effects of the use of scallop fishing gear in these areas and test new gear designs to reduce finfish bycatch rates.

The NEFSC would conduct experimental fishing activities with three commercial vessels federally permitted with a limited access Atlantic sea scallop permit. Vessels interested in participating in this experiment would be chosen by a lottery system administered by the NMFS Northeast Regional Office. Exempted fishing permits would be issued to the participating vessels to exempt them from closed areas and gear restrictions contained in the regulations implementing the Northeast Multispecies and Atlantic Sea Scallop Fishery Management Plans.

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

Dated: April 13, 1999.

Gary C. Matlock,

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

[FR Doc. 99–9726 Filed 4–16–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 990226056–9056–01; I.D. 122498C]

RIN 0638–AL31

Northeast Multispecies Fishery; Amendment 9 to the Northeast Multispecies Fishery Management Plan; Supplement to the Proposed Rule

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

ACTION: Supplement to the proposed rule.

SUMMARY: NMFS issues this supplement to the proposed rule for Amendment 9 to the Fishery Management Plan for the Northeast Multispecies Fishery. The supplement is intended to provide information inadvertently omitted from the summary of the initial regulatory flexibility analysis (IRFA) prepared for Amendment 9 published with the proposed rule. Specifically, this supplement summarizes information about alternatives that the New England Fishery Management Council (Council) considered, but rejected, for the Amendment.

DATES: Public comments will be accepted from April 14, 1999 through May 3, 1999.

ADDRESSES: Comments should be sent to Jon C. Rittgers, Acting Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, ''Comments on the initial regulatory flexibility analysis of Amendment 9.''

FOR FURTHER INFORMATION CONTACT: Susan A. Murphy, Fishery Policy Analyst, 978–281–9252.

SUPPLEMENTARY INFORMATION: Analytical documents in Amendment 9 pertaining to requirements of the Regulatory Flexibility Act include ''Volume I,'' October 9, 1998; ''Supplement,'' November 14, 1998; and ''Supplement,'' January 27, 1999. This supplement to the proposed rule for Amendment 9 republishes, for the convenience of the public, the portion of the classification section of that proposed rule (64 FR 13952; March 23, 1999) that addressed the Regulatory Flexibility Act and adds information inadvertently omitted from that classification section relevant to alternatives considered, but rejected, by the Council for Amendment 9.

Classification

NMFS prepared an IRFA for this proposed rule, pursuant to 5 U.S.C. 603, without regard to whether the proposal would have a significant impact on a substantial number of small entities. Measures analyzed in the IRFA include the brush-sweep trawl gear prohibition, the one-fish halibut possession limit, and the winter flounder fish size increase. The following is a brief discussion of the measures analyzed in the IRFA.

Amendment 9 proposes the prohibition of brush-sweep trawl gear on vessels fishing for multispecies. The cost of the brush-sweep trawl gear is estimated to be between $8,000 and $15,000, depending on the individual vessel. Excessive wear and tear on the gear requires that the gear be replaced

often. The overall cost to vessels impacted by this action would be based on the loss of the use of the gear which, when utilized, wears out in a few months to a year. The potential universe of vessels that could be impacted by the brush-sweep trawl gear prohibition is approximately 900 vessels, i.e., based on NMFS Regional Office database, the number of permit holders who fish for multispecies with otter trawl gear. Therefore, the one-time cost to the industry would likely be between $7.2 million (900 x $8,000) and $13.5 million (900 x $15,000) since there are approximately 900 vessels that fish for multispecies with otter trawl gear. This assumes that all 900 vessels are currently using brush sweep gear. NMFS is seeking information on the number of vessel fishing with brush sweep trawl gear.

A one-fish halibut possession limit with a minimum fish size of 36 inches (91.4 cm) is also proposed. Commercial vessels wishing to retain the one-fish possession limit would be required to obtain a multispecies permit. The economic costs associated with the proposed halibut restrictions include lost revenues from restricted or prohibited landings, as well as the added costs of enforcing new regulations and administering the new open-access permits. For the years 1996 and 1997, Vessel Trip Reports indicate that 134 and 139 vessels, respectively, reported landing halibut. Based on recent landings data reported to NMFS, halibut landings have averaged less than 50,000 lb (22,680 kg), and more recently have declined from 31,542 lb (14,307 kg) in 1996 to 17,078 lb (7,746.5 kg) in 1997. Annual landings per vessel averaged 235 lb (106.5 kg) in 1996 and 123 pounds in 1997. Annual revenues per vessel during this time averaged $1,059 and $553,000, respectively. The total exvessel revenue from halibut was $141,906 (134 x $1,059) in 1996 and $76,867 (139 x $553) in 1997. The number of vessels affected by the proposed one-fish halibut restriction may amount to 1,050 vessels based on the number of permitted vessels in the multispecies fishery. This number includes active limited access multispecies permit holders (1,000) combined with a subset of the estimated 100 active participants in the directed halibut fishery who do not possess a Federal fisheries permit, approximately 50. In 1996 or 1997, 134 to 139 active vessels (those that reported landings of halibut in recent years) are estimated to be only those vessels that caught at least one halibut.

An increase in the minimum fish size for winter flounder to 13 inches (33.0 cm) from the current minimum size of 12 inches (30.5 cm) for both commercial and recreational fishing vessels is proposed in Amendment 9. For the commercial fishery, economic impacts of increasing the winter flounder fish size involve revenue loss from prohibiting landings of fish that are between 12 and 13 inches (30.5 and 33.0 cm) and revenue gains from the increased yield per recruit and price per pound for higher market category once 12–inch (30.5 cm) size fish grow to 13–inch (33.0 cm) size and above.

The data for NMFS 1997 winter flounder landings data, including all sizes of fish, were approximately 11.7 million pounds, or 14 percent of the total regulated species landings. Exvessel revenues of winter flounder during this period amounted to $15.6 million (8.5 percent) of the total exvessel revenues ($183.5 million) from all species for vessels that landed winter flounder. Although some fishers have commented that fish in the 12– to 13–inch (30.5–33 cm) size range accounted for up to 30 - 40 percent of their winter flounder catch, many other fishers have reported that very few fish in the 12– to 13–inch (30.5–33 cm) range are retained by nets unless the vessel is fishing with nets that are less than the minimum regulated mesh size. Landing reports from the New Bedford, MA, auction indicate that 12–inch (30.5 cm) fish make up less than 10 percent of winter flounder sold in this port. Assuming that 30 - 40 percent of winter flounder landed were in the 12– to 13–inch (30.5–33 cm) size range, the decrease in exvessel revenue would likely be between 2.6 percent ($4.68 million of $183.5 million) and 3.4 percent ($6.24 million of $183.5 million) in the first year for all vessels that reported landings of winter flounder.

Compliance costs associated with increasing the minimum winter flounder fish size would result from the cost of modifying trawl codends to reduce the bycatch of 12–inch (30.5 cm) size fish. However, because codends are expandable and replaced often due to constant wear and tear, annual costs associated with this measure would be part of normal gear replacement cost.

Approximately 1,650 vessels have limited access permits and could land winter flounder regardless of whether it was the target species. Based on the NMFS 1997 landings data, 971 of the active multispecies vessels landed winter flounder. On average, reduction in gross revenue per vessel would likely be between $4,820 and $6,430 in the first year, assuming uniform landings across vessels. Otter trawl vessels accounted for the majority of the landings (64 percent), followed by gillnet vessels (18 percent). Thus, otter trawl vessels could lose between $3.0 million and $4.0 million in the first year. Gillnet vessels could lose between $0.8 million and $1.1 million in the first year.

Alternatives Considered, But Rejected by the Council

1. The Council considered taking ''no action'' in terms of the use of brush sweep trawl gear but was concerned about the lack of information about its overall use or about how it may impact specific species and other related impacts. The Council was concerned that the efficiency of the gear may be so greatly improved so as to undermine the effectiveness of the days at sea (DAS) reduction program. The basis for this concern is that, if vessels with limited DAS could increase their catch per day significantly, the number of DAS allocated would have to be reduced to achieve the set fishing mortality goal. Because the impacts of the gear are not known at this time, the Council has chosen a precautionary approach by prohibiting use of the gear but recommends comparative studies of roller, rockhopper, chain, brush sweep and other bottom tending trawl gear (not including scallop dredges) be conducted to assess bycatch, gear efficiency and such other impacts as effects on bottom habitat.

2. The Council chose as its preferred alternative for Atlantic halibut to add that species to the management unit for the FMP, and establish a 1–fish possession limit and a minimum fish size of 36 inches (91.4 cm) to begin rebuilding this overfished fish stock. Additionally, the Council considered, but rejected, four other alternatives for halibut management: (1) No action alternative, (2) add Atlantic halibut to the management unit and prohibit possession on halibut, (3) add Atlantic halibut to the management unit and implement a 1–fish possession limit with a maximum fish size of 48 inches (121 cm), and (4) add Atlantic halibut to the management unit and implement a 1–fish possession limit with a maximum fish size limit of 48 inches (121 cm) and a minimum fish size of 36 inches (91.4 cm). The two alternatives that included a maximum fish size limit were rejected based on public comment that capture of a large fish only to determine if it was of illegal size would result in excessive discard mortality. NMFS declared Atlantic halibut to be overfished in its September 1997 and 1998 Reports to Congress. The Council rejected the no action alternative given the overfished condition of halibut and the

requirement under the Sustainable Fisheries Act to prepare a plan to rebuild overfished stocks. The Council also decided the species needs specific management measures to begin rebuilding. It adopted a one-fish possession limit rather than total prohibition in part to minimize the economic effects on the few vessels (believed to be about 50) that are considered to be part of a directed fishery, even though their catch of halibut is only occasional and mostly in state waters.

3. In addition to the preferred alternative of an increase in minimum fish size for winter flounder, the Council considered, but rejected, a possession limit of between 5,000 and 12,000 lb (2268 and 5443.2 kg) of winter flounder for Southern New England and a mesh change for the Gulf of Maine/Georges Bank area. There were a strong opposition by industry to the mesh-size change alternative and a concern over a trip limit being confined to one area. The Council rejected the no action alternative because most stocks of winter flounder are considered overfished and in need of further protection of spawning size fish for rebuilding stock abundance.

NMFS seeks comments regarding the IRFA. In particular, NMFS is seeking information on the number of vessels using brush sweep trawl gear, the number of vessels currently fishing for halibut, and the number of vessels impacted by the proposed increase in the winter flounder fish size. Copies of the IRFA are available (see **ADDRESSES**).

Dated: April 14, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 99–9700 Filed 4–14–99; 4:07 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990407088–9088–01; I.D. 030999A]

RIN 0648–AK69

Fisheries of the Exclusive Economic Zone Off Alaska; License Limitation Program

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues a proposed rule that would amend the regulations implementing the License Limitation Program (LLP) for the groundfish fisheries and the king and tanner crab fisheries of the exclusive economic zone (EEZ) off Alaska by adding an application process and a transfer process for licenses. This proposed rule would establish an application process for an LLP license by providing for an application period, specifying the type of information necessary for license eligibility, and providing the procedure for appealing agency determinations that are made based on information and evidence provided in support of applications. The proposed rule also would establish a transfer process for LLP licenses. This action is necessary to complete implementation of the LLP, a fishery management program recommended by the North Pacific Fishery Management Council (Council), and intended to further the objectives of the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI), the Fishery Management Plan for Groundfish of Gulf of Alaska (GOA), and the Fishery Management Plan for the Commercial King and Tanner Crab Fisheries in the Bering Sea and Aleutian Islands.

DATES: Comments must be received by May 19, 1999.

ADDRESSES: Comments should be addressed to Susan J. Salveson, Assistant Regional Administrator for Sustainable Fisheries, Sustainable Fisheries Division, Alaska Region, NMFS, 709 West 9th Street, Room 453, Juneau, AK 99801, or P.O. Box 21668, Juneau, AK 99802, Attention: Lori J. Gravel. Send comments regarding burden estimates or any other aspect of the data requirements, including suggestions for reducing the burdens, to NMFS and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503, Attn: NOAA Desk Officer.

FOR FURTHER INFORMATION CONTACT: John Lepore, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the U.S. groundfish fisheries of the GOA and the BSAI in the exclusive economic zone (EEZ) pursuant to the FMPs for groundfish in the respective management areas. The state of Alaska manages the commercial king crab and Tanner crab fisheries in the Bering Sea and the Aleutian Islands with Federal oversight, pursuant to the FMP for those fisheries. The Council prepared the FMPs pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801, *et seq.* Regulations at 50 CFR part 679 implemented the FMPs. General regulations at 50 CFR 600 also apply.

Fishing under the LLP for the commercial groundfish fisheries in the EEZ of the GOA and the BSAI and the commercial king crab and Tanner crab fisheries in the Bering Sea and Aleutian Islands fishing is scheduled to begin January 1, 2000. The LLP will replace the Vessel Moratorium Program (VMP), which is scheduled to expire December 31, 1999 (64 FR 3651, January 25, 1999). The VMP which was implemented to curtail increases in fishing capacity and to provide industry stability while the Council developed and NMFS implemented a comprehensive solution for the affected fisheries. The LLP is an integral part of that solution.

The Council took final action to recommend the LLP in June 1995. The design and implementation of the LLP required more time than originally anticipated. When the final rule implementing the LLP was published on October 1, 1998 (63 FR 52642), the application process and the transfer process were postponed for further development. Paragraphs at § 679.4(k)(6) [Application Process] and § 679.4(k)(7) [Transfer Process] were reserved to allow for the inclusion of these processes.

Application Process for LLP Licenses

This proposed rule would provide for a one-time application period of no less than 90 days to be specified by a notice in the **Federal Register**. NMFS anticipates that the application period for LLP licenses will be in the second half of 1999. All applications for LLP licenses would have to be submitted during the time period specified for applying for a license. Applications postmarked after the ending date for the application period would be denied.

In anticipation of the information that will be necessary to evaluate and verify the claims of an applicant, NMFS is compiling a database containing information on vessels that were used to participate in the groundfish and crab fisheries during the qualifying periods for licenses. This database will constitute the official LLP record that will contain only complete and verifiable information and that, under this proposed rule, would be used for the purpose of determining eligibility for a license. An applicant who includes information in an application that is inconsistent with information in the

official LLP record would have the burden of proving that the information submitted in the application is correct.

NMFS would compare the official LLP record for each applicant with the qualification criteria specified in the LLP final rule (63 FR 52642, October 1, 1998). Based on that comparison, NMFS would prepare a summary of qualifications for those applicants appearing to be eligible. NMFS would send these applicants an application form and a copy of the summary of qualifications. Application forms also would be available on request. Applicants who agree with the summary of qualifications would merely need to complete the application with the provided data and include any other information requested on the form. Using the information from the summary of qualifications (by either NMFS or the applicant) is intended to expedite application processing because this information would be consistent with information in the official LLP record.

If an applicant agrees with the information in the summary of qualifications, and the information is sufficient to qualify the applicant for a license, NMFS would issue a license to the applicant at the conclusion of the application period. However, if an applicant disagrees with the information provided in the summary of qualifications, the applicant would have 60 days to submit information in the application other than that contained in the summary of qualifications. For example, an applicant could provide state fish tickets or Weekly Production Reports to verify documented harvests not found in the official LLP record. Or, an applicant could provide a sales contract verifying vessel ownership. Unsubstantiated or incompletely verified information would not be accepted. If an applicant is able to meet the burden of proving that the information submitted in the application is correct and sufficient to qualify the applicant for a license, NMFS would issue a license to the applicant at the conclusion of the application period.

If the applicant submits information in the application that is inconsistent with the information in the official LLP record but cannot be verified with evidence provided with the application, NMFS would not accept that information. NMFS would notify the applicant that the information provided in the application is inconsistent with information in the official LLP record or that necessary information is missing. The applicant would have 60 days in which to submit evidence to prove that the information provided in the application is correct or to submit missing information. An applicant would be limited to one 60-day period to submit evidence or to correct or submit missing information.

If information in the application could not be substantiated or verified at the conclusion of the 60-day evidentiary period, NMFS would issue an initial administrative determination (IAD) indicating which information in the application is not accepted, and why. Applicants would then have an opportunity to appeal that IAD to the Regional Administrator. Section 679.43(d) currently provides that an appeal must be filed no later than 60 days after the date an IAD is issued.

Upon the filing of an appeal an appellate officer would perform an initial review. Two possible outcomes could result from that review. The appellate officer could (1) issue a decision on the merits of the appeal or (2) accept the appeal for further proceedings. An initial review of an applicant's appeal would result in an issuance of a decision on the merits if it is apparent that, although all claims are decided in favor of the applicant, he or she still would not qualify for the relief requested, or that the grounds of the appeal involve claims outside the appellate officer's jurisdiction (i.e., that the regulations are illegal).

An applicant who was issued a license the previous year would be eligible for a non-transferable license pending the final resolution of his or her claim pursuant to the license renewal provisions of 5 U.S.C. 558. The non-transferable license would authorize the applicant to deploy a vessel to conduct directed fishing for license limitation groundfish or crab species as specified on the license and would have specific endorsements and designations based on verified and unverified claims of the applicant. A non-transferable license could be granted to an applicant at one of two points in the resolution of his or her claim. First, a non-transferable license could be granted to an applicant in the IAD if the applicant failed to support a credible claim with sufficient evidence, but NMFS determines that the applicant could prove his or her claim on appeal. The non-transferable license would be effective until final agency action. Second, issuance of a non-transferable license could be ordered by an appellate officer, even if a non-transferable license was not issued in the IAD. Again, this non-transferable license would be effective until final agency action. If any portion of an applicant's claim is in dispute, the entire license the applicant would receive would be non-transferable, including portions of the license that could have been verified and issued, until final resolution of the disputed claim. This provision would give effect to the LLP's prohibition on severing a license. Otherwise, if an applicant was granted a fully transferable portion of a license while a disputed claim was being resolved, the applicant could transfer the granted portion to another person. This transfer would result in two participants in the affected fisheries, instead of only one, if the applicant prevailed in the appeal and another license was issued. To prevent this occurrence, an applicant's entire license would be non-transferable pending a final agency action. A non-transferable license would expire on final agency action. At that time, the person who appealed would either receive a transferable license, or no license at all, depending on the final agency action.

Transfer Process for LLP Licenses

The transfer process for LLP licenses would enable a license holder to request a transfer of an LLP license to any person who meets the eligibility requirements. Eligibility requirements would include (1) the designated transferee being eligible to document a fishing vessel under Chapter 121, Title 46, U.S.C., (2) the parties to the transfer having no fines, civil penalties, other payments due and outstanding, or outstanding permit sanctions resulting from Federal fishing violations, and (3) the transfer not causing the designated transferee to exceed the license cap in § 679.7.

A license holder also would need to request a transfer if the license holder plans to use the license on a vessel other than the one designated on the license. A license would be valid for use only on the vessel designated on the license; therefore the transfer procedure must be used to change the vessel designated on the license.

A complete application would have to be submitted to the Administrator, Alaska Region, for approval before a transfer could occur. Application forms would be available on request. NMFS would return incomplete applications to the applicant and would identify specific information that is necessary to make the application complete. Information that would be required in the application includes (1) identification information for all parties to the transfer, (2) identification information for the vessel on which the license will be used, (3) documentation of the eligibility of the designated transferee to document a fishing vessel,

(4) a copy of the contract or sales agreement for the transfer, and (5) the signatures of the parties to the transfer.

The proposed rule also would provide for transfer requests by court order, operation of law, or as part of a security agreement. This provision contemplates that some transfers might not be voluntarily requested by the permit holder. Under those circumstances, the Administrator, Alaska Region, would review the information in the transfer application or other document and determine whether the requested transfer would conflict with other provisions of the LLP regulations (e.g., transfer to a person who could not document a fishing vessel under Chapter 121, Title 46, U.S.C.).

Finally, a license could not be transferred more than once per calendar year. This limitation should restrict the incidence of intraseason movement of licenses among vessels and operators. The Council identified intraseason movement of licenses and vessels as behavior that could contribute to overcapacity and excess effort in the affected fisheries.

Classification

At this time, NMFS has not determined that this rule is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

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

An EA/RIR was prepared for the LLP, of which this rule is a part. The EA/RIR describes the management background, the purpose and need for action, the management action alternatives, and the socio-economic impacts of the alternatives. It estimates the total number of small entities affected by this action and analyzes the economic impact on those small entities. Based on the economic analysis in the EA/RIR, the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities for the following reason:

Although most fishing operations that would be affected by this rule are considered small entities, these entities would not experience ''significant economic impact'' as a result of this rule. NMFS estimates that 3,450 persons will apply for a license under the LLP. Estimated completion time per application is 2.5 hours. Given the small time burden associated with application completion, any economic costs would not cause a ''significant economic impact.'' NMFS estimates that 10 percent of all applicants (345 of 3,450) will transfer a license annually. Estimated completion time per transfer is 1 hour. This completion time is less than the completion time contemplated for the application process. Given the small time burden associated with an application for a transfer, and the small percentage of affected entities, any economic costs would not cause a ''significant economic impact to a substantial number of small entities.''

As a result, an initial regulatory flexibility analysis was not prepared.

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

This proposed rule contains a revised collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This revision has been submitted to OMB for approval. OMB approved the original collection of information requirement for the LLP under OMB control number 0648–0334. Please refer to this number in any correspondence regarding this request. The public reporting burden for this collection of information is estimated to average 2.5 hours per response for an application for initial issuance, 1 hour per response for an application for transfer, and 4 hours per response for an appeal. These response times include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS (see **ADDRESSES** above), and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC. 20503 (Attention: NOAA Desk Officer).

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: April 14, 1999.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.2, the definition for ''Official LLP record'' is added in alphabetical order to read as follows:

§ 679.2 Definitions.

* * * * *

Official LLP record means the information assembled by the Regional Administrator about vessels that were used to participate in the groundfish and crab fisheries during the qualifying periods for the License Limitation Program. Information in the official LLP record includes vessel ownership information, documented harvests made from vessels during the qualification periods, and vessel characteristics. The official LLP record is presumed to be correct for the purpose of determining eligibility for licenses. An applicant for a license under the License Limitation Program has the burden of proving that information submitted in an application that is at variance with the official LLP record is correct.

* * * * *

3. In § 679.4, text is added to paragraphs (k)(6) and (7) to read as follows:

§ 679.4 Permits.

* * * * *

(k) * * *

(6) *Application for a groundfish license or a crab species license*—(i) *General.* The Regional Administrator will issue a groundfish license or a crab species license to an eligible applicant if that applicant meets all the criteria for eligibility in paragraph (k) of this section, a complete and timely application is filed by or on behalf of the applicant, and the complete application is approved by the Regional Administrator. An application form will be sent to the last known address of a

person identified as an eligible applicant by the Official LLP Record. The Regional Administrator will provide an application form to any person who requests one.

(ii) *Application period*. An application period of no less than 90 days will be specified by notice in the **Federal Register** and other information sources deemed appropriate by the Regional Administrator.

(iii) *Contents of application*. To be complete, an application for a groundfish license or a crab species license must contain the following information:

(A) Name(s), business address(es), telephone number(s), and FAX number(s) of the applicant(s);

(B) Name, state registration number (e.g., ADF&G number), and, if applicable, the USCG documentation number of the vessel being used as the basis for eligibility for a license; and name, state registration number (e.g., ADF&G number), and, if applicable, the USCG documentation number of the vessel to be deployed with the license if different than the vessel used as the basis of eligibility for a license;

(C) Name of the managing company, if any;

(D) Valid documentation of the documented harvests that are the basis of eligibility for a license, including harvest area, gear used, date of landing, and, if applying for a crab species license, species;

(E) Valid documentation of LOA on June 24, 1992, of the vessel used as the basis of eligibility for a license. If that vessel was under reconstruction on that date, valid documentation of LOA on the date reconstruction was completed and valid documentation of when reconstruction began and ended;

(F) Valid documentation of LOA on June 17, 1995, of the vessel used as the basis of eligibility for a license. If that vessel was under reconstruction on that date, valid documentation of LOA on the date reconstruction was completed and valid documentation of when reconstruction began and ended;

(G) Valid documentation to support the applicant's claim for a vessel designation of catcher vessel or catcher/processor vessel;

(H) Valid documentation of ownership of the vessel being used as the basis for eligibility for a license (for USCG documented vessels, valid documentation must be the USCG Abstract of Title), or, if eligibility is based on a fishing history that has been separated from a vessel, valid documentation of ownership of the fishing history being used as the basis of eligibility for a license;

(I) Valid documentation of the LOA of the vessel to be deployed by the license if different than the vessel used as the basis for eligibility for a license; and

(J) Signature of the applicant(s), or the individual responsible for representing the applicant(s).

(iv) *Other information required for special circumstances*. To be complete, an application also must contain the following information for these special circumstances.

(A) *Successor-in-interest*. An applicant applying as the successor-in-interest to an eligible applicant must provide valid documentation proving the applicant's status as a successor-in-interest to that eligible applicant and:

(*1*) valid documentation of death or disability of that eligible applicant at the time of application, if the eligible applicant was or is an individual; or

(*2*) valid documentation that that eligible applicant is no longer in existence at the time of application, if the eligible applicant is not an individual.

(B) *Norton Sound crab species license endorsement*. In addition to other information that must be provided pursuant to paragraph (k)(6)(iii) of this section, an applicant for a crab species license endorsement for Norton Sound must indicate whether he or she was a State of Alaska permit holder for the Norton Sound king crab summer fishery in 1993 or 1994 or for a corporation that owned or had a lease for a vessel on June 17, 1995, that participated in the Norton Sound king crab summer fishery in 1993 or 1994.

(C) *Extended general qualification period*. An applicant for a license based on meeting the general qualification period documented harvest requirement of making a documented harvest with jig or pot gear between June 28, 1992, and December 31, 1994, pursuant to paragraph (k)(4)(i)(A)(2) or (B)(2) of this section, must select one endorsement area for license issuance, notwithstanding the fact that the applicant may have the documented harvests necessary to qualify for more than one endorsement area.

(D) *Unavoidable circumstances*. An applicant for a license based on an unavoidable circumstance pursuant to paragraph (k)(8)(iv) of this section must provide the information required by that paragraph, the date the vessel on which the application is based was lost, damaged, or otherwise unable to participate in the fishery, and the date a documented harvest was made from the replacement vessel.

(v) *Application evaluation*. The Regional Administrator, will evaluate all timely filed applications. A timely filed application is an application that is postmarked before the ending date for the application period for the License Limitation Program specified in the **Federal Register**. All claims and data in the application will be compared with information and data from the Official LLP Record. Any claims or data in the application that are consistent with the information and data from the Official LLP Record are uncontested data. Uncontested data in the application will be accepted by the Regional Administrator. Uncontested data will be used by the Regional Administrator, in determining whether the applicant is eligible for a license as claimed in the application. Any claims or data in the application that are inconsistent with the information and data from the Official LLP Record are contested data. Contested data in applications will not be accepted. Pursuant to paragraph (k)(6)(vii) of this section, an applicant who submits contested data, or an applicant who fails to submit data as specified in paragraphs (k)(6)(iii) and (iv), will have 60 days to submit additional information, submit evidence to support his or her contested data, or submit a revised application with claims consistent with data in the Official LLP Record.

(vi) *Additional information or evidence*. Additional information or evidence to support an applicant's contested data will be evaluated by the Regional Administrator if submitted within the 60-day evidentiary period pursuant to paragraph (k)(6)(vii) of this section. If the Regional Administrator determines that the additional information or evidence meets the applicant's burden of proving that the contested data in his or her application are correct, the Official LLP Record will be amended and the data will be used in determining whether the applicant is eligible for a license. However, if the Regional Administrator determines that the additional information or evidence does not meet the applicant's burden of proving that the contested data in his or her application are correct, the applicant will be notified by an initial administrative determination, pursuant to paragraph (k)(6)(viii) of this section, that the information or evidence submitted is insufficient to change the Official LLP Record.

(vii) *Sixty-day evidentiary period*. An applicant who submits data in the application that is inconsistent with the Official LLP Record has the burden of proving that the submitted data are correct. If the Regional Administrator determines that the applicant submitting the data did not meet the burden of proving that the submitted

data are correct through information or evidence provided with the application, that applicant will be notified and will have 60 days to submit additional information or evidence to support the claims and data in his or her application, or to submit a revised application with claims and data consistent with the data in the Official LLP Record. Also, an applicant who fails to submit data as specified in paragraphs (k)(6)(iii) and (iv) of this section will have 60 days to submit that data. An applicant will be limited to one 60-day evidentiary period. Additional information or evidence, or a revised application, received after the 60-day evidentiary period has expired will not be considered for purposes of the initial administrative determination.

(viii) *Initial administrative determinations (IAD).* If, following the receipt of additional information or a revised application, the Regional Administrator determines that there is still insufficient information or evidence to rebut the presumption that the Official LLP Record is accurate, or, if the submitted information, evidence, or revised application is not submitted within the time period indicated in the 60-day evidentiary period notification letter, an IAD will be prepared and sent to the applicant who had submitted the application with contested or missing data. The IAD will explain the deficiency in the contested or missing data, the deficiency in the additional information or evidence submitted in support of the contested or missing data, or the deficiency in the revised application. The IAD will also indicate which claims cannot be approved based on the available information or evidence. An applicant who receives an IAD will have an opportunity to appeal pursuant to § 679.43. An applicant who avails himself or herself of the opportunity to appeal an IAD will not receive a transferable license until after the final resolution of that appeal, notwithstanding the eligibility of that applicant for some claims based on uncontested data in the application.

(ix) *Issuance of a non-transferable license.* When required by the license renewal provisions of 5 U.S.C. 558, NMFS will issue a non-transferable license to an applicant on issuance of an IAD, or alternatively, by order of an appellate officer. NMFS may issue a non-transferable license when NMFS issues an IAD if an applicant failed to support his or her claim with sufficient evidence, but NMFS determines that the applicant's claim is credible and may be proven on appeal. NMFS may issue a non-transferable license to an applicant pursuant to an order of an appellate officer pending final agency action if a non-transferable license was not issued with the IAD. A non-transferable license authorizes a person to deploy a vessel to conduct directed fishing for license limitation groundfish or crab species as specified on the non-transferable license, and will have the specific endorsements and designations based on the claims in his or her application. A non-transferable license will expire upon final agency action.

(7) *Transfer of a groundfish license or a crab species license*—(i) *General.* NMFS will transfer a groundfish license or a crab species license if a license holder and designated transferee meet all the eligibility criteria for transfers in paragraph (k)(7)(ii) of this section and the license holder submits a complete application that is subsequently approved by the Regional Administrator. NMFS will provide an application form to any person who requests one.

(ii) *Eligibility criteria for transfers.* NMFS will not approve a groundfish license or crab species license transfer if:

(A) The designated transferee is not eligible to document a fishing vessel under Chapter 121, Title 46, U.S.C.;

(B) There are fines, civil penalties, other payments due and outstanding, or outstanding permit sanctions resulting from Federal fishing violations involving any party to the transfer;

(C) The transfer will cause the designated transferee to exceed the license caps in § 679.7(j); or

(D) The transfer violates other provisions specified in this part.

(iii) *Contents of application.* To be complete an application for a groundfish license transfer or a crab species license transfer must contain the following information, as applicable:

(A) Name(s), business address(es), telephone number(s), FAX number(s), of the license holder and the designated transferee;

(B) Name, state registration number (e.g., ADF&G number), and, if applicable, the USCG documentation number of the vessel on which the license will be used after the transfer is approved:

(C) Valid documentation that the designated transferee is a person eligible to document a fishing vessel under Chapter 121, Title 46, U.S.C.;

(D) A legible copy of a contract or sales agreement that specifies the license to be transferred, the license holder, the designated transferee, the monetary value or the terms of the license transfer, and the signature of the license holder and the designated transferee;

(E) Information regarding whether a broker was used for the transaction, whether the license was collateralized, and other information the Regional Administrator deems necessary for measuring program performance; and

(F) Signature of the license holder and the designated transferee, or of the individuals responsible for representing those persons.

(iv) *Incomplete applications.* NMFS will return to the applicant a transfer application that is determined to be incomplete by the Regional Administrator. The returned application will identify the specific kinds of information necessary to make the application complete.

(v) *Transfer by court order, operation of law, or as part of a security agreement.* The Regional Administrator will approve a complete transfer application based on a court order, operation of law, or a security agreement, if the transfer does not conflict with any of the provisions of this section.

(vi) *Transfer Limitation.* A groundfish license or a crab species license may be transferred only once in any calendar year. NMFS will not approve an application for transfer that violates this provision.

[FR Doc. 99–9731 Filed 4–16–99; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 64, No. 74
Monday, April 19, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Farm Service Agency

List of Warehouses and Availability of List of Cancellations and/or Terminations

AGENCY: Farm Service Agency, USDA.

ACTION: Notice of publication.

SUMMARY: Notice is hereby given that the Farm Service Agency has published a list of warehouses licensed under the United States Warehouse Act (7 U.S.C. 241 *et. seq.*) as of December 31, 1998, as required by section 26 of that Act (7 U.S.C. 266). A list of cancellations or terminations that occurred during calendar year 1998 is also available. Interested persons may obtain a copy of either list from the person listed below.

FOR FURTHER INFORMATION CONTACT: Judy Fry, Farm Service Agency, Warehouse and Inventory Division, U.S. Department of Agriculture, STOP 0553, 1400 Independence Avenue, SW., Washington, DC 20250–0553: telephone 202–720–3822; e-mail requests may be sent: Judy__Fry@wdc.fsa.usda.gov.

Signed at Washington, DC, on April 7, 1999.

Parks Shackelford,

Acting Administrator, Farm Service Agency.

[FR Doc. 99–9628 Filed 4–16–99; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Request for Comments; Grazing Permit Administration Forms

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service announces its intent to request extension of a previously approved information collection. The Forest Service uses the collected information to administer grazing use on National Forest System lands. Information will be collected from individuals applying for a grazing permit or permittees holding a grazing permit.

DATES: Comments must be received in writing on or before June 18, 1999.

ADDRESSES: All comments should be addressed to: Director, Range Management, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090 or email to rge/wo@fs.fed.us.

FOR FURTHER INFORMATION CONTACT: Ralph Giffen, Range Management Staff, (202) 205–1460.

SUPPLEMENTARY INFORMATION:

Background

The Federal Land Policy and Management Act of 1976 (FLPMA), as amended, requires the Forest Service to collect certain information from individuals, partnerships, corporations, associations, or other private entities applying for permits to graze livestock on National Forest System lands. The data collected is used by Forest Service officers in administering the range management grazing use program on National Forest System lands. There are different kinds of forms to address different kinds of circumstances. Fees are associated with some permits. Each form is described in this request for extension of Office of Management and Budget approval.

National Forms

Information collected on national forms is applicable in all Forest Service regions and includes, along with other information, such basic information as names and addresses of those who apply for a grazing permit or of those who already hold a grazing permit.

Description of Information Collection

The following describes the information collection to be extended:

Title: FS–2200–1; Refund, Credit, or Transfer Application.

OMB Number: 0596–0003.

Expiration Date of Approval: April 30, 1999.

Type of Request: Extension of a previously approved information collection.

Abstract: The permittee uses this form when applying for a refund, credit, or transfer of the unused portion of the preceding season's grazing permit fees, which were collected by the Federal Government for use of National Forest System lands .

Estimate of Burden: 20 minutes.

Type of Respondents: Individuals applying for or holding a grazing permit.

Estimated Number of Respondents: 600.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 200 hours.

Description of Information Collection

The following information describes the information collection to be extended:

Title: FS–2200–2; Application for Temporary Grazing Permit.

OMB Number: 0596–0003.

Expiration Date of Approval: April 30, 1999.

Type of Request: Extension of a previously approved information collection.

Abstract: This form is used to evaluate applicants applying for temporary grazing permits, which are issued for a specific grazing allotment, a specific number of head of livestock, a specific class of livestock, and a specific grazing period of time. The information collected on this form enables the agency to validate the ability of the applicant to meet the Federal Government's requirements to graze on National Forest System lands.

Estimate of Burden: 20 minutes.

Type of Respondents: Individuals applying for or holding a grazing permit.

Estimated Number of Respondents: 1000.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 350 hours.

Description of Information Collection

The following information describes the information collection to be extended:

Title: FS–2200–12; Waiver of Term grazing Permit.

OMB Number: 0596–0003.

Expiration Date of Approval: April 30, 1999.

Type of Request: Extension of a previously approved information collection.

Abstract: Information collected on this form enables the agency to cancel

a grazing permit on a specified allotment, to issue a subsequent grazing permit for that allotment, and to identify a purchaser of base property or permitted livestock as the preferred applicant for the subsequent grazing permit.

Estimate of Burden: 20 minutes.

Type of Respondents: Individuals applying for or holding a grazing permit.

Estimated Number of Respondents: 750.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 250 hours.

Description of Information Collection

The following information describes the information collection to be extended:

Title: FS–2200–13; Escrow Waiver of Term Grazing Permit Privileges.

OMB Number: 0596–0003.

Expiration Date of Approval: April 30, 1999.

Type of Request: Extension of a previously approved information collection.

Abstract: The agency uses data collected on this form to identify a lien holder for permitted livestock or to identify base property of a current permittee, so if the current permittee defaults on a loan, the permit can be transferred to the lien holder.

Estimate of Burden: 20 minutes.

Type of Respondents: Individuals applying for or holding a grazing permit.

Estimated Number of Respondents: 150.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 50 hours.

Description of Information Collection

The following information describes the information collection to be extended:

Title: FS–2200–15; Application and Permit for Livestock Use.

OMB Number: 0596–0003.

Expiration Date of Approval: April 30, 1999.

Type of Request: Extension of a previously approved information collection.

Abstract: Information collected on this form describes the specific grazing area for which the applicant requests a permit, the period of time the applicant plans to use the specific grazing area, and the number, king, and class of livestock the applicant plans to graze on the area. This form also provides the basis for the fees the applicant must pay the Federal Government for the use of the land and enables the agency to validate the ability of the applicant to meet the requirements to graze on National Forest System lands.

Estimate of Burden: 20 minutes.

Type of Respondents: Individuals applying for or holding a grazing permit.

Estimated Number of Respondents: 750.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 250 hours.

Description of Information Collection

The following information describes the information collection to be extended:

Title: FS–2200–16; Application for Term Grazing Permit.

OMB Number: 0596–0003.

Expiration Date of Approval: April 30, 1999.

Type of Request: Extension of a previously approved information collection.

Abstract: The information collected on this form enables the agency to evaluate the applicant's ability to hold and properly adhere to term grazing permit for National Forest System lands, to issue a term grazing permit to a an applicant, and to bill the applicant for fees due the Federal Government for a specific grazing allotment for specified dates of use, and for a specified number, kind, and class of livestock.

Estimate of Burden: 30 minutes.

Type of Respondents: Individuals applying for or holding a grazing permit.

Estimated Number of Respondents: 1800.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 900 hours.

Description of Information Collection

The following information describes the information collection to be extended:

Title: FS–2200–17; Application for Private Land Grazing Permit.

OMB Number: 0596–0003.

Expiration Date of Approval: April 30, 1999.

Type of Request: Extension of a previously approved information collection.

Abstract: The information collected on this form enables the agency to evaluate whether private lands can be appropriately administered by the agency for grazing use in conjunction with administration of grazing use on National Forest System lands. The data is necessary for the issuance of a term private land grazing permit and the proper coordination of grazing on adjacent National Forest System lands.

Estimate of Burden: 20 minutes.

Type of Respondents: Individuals applying for or holding a grazing permit.

Estimated Number of Respondents: 150.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 50 hours.

Regional Forms

Regional forms are applicable only to the specific Forest Service region identified on the form. The information on the regional forms supplements data on the national forms, such as assigning grazing privileges to permittees having a corporate or partnership interest in the grazing permit and identifying the portion of interest an entity has in the corporation or partnership.

Description of Information Collection

The following information describes the information collection to be extended:

Title: R1–FS–2200–5; Statement of Corporation or Partnership Interest in Grazing Permit.

OMB Number: 0596–0003.

Expiration Date of Approval: April 30, 1999.

Type of Request: Extension of a previously approved information collection.

Abstract: The data collected on this form enables the agency to issue grazing permits and assign grazing privileges to permittees having a corporate or partnership interest in the grazing permit. The information identifies the portion of interest an entity has in the corporation or partnership holding the grazing permit.

Estimate of Burden: 20 minutes.

Type of Respondents: Individuals applying for or holding a grazing permit.

Estimated Number of Respondents: 300.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 100 hours.

Description of Information Collection

The following information describes the information collection to be extended:

Title: R2–2200–6; Ownership Statement by Corporation or Partnership.

OMB Number: 0596–0003.

Expiration Date of Approval: April 30, 1999.

Type of Request: Extension of a previously approved information collection.

Abstract: The data collected on this form enables the agency to issue term

grazing permits and assign grazing privileges to permittees having a corporate or partnership interest in the grazing permit. The information identifies the portion of the interest an entity has in the corporation or partnership holding the grazing permit.

Estimate of Burden: 20 minutes.

Type of Respondents: Individuals applying for or holding a grazing permit.

Estimated Number of Respondents: 300.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 100 hours.

Description of Information Collection

The following information describes the information collection to be extended:

Title: R3–FS–2200–1; Annual Validation of Term Grazing Permit.

OMB Number: 0596–0003.

Expiration Date of Approval: April 30, 1999.

Type of Request: Extension of a previously approved information collection.

Abstract: The data is necessary for annual confirmation that the permittee intends to use the grazing permit and the extent to which they plan to use it. It also can be used as a request for changes to a grazing permit. Information collected on this form enables the agency to bill for fees due the Federal Government and to recommend and approve changes from the current year's permitted use.

Estimate of Burden: 30 minutes.

Type of Respondents: Permittees holding a grazing permit.

Estimated Number of Respondents: 1000.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 500 hours.

Description of Information Collection

The following information describes the information collection to be extended:

Title: R8–2200–23; Application for Validation of Term Grazing Permit.

OMB Number: 0596–0003.

Expiration Date of Approval: April 30, 1999.

Type of Request: Extension of a previously approved information collection.

Abstract: The data is necessary for the annual confirmation the permittee intends to use the grazing permit and the extent to which they plan to use it. It also can be used as a request for changes to a grazing permit. Information collected on this form enables the agency to bill for fees due the Federal Government and to recommend and approve changes from the current year's permitted use.

Estimate of Burden: 30 minutes.

Type of Respondents: Permittees holding a grazing permit.

Estimated Number of Respondents: 400.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 200 hours.

Comments Are Invited

The agency invites comments on the following: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Use of Comments

All comments received in response to this notice, including name and address when provided, will be summarized and included in the request for Office of Management and Budget approval. All comments will also become a matter of public record.

Dated: April 14, 1999.

Robert Lewis, Jr.,

Deputy Chief, Research.

[FR Doc. 99–9686 Filed 4–16–99; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Cannon/Mittersill Land Exchange; White Mountain National Forest, Grafton County, NH

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA—Forest Service will prepare an environmental impact statement (EIS) for a proposed land exchange between the State of New Hampshire and the Forest Service. The State would acquire approximately 190 acres of National Forest System land near the top of the former Mittersill Ski Area. In exchange, the State would give to the Forest Service a portion of the Second Presidential Tract, located about 5 miles south of Cannon Mountain in the town of Lincoln. In addition, the State desires a Special Use Permit for the operation and maintenance of the Tucker Brook Trail, within its existing footprint. No additional access or ski lifts are proposed for this trail.

The Mittersill parcel proposed for exchange is composed largely of land designated by the Forest Service as Management Areas (MAs) 7.1 and 9.2 (approximately 52 and 132 acres, respectively). MA 7.1 is managed for the development of alpine ski terrain and associated year-round recreation while MA 9.2 is land that is reserved for future ski area expansion. Both management areas have been used for skiing since the early 1930's. Approximately 6 acres of the proposed Mittersill exchange parcel is designated as MA 6.2, which is managed for semi-primitive, non-motorized recreation. This small piece of MA 6.2 is included in the proposed exchange to fulfill a Forest Plan land adjustment objective of achieving ''more efficient land ownership patterns''.

The Second Presidential Tract was acquired by the State of New Hampshire Department of Transportation to facilitate the extension of I–93 through Franconia Notch. The original acquisition contained about 1,665 acres and was part of a much larger tract, the rest of which (4,565 acres) was previously transferred to the United States of America for addition to the WMNF. Approximately 346 acres of the northern portion of the Second Presidential Tract was transferred to the Department of Resources and Economic Development and incorporated into Franconia Notch State Park to compensate for land taken from the park for construction of the Franconia Notch Parkway. An additional 159 acres was utilized by the Department of Transportation for the I–93 right-of-way. The remaining 1,160 acres are available for consideration in the land exchange.

Portions of the state-owned Second Presidential Tract were recommended for possible Forest Service acquisition in the 1986 WMNF Plan. This tract contains significant natural resources including Georgiana Falls, several significant wetlands and relatively mature hard- and softwood forests. The parcel also serves as the visual foreground for the Blue Ridge-Mount Kinsman Area of the Forest which includes a significant portion of the Appalachian Trial. Although owned by the State of New Hampshire, the Second

Presidential Tract remains under the administrative jurisdiction of the New Hampshire Department of Transportation.

The State of New Hampshire proposes to exchange a portion of the Second Presidential Tract with the Forest Service for 190 acres at the top of the Mittersill Ski Area. It is further proposed that the exchange parcel be taken from the northern end of the Tract (bounded by Franconia State Park to the north and the WMNF to the west) in an amount that may equal up to 125% of the value of the Mittersill parcel. The exchange parcel would likely contain Georgiana Falls. Values of the exchange parcels would be determined by appraisers acceptable to both the State of New Hampshire and the Forest Service.

DATES: The agency must receive comments on or before May 19, 1999.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to Anne Archie, District Ranger; White Mountain National Forest; Ammonoosuc/Pemigewasset Ranger District; RFD 3, Box 15, Route 175; Plymouth, New Hampshire 03264.

FOR FURTHER INFORMATION CONTACT: Questions regarding the proposed action, the National Environmental Policy Act (NEPA) process and/or the forthcoming EIS should be directed to Anne Davy, NEPA Coordinator; White Mountain National Forest; Ammonoosuc/Pemigewasset Ranger District; FRD 3, Box 15, Route 175; Plymouth, New Hampshire 03264. Phone: 603–536–1315; fax: 603–536–3281; e-mail: adavy/r9__whitemtn@fs.fed.us.

SUPPLEMENTARY INFORMATION:

Purpose and Need for the Proposal

The New Hampshire State Legislature recently mandated that a new Master Development Plan (MDP) be prepared for Cannon. The new MDP has been completed and accepted by the Cannon Mountain Advisory Commission, the Department of Parks and Recreation (which operates Cannon), the Capitol Budget Overview Committee, and the Governor and Executive Council. This MDP recommended three phases of development, all of which involve upgrading lifts, expanding and improving existing terrain and up-grading service facilities, consistent with the development philosophy for Cannon.

Phase III involves the restoration and reopening of the Mittersill Ski Area. Because expansion opportunities are limited on the Cannon portion of the resort, redevelopment of Mittersill is part of the plan to offer new and exciting terrain to the skiing public. Optimal development of Mittersill would require use of National Forest System lands. Although it would be possible to redevelop the Mittersill area entirely on State lands, it is not desirable for the following reasons:

1. The historic ski trails on National Forest System lands are not maintained for public use. For example, the Taft Trail, which was one of the first ski racing trails in North America and provides an upper mountain connection between Cannon and Mittersill, is highly desirable to reestablish and maintain.
2. Redevelopment of Mittersill entirely on State lands would reduce the amount of new terrain that could be created to about 60% of what is presented in the new MDP.
3. Cannon is deficient in intermediate terrain at present and development of more of this terrain is needed to meet the skiing and riding needs of the public. The Mittersill area offers the greatest potential for intermediate terrain development, but only by utilizing National Forest System land. If National Forest System lands can not be used, the redeveloped Mittersill area on State land would be for advanced and expert skiers only. Cannon Mountain would remain deficient in intermediate terrain.

With respect to the Tucker Brook Trail, the Forest Service does not currently operate or maintain this trail and has no plans to do so in the future. The State believes this trail has historic significance, and for this reason, proposes to assume control of the trail. Since this trail is within the National Forest and is not part of the proposed land exchange, a Special Use Permit is needed.

Consistency With National Forest Policy/White Mountain National Forest Plan

Land exchanges have played an important role in facilitating land acquisitions in National Forests since passage of the General Exchange Act of 1922. Other pieces of important enabling Federal legislation include the Federal Land Policy and Management Act of 1976, the National Forest Management Act of 1976 and the Federal Land Exchange Facilitation Act of 1988. The purpose of the 1988 legislation was to ''facilitate and expedite land exchanges pursuant to the Federal Land Policy and Management Act of 1976 and other laws applicable to exchanges involving lands managed by the Departments of Interior and Agriculture''. Among other things, this act's findings include a declaration from Congress that ''land exchanges are a very important tool for Federal and State land managers and private landowners to consolidate Federal, State and private holdings of land or interests in land for purposes of more efficient management and to secure important objectives including the protection of fish and wildlife habitat and aesthetic values; the enhancement of recreation opportunities; the consolidation of mineral and timber holdings for more logical and efficient development; the expansion of communities; the promotion of multiple-use values; and fulfillment of public needs''. This act further recognized that the ''needs for land ownership adjustments and consolidation consistently outplace available funding for land purchases by the Federal Government and thereby make land exchanges an increasingly important method of land acquisition and consolidation for both Federal and State land managers and private landowners''.

The Forest Plan for the WMNF also recognizes land adjustments, either by purchase or exchange, as important tools for achieving management goals for the National Forest. The plan states that ''Land adjustments (purchase or exchange) will satisfy one or more of the following purposes:

- To accomplish objectives of public law or regulation;
- To meet demand for National Forest System resources;
- To achieve more efficient land ownership patterns;
- To achieve lower resource management costs; and
- To obtain needed access to National Forest System lands.''

In short, Federal legislation gives the Forest Service broad discretionary power to pursue land exchanges while the Forest Plan specifies the criteria to be satisfied when considering land acquisition. The Forest Service believes that the proposed land exchange between the State of New Hampshire and the Forest Service meets all five criteria cited above. Therefore, the Forest Service has concluded that it is in the public interest to pursue the proposed project.

NEPA Process

The Forest Service has adopted a rigorous process of environmental review and analysis, pursuant to NEPA regulations, for all activities on National Forest System lands that have potential environmental impact. This process includes extensive public involvement, beginning with scoping early in the process and concluding with public review of final environmental documents and Forest Service decisions. Public participation is an important part of the analysis, commencing with the initial scoping process (40 CFR 1501.7), which will

occur upon publication of this notification. The Forest Service will be seeking information, comments and assistance from Federal, State and local agencies and other individuals or organizations that may be interested in or affected by the proposed action. The proposed project will be presented at an Open House in the local area, where representatives from the WMNF and the State of New Hampshire will be available to discuss the project and provide additional information. In addition, interested parties are encouraged to visit with Forest Service officials at any time during the analysis and prior to the decision.

Comments from the public and other agencies will be used in preparation of the Draft Environmental Impact Statement (DEIS). Please note that comments will be regarded as public information. The scoping process will be used to:

1. Identify potential issues.
2. Identify major issues to be analyzed in depth.
3. Eliminate minor issues or those which have been covered by a relevant previous environmental analysis, such as the Forest Plan EIS for the WMNF.
4. Identify alternatives to the proposed action.
5. Identify potential environmental effects of the proposed action and it's alternatives, including direct, indirect and cumulative effects.
6. Determine potential cooperating agencies and task assignments.

No significant issues associated with the proposed land exchange or the Special Use Permit for the Tucker Brook Trail have been identified to date. Issues commonly associated with land exchanges of public lands are usually specific to the lands involved but often include methods of determining appropriate values of the parcels involved and potential impacts to threatened, endangered or sensitive species.

In preparing the DEIS, the Forest Service will consider a range of alternatives to meet the objectives of this proposal. One of these will be the ''no action'' alternative, in which none of the proposed activities would be implemented. Additional alternatives may involve issuance of a Special Use Permit instead of a land exchange and/or evaluation of parcels of land other than that already identified that might better meet the management objectives for the WMNF.

The DEIS will analyze the direct, indirect and cumulative environmental effects of the alternatives. Past present and foreseeable future activities on private, State and National Forest System lands will be considered. The DEIS will also discuss site-specific mitigation measures, if necessary, that may be required to implement the project and their anticipated effectiveness.

It is expected at this time that the DEIS will be filed with the Environmental Protection Agency (EPA) and made available for public review in December 1999. At that time, the EPA will publish a Notice of Availability of the DEIS in the **Federal Register.** The comment period on the DEIS will be 45 days from the date the EPA's notice of availability appears in the **Federal Register**. It is very important that those interested in management of the WMNF and Cannon Mountain participate during this review and comment period. To be most helpful, comments on the DEIS should be as specific as possible. The Final EIS (FEIS) is expected to be released in March of 2000.

The Forest Service believes, at this early stage, that it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft 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. *Natural Resources Defense Council, 435 US 519, 558 (1978).* Also, environmental objections that could be raised at the draft environmental impact stage but that are not raised until after completion of the final 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 scoping and 45-day DEIS comment periods 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 developing issues and alternatives.

To assist the Forest Service in identifying and considering issues on the proposed action, comments should be as specific as possible. 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: April 13, 1999.

Donna Hepp,

Forest Supervisor.

[FR Doc. 99–9665 Filed 4–16–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Designation for the Central Illinois (IL) Area

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice; correction.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration published a document in the **Federal Register** of April 1, 1999, announcing designation of Central Illinois Grain Inspection, Inc. (Central Illinois), to provide official services under the United States Grain Standards Act. The document contained an incorrect date.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, 202–720–8525.

Correction

In the **Federal Register** of April 1, 1999, in FR Doc. 99–7995, on page 15723, in the third column, correct the fifth paragraph to read:

Effective June 1, 1999, and ending March 31, 2002, Central Illinois is designated to provide official services in the Central Illinois geographic area specified in the October 1, 1998, **Federal Register**.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: April 13, 1999.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 99–9637 Filed 4–16–99; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Nutrient Management Technical Assistance Activities Policy; Revision

AGENCY: Natural Resources Conservation Service (NRCS), USDA

ACTION: Revision of the NRCS policy for nutrient management technical assistance activities. This revised policy impacts the NRCS national conservation practice standards for Nutrient Management (Code 590) and Waste Utilization (Code 633), which have been revised and reissued to reflect the new policy.

SUMMARY: Notice is hereby given of the decision of NRCS to adopt a revised policy for providing nutrient management technical assistance. This revised policy will be disseminated within the agency through updates of the agency's General Manual. This includes revision of existing policy in Title 450, Part 401, Subpart A Technical Guides, Policy and Responsibilities; and new policy in Title 190, Part 402, Ecological Sciences, Nutrient Management Policy. This policy will be implemented through revision of the agency's conservation practice standards for Nutrient Management (Code 590) and Waste Utilization (Code 633). These national conservation practice standards have been revised and reissued to reflect the new policy.

EFFECTIVE DATES: The new policy and revised conservation practice standards are effective upon the date of adoption by the agency. They will be implemented by NRCS State Conservationists as quickly as possible, but not more than 2 years after their date of adoption by NRCS.

FOR FURTHER INFORMATION CONTACT: Questions about this policy should be directed to Ecological Sciences Division, NRCS, Washington, D.C. Submit questions in writing to Charles H. Lander, Nutrient Management Specialist, Natural Resources Conservation Service, Post Office Box 2890, Room 6155–S, Washington, D.C. 20013–2890.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 requires NRCS to make available for public review and comment proposed revisions to conservation practice standards used to carry out the highly erodible land and wetland provisions of the law. The policy supporting the revised conservation practice standard for Nutrient Management (Code 590) was published for comment in the **Federal Register** on Wednesday, April 22, 1998 (Vol. 163, No. 77, pgs. 19889–19893). Comments were received for 90 days. The revised standard for Waste Utilization (Code 633) was published for comment in the **Federal Register** on Wednesday, October 28, 1998 (Vol. 63, No. 208, pgs. 19889–19893). Comments were received for 60 days.

Signed in Washington, D.C., on March 30, 1999.

Pearlie S. Reed,

Chief, Natural Resources Conservation Service, Washington, D.C.

[FR Doc. 99–9704 Filed 4–16–99; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–815]

Notice of Final Determination of Sales at Less Than Fair Value and Final Affirmative Finding of Critical Circumstances: Elastic Rubber Tape From India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 19, 1999.

FOR FURTHER INFORMATION CONTACT: Alysia Wilson or Cynthia Thirumalai, Office of AD/CVD Enforcement 1, Group I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0108 or (202) 482–4087, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department of Commerce (''Department'') regulations are to the regulations at 19 CFR Part 351 (April 1998).

Final Determination

We determine that elastic rubber tape (''ERT'') from India is being sold in the United States at less than fair value (''LTFV''), as provided in section 735 of the Act. The estimated margins are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

On February 5, 1999, after the publication of our preliminary determination in this investigation (*see Notice of Preliminary Determination of Sales at Less Than Fair Value and Preliminary Negative Critical Circumstances Determination: Elastic Rubber Tape from India*, 64 FR 5025 (February 2, 1999) (*Preliminary Determination*)), Garware Elastomerics Limited (''GEL'') withdrew from the remainder of the proceeding. No interested parties provided comments on the *Preliminary Determination* and no request for a hearing was received by the Department.

Scope of the Investigation

For purposes of this investigation, the product covered is elastic rubber tape. Elastic rubber tape is defined as vulcanized, non-cellular rubber strips, of either natural or synthetic rubber, 0.006 inches to 0.100 inches (0.15 mm to 2.54 mm) in thickness and ⅛ inches to 1⅝ inches (3 mm to 42 mm) in width. Such product is generally used in swim wear and underwear.

The merchandise subject to this investigation is classified in the *Harmonized Tariff Schedule of the United States* (''HTSUS'') at subheading 4008.21.00. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of investigation (''POI'') is July 1, 1997, through June 30, 1998.

Adverse Facts Available

Section 776(a)(2) of the Act provides that if an interested party or any other person (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified as provided in section 782(i) of the Act, the administering authority shall, subject to section 782(d) of the Act, use the facts otherwise available in reaching the applicable determination.

GEL failed to respond to the Department's requests for information; namely, GEL withdrew from the investigation. Accordingly, since GEL has withheld necessary information and withdrawn from the proceeding, which prevented the Department from verifying any of GEL's responses and impeded the Department from further investigation, we have determined, under sections 776(a)(2)(A), (C) & (D) of the Act, that we must base our determination for that company on the facts available.

Section 776(b) of the Act further provides that adverse inferences may be used for a party that has failed to cooperate by not acting to the best of its ability to comply with a request for information (*see* also the Statement of Administrative Action (''SAA''), accompanying the URAA, H. Doc. No. 316, 103rd Cong., 2d Sess. 870). Given GEL's refusal to comply with the

Department's request for information and its withdrawal from participation in the investigation, the Department has determined that GEL has failed to cooperate to the best of its ability in this investigation. Therefore, the Department has determined that an adverse inference is warranted with respect to GEL.

As adverse facts available, the Department is assigning GEL a margin based on the highest margin in the petition. The Department finds that the highest petition margin is appropriate and indicative of GEL's selling practices because if GEL could have submitted information demonstrating the appropriateness of a lower margin, it would have done so. *See,* Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod from Venezuela, 63 FR 8946 (February 23, 1998). The court has upheld the Department's assumption that the petition information is probative of a respondent's experience when a respondent failed to submit information in a proceeding. *See, Koenig and Bauer-Albert AG* v. *United States,* 15 F. Supp 2d 834, 858 (Court of International Trade (CIT) 1998) (stating that ''Commerce had a right to assume that the petition information was more probative of [respondent's] experience because if [respondent] could have submitted information demonstrating that it ought to receive a lower margin, it would have done so.'').

Therefore, the final rate for GEL is 66.51 percent, which is based on the highest margin alleged in the petition. We used this same petition margin as partial adverse facts available in the *Preliminary Determination,* and as discussed there, the Department has, to the extent practicable, corroborated that margin as required by Section 776(c) of the Act. *See* also, Memorandum to Susan Kuhbach regarding ''Corroboration of Secondary Information, Use of Adverse Facts Available'' dated January 26, 1999. Furthermore, no record evidence or argument has been submitted that would cause the Department to call into question the accuracy of the data in the petition. Therefore, we determine that the use of this margin as facts available for GEL is appropriate.

Critical Circumstances

Section 733(e)(1) of the Act provides that, if a petitioner alleges critical circumstances, the Department will determine whether there is a reasonable basis to believe or suspect that (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period.

As discussed above in the ''Facts Available'' section, GEL has not cooperated to the best of its ability in this investigation and application of adverse facts available is appropriate. Since there is no verified information on the record with respect to GEL's volume of imports, and U.S. import statistics are unavailable because ERT is entered under an HTSUS basket category which includes a variety of other products, we have no choice but to apply the adverse inference that GEL has made massive imports of the subject merchandise over a relatively short period of time. Therefore, we find that the second criterion for determining whether critical circumstances exist with respect to GEL's exports of subject merchandise has been met. *See,* Notice of Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From Malaysia, 60 FR 10550, 10551 (February 27, 1995) where the Department determined critical circumstances existed since it was unable to verify the accuracy of this data.

In determining whether an importer knew or should have known that the exporter was selling the subject merchandise at less than its fair value and thereby causing material injury, the Department normally considers margins over 15 percent for CEP sales and 25 percent for EP sales to impute knowledge of dumping and of resultant material injury. *See,* Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the Russian Federation, 62 FR 61787, 61793 (November 19, 1997). In this investigation, we have determined, pursuant to an application of adverse facts available, the margin to be 66.51 percent. As this margin indicates dumping over the 15 and 25 percent thresholds for all of GEL's sales, we determine that the first criterion for ascertaining whether critical circumstances exist has also been satisfied. Therefore, since both criteria for finding critical circumstances under section 733(e)(1) of the Act have been met, we determine that critical circumstances exist with respect to exports of ERT from India by GEL.

The All Others Rate

The foreign manufacturer/exporter in this investigation is being assigned a dumping margin entirely on the basis of facts otherwise available. Section 735(c)(5)(B) of the Act provides that, where the dumping margins established for all exporters and producers individually investigated 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, including averaging the estimated weighted-average dumping margins determined for the exporters and producers individually investigated. Further, the SAA at 873 provides that where the data do not permit weight-averaging, the Department may use other reasonable methods. In this case, the margin assigned to the only company investigated is based on adverse facts available. Therefore, consistent with the SAA at 873, we are using an alternative method. As our alternative, we are basing the ''All Others'' rate on a simple average of the margins in the petition, based both on price-to-price comparisons and constructed value. As a result, the ''All Others'' rate is 45.55 percent.

Continuation of Suspension of Liquidation

In accordance with section 733(d)(1) and 735(c)(4)(A) of the Act, we are directing the U.S. Customs Service (''Customs'') to continue to suspend liquidation of all entries of ERT from India, that are entered, or withdrawn from warehouse, for consumption on or after February 2, 1999 the date of publication of our preliminary determination in the **Federal Register**. In addition, as a result of our critical circumstances determination in our final determination, we will instruct Customs to suspend liquidation of GEL's entries of ERT from India between November 4, 1999, and February 1, 1999 (i.e., 90 days prior to the date of publication of our preliminary determination in the **Federal Register**). We will instruct Customs to require a cash deposit or the posting of a bond equal to the percentage margins, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The dumping margins are as follows:

Exporter/Manufacturer	Margin percentage
Garware Elastomerics Limited (GEL)	66.51

Exporter/Manufacturer	Margin percentage
All Others	45.55

The ''All Others'' rate, which we derived from the average of the margins calculated in the petition, applies to all entries of subject merchandise other than those manufactured or exported by the named respondent.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury, does not exist the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

In accordance with section 735(c)(3) of the Act, if the ITC makes a final negative finding of critical circumstances, the Department will instruct Customs to terminate the retroactive suspension of liquidation of GEL's entries from the period beginning November 4, 1998, through February 1, 1999 (i.e., the 90 day period prior to publication of the preliminary determination). The Department will also instruct Customs to release any bond or other security and refund any cash deposit collected on subject merchandise retroactively suspended during this 90-day period.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: April 12, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–9760 Filed 4–16–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–816]

Final Negative Countervailing Duty Determination: Elastic Rubber Tape From India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 19, 1999.

FOR FURTHER INFORMATION CONTACT: Vincent Kane or Suresh Maniam, Office I, AD/CVD Enforcement, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–2815 or 482–0176, respectively.

Final Determination

The Department of Commerce (''the Department'') determines that countervailable subsidies are being provided to Garware Elastomerics Ltd. and that these subsidies are *de minimis.*

Petitioners

The petition in this investigation was filed by Fulflex, Inc., Elastomer Technologies Group, Inc., and RM Engineered Products, Inc. (''petitioners'').

Respondents

The respondents in this investigation are Garware Elastomerics Ltd. (''GEL''), its affiliate, and the Government of India (''GOI'').

Case History

Since our preliminary determination on December 7, 1998 (63 FR 67457), the following events have occurred: On January 11, 1999, January 13, 1999, February 8, 1999, and February 12, 1999, we issued supplemental questionnaires to respondents. We received responses to these questionnaires prior to verification. On January 8, 1999, we aligned the date of our final determination with the date of the final determination in the companion antidumping duty investigation of elastic rubber tape from India (63 FR 4973). We conducted a verification in India of the questionnaire responses received from the Government of India, Garware Elastomeric Ltd., (GEL) and one of GEL's affiliates from February 21 through March 6, 1999. Petitioners filed a case brief on March 24, 1999. Respondents filed a rebuttal brief on March 26, 1999.

Period of Investigation

The period for which we are measuring subsidies (''the POI'') is GEL's 1997 fiscal year from April 1, 1997 through March 31, 1998.

Scope of Investigation

For purposes of this investigation, the product covered is elastic rubber tape. Elastic rubber tape is defined as vulcanized, non-cellular rubber strips, of either natural or synthetic rubber, 0.006 inches to 0.100 inches (0.15 mm to 2.54 mm) in thickness, and ⅛ inches to 1⅝ inches (3 mm to 42 mm) in width. Such product is generally used in swim wear and underwear.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') at subheading 4008.21.00. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

The 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 is conducting this investigation in accordance with section 701 of the Act.

Injury Test

Because India is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, the International Trade Commission (''ITC'') is required to determine whether imports of the subject merchandise from India materially injure, or threaten material injury to, a U.S. industry. On October 15, 1998, the ITC published its preliminary determination finding that there is a reasonable indication that an industry in the United States is being materially injured, or threatened with material injury, by reason of imports of the subject merchandise from India (*see* 63 FR 55407 (October 15, 1998)).

De Minimis Threshold for Least Developed Countries

Section 705(3) of the Act requires the Department to disregard *de minimis* subsidies in making countervailing duty determinations. The Agreement on Subsidies and Countervailing Measures extends special and differential treatment to developing and least-developed members of the World Trade Organization, inter alia, by raising the *de minimis* level for these members. Normally, *de minimis* is defined as a

subsidy of one percent or less *ad valorem*. In the case of least developed countries the *de minimis* standard is three percent or less. (*See* section 703(b)(4)(C) of the Act.)

Because India is considered a least developed country, it is entitled to the three percent *de minimis* test. (*See* Developing and Least-Developed Country Designations under the Countervailing Duty Law (63 FR 29945, 29946 (June 2, 1998)).

Subsidies Valuation Information

Benchmarks for Short-term Loans: GEL received an exemption from customs duties on certain capital goods under the Export Promotion Capital Goods Scheme contingent on its export performance over a five-year period. We are treating the contingent liability arising from the exemption as a series of short-term, zero rate loans that were taken out in the year prior to the POI. Our benchmark for these loans is an average of the short-term loan rates reported by the State Bank of India for the year prior to the POI. *See* the Reserve Bank of India's Report on Currency and Finance (1997–98, Statement 70). We find this rate to be representative of short-term commercial interest rates in effect prior to the POI.

As explained below in the Affiliated Parties section, we found GEL to be related to an affiliated company. In addition, as explained below in the *Financial Transaction Between GEL and Its Related Company* section, we found that GEL received short-term loans from its affiliate. To determine whether loans received from its affiliate prior to the POI were on commercial terms, we used the State Bank of India's short-term advance rate (described above) as our benchmark rate. For the loans received from its affiliate during the POI, most did not have interest payments due during the POI. Therefore, GEL would not receive any benefit from these loans during the POI. For those loans received from its affiliate during the POI which also had payments due during the POI, we have used as our benchmark the average interest rate on several short-term lines of credit received by GEL from commercial banks.

Affiliated Parties

In accordance with section 771(33) of the Act, the Department considers the following persons to be affiliated or affiliated persons: (1) members of a family; (2) any officer or director of an organization and such organization; (3) partners; (4) employer and employee; (5) any person directly or indirectly owning, controlling, or holding with power to vote, five percent or more of the outstanding voting stock or shares of any organization and such organization; (6) two or more persons directly or indirectly controlling, controlled by, or under common control with, any person; and (7) any person who controls any other person and such other person.

In cases where a company under investigation is affiliated with another company, the Department's questionnaire directs the affiliated company to respond to our countervailing duty questionnaire, if: (1) that company produces the subject merchandise or (2) that company is ''related'' to the company under investigation, and there are financial transactions between the two companies. Normally, we consider companies to be ''related,'' if they prepare consolidated financial statements or if one of the companies has at least 20 percent ownership in the other. *See* Final Affirmative Countervailing Duty Determination: Certain Pasta (''Pasta'') from Italy, 61 FR 30288, 30290 (June 14, 1996). If the related company has financial transactions with the company under investigation that are not on commercial terms and the related company is found to have benefitted from subsidies during the POI, the Department may determine that there has been a transfer of subsidies from the related company to the company originally under investigation.

In this case, based on proprietary information in GEL's November 9, 1998 questionnaire response and its November 16, 1998 supplementary questionnaire response (SQR), we determine that GEL is related to its affiliate. In addition, GEL reported, and we verified, that financial transactions have taken place between the two companies. (*See* March 31, 1999 Memorandum to the File on our reasons for determining the related company to be related.) As described below, our review of these various transactions leads us to conclude that certain of the financial transactions resulted in a transfer of subsidies from the related company to GEL.

Financial Transactions Between GEL and Its Related Company

During GEL's start-up in 1995, the related company supplied certain machinery and equipment and technical advice to GEL. In addition, the related company provided loans and loan guarantees to GEL and, on limited occasions, certain inputs to production. As explained below, we determine that the transactions between GEL and its related company involving loan guarantees and the provision of supplies were on commercial terms. However, the short-term loans provided to GEL by its related company are not on commercial terms. Nor are the financing arrangements for the machinery and technical advice provided to GEL by its related company.

Respondents argue that the financial transactions (short-term loans, loan guarantees, provision of machinery and supplies, and provision of technical advice) between GEL and its related company were consistent with commercial considerations. In support of this argument, they claim that the stock structure of GEL's related company requires that the transactions be made on commercial terms. The transfer of subsidies to GEL through non-commercial transactions would deplete the related company's assets and would be contrary to its shareholders' interests. They conclude that because these transactions were made on commercial terms, the Department has no basis on which to transfer any of the subsidies received by GEL's related company to GEL.

While we recognize that a company generally acts in the best interests of its stockholders, we cannot disregard evidence to the contrary in specific instances. As explained below, we found the short-term loans and the financing arrangements for the machinery and technical advice which GEL received from its related company were not on commercial terms. Hence, it is appropriate to allocate a portion of these subsidies received by GEL's affiliate to GEL.

Short-Term Loans to GEL From Its Related Company

GEL received short-term loans from its related company both prior to and during the POI. To determine whether GEL's loans received prior to the POI were on commercial terms, we first compared the interest rate on these loans to the benchmark rate. This comparison revealed that the interest rate on the loans from the related party was higher than the benchmark rate. We used the Bank of India rates as our benchmark for loans received prior to the POI because we did not have information on any short-term commercial loans which GEL may have received prior to the POI. Respondents assert that the loans GEL obtained from its related company during the POI were provided at above-market rates to take into account possible delays in payment of interest during the start-up period.

In fact, the Department verified that the rate charged by the related company to GEL was greater than the 13.3 percent rate for commercial loans in 1997–98 as

reported by the Reserve Bank of India. However, even though GEL's rate for pre-POI loans was higher than the benchmark rate, the terms of payment on the loans provided prior to the POI were more favorable than commercial terms. Specifically, GEL was required to (and has) repaid the principal on these loans. However, it has not paid interest on these loans and is not required to do so until after its start-up period concludes. Although deferral of interest is not inconsistent with commercial terms in itself, it is inconsistent when the borrower is not required to pay interest on the deferred interest. In such a situation, the borrower is essentially receiving a zero-interest loan in the amount of the interest that is being deferred. Consequently, we determine that GEL has received loans from its related company on terms inconsistent with commercial considerations. An examination of the loan contract does not support respondents' assertion that the interest rate accounts for delayed interest payments.

For the loans received during the POI, we have used a different benchmark interest rate. In selecting a benchmark for short-term government loan, our preference is to use the interest rate on short-term loans received by the company from a commercial bank as our benchmark. GEL received short-term lines of credit from commercial banks during the POI. Therefore, we have used the average of the interest rate on these lines of credit as our benchmark for loans received by GEL from its related company during the POI.

Therefore, for loans received from the related company during the POI which had payments due during the POI, we compared the interest rate charged by the related company to the benchmark rate. Based on this comparison, we determine the interest rate paid by GEL was less than the benchmark and, hence, that these loans were not on commercial terms.

Provision of Machinery

GEL's related company manufactured and sold certain machinery to GEL during its start-up period. The related company calculated the sales price based on the cost of design, materials, fabrication, assembly and profit in an amount equal to the related company's profit ratio from the prior fiscal year. The costs of producing the machinery and the profit amount were audited by an outside accountant and the sales prices were certified by the accountant to be the assessable value of the machinery. The GOI requires an outside audit of financial transactions between related companies because such sales are subject to the excise tax and a sales tax. At verification, we found that the related company actually charged GEL the prices certified by the outside accountant.

We consider the related company's method for setting the sales prices to be a reasonable method of determining a commercial price. However, GEL has not paid its related company for the machinery and will not be required to do so until after its start-up period has concluded. In fact, it appears that GEL will not be required to pay for the machinery until it has sufficient cash flow to do so. Moreover, although GEL is required to pay interest on this debt, which has already been outstanding for a considerable period, it has not done so, nor does it appear that GEL is required to pay interest on the outstanding interest.

Because of the length of time that this debt has been outstanding, the open-ended terms of the debt, and the fact that GEL is not currently paying interest on it, we determine that the financing for GEL's purchases of machinery from its related company is not on commercial terms.

Provision of Technical Advice

GEL also received technical advice from its related company's engineers during its start-up period. The related company invoiced GEL for this technical advice based on the related company's appraisal of the cost of providing the technical advice required for each particular project plus an amount for profit and taxes. As with the purchases of machinery from the related company, an outside engineer certified these costs for excise tax and sales tax purposes. At verification, we found that GEL's related company actually charged GEL the prices certified by the outside engineer.

Petitioners assert that the technical advice from GEL's related company was provided at below market rates. They cite a 1996 Price Waterhouse report which states that the GOI requires accountants and engineers to certify transfer prices between related companies to prevent companies from overstating their costs on sales to related companies as a means of reducing the net profit to be reported for income tax purposes. (*See* Petitioners' February 2, 1999 submission, Exhibit 1.)

At verification, we found that the prices charged to GEL by its related company for technical advice were certified by an outside engineer as the correct assessable value for excise tax purposes. Our review of the engineer's certification of the related company's price for technical advice and our review of the related company's costs of providing the advice and profit confirmed that the related company's method of establishing a price was a reasonable one.

We consider the related company's method for setting the sales prices to be a reasonable method of determining a commercial price. However, GEL has not paid its related company for the technical advice and will not be required to do so until after its start-up period has concluded. In fact, it appears then that GEL will not be required to pay for the technical advice until it has sufficient cash flow to do so. Moreover, although GEL is required to pay interest on this debt, which has already been outstanding for a considerable period, it has not done so, nor does it appear that GEL is required to pay interest on the outstanding interest.

Because of the length of time that this debt has been outstanding, the open-ended terms of the debt, and the fact that GEL is not currently paying interest on it, we determine that the financing for GEL's purchases of technical advice from its related company is not on commercial terms.

Loan Guarantees

GEL's related company guaranteed several of GEL's medium-term loans and charged no fee for the guarantees. During verification, we discussed loan guarantee practices with an official from the UTI Bank Ltd., a commercial bank in New Delhi. The official indicated that it is not uncommon for a parent company to guarantee a loan received by a subsidiary or for a company to guarantee a loan to a related company. The official also said that it was also not uncommon for the guarantor in these cases not to charge a fee for the loan guarantee. Based on these discussions, we determine that the loan guarantees received by GEL from its related company are consistent with commercial considerations.

Petitioners claim that the related company's guarantee of GEL's loans without charging a guarantee fee is inconsistent with commercial considerations.

We disagree. As explained above, we confirmed at verification that such a practice is not uncommon in India. Therefore, we find the related company's provision of guarantees to GEL free of any fees consistent with commercial considerations. (See section 351.506(a)(2) of Countervailing Duties; Final Rule (63 FR 65348, November 25, 1998) (Countervailing Duty Regulations) (although not in effect for this investigation).

Provision of Supplies

GEL purchased diesel fuel and other supplies from its related company during the POI and paid an amount for these supplies equivalent to the related company's cost of acquiring them. GEL purchased these supplies through its related company as a convenience. At verification, we found that the prices paid by GEL's related company for the supplies, as reflected on its purchase invoices, were the prices which the related company charged GEL for the supplies.

Based on our review of the purchase invoices, we determine that the sales were at arm's length and that the prices were market prices for the supplies in question. We found no evidence at verification indicating that GEL could not have purchased the supplies at the same price as its related company. Therefore, we determine that GEL's purchases of supplies from its related company were made on commercial terms.

Petitioners claim that the price for supplies was not a market price because it did not include a mark-up for general, selling and administrative expenses incurred by GEL's affiliate in purchasing supplies. For this reason, GEL's purchases of supplies were not made on commercial terms.

GEL paid market prices for the supplies provided by its affiliate and could have purchased these supplies at the same market prices on its own. Therefore, we find that the fact that GEL was not required to pay a price which included a share of the affiliate's general, selling and administrative expenses does not make the price which it did pay to be on terms inconsistent with commercial considerations. It is not uncommon for affiliates to provide services such as this without charging an additional fee.

Subsidies Received by GEL's Related Company

On January 11, 1999, we issued a countervailing duty questionnaire to the affiliated company. On January 16, 1999, we received a response from the affiliated company indicating that all of the programs that it used during the POI were tied to its production and not to the subject merchandise.

At verification, we examined documentation regarding each of the programs that GEL's related company had used during the POI. With the exception of the Income Tax Exemption Scheme, we determine that benefits under the programs used by GEL's related company, which does not produce subject merchandise, were tied to the products produced and sold by the related company. (Our bases for finding these benefits tied to non-subject merchandise are discussed more fully below.) Because we find the programs used by GEL's related company, with the exception of the Income Tax Exemption Scheme, to be tied to the production and sale of non-subject merchandise, we determine that they confer a benefit only on those products and do not benefit the production or sale of the subject merchandise.

1. Export Promotion Capital Goods Scheme

The Export Promotion Capital Goods Scheme provides for duty reductions or exemptions and an exemption from the excise tax on imports of capital equipment. At verification, the applications, approvals and licenses for this scheme clearly showed that the machinery imported under the scheme was for the production of merchandise produced by GEL's related company. On each of these documents, the products to be produced with the imported machinery were specifically named. The products that had to be exported to satisfy the related company's export obligation under the license were also specifically named on the license. These products were the related company's products, not subject merchandise. In addition, from our observation at verification of GEL's machinery for producing ERT and from our review of machinery imports by GEL's related company, it was clear that the machinery imported by GEL's related company was not the machinery we observed in GEL's plant.

2. Export Oriented Unit (Duty-Free Import of Inputs)

The application, approvals and licenses to obtain this benefit clearly showed that the inputs imported duty-free were inputs to be used in the production of the related company's products. On these documents, the inputs that may be entered duty free are specifically stated. These inputs are inputs used to produce the related company's products and could not be used to produce subject merchandise. Further, the finished products to be produced from these inputs are also clearly stated on these documents. Our review of importations made under the scheme confirmed that the imported inputs were inputs to the related company's products and could not have been used to produce the subject merchandise. Therefore, we find that benefits from this scheme are tied to non-subject merchandise.

3. Pre-Shipment Export Financing

The loan applications and accompanying list of purchase orders from the related company's customers in foreign markets which served as the basis for the loans plainly showed that the products being ordered were the related company's own products.

4. Post-Shipment Export Financing

The loan applications and attached invoices clearly showed that the financing was to enable GEL's related company to extend credit on sales of its products to customers in foreign markets.

5. Duty Drawback of Excise Taxes

The applications, approvals and licenses of GEL's related company clearly showed that the inputs for which duty drawback was claimed were inputs to be used in the production of the related company's products. Our review of importations made under the scheme confirmed that the imported inputs were inputs to the related company's products and could not have been used to produce the subject merchandise.

6. Exemption From the Tax on Interest on Export Credits

During the POI, GEL's related company was not required to pay the interest tax on export credits. GEL's related company received export credits under the Pre-Shipment and Post-Shipment Export Financing programs discussed above. As explained above, these loan programs were tied to the production and sale of GEL's related company's products. Because the interest tax exemption was granted with respect to interest on loans found to be tied to GEL's related company's products, the benefit from the interest tax exemption is also tied to those products.

7. Special Benefits for Trading Houses and Super Star Trading Houses

Although GEL's related company had trading house status during the POI, it did not use its special import license to import restricted merchandise nor did it sell this license during the POI. Because GEL's related company did not benefit from this license during the POI, it was not necessary to determine whether benefits to companies with Trading Houses and Superstar Trading House status are tied to the products produced and sold by these companies.

8. Income Tax Exemption Scheme

During the POI, GEL's related company received benefits under section 80HHC of the Income Tax Exemption Scheme, which provides an

income tax exemption for the profits earned on export sales. Respondents argue that the Department verified that section 80HHC benefits are tied to the production and export of non-subject merchandise. Because section 80HHC provides income tax exemptions to companies based on their total export profits, without regard to the products which earned the profits, we determine that 80HHC benefits are untied export subsidies. See Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom: Final Results of Countervailing Duty Administrative Review, 62 FR 53306, 13–16 (October 14, 1998); Final Affirmative Countervailing Duty Determination: Certain Pasta from Turkey, 61 FR 30366, 70 (June 14, 1996); Final Negative Countervailing Duty Determination: Silicon Metal from Brazil, 56 FR 26988 (June 21, 1991).

We normally attribute a subsidy received by a company to the products produced by that company. However, as discussed above, untied subsidies received by one company may be allocated to a related company, if the company receiving the subsidies transfers them to the company producing the subject merchandise. In GEL's case, as discussed above, its related company provided loans and financing for machinery and technical advice on non-commercial terms. These non-commercial transactions indicate that a portion of the untied subsidies received by GEL's related company should be allocated to GEL.

To determine the portion attributable to GEL, we first calculated the benefit received by GEL's related party under the Income Tax Exemption Scheme. We then calculated GEL's share by multiplying the total benefit by GEL's share of the total sales of both companies. We used this method to determine GEL's share because, although this is an export subsidy to GEL's related company, it should not be considered an export subsidy to GEL for allocation purposes. This is because it was not GEL's exports that gave rise to the portion of the benefit which GEL received but, rather, the short-term loans it received from its affiliate on terms inconsistent with commercial considerations. Since the portion of the subsidy transferred to GEL is untied, and the benefit to GEL is calculated using GEL's total sales, we have used total sales of the two companies as the basis for calculating the share to be allocated to each company. For the countervailable subsidy to GEL, *see* section below on the Transfer of Income Tax Exemption Scheme Benefits to GEL.

Programs Determined To Be Countervailable

With regard to GEL, based on the information provided in the responses and the results of verification, we find the following programs to be countervailable:

A. Export Promotion Capital Goods Scheme

The Export Promotion Capital Goods Scheme (EPCGS) provides for a reduction or exemption of customs duties and an exemption from excise taxes on imports of capital goods. A reduction of customs duties and an exemption from excise taxes are provided under the Concessional EPCGS. Under this scheme, producers may import capital goods at reduced rates of duty and must undertake to earn convertible foreign exchange equal to four times the value of the capital goods within a period of five years. For failure to meet the export obligation, a company is subject to payment of all or part of the duty reduction, depending on the extent of the export shortfall, plus interest on the amount of the payment. (*See* the section below on the *Excise Tax Exemption under the EPCGS* for our treatment of this tax exemption.)

In 1995, GEL received a license under the Concessional EPCGS to import certain machinery to be used in the production of ERT. GEL met the portion of its export undertaking applicable to the POI and has not had to pay duty or interest on the duty reduction which it received under the EPCGS.

The customs duty reduction under the EPCGS represents revenue foregone by the GOI and confers a benefit on GEL. In addition, the duty reduction benefit is specific because its receipt was contingent upon anticipated export performance. Therefore, we determine that duty reduction under the EPCGS is a countervailable subsidy within the meaning of section 771(5) of the Act.

Petitioners claim that GEL did not receive a benefit from the duty exemption under the EPCGS until GEL satisfied its export obligation as required by the scheme. Petitioners state that because GEL's exports during the POI served to satisfy this export obligation, GEL realized the entire duty exemption during the POI. Petitioners also claim that the benefit cannot be allocated to the period before GEL began commercial production because allocating a benefit to a pre-production period would create a loophole in the countervailing duty law because the subsidy could not be countervailed during a period when nothing was exported.

Respondents claim that it is the Department's established practice to expense customs duty exemptions in the year of receipt. Respondents cite Porcelain-on-Steel Cookingware from Mexico: Final Results of Countervailing Duty Administrative Review (57 FR 562, 564; January 7, 1992) (Cookingware from Mexico), as a case in which the Department rejected the Government of Mexico's claim that the benefit of an import duty exemption on machinery should be allocated over the useful life of the machinery. Respondents assert that in this case, the Department should follow its usual practice and expense the benefit in the year of receipt.

GEL may be obligated to pay the duties on its imported capital equipment in each year or in any given year during the five-year period following importation. Thus, we find that the waived duties are properly viewed as a contingent liability loan because GEL has the use of funds from the waived duties interest free for a five-year period, assuming it meets its export obligation. Where a government provides a long-term, interest free loan and the obligation for its repayment is contingent upon subsequent events, our practice is to treat any balance on the loan outstanding during a year as an interest-free short-term loan (in the amount of the duty waived) that is rolled over each year. (*See* Final Negative Countervailing Duty Determination: Fresh Atlantic Salmon from Chile, 63 FR 31437, 42–43 (June 1998); *see* also section 351.505(d)(1) of the Countervailing Duty Regulations. Although GEL met the portion of its export obligation applicable to the POI, we cannot be certain at this point that it will continue to do so in the future. Therefore, we have considered the full amount of the customs duty reduction to be an interest free loan that was outstanding during the POI.

In Cookingware from Mexico, although exporters were subject to forfeiting a portion of benefits if they sold production domestically, receipt of the benefits was not dependent upon exporting a specified amount, the duty exemption received by the company was not contingent on the company's meeting an export obligation for a number of years, nor did it require that duty be paid if the company failed to meet the export obligation. Therefore, the Department did not treat the duty exemption as a contingent liability but countervailed the full amount of the exemption in the POR. As described above, however, the duty exemption under the EPCGS, is contingent on a company's meeting a specific export obligation for a period of five years.

Therefore, we properly countervailed it as a short-term interest-free loan, which is rolled over for a period of five years.

Because we consider the loans to be rolled over from year to year, we used a short-term interest rate as our benchmark for measuring the subsidy. We calculated the benefit as the difference in the interest that GEL paid on the zero-rate loan received as a result of the duty reduction under the EPCGS and the interest GEL would have paid at the benchmark rate. We divided this benefit by GEL's total exports of all products because the capital equipment imported under the Concessional EPCGS was used in the production of all of GEL's products. On this basis, we calculated a subsidy of 1.53 percent ad valorem.

B. Transfer of Income Tax Exemption Scheme Benefits to GEL

As discussed above, GEL's related company received an income tax exemption under section 80HHC of the Income Tax Exemption Scheme on profits from exports during the POI. The 80HHC exemption received by GEL's related company represents revenue foregone by the GOI. In addition, the exemption is specific within the meaning of section 771(5A)(B) of the Act because it is contingent on export performance. Therefore, we determine that the 80HHC exemption received by GEL's related company during the POI is a countervailable subsidy within the meaning of section 771(5) of the Act.

As explained above in the Income Tax Exemption Scheme section, the benefit of the 80HHC exemption is attributable to both GEL and its related company. Accordingly, we have calculated the subsidy for ERT by dividing the amount of the income tax savings from the 80HHC attributable to GEL by GEL's total sales of all products. On this basis, we calculated a subsidy of 0.18 percent ad valorem for GEL during the POI.

Programs Determined To Be Not Countervailable

A. Exemption From Excise Tax on Imports of Capital Goods

In addition to providing for a reduction or exemption of customs duties, the EPCGS also provides for an exemption from excise duties on imports of capital goods. In its February 16, 1999 response, GEL reported that its benefit under the EPCGS was the sum of the customs duty reduction and the excise duty exemption. However, at verification, GEL officials claimed that the excise duty exemption was not a benefit because had GEL not received the exemption but instead paid the excise duty, it would then have received excise credits in the amount of the excise duty payment. Specifically, when GEL purchases inputs or capital goods in the domestic market or in foreign markets (other than under the EPCGS), GEL pays the excise duty or tax. When GEL sells finished products in the domestic market, it collects the excise tax from its customers and remits it to the GOI. In computing the amount of excise tax it must remit to the GOI, GEL gets a credit for the amount of excise taxes it paid on its purchases of inputs and capital goods. In this way, manufacturers are ultimately not burdened by the excise tax. It is essentially a tax on the consumer.

Petitioners claim the Department should not offset the benefit of the excise tax exemption on imports of capital equipment under the EPCGS because respondents did not claim this offset until verification. In addition, petitioners state that the Department's practice precludes consideration of the secondary tax effect on the subsidy provided by the EPCGS.

Respondents claim that at verification, GEL provided information that demonstrates that the excise duty exemption should not be considered a subsidy because payment of the tax results in a credit that can be used against excise taxes owed. In Ball Bearings and Parts Thereof from Thailand: Final Results of Countervailing Administrative Review (60 FR 52371, 52373; October 6, 1995) (Bearings from Thailand—Final), the Department stated that under the VAT system, companies receive credit for the VAT paid on the purchase of inputs and, as a result, no VAT is effectively paid by companies on these purchases. Therefore, the exemption from the VAT was found not to be a countervailable subsidy.

We do not view the excise tax as a prior stage cumulative tax (*see* item (h) of the Illustrative List of Export Subsidies, Annex I of the Agreement on Subsidies and Countervailing Measures (Illustrative List). The excise tax, like a value added tax, is treated as being passed on to the consumer. (See Ball Bearings and Parts Thereof from Thailand: Preliminary Results of a Countervailing Duty Administrative Review, 60 FR 42532 (August 16, 1995)) (Bearings from Thailand—Preliminary). Indian Companies pay the excise tax on purchases of inputs and capital goods and collect it on sales of finished goods. When a company pays the tax it enters a tax credit in its excise tax book. When a company sells finished goods it enters a debit in its excise tax book. Periodically, the company remits in cash any excess excise tax debits over credits to the GOI and receives a rebate for any excess of tax credits over debits. Therefore, because GEL does not ultimately bear the excise tax, we determine that the exemption from the excise tax under EPCGS is not a countervailable benefit.

B. Drawback of Customs Duties

In the preliminary determination of the companion antidumping duty investigation, the Department found that respondents had not provided sufficient information to demonstrate that drawback was tied to import duties paid and should, therefore, be added to U.S price. (Preliminary Affirmative Determination of Sales at Less Than Fair Value and Preliminary Determination of Critical Circumstances: Elastic Rubber Tape from India (64 FR 5025, 5028; February 2, 1999) (Preliminary Anti-Dumping Determination). On the basis of this finding, petitioners allege that GEL received impermissible drawback and claim that the Department should include this program in its countervailing duty investigation.

Under this program, exporters may file a drawback claim after the exportation of finished goods to recover import duties paid on imported inputs used to produce the export goods. Exporters may claim drawback at the all-industry rate or the brand rate. The all-industry rate is an average rate calculated for a product or group of products. The brand-rates are applicable to products of specified description and technical characteristics, which are exported by specific exporters, and permit reimbursement of actual duties paid. Companies may use the all-industry rate or apply for the brand rate and supply the documentation necessary to establish the brand rate.

In 1997, GEL filed an application for a brand-rate to be used in calculating the drawback on export shipments of ERT for inputs imported prior to the POI. At verification, we examined GEL's drawback application. The application included copies of the import entries on which the drawback was based, which showed payment of customs duties on the imported inputs, a bill of materials showing the quantity of each input used by GEL to produce one metric ton of ERT, the duty per kilogram of each input, and the duty borne by each input per metric ton of ERT. The quantities were certified by company officials and by an outside accountant.

An officer from a regional office of the Central Board of Excise and Customs (CBEC) audited GEL's application. As a result of the audit, the quantity of ERT on which GEL could claim drawback

was reduced because the quantity of inputs imported by GEL was sufficient for the production of only this reduced quantity. In addition, the drawback rate was adjusted downward slightly to take into account waste.

At verification, we were unable to review the audit of GEL's application because GOI officials indicated that it had been archived. Instead, we reviewed two recent audits of brand rate drawback applications from other companies producing products other than ERT to determine how the GOI audited these applications. Each of the audits appeared thorough, took several days to complete, and were described in detail in a lengthy audit report. The quantities of inputs necessary to produce a given quantity of each of these companies' outputs was checked by the CBEC officer against each company's actual stock issuance records and batch production cards.

The drawback of customs duties paid on inputs, which are consumed in the production of goods for export, is a permissible rebate and not countervailable provided it is not excessive. (*See* Item (i) of the Illustrative List: *See* Ball Bearing from Thailand—Final). Based on our review of GEL's application for brand rate drawback and the GOI's procedures for auditing such claims, we determine that GEL's adjusted brand rate of drawback provides a non-excessive rebate of customs duties paid on imported inputs, *i.e.*, the duty rebates which GEL received on exports of its finished products did not exceed the duty paid on the imported inputs. Therefore, we determine that the drawback received by GEL under the brand rate of drawback is not countervailable.

Because GEL submitted a published input/output norm with its drawback application, petitioners claim that GEL's drawback claim was based on standard input/output norms rather than on the quantities of inputs GEL actually used to produce a unit of ERT. Therefore, they assert, drawback paid on these inputs is based on an estimate of the duties paid rather than on actual duties. Petitioners also claim that based on this standard norm, GEL's exports qualify for drawback whether the ERT is produced from imported or domestic inputs.

GEL is the only producer of ERT in India. The bill of materials listing the quantities of each input needed to produce a unit of ERT was based on GEL's own production experience. (*See* the March 19, 1999, verification report on GEL, Exhibit 35 at page 3). At verification, we found that auditors from the regional offices of CBEC audit the applications of companies applying for brand-rate drawback. We also found that they audited the input/output ratios based on companies' actual usage as reflected on inventory and production records. The reason that the GOI publishes norms is so they can be disseminated to customs offices throughout the country.

We disagree with petitioners' claim that GEL may receive drawback even if it uses domestic inputs. At verification we found that GEL had applied to receive drawback on a certain quantity of ERT exports. The GOI reduced this quantity to correspond to the quantity GEL was able to produce based on the quantities of inputs it had imported. In addition, GEL was required to include with its application copies of the import entries of each of the imported inputs indicating that duties had been paid on these inputs. Thus, it is clear that GEL's inputs were imported inputs and not domestic ones.

C. Advance Licenses

The Advance Licenses Program allows for the duty-free importation of inputs to be incorporated into finished products for export. Companies importing under advance licenses are obligated to export the products produced using the duty-free imports. GEL received an advance license late in 1997. With this license, GEL was authorized to import duty free a given quantity of the raw materials needed to produce ERT and was obligated to export the ERT produced with these inputs. The quantity to be exported was also specified on the license.

In Certain Iron-Metal Castings from India: Final Results of Countervailing Duty Administrative Review (62 FR 32297, 32306; June 13, 1997) (1995 Castings Final), the Department found the advance license system to accomplish what a drawback system is intended to accomplish, *i.e.*, to allow finished products produced with imported inputs to be exported free of the import duties assessed on the imported inputs. In the 1995 Castings Final, the Department concluded that because the imported inputs were used to produce castings which were subsequently exported, the duty-free importation of these inputs under the advance license was not a countervailable subsidy.

GEL's advance license allows for the duty-free importation of the inputs needed to produce ERT. We verified that GEL did not transfer this license but used it to import inputs that were subsequently used in the production of ERT. At verification, we reviewed customs entries of imported inputs, entries in GEL's inward shipping register, entries in GEL's stock receipt and issuance register and in GEL's batch production card to confirm that imported inputs were used by GEL to produce ERT. From our examination of the import entries and these inventory control records, it was clear that GEL used the imported inputs to produce ERT. It was also clear from our review of export entries that GEL was exporting the ERT produced from the imported inputs thereby satisfying its export obligation under the license. Because GEL used the duty-free imported inputs to produce ERT which was subsequently exported, we do not consider the Advance License program to be countervailable.

Petitioners argue that the advance license is based on standard input/output norms rather than on a producer's actual input/output experience and, therefore, under the Department's practice, countervailable. Further, petitioners indicate that under the Advance License Scheme, inputs are merely assumed to be imported.

Citing Iron Metal Castings from India, respondents argue that Advance Licenses were found not to be countervailable because the Advance License Scheme is a drawback scheme which provides duty rebates commensurate with the duties paid on imported inputs used to produce the exported product.

We agree with respondents that the Advance License Program has been found not countervailable in the past because under this program the drawback of import duties was not excessive. *See* 1995 Castings Final. Despite petitioners' assertions, the Advance License is not based on standard input/output norms. GEL's Advance License specified the quantity of inputs permitted to be imported under the license and the quantity of finished goods to be exported. As explained above, in the section of this notice on Duty Drawback on Exports, we found at verification that the bill of materials (input/output formula) which GEL used was based on its actual experience not a standard norm. This input output/formula was also used to determine GEL's obligation under the Advance License. Therefore, we find that GEL used actual production experience rather than a standard norm for purposes of the Advance License Scheme. Also, under the Advance License Scheme, inputs are not merely assumed to be imported, but must be demonstrated to be imported on the basis of evidence of importations of the inputs required to produce the export product.

Programs Determined Not To Be Used

Based upon the information provided in the responses and our verification, we determine that GEL did not apply for or receive benefits under the following programs during the POI:

A. Passbook Scheme/Duty Entitlement Passbook Scheme.

B. Export Processing Zones/Export Oriented Units Programs.

C. Income Tax Exemption Scheme.

D. Pre-Shipment Export Financing.

E. Post-Shipment Export Financing.

F. Import Mechanism (Sale of Import Licenses).

G. Exemption of the Interest Tax on Export Credits.

H. Re-discounting of Export Bills Abroad.

I. Programs Operated by the Small Industries Development Bank of India.

J. Special Imprest Licenses.

K. Market Development Assistance.

L. Special Benefits to Export Houses, Trading Houses and Super Star Trading Houses.

M. Duty Drawback on Excise Taxes.

N. Pre-Shipment Export Financing in Foreign Currency.

Programs Determined Not To Exist

Based on information provided by the GOI and the results of verification, we determine that the following program does not exist: Preferential Freight Rates.

Interested Party Comments

Comment 1: Use of Facts Available

Petitioners argue that GEL's related company did not properly respond to the Department's questionnaire. Therefore, if the Department determines that any of the financial transactions between the two parties were made on terms inconsistent with commercial considerations, the Department should apply adverse facts available. Petitioners claim that in its January 11, 1999 questionnaire to GEL's related company, the Department informed GEL's related company that it must either respond to the questionnaire by February 11, 1999, or risk facts available being used if it determined that the transactions between the two companies were not on commercial terms. GEL, on behalf of its related company, responded late to the Department on February 16, 1999. In this late submission, petitioners argue that GEL listed the programs used by its related company rather than providing a full description, and merely stated that all of the benefits received were directly tied to non-subject merchandise. In addition, petitioners argue that GEL's related company failed to certify the submission.

Petitioners assert that GEL has falsely certified its responses by simply asserting that the financial transactions with its related company were made on commercial terms and subsequently not responding to the Department's questionnaire. If GEL and its related company had been more forthright in their initial responses, petitioners claim they would have been able to comment fully on the issues and the Department would have been able to issue supplemental questionnaires more readily. Because of these failures, facts available is warranted.

Petitioners assert that at a minimum, the Department should apply facts available to the related company's use of the EPCGS program because GEL never completely answered the Department's questions regarding this program. As such, it is unclear whether the related company benefitted from this program. Petitioners argue that the Department should make adverse inferences regarding certain transactions between GEL and its related company and find that benefits transferred to GEL from the affiliate's use of the EPCGS.

Respondents assert that petitioners' request that the Department apply facts available to GEL is unfounded. They state that they have cooperated fully in this investigation by responding to all of the Department's requests for information and cooperating fully during verification.

Regarding petitioners' claim that GEL failed to accurately respond to the Department's September 18, 1998 questions regarding the EPCGS program, respondents assert that their responses were accurate and complete. Respondents argue that GEL responded that it did not use or benefit from the EPCGS program during the POI based on the Department's previous treatment of such programs as benefitting companies at the time the duty on imports was actually paid. Because GEL received benefits from this program outside of the POI, it did not report the benefits. However, respondents point out that they did provide the information once the Department informed the company of its possible change in methodology.

Respondents also argue that GEL should not be penalized for petitioners' failure to include the Drawback of Customs Duties program and Advance License Scheme in their petition. Because these programs have been previously found not countervailable by the Department, respondents claim that petitioners are required to provide new evidence to suggest that the Department's prior decisions were incorrect or that the programs are otherwise countervailable. Petitioners provided no such evidence.

Furthermore, according to respondents, GEL's related company should not be penalized for not providing a separate response to the Department's questionnaire. Because the related company believed its financial transactions with GEL were made on commercial terms and all of the programs it used were tied to the production and export of non-subject merchandise, it was unnecessary for it to respond on its own.

Respondents point out that they filed a certificate of accuracy on March 4, 1999, regarding its February 16, 1999 response.

DOC Position

We disagree with petitioners' claim that GEL's related company did not respond adequately to our countervailing duty questionnaire and that its response was not filed on time. Based on the evidence, pursuant to section 776(a) of the Act, we find that facts available are unwarranted because respondents did not (1) withhold information, (2) did not fail to provide information by the due dates required in the form and manner requested or (3) did not significantly impede the investigation. The February 16, 1999 questionnaire response of GEL's related company was filed timely. The original due date for this response was extended from February 11, 1999 to February 16, 1999, by the case analyst in a telephone conversation with respondents. Thus, although petitioners were not notified of the extension as they should have been, respondents were timely in their submission.

Although respondents did not initially file a certification of accuracy with the related company's questionnaire response, they did file one on March 6, 1999. We do not find this delayed certification, in and of itself, grounds for applying fact available under section 776(a) of the Act. Moreover, the related company's response, which was filed as an exhibit to GEL's February 16, 1999 SQR, did contain a certificate (in proper form) of accuracy from GEL. Moreover, both GEL and the related company responded to our questionnaires and were fully cooperative at verification. Furthermore, at verification, we were able to confirm the accuracy of their responses. Therefore, we find no basis for using facts available in this case.

We also disagree with petitioners' assertion that GEL falsely certified its responses by simply asserting that the financial transactions with its related company were on terms consistent with

commercial considerations. Although GEL maintained that it had no commercially inconsistent transactions, as defined in the questionnaire, with related companies in its questionnaire response, GEL did inform the Department of financial transactions it had with its related company by briefly listing them in its response and thereafter supplied the Department with additional information as requested, which we later verified. Because GEL was forthright in its response regarding these transactions, we see no grounds for applying facts available in this circumstance.

Petitioners are mistaken in stating that capital goods which GEL's related company transferred to GEL were imported under the EPCGS. At verification, we confirmed that all of the capital goods imported under the EPCGS by the related company were tied to the production of the related company's products. The capital goods in question were identified in Attachment 3 of GEL's December 23, 1998 questionnaire response. As we confirmed at verification, these capital goods could not be used in producing the related company's merchandise but were produced by GEL's related company for GEL and sold to GEL at market prices. These capital goods were not imported under the EPCGS. (*See* the March 16, 1999 verification report on GEL's related company at page 9.)

We agree with respondents' claim that they should not be penalized for failure to include the Drawback of Customs Duties and the Advance License schemes in their response. Because the petition did not allege that respondent benefitted from Drawback of Customs Duties and the Advance License schemes, the original questionnaire did not include questions about the Advance License or the Drawback of Customs Duties. The subject of drawback arose only after the preliminary determination in the antidumping investigation where the Department disallowed respondents' claim that drawback be added to the U.S. price. (*See* Preliminary Anti-dumping Determination). It was not until after the preliminary determination in this investigation that petitioners alleged these programs. Because their allegation was timely, however, we then sent a supplementary questionnaire to respondent with regard to this scheme. In an SQR dated February 16, 1999, GEL reported that it had imported natural rubber under the Advance License Scheme to be used in the production of elastic rubber tape for export. At verification, as described above, we reviewed this scheme fully. Therefore, we conclude that the information provided by respondents on these programs was adequate and that use of facts available is not warranted.

We also agree with respondents' claim that GEL's related company should not be penalized for not providing a separate questionnaire response. As required under section 782(e) of the Act, the Department cannot decline to consider information necessary to the determination even though it may not meet all of the requirements established provided that the information is submitted by the deadline, can be verified, is not so incomplete that it cannot be used, and the interested party has demonstrated that it has acted to the best of its ability. As described above, because GEL and its affiliate answered our questionnaire and supplemental responses in a timely fashion, and the information was verified and usable, we find that GEL and its affiliate acted to the best of their ability. Therefore, facts available are unwarranted. Pursuant to section 776(a) of the Act, even though GEL did not provide a full description of the programs its related company benefitted from during the POI, GEL did provide sufficient timely information. This permitted us to verify fully whether any of the benefits received by GEL's related company were tied to its products and not transferred to GEL. Therefore, we find that GEL's related company responded sufficiently and we find no basis for using facts available in this determination.

Comment 2: Excise Rebates

Petitioners argue that the Department should countervail the excise rebates reported in GEL's 1997/98 financial statements. They assert that because GEL failed to provide a copy of its financial statements for the POI in a timely manner, the Department was unable to fully investigate whether the line item entitled ''Other Income'' from ''Excise Rebate Received Export'' constitutes a countervailable subsidy. Therefore, the Department should apply facts available and countervail these rebates.

DOC Position

We disagree with petitioners since we received GEL's financial statements in sufficient time to review them prior to verification. At verification, we confirmed that the excise rebates referred to in the financial statements were, in fact, permissible rebates of the excise tax, as discussed above in the *Exemption from Excise Tax under the EPCGS* section of this notice.

Comment 3: Income Tax Exemption Scheme

Respondents argue that the Income Tax Exemption Scheme (''ITES'') is tied to the production of the related company's products such that the benefits earned under a tax deduction from ITES could be attributed to a related company. Respondents cite to section 351.525(b)(5) of the countervailing duty regulations saying that ''subsidies tied to the production, sale, or export of a particular product will be attributed only to that product.'' Respondents also state that in cross-ownership situations, only untied subsidies may be allocated to a subsidiary. Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Canada, 62 FR 54972, 54981 (Oct. 22, 1997). Respondents further point to Final Negative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Laminated Hardwood Trailer Flooring (LHF) from Canada, 62 FR 5201, 5202 (February 4, 1997) to state the fact that even when the Department treats several companies as one, it will not countervail a subsidy that was received for non-subject merchandise. Finally, respondents argue that because of the Department's position on fungibility of money, the Department would refuse ''to trace the use of specific funds to determine whether the funds were used for their stated purpose.''

DOC Position

It is the Department's consistent and long-standing practice to attribute the benefit from an export subsidy that is not tied to a particular product or market to all export sales. See *e.g.*, Certain Iron-Metal Castings From India; Final Results and Partial Rescission of Countervailing Duty Administrative Review; 63 FR 64050, 055 (Nov. 18, 1998); Final Affirmative Countervailing Duty Determination: Certain Pasta from Turkey, 61 FR 30366, 30370 (June 1996). Where, as here, the tax exemption applies to all export profits, we find that it is not tied to a particular product or market and therefore is an untied export subsidy. *See* Silicon Metal From Brazil (tax exemption from profits of export sales a subsidy to all exports).

We disagree with respondents that all subsidies received by GEL's affiliate were tied to the production and sale of products produced by GEL's affiliate. As described above, although six of the seven programs investigated were tied to the particular products produced by GEL's affiliate, we find the ITES, which

exempts all of a firm's export profits from the income tax, is not tied to a particular product.

In determining whether a benefit is or is not tied, we examine whether the company's application, the government's approval notice, and the benefits disbursal documents specify the product or products that qualify to receive the benefit. If the production and sale of a particular product is specified on these documents, we generally regard the benefit as tied to that product. In the case of this scheme, we saw no evidence at verification of the application or approval forms for receipt of the benefit because the benefit was claimed directly on the income tax return.

As discussed elsewhere in this notice, because there were transactions between GEL and its affiliate, which we find were not on market terms, we find both companies have benefitted from this subsidy. Respondents do not dispute that it is the Department's practice to allocate subsidies in between related parties where the subsidies are untied nor the Department's authority in this regard. *See* e.g., Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom; Final Results of Countervailing Duty Administrative Review, 62 FR 53306, 3313–16 (Oct. 1998); Final Negative Countervailing Duty Determination: Certain Laminated Hardwood Trailer Flooring From Canada, 62 FR 5201, 02 (Feb. 1997); Final Affirmative Countervailing Duty Determination: Steel Wire Rod From Canada, 62 FR 54972 (Oct. 1997). Rather, respondents agree that our practice of allocating only untied subsidies between two companies is consistent with the Department's basic principle of tying.

Respondents rely upon the Department's new regulations for the proposition that export subsidies are tied subsidies which may be attributed only to products exported by the company directly receiving the subsidy. While we note that these regulations are not in effect for this investigation, there is nothing in our view, as discussed above, of how to treat export subsidies that is contradicted by our new regulations. *See* 19 CFR 351.525(b)(2). In addition, respondents themselves acknowledge that under our new regulations we have codified our practice of allocating untied subsidies between related companies (*i.e.*, companies with cross-ownership) in a circumstance where one company is not producing subject merchandise. *See* 19 CFR 351.525(b)(6)(v).

Verification

In accordance with section 782(i) of the Act, we verified the information used in making our final determination. We followed our standard verification procedures, including meeting with government officials and examination of relevant government records and original source documents. Our verification results are outlined in detail 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).

Summary

In accordance with section 705(a)(3) of the Act, we determine that the total estimated net countervailable subsidy rate is 1.71 percent ad valorem which is *de minimis*. Therefore, we determine that no countervailable subsidies are being provided to the production or exportation of elastic rubber tape from India. Pursuant to section 705(c)(2) of the Act, this investigation will be terminated upon publication of the final negative determination in the **Federal Register**.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination.

Return or Destruction of Proprietary Information

This notice serves as the only reminder to parties subject to Administrative Protective Order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Failure to comply is a violation of the APO.

This determination is issued and published pursuant to section 705(d) and 777(i) of the Act.

Dated: April 12, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–9761 Filed 4–16–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041499A]

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 U.S.C. Chapter 35). This request is being submitted under the emergency processing procedures of the Paperwork Reduction Act.

Agency: National Oceanic and Atmospheric Administration.

Title: Large Pelagic Fishing Survey.

Agency Form Number(s): None.

OMB Approval Number: None.

Type of Request: New collection—emergency clearance requested.

Burden: 4,752 hours.

Number of Respondents: 21,500 (multiple responses).

Avg. Hours Per Response: Ranges between 2 and 15 minutes depending on the requirement.

Needs and Uses: The Large Fishing Survey consists of dockside and telephone surveys of recreational anglers and headboats fishing for large pelagic species (tunas, sharks, and billfish) in the Atlantic Ocean. The summer fisheries for bluefin tuna and marlin begin in June. Catch monitoring in these two fisheries and collection of catch and effort statistics for all large pelagic fish is required under the Atlantic Tunas Convention Act and the Magnuson-Stevens Fishery Conservation and Management Act. Information collected through the survey is essential for the U.S. to meet its reporting obligation to the International Commission for the Conservation of Atlantic Tunas.

Affected Public: Individuals, businesses or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent no later than April 30, 1999 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503.

Dated: April 12, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–9727 Filed 4–16–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041499B]

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 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Effectiveness of the Coastal Services Center's Coastal Change Analysis Program.

Agency Form Number(s): None.

OMB Approval Number: None.

Type of Request: New collection.

Burden: 67 hours.

Number of Respondents: 200.

Avg. Hours Per Response: 20 minutes.

Needs and Uses: The Coastal Change Analysis Program (C-CAP) of the Coastal Services Center has been using remote sensing technology to quantify habitat change in coastal areas of the United States. It offers to coastal managers the ability to monitor habitat loss due to natural events such as hurricanes or human induced events. The questionnaire, which will be used for programmatic evaluation, will provide information on the performance of C-CAP and the utility of their products. The information will be used to make appropriate improvements, investigate potential links with the private sector, and plan future program implementation.

Affected Public: State, local or tribal government, federal government, business or other for-profit organizations, not-for-profit institutions.

Frequency: One time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503.

Dated: April 9, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–9729 Filed 4–16–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 030199B]

Marine Mammals; File No. 369–1440

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

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that Dr. Bruce R. Mate, Oregon State University, Newport, Oregon 97365–5296, has been issued an amendment to Permit No. 369–1440 to take various species of large whales and opportunistically take by Level B harassment other species of marine mammals, for purposes of scientific research.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment (See **SUPPLEMENTARY INFORMATION**).

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Sara Shapiro, 301/713–2289.

SUPPLEMENTARY INFORMATION: On December 29, 1998, notice was published in the **Federal Register** (63 FR 71618) that an amendment of Permit No. 369–1440, issued September 18, 1998 (63 FR 52686), had been requested by the above-named individual. 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), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the provisions of § 222.25 of the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR 222.23).

The amendment authorizes the applicant to import/export samples from large whales on a worldwide basis, and to conduct tagging activities in international waters.

Issuance of this amendment, as required by the ESA was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Documents are available for review in the following locations:

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Alaska Region, NMFS, P.O. Box 21668 Juneau, AK 99802 (907/586–7221);

Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way, NE, BIN C15700, Seattle, WA 98115 (206/526–6150);

Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213 (562/980–4015);

Coordinator, Pacific Area Office, NMFS, 2570 Dole Street, Room 106, Honolulu, HI 96822–2396 (808/955–8831);

Regional Administrator, Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432 (813/570–5312); and

Regional Administrator, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930, (978/281–9250).

Dated: April 14, 1999.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–9730 Filed 4–16–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. 990408092–0992–01]

RIN 0651–ZA01

Notice of Public Hearing and Request for Comments on the Proposed New Act of the Hague Agreement Concerning the International Registration of Industrial Designs

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of hearing and request for public comments.

SUMMARY: The United States Patent and Trademark Office is seeking comments to obtain views of the public on the international effort to form a new Act of the Hague Agreement Concerning the International Deposit of Industrial Designs. The proposed Act will make it easier for United States applicants to obtain protection of their industrial

designs abroad by providing a mechanism in which a single international application on industrial designs will have the effect of filing an application in each of the Parties designated by the applicant. Interested members of the public are invited to testify at the hearing and to present written comments on any of the topics outlined in the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES: A public hearing will be held on May 13, 1999, starting at 9:00 a.m. and ending no later than 5:00 p.m. If sufficient interest warrants, an additional public hearing will be held in an alternate location or by televideo conference.

Those wishing to present oral testimony at the hearing must request an opportunity to do so no later than May 11, 1999.

To ensure consideration, written comments must be received by May 20, 1999. Written comments and transcripts of the hearing will be available for public inspection on or about May 24, 1999.

ADDRESSES: The May 13, 1999 hearing will be held in the Commissioner's Conference Room located in Crystal Park Two, Room 912, 2121 Crystal Drive, Arlington, Virginia. Those interested in testifying or in submitting written comments on the topics presented in the **SUPPLEMENTARY INFORMATION**, or any other related topics, should send their request or written comments to the attention of Mary Critharis addressed to Commissioner of Patents and Trademarks, Box 4, Patent and Trademark Office, Washington, DC 20231. Written comments may be submitted by facsimile transmission to Mary Critharis at (703) 305–8885. Comments may also be submitted by electronic mail through the Internet to mary.critharis@uspto.gov. Written comments will be maintained for public inspection in Crystal Park Two, Room 902, 2121 Crystal Drive, Arlington, Virginia. Written comments in electronic form may be made available via the PTO's World Wide Web site at http://www.uspto.gov. No requests for presenting oral testimony will be accepted through electronic mail.

FOR FURTHER INFORMATION CONTACT: Mary Critharis by telephone at (703) 305–9300, by facsimile at (703) 305–8885, by electronic mail at mary.critharis@uspto.gov, or by mail addressed to Commissioner of Patents and Trademarks, Box 4, Washington, DC 20231.

SUPPLEMENTARY INFORMATION:

I. Background

The Hague Agreement Concerning the International Deposit of Industrial Designs (hereinafter ''Hague Agreement''), concluded in 1925 under the auspices of the World Intellectual Property Organization (WIPO), establishes a mechanism for obtaining industrial design protection on an international level. Since its inception, the Hague Agreement was revised in London in 1934 (hereinafter ''1934 Act'') and subsequently in The Hague in 1960 (hereinafter ''1960 Act''). The Hague Agreement was supplemented in respect of certain provisions on fees by an Additional Act signed in Monaco in 1961 and in respect of the administrative clauses by a Complementary Act signed in Stockholm in 1967.

The Hague Agreement is currently governed by procedures established in the 1934 Act and the 1960 Act. The 1960 Act, which entered into force in 1984, enacted uniform fees and procedures for depositing a design with the International Bureau of WIPO. The Hague Agreement gives any applicant who is a national of one of the member States the possibility of obtaining, by means of a single application filed with WIPO, protection for industrial designs in all member States designated by the applicant. Accordingly, this procedure eliminates the difficulties of filing in each of the individual States. Presently, twenty-nine States are party to the Hague Agreement. The Member States are Belgium, Benin, Bulgaria, Côte d'Ivoire, Democratic People's Republic of Korea, Egypt, France, Greece, Germany, Holy See, Hungary, Indonesia, Italy, Liechtenstein, Luxembourg, Monaco, Mongolia, Morocco, Netherlands, Republic of Moldova, Romania, Senegal, Spain, Slovenia, Suriname, Switzerland, The Former Yugoslav Republic of Macedonia, Tunisia, and Yugoslavia. In 1997, approximately 4,000 international applications were deposited with WIPO, which contained over 20,000 industrial designs.

To date, the United States has not acceded to the Hague Agreement because of numerous provisions that are inconsistent with United States law and practice. A process of revising the Hague Agreement to improve the existing text was initiated in 1991. The aim of the revision is twofold: to permit more States to adhere to the Hague Agreement by removing obstacles that have excluded States whose legislation provides for examination of industrial designs; and to make the system simpler, less expensive, and more responsive to the creators of industrial designs. A Committee of Experts has developed a new Act of the Hague Agreement Concerning the International Registration of Industrial Designs (hereinafter ''new Act of the Hague Agreement''). It attempts to simplify the formal obligations and reduce the associated costs for industrial design applicants and owners in obtaining and preserving their rights for industrial designs in many countries of the world. A Diplomatic Conference to conclude these negotiations is scheduled to convene from June 16 to July 6, 1999, in Geneva, Switzerland.

The proposed new Act of the Hague Agreement contains several advantages for United States industrial design applicants. As global trading increases and multinational businesses grow, worldwide protection for industrial designs is becoming extremely important and desirable. Despite this increased importance, obtaining protection for industrial designs on an international scale is both expensive and complex. Overall, the proposed new Act of the Hague Agreement will provide a more convenient method of seeking industrial design protection worldwide. In particular, using a single application, in the English language, filed with the United States Patent and Trademark Office (USPTO), United States applicants will be able to obtain protection for industrial designs in all member States of the Hague Agreement. Most important, however, is that the single application may be filed with the knowledge that all Contracting Parties to the Agreement have agreed upon a uniform list of elements to be included in the application. (Article 1 of the proposed new Act of the Hague Agreement defines Contracting Party as any State or intergovernmental organization party to the new Act.)

Given the benefits to the users of the Hague system, the United States has been actively involved in the negotiations with the goal of obtaining a suitable agreement that could engender interest and support by United States industry and designers. Although protection for industrial designs is available in the United States under various laws, including patent, trademark, copyright, and unfair competition laws, the United States has taken the position that, if adopted, implementation of the new Act of the Hague Agreement would be through United States design patent law.

The USPTO, leading the negotiations for the United States, is interested in obtaining comprehensive comments to assess continued support for the effort. In light of the impending conclusion of

this effort, the USPTO desires to ensure that the text of the treaty and accompanying regulations is disseminated as widely as possible and the opportunity to provide comments is correspondingly comprehensive.

Written comments may be offered on any aspect of the treaty articles, rules, notes, or expected implementation in the United States. Comments are also welcome on any of the topics outlined below.

II. Brief Summary of the Proposed Treaty

The current text of the proposed new Act of the Hague Agreement includes thirty-four articles, thirty-two rules, and associated notes. A brief summary of most of the articles, followed by an overall summary of the treaty, appears below. This discussion is intended only to highlight various portions of the articles of the treaty; it is not intended as a comprehensive treatment of the draft texts. The draft texts, identified in Part III below, should be consulted for a complete understanding of the effort that is underway.

Article 1—Abbreviated Expressions: This Article provides definitions for terms used throughout the text of the proposed articles and rules. For the most part, this article is self-explanatory.

Article 2—Applicability of Other Protection Accorded by Laws of Contracting Parties and of Certain International Treaties: This Article provides that the new Act of the Hague Agreement will not affect other protection of industrial designs afforded by Contracting Parties unless such protection diminishes or interferes with the rights under this Act. In addition, the provisions of this Act will not affect certain existing international treaties including the Agreement on Trade-Related Aspects of Intellectual Property, the Paris Convention for the Protection of Industrial Property (hereinafter ''Paris Convention''), and copyright treaties.

Article 3—Entitlement to File an International Application: This Article provides that any person who is a national of a Contracting Party or who has a domicile in the territory of a Contracting Party is entitled to file an international application.

Article 4—Procedure for Filing the International Application: This Article allows an international application to be filed, at the applicant's option, at either WIPO or through the national Office of a Contracting Party, such as the USPTO. The filing date is the date on which either WIPO or the national Office receives the application. However, if filed with the national Office of a Contracting Party, the filing date is conditioned upon timely transmittal to WIPO.

Article 5—Contents of the International Application: This Article recites the mandatory content of an international application.

Article 6—Priority: This Article allows an applicant to claim priority under Article 4 of the Paris Convention in an international application by filing a declaration. The priority can be established by one or more earlier applications filed in a country that is party to the Paris Convention or a Member of the World Trade Organization.

Article 7—Designation Fees: This Article provides that the prescribed application fees will include a designation fee for each designated Contracting Party. A Contracting Party may replace the prescribed designation fee with an individual designation fee covering its application processing and examining costs.

Article 8—Correction of Irregularities: This Article requires WIPO to allow applicants to make corrections if WIPO determines that an international application does not meet the requirements of the Hague Agreement at the time of filing. However, if the applicant fails to make the corrections in a timely manner, the international application may be abandoned.

Article 9—International Registration, Date of the International Registration, and Publication: This Article mandates WIPO to register each international application immediately upon receipt of a complete international application. In addition, WIPO will publish the international registration and send a copy of the publication to each designated Contracting Party. The date of international registration will be the filing date of the international application.

Article 10—Deferment of Publication: This Article allows Contracting Parties to defer publication for up to thirty months from the filing date or priority date, if claimed.

Article 11—Refusal of Effects and Remedies Against Refusals: This Article permits the national Office of any designated Contracting Party to refuse registration when the conditions for the grant of protection under the Contracting Party's laws are not met. In doing so, the national office must communicate the refusal, stating all the grounds, to WIPO within the prescribed time period. WIPO will, in turn, forward the notification to the applicant. In addition, the applicant who filed an international application must have the same remedies as an applicant who filed an application under the domestic laws of the Contracting Party.

Article 12—Effects of the International Registration: This Article states that the effect of the international registration will be the same as that for a regularly filed national application for the grant of protection of the industrial design under the law of the Contracting Party.

Article 13—Invalidation: This Article requires a Contracting Party to notify WIPO of any invalid registration or grant of protection. Invalidation may not be pronounced until the holder has been given the opportunity to defend the registration or grant of protection.

Article 14—Recording of Changes and Other Matters Concerning International Registrations: This Article requires WIPO to record the following changes in the International Register: any change of ownership of the international registration; any change in name or address of the holder; any appointment of a representative; and any limitation or invalidation of the international registration. Any recording will have the same effect as if it had been made in the Office of the Contracting Party concerned.

Article 15—Term and Renewal of the International Registration: This Article provides that the minimum period of protection is fifteen years from the date of the international registration. Contracting Parties may provide for an initial term of protection of five years from the date of international registration, subject to renewals for additional five-year periods.

Article 16—Information Concerning Published International Registrations: This Article permits WIPO to supply a person paying the prescribed fees information or copies of an international registration.

Article 17—Additional Mandatory Contents of the International Application: This Article contains additional requirements for international applications that designate a Contracting Party with an Examining Office. For example, the international application may have to include an indication of the creator of the industrial design, a brief description of the reproduction or of the characteristic features of the industrial design, and/or claim(s).

Article 18—Special Requirements Concerning Unity of Designs: This Article allows a Contracting Party to maintain its unity of design requirements.

Article 19—Confidential Copies of International Registrations Whose Publication is Deferred: This Article protects confidential copies of an

international registration by requiring Examining Offices to keep the application in confidence. Examining Offices may only use a copy of the international registration sent by WIPO for examination purposes.

Article 20—Republication of the Industrial Design: This Article provides that if an industrial design has been amended to satisfy the condition of novelty before an Examining Office, that Office can charge a fee for the publication of the amended reproduction.

Articles 21 through 34 of the proposed new Act of the Hague Agreement comprise the Administrative Provisions. Accordingly, these articles, and accompanying regulations, relate to the administration and implementation of the Hague Agreement, and include matters such as membership, voting rights, effective dates of accession, and applicability of previous Acts.

Overall Summary: After filing an international application, WIPO determines whether the minimum requirements are met, assigns a filing date, registers the application, and forwards the application to the designated Contracting Parties. The international registration is then published by WIPO and Contracting Parties are given a limited time to decide whether to register or grant protection to the industrial design(s) contained in the international application. The term for the protection of each industrial design runs at least fifteen years from the date of international registration for each industrial design.

I. Text of the Proposed Treaty, Rules, and Notes

The text of the proposed new Act of the Hague Agreement, with associated rules and notes, is available at WIPO's World Wide Web site at http://www.wipo.int/eng/main.htm. The documents are H/DC/3, H/DC/4, H/DC/5, and H/DC/6.

Requests for paper copies of the text may be made in writing to Mary Critharis at the above address or by telephone at (703) 305–9300.

II. Issues of Potential Concern

Insofar as this effort to revise the Hague Agreement is focused upon, and limited to, formal matters associated with industrial design applications and protection, the USPTO expects that, if adopted, changes to our design patent law would be minimal. Although many provisions in the proposed new Act of the Hague Agreement were incorporated to accommodate United States law and interests, several issues have yet to be fully resolved. Below is a brief summary of the more important issues of potential concern to the USPTO and United States applicants. This summary, however, is by no means an exhaustive recitation of the impact of the proposed new Act of the Hague Agreement on United States practice and interests.

1. Filing Procedures

Article 4 and Rule 13 of the proposed treaty provide that if an Office of a Contracting Party does not transmit an international application to WIPO within the prescribed time period, the filing date is the date on which WIPO receives the application. Accordingly, an applicant may lose the benefit of the earlier filing date with the national Office if for some reason it did not transmit the application to WIPO in a timely fashion.

2. Fee Structure

Although Article 7 and Rule 12 of the proposed treaty permit Contracting Parties to set an individual designation fee in connection with any international application, it appears that the individual designation fee must include all fees that would be charged under the national procedure for the grant of protection. Therefore, while Contracting Parties may require the payment of national fees not covered by the individual designation fee (such as fees charged for appeals, fees for extensions of time, and inspection fees), it appears that certain fees, namely the filing fee and issue fee, would have to be included in the individual designation fee.

3. Effect of International Application

Article 12 of the proposed treaty requires Contracting Parties to give the same effect to international applications as regularly filed applications. This conflicts with the so-called Hilmer practice in the United States where a disclosure contained in a patent of foreign origin is effective as prior art only as of its United States filing date, rather than the foreign or international filing date.

4. Failure to Communicate Notification of Refusal

Article 12 of the proposed treaty provides that if a Contracting Party did not send a notification of refusal within the prescribed time period, the grant of protection will ensue automatically. As a result, examining countries like the United States would be obliged to give effect to a design that may have not been examined, either because the application was misplaced or due to administrative delay on the part of the Office of the Contracting Party. This conflicts with United States law which obliges the Commissioner of the USPTO to undertake an examination of an application and make a positive act of issuing a patent, if it is determined to be patentable.

5. Changes in Ownership

Article 14 of the proposed treaty establishes a central ownership registry whereby Contracting Parties must give effect to changes in ownership of industrial designs recorded with WIPO, but not necessarily recorded in the USPTO. According to United States practice, unless recorded in the USPTO, a transfer of ownership of a patent or patent application is void against subsequent bona fide purchasers or mortgagees. Moreover, to record an assignment or any other type of conveyance of ownership in the United States, a statement indicating that an interest has been conveyed must be submitted to the USPTO. Therefore, in the United States, subsequent purchasers are able to view the contents of any agreement that purports to transfer ownership. In contrast, the proposed treaty does not require the submission of any type of documentation indicating a transfer of ownership to effectuate changes of ownership in the International Register. Nevertheless, according to the proposed treaty, any changes in ownership recorded with WIPO must be sufficient notice to subsequent purchasers in the United States. This may represent a significant departure from current law and practice regarding changes of ownership in patents in the United States.

V. Issues for Public Comment

Interested members of the public are invited to testify and present written comments on any issues they believe to be relevant to the foregoing discussion or any aspect of the proposed new Act of the Hague Agreement. The questions posed below identify specific issues that would benefit from public comment:

1. Do you have any overall interest in United States accession to the new Act of the Hague Agreement? Please discuss any potential advantages and drawbacks in your response.

2. Do you feel that you would use an international system for the protection of industrial designs as proposed by the new Act of the Hague Agreement? Please identify your reasons in your reply.

3. Do you currently file applications under the existing Hague Agreement through entities located in current member States? If yes, please describe

your experiences and explain any problems encountered.

4. Please discuss issues of potential concern identified in Part IV of this notice. In your response, please include the following:

(a) Clearly identify the matter being addressed;

(b) Indicate whether the particular matter would create significant problems for United States applicants and, in particular, whether it would discourage use of an international system for the protection of industrial designs as proposed by the new Act of the Hague Agreement;

(c) Identify potential drawbacks and/or advantages of the particular matter addressed;

(d) Provide examples, where appropriate, that illustrate the matter addressed;

(e) Identify any relevant legal authorities applicable to the matter being addressed; and

(f) Provide suggestions regarding how the matter should be addressed by the United States.

5. Please discuss any related matters not specifically identified in the above questions. If this is done, parties are requested to:

(a) Label that portion of their response as ''Other Issues'';

(b) Clearly identify the matter being addressed;

(c) Provide examples, where appropriate, that illustrate the matter addressed;

(d) Identify any relevant legal authorities applicable to the matter being addressed; and

(e) Provide suggestions regarding how the matter should be addressed by the United States.

VI. Guidelines for Oral Testimony

Individuals wishing to testify must adhere to the following guidelines:

1. Anyone wishing to testify at the hearing(s) must request an opportunity to do so no later than May 11, 1999. Requests to testify may be accepted on the date of the hearing if sufficient time is available on the schedule. No one will be permitted to testify without prior approval.

2. Requests to testify must include the speaker's name, affiliation and title, mailing address, and telephone number. Facsimile number and Internet mail address, if available, should also be provided. Parties may include in their request an indication as to whether they wish to testify during the morning or afternoon session of the hearing.

3. Speakers will be given between five and fifteen minutes to present their remarks. The exact amount of time allocated per speaker will be determined after the final number of parties testifying has been determined. All efforts will be made to accommodate requests for additional time for testimony presented before the day of the hearing.

4. Speakers may provide a written copy of their testimony for inclusion in the record of the proceedings. These remarks should be provided no later than May 20, 1999.

5. A schedule providing the approximate starting time for each speaker will be distributed the morning of the day of the hearing. Speakers are advised that the schedule for testimony will be subject to change during the course of the hearings.

VII. Guidelines for Written Comments

Written comments should include the following information:

1. Name and affiliation of the individual responding; and

2. If applicable, an indication of whether comments offered represent views of the respondent's organization or are the respondent's personal views.

If possible, parties offering testimony or written comments should provide their comments in machine-readable format. Such submissions may be provided by electronic mail messages sent over the Internet, or on a 3.5″ floppy disk formatted for use in either a Macintosh or MS–DOS based computer.

Machine-readable submissions should be provided as unformatted text (e.g., ASCII or plain text), or as formatted text in one of the following file formats: Microsoft Word (Macintosh, DOS, or Windows versions) or WordPerfect (Macintosh, DOS, or Windows versions).

Information that is provided pursuant to this notice will be made part of a public record and may be available via the Internet. In view of this, parties should not submit information that they do not wish to be publicly disclosed or made electronically accessible. Parties who would like to rely on confidential information to illustrate a point are requested to summarize or otherwise submit the information in a way that will permit its public disclosure.

Dated: April 12, 1999.

Q. Todd Dickinson,

Acting Assistant Secretary of Commerce and Acting Commissioner of Patents and Trademarks.

[FR Doc. 99–9733 Filed 4–16–99; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Availability of the ''Annual Report to Congress on the Status of the Harbor Maintenance Trust Fund for Fiscal Year 1997''

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: This notice is to inform the general public of the availability of the ''Annual Report to Congress for Fiscal Year 1997.'' Single copies of the report may be obtained free of charge.

FOR FURTHER INFORMATION CONTACT: Mr. James D. Hilton, Operations Division, Office of the Chief of Engineers at (202) 761–8830 or fax (202) 761–1685.

SUPPLEMENTARY INFORMATION: The Harbor Maintenance Fee was authorized under Sections 1401 and 1402 of the Water Resources Development Act of 1986, Pub. L. 99–662. This law imposed a 0.04 percent fee on the value of commercial cargo loaded (exports and domestic cargo) or unloaded (imports) at ports which have had Federal expenditures made on their behalf by the U.S. Army Corps of Engineers since 1977. Section 11214 of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–580, increased the Harbor Maintenance Fee to 0.125 percent, which went into effect on January 1, 1991. Harbor maintenance Trust Fund monies are used to pay up to 100 percent of the Corps eligible Operations and Maintenance expenditures for the maintenance of commercial harbors and channels. Section 201 of the Water Resources Development Act of 1996, Pub. L. 104–303, expanded the use of Harbor Maintenance Trust Fund monies to pay Federal expenditures for construction of dredged material disposal facilities necessay for the operation and maintenance of any harbor or inland harbor; dredging and disposing of contaminated sediments that are in or that affect the maintenance of Federal navigation channels; mitigating for impacts resulting from Federal navigation operation and maintenance activities; and operating and maintaining dredged material disposal facilities.

Section 330 of the Omnibus Budget Reconciliation Act of 1992, Pub. L. 102–580, requires that the President provide an Annual Report to Congress on the Status of the Trust Fund. The release of this report is in compliance with this legislation.

Dated: April 8, 1999.

Eric R. Potts,

Colonel, Corps of Engineers, Executive Director of Civil Works.

[FR Doc. 99–9732 Filed 4–16–99; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of partially closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: May 13–16, 1999.

TIME: May 13—Subject Area Committee #1, 1:30–2:20 p.m., (open); Joint Meeting of the Design and Methodology Committee and the Subject Area Committee, #1 and #2, 2:30–3:30 p.m., (closed); Design and Methodology Committee, 3:30–4:30 p.m., (open); Subject Area Committee #2, 3:30–4:30 p.m., (open); and Reporting and Dissemination Committee, 3:00–4:30 p.m., (open). May 14—Full Board, 8:30–9:00 a.m., (open), 9:00–10:30 a.m. (closed), 10:30 a.m.–5:00 p.m., (open); May 15—Nominations Committee, 8:00–9:00 a.m., (closed); Full Board, 9:00–11:30 a.m., (open); adjournment, 11:30 a.m.

LOCATION: Lowe's New York, 569 Lexington Avenue, New York, N.Y.

FOR FURTHER INFORMATION CONTACT: May Ann Wilmer, Operations Officer, National Assessment Governing Board, Suite 825, 800 North Capitol Street, NW, Washington, DC, 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994 (title IV of the Improving America's Schools Act of 1994) (Pub. L. 103–382).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress. The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons. Under Public Law 105–78, the National Assessment Governing Board is also granted exclusive authority over developing the Voluntary National Tests pursuant to contract number RJ97153001.

On May 13, the Subject Area Committee #1 will meet in open session from 1:30–2:30 p.m. The Committee will discuss the new NAEP Foreign Language Consensus contract.

From 2:30–3:30 p.m., there will be a closed joint meeting of the Design and Methodology Committee and the Subject Area Committee #1 and #2. The Committee will discuss the results of a report about the feasibility of linking assessment instruments. This meeting must be closed because references will be made to specific items from the assessment and premature disclosure of the information presented for review would be likely to significantly frustrate implementation of a proposed agency action. Such matters are protected by exemption (9)(B) of Section 552b(c) of Title 5 U.S.C.

The Design and Methodology Committee will meet in open session from 3:30–4:30 p.m., to consider technical issues related to the Voluntary National Tests, and hear a report from the National Academy of Sciences' studies on ''market basket assessment'', conduct of assessments below the state level.

Subject Area Committee #2 will meet in open session from 3:30–4:30 p.m. to discuss the NAEP mathematics assessment item development activities for 2000.

Also on May 13, the Reporting and Dissemination Committee will meet in open session from 3:00–4:30 p.m. Agenda items for this meeting include action on the revisions to NAGB Policy on Reporting and Dissemination of National Assessment Results; an update on the implementation of the Board decision on reporting private school results; sampling and reporting of students with disabilities and limited-English proficiency; and reporting Voluntary National Tests results to parents and schools.

On May 14, the full Board will convene in open session from 8:30–9:00 a.m. The Board will hear a report from the Executive Director of the National Assessment Governing Board, and an update on NAEP activities. From 9:00–10:30 a.m., the Board will meet in closed session to receive a report on the Achievement Level Setting for Civics and Writing Assessments and to discuss the results. This portion of the meeting must be closed because references will be made to specific items from the assessment and premature disclosure of the information presented for review would be likely to significantly frustrate implementation of a proposed agency action if conducted in open session. Such matters are protected by exemption 9(B) of Section 552b(c) of Title 5 U.S.C.

The Board will convene in open session from 10:30 a.m. to 4:00 p.m. The agenda for this portion of the meeting includes a report and discussion on the Voluntary National Tests: Purpose, Definitions and Reporting Plans; NAEP Report on Accommodations; a discussion on the National Assessment Design 2000–2010; and a discussion on the NAGB plan and report to Congress on achievement levels. Final action of the day will be remarks from the New York State Commissioner of Education.

On May 15, there will be a closed meeting of the Nominations Committee from 8:00–9:00 a.m. The Committee will discuss nominees qualifications for Board membership. These discussions will relate solely to the internal personnel rules and practices of an agency and would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemption (2) and (6) of Section 552b(c) of Title 5 U.S.C.

Beginning at 9:00 a.m., until adjournment, approximately 11:30 a.m., the full Board will reconvene to hear an update on the Voluntary National Tests and to receive reports from its various standing committees.

Also on May 15, the full Board will receive and consider the Nominations Committee recommendations for membership, in a partially closed session, beginning at 11:30 a.m. through adjournment, approximately 12:00 noon. The review and subsequent discussion of this information relate sole to the internal personnel rules and practices of an agency and will disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session.

Such matters are protected by exemptions (2) and (6) of Section 552b(c) of Title 5 U.S.C.

Summaries of the activities of the closed sessions and related matters, which are informative to the public and consistent with the policy of 5 U.S.C. 552b(c), will be available to the public within 14 days of the meeting. Records are kept of all Board proceedings and

are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite #825, 800 North Capitol Street, NW, Washington, DC, from 8:30 a.m. to 5:00 p.m.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 99–9663 Filed 4–16–99; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. SA99–22–000, SA99–23–000, and SA99–24–000 (Not Consolidated)]

Atlantic Richfield Corporation; Notice of Petitions for Dispute Resolution or, Alternatively, for Adjustment

April 13, 1999.

Take notice that on March 9, 1999, Atlantic Richfield Corporation (Arco) filed the above-referenced petitions, requesting the Commission to resolve disputes concerning its Kansas ad valorem tax refund obligation to the pipelines listed below.

Pipeline and docket No.	Refund claim
Colorado Interstate Gas Company, SA99–22–000 [1]	$415,240.17
Northern Natural Gas Company, SA99–23–000 [2]	166,103.28
Williams Gas Pipelines Central, Inc., SA99–24–000 [3]	172,916.89

[1] Changed from Docket No. GP99–7–000.
[2] Changed from Docket No. GP99–8–000.
[3] Changed from Docket No. GP99–9–000.

Arco requests that the Commission resolve its dispute with Northern and Williams by holding that termination agreements and/or settlements with these two pipelines resolved all issues associated with Kansas ad valorem tax refund liability and extinguishes the pipeline's refund claim in its entirety. Arco contends that by agreeing in the settlement to forego claims it for nonperformance it otherwise could have continued to pursue, Arco agreed to accept total payments under the contracts that did not exceed the MLP ceilings multiplied by the total volumes represented by each pipeline's nonperformance. In such circumstances, no refund should be required. To order otherwise would prevent Arco from receiving the very benefits it bargained for in the settlements-settlements that the Commission itself strongly encouraged as a means to resolve the massive take-or-pay and underpayments liabilities of interstate pipelines and make the transition to a more market-responsive and competitive environment.

Arco maintains that Northern and consumers benefited from agreements and settlements because the settlements allowed the pipelines to avoid the much higher costs that full-performance of the contract would have entailed. By resolving ''all claims'' relating to, inter alia, ''contractual price'', the settlements resolved the Kansas ad valorem tax reimbursement issue. The Commission has found that these settlements served the public interest.

Arco also requests the Commission to establish procedure to verify the refund calculations in all three dockets to ensure fairness and equity.

Alternatively, Arco requests that the Commission waive Arco's refund liability pursuant to Section 502(c) of the NGPA. Arco asserts that the Commission has equitable discretion to grant adjustment relief from this refund requirement. Since the tax reimbursement payments made by the pipelines were for taxes that Arco in fact paid the State of Kansas, Arco maintains it did not retain any revenues in excess of the MPLs. Arco maintains that the equities in the case require the Commission to waive Arco's refund obligation. At a minimum, Arco continues, the Commission should waive the royalty portion of the refund. Arco notes that it sold its Kansas properties in 1993, and thus no longer has ongoing contractual relationships with its former Kansas royalty owners. The response from Arco's former royalty owners to Arco's mailing has been negligible. To engage in extensive searches or to pursue legal action against these interests would be a cost-prohibitive exercise in futility. Since Arco has transferred or otherwise ended the leases in question here, and thus has no ongoing relationship with the royalty owners, let alone relationships that would permit Arco to impose a unilateral reduction in future royalty payments as contemplated in Wylee. Arco asserts that the royalty portion of the refund claim is uncollectible, as a practical matter, due to the passage of time and the Kansas statute of limitations. Arco's petitions are on file with the Commission, and they are open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Any person desiring to be heard or to make any protest with reference to any of these petitions 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, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 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 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–9680 Filed 4–16–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–227–000]

High Island Offshore System; Notice of Technical Conference

April 13, 1999.

In the Commission's order issued on March 31, 1999, 86 FERC ¶ 61,321 (1999), the Commission directed that a technical conference be held to address issues raised by the filing.

Take notice that the technical conference will be held on Wednesday, May 12, 1999, at 10:00 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

All interested parties and staff are permitted to attend.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–9652 Filed 4–16–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–287–000]

Texas Gas Transmission Corporation; Notice of Application

April 13, 1999.

Take notice that on April 5, 1999, pursuant to Sections 7(b) and 7(c) of the Natural Gas Act (NGA), Texas Gas Transmission Corporation (Texas Gas), P.O. Box 20008, Owensboro, Kentucky 42304, filed in Docket No. CP99–287–000 on Abbreviated Application for a Certificate of Public Convenience and Necessity and Request for Abandonment Authorization (Application). Texas Gas seeks authority to construct, own, and operate a 13 mile pipeline loop of its existing Slaughters-Montezuma Line and to abandon by retirement its White River Storage Field. Texas Gas' proposals are more fully set forth in the application on file with the Commission and open to public inspection. This application may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Texas Gas proposes to abandon by retirement its White River Storage Field due to problems with the field's reliability, due in large part to the recent failures of gas treatment equipment at the field. Texas Gas says that the significance and need for the storage facility has lessened over the past few winters due to the increase in operational efficiencies of its other storage fields. Texas Gas says that the delivery capabilities associated with the White River Storage Field can be more efficiently performed by the addition of 13 mile pipeline loop of its existing Slaughters-Montezuma Line as described below. The abandonment of the White River Storage Field would include the plugging of wells, the abandonment in place of underground pipeline and the removal of above-ground facilities at an estimated cost of $500,000, an amount which is significantly lower than the capital cost that would be necessary to upgrade the facility's gas treatment equipment to optimal conditions.

Texas Gas proposes to install, own, and operate about 13 miles of 12-inch pipeline loop of a portion of its existing Slaughters-Montezuma system. The loop will assist in replacing the peaking capability formerly supplied by the White River Storage Field and provide both system security and elimination of a current bottleneck on this segment of the pipeline. The estimated cost associated with the installation of the pipeline loop is $4,730,000 and will be paid for from funds on hand.

Texas Gas says that the net effect of the two proposals will allow an incremental increase of 1.1 MMCF/D delivery to the northern end of the Slaughters-Montezuma system and will be of no adverse effect to Texas Gas's firm service commitments (seasonal or peak requirements) or system operations.

Any person desiring to be heard or making any protest with reference to said application should on or before May 3, 1999, 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 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make protestants parties to the proceedings. The Commission's rules require that protestors provide copies of their protests to the party or person to whom the protests are directed.

Any person wishing to become a part to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents issued by the Commission, filed by the applicant, or filed by all other 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 serve copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as filing an original and 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 such comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents, and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission, and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on these applications if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Texas Gas to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–9645 Filed 4–16–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–291–000]

Transcontinental Gas Pipe Line Corporation; Notice of Application

April 13, 1999.

Take notice that on April 7, 1999, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket

No. CP99–291–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon certain facilities located Offshore Louisiana by sale to Union Oil Company of California (Unocal), all as more fully set forth in the application on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online.rims.htm (call 202–208–2222 for assistance).

Specifically, Transco states that it seeks authorization to abandon by sale to Unocal the following facilities: (1) 1.012 miles 6-inch Purchase Lateral, Pan-American and Unocal's platform in Vermilion Block 35, Offshore Louisiana; (2) 0.451 mile 4-inch lateral, Union Platform #3 to Platform #1 in Vermilion Block 35, Offshore Louisiana; and (3) a 600 HP skid mounted compressor unit, Unocal Platform B in Vermilion Block 67, Offshore Louisiana. The facilities are collectively referred to as the Vermilion 35 and 67 Facilities. Transco states that these faculties are currently included in its spindown proceeding on file with the Commission in Docket No. CP96–206–000 and upon approval of this abandonment by sale, Transco will remove these facilities from the spindown proceeding.

Transco states that the abandonment of the Vermilion 35 and 67 Facilities will be by sale to Unocal, and no removal of any of the facilities will be required. Transco states that the purchase price for the Vermilion 35 and 67 Facilities at the closing will be $1.00 and other good and valuable consideration, and that the estimated net book value of the Vermilion 35 and 67 Facilities as of March 31, 1999 was $28,978. In addition, Transco states that the requested abandonment will have no impact on the daily design capacity of or operating conditions on its system, and no service to any of Transco's customers will be impacted by the abandonment of these facilities.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 4, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to 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.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment 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 a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Transco to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–9646 Filed 4–16–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG99–91–000, et al.]

EGENOR S.A., et al.; Electric Rate and Corporate Regulation Filings

April 12, 1999.

Take notice that the following filings have been made with the Commission:

1. EGENOR S.A.

[Docket No. EG99–91–000]

Take notice that on April 7, 1999, EGENOR S.A. filed with the Federal Energy Regulatory Commission a request pursuant to Section 365.5 of the Commission's regulations to amend its March 10, 1999 application for determination of exempt wholesale generator status .

The requested amendments set out certain modifications to the planned business activities described in EGENOR S.A.'s March 10, 1999 application.

Comment date: May 3, 1999, 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. Western Massachusetts Electric Company

[Docket Nos. ER92–67–008 and ER93–219–005]

Take notice that on April 7, 1999, Northeast Utilities Service Company (NUSCO), tendered for filing refund reports and revised CIAC charges in compliance with the Commission's orders in *Western Massachusetts Electric Company*, Opinion No. 409, 77 FERC ¶ 61,268, (1996), rehearing denied 81 FERC ¶ 61,152 (1997) and *Western Massachusetts Electric Company* 63 FERC ¶ 61,222, (1993), rehearing denied 66 FERC ¶ 61,167 (1994).

Comment date: April 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Minnesota Power, Inc.

[Docket No. ER99–2405–000]

Take notice that on April 7, 1999 the above-referenced public utility filed their quarterly transaction report for the for the first quarter of 1999.

Comment date: April 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Wisconsin Electric Power Company

[Docket No. ER99–2406–000]

Take notice that on April 7, 1999, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing electric service agreements under its Market Rate Sales Tariff (FERC Electric Tariff, Original Volume No. 8) and its Coordination Sales Tariff (FERC Electric Tariff, Original Volume No. 2) with TransAlta Energy Marketing (U.S.) Inc. Wisconsin Electric respectfully requests an effective date of April 6, 1999 to allow for economic transactions.

Copies of the filing have been served on TransAlta Energy Marketing (U.S.) Inc., the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: April 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. California Independent System Operator Corporation

[Docket No. ER99–2407–000]

Take notice that on April 7, 1999, the California Independent System Operator Corporation (ISO) tendered for filing a proposed amendment (Amendment No. 15) to the ISO Tariff. Amendment No. 15 implements portions of a Settlement filed on April 2, 1999, in Docket Nos. ER98–441–000, ER98–495–000, ER98–496–000, et. al.

The ISO states that this filing has been served upon the Public Utilities Commission of California, the California

Energy Commission, the California Electricity Oversight Board, and all parties with effective Scheduling Coordinator Service Agreements under the ISO Tariff.

Comment date: April 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. New England Power Pool

[Docket No. ER99–2408–000]

Take notice that on April 7, 1999, the New England Power Pool Executive Committee filed for acceptance a signature page to the New England Power Pool (NEPOOL) Agreement dated September 1, 1971, as amended and signed by PP&L EnergyPlus Co. (PP&L). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Executive Committee states that the Commission's acceptance of PP&L's signature page would permit NEPOOL to expand its membership to include PP&L. NEPOOL further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make PP&L a member in NEPOOL.

NEPOOL requests an effective date of May 1, 1999, for commencement of participation in NEPOOL by PP&L.

Comment date: April 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Western Resources, Inc.

[Docket No. ER99–2409–000]

Take notice that on April 7, 1999, Western Resources, Inc. (Western Resources) tendered for filing two Long-Term Firm Point-To-Point Transmission Service Agreements between Western Resources and Western Resources Generation Services. Western Resources states that the purpose of the agreements is to permit non-discriminatory access to the transmission facilities owned or controlled by Western Resources in accordance with Western Resources' open access transmission tariff on file with the Commission.

The agreements are proposed to become effective April 1, 1999.

Copies of the filing were served upon the Kansas Corporation Commission.

Comment date: April 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Northern States Power Company (Minnesota Company); Northern States Power Company (Wisconsin Company)

[Docket No. ER99–2410–000]

Take notice that on April 7, 1999, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (collectively known as NSP) tendered for filing a Short-Term Market-Based Electric Service Agreement between NSP and Associated Electric Cooperative, Inc. (Customer).

NSP requests that this Short-Term Market-Based Electric Service Agreement be made effective on March 15, 1999.

Comment date: April 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Northern States Power Company (Minnesota Company); Northern States Power Company (Wisconsin Company)

[Docket No. ER99–2411–000]

Take notice that on April 7, 1999, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (collectively known as NSP) tendered for filing an Electric Service Agreement between NSP and Associated Electric Cooperative (Customer). This Electric Service Agreement is an enabling agreement under which NSP may provide to Customer the electric services identified in NSP Operating Companies Electric Services Tariff original Volume No. 4.

NSP requests that this Electric Service Agreement be made effective on March 15, 1999.

Comment date: April 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Northeast Utilities Service Company

[Docket No. ER99–2412–000]

Take notice that on April 7, 1999, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement to provide Non-Firm Point-To-Point Transmission Service to FPL Energy Power Marketing, Inc. under the NU System Companies' Open Access Transmission Service Tariff No. 9.

NUSCO states that a copy of this filing has been mailed to FPL Energy Power Marketing, Inc.

NUSCO requests that the Service Agreement become effective May 1, 1999.

Comment date: April 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Northeast Utilities Service Company

[Docket No. ER99–2413–000]

Take notice that on April 7, 1999, Northeast Utilities Service Company (NUSCO) tendered for filing, a Service Agreement to provide Firm Point-To-Point Transmission Service to FPL Energy Power Marketing, Inc. under the NU System Companies' Open Access Transmission Service Tariff No. 9.

NUSCO states that a copy of this filing has been mailed to FPL Energy Power Marketing, Inc.

NUSCO requests that the Service Agreement become effective May 1, 1999.

Comment date: April 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Virginia Electric and Power Company

[Docket No. ER99–2414–000]

Take notice that on April 7, 1999, Virginia Electric and Power Company (Virginia Power) tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service with DukeSolutions, Inc. under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreement, Virginia Power will provide firm point-to-point service to the Transmission Customer under the rates, terms and conditions of the Open Access Transmission Tariff.

Virginia Power requests an effective date of April 7, 1999, the date of filing of the Service Agreement.

Copies of the filing were served upon DukeSolutions, Inc., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: April 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Virginia Electric and Power Company

[Docket No. ER99–2415–000]

Take notice that on April 7, 1999, Virginia Electric and Power Company (Virginia Power) tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service with DukeSolutions, Inc. under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreement, Virginia Power will provide non-firm point-to-point service to the Transmission Customer under the rates, terms and conditions of the Open Access Transmission Tariff.

Virginia Power requests an effective date of April 7, 1999, the date of filing the Service Agreement.

Copies of the filing were served upon DukeSolutions, Inc., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: April 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. El Paso Electric Company

[Docket No. ER99–2416–000]

Take notice that on April 7, 1999, El Paso Electric Company (EPE) submitted for filing a market-based Market Rate Tariff No. 1 to permit EPE to engage in wholesale power sales of energy and capacity at market-determined prices in the Four Corners, Palo Verde and Southwestern Public Service Company markets and all markets interconnected directly or indirectly with those markets outside of the Southern New Mexico market.

Comment date: April 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Cleco Corporation

[Docket No. ER99–2417–000]

Take notice that on April 7, 1999, Cleco Corporation, (Cleco) tendered for filing a service agreement under which Cleco will make market based power sales under its MR–1 tariff with ONEOK Power Marketing.

Cleco states that a copy of the filing has been served on ONEOK Power Marketing.

Comment date: April 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Public Service Electric and Gas Company, PECO Energy Company, Atlantic City Electric Company, Delmarva Power & Light Company, PP&L, Inc., Baltimore Gas and Electric Company, Jersey Central Power & Light, Company, Metropolitan Edison Company, Pennsylvania Electric Company, Potomac Electric Power Company, and UGI Utilities, Inc.

[Docket No. ER99–2419–000]

Take notice that on April 7, 1999, PECO Energy Company, Metropolitan Edison Company and Public Service Electric and Gas Company filed amendments to the Extra High Voltage Transmission System Agreement, the Transmission Enhancement Facilities Agreement, the Susquehanna-Eastern 500 kV Transmission System Agreement and the Lower Delaware Valley Transmission System Agreement on behalf of the parties to those Agreements.

Comment date: April 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such 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 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. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers

Secretary

[FR Doc. 99–9682 Filed 4–16–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests

April 13, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. Type of Application: New Major License.

b. Project No.: 2566–010.

c. Date Filed: March 30, 1999.

d. Applicant: Consumers Energy Company.

e. Name of Project: Webber Hydroelectric Project.

f. Location: On the Guard River, in Lyons and Portland Townships, near the City of Portland, Ionia County, Michigan. The project would not utilize federal lands.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Applicant Contact: David Battige, Consumers Energy Company, Hydro Operations, 330 Chestnut Street, Cadillac, MI 49601, (616) 779–5506.

i. FERC Contact: Any questions on this notice should be addressed to Tom Dean, E-mail address, thomas.dean@ferc.fed.us, or telephone (202) 219–2778.

j. Deadline for filing additional study requests: May 31, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. Status of environmental analysis: This application is not ready for environmental analysis at this time.

l. Description of the Project: The project consists of the following existing facilities: (1) a 32-foot-high, 1,200-foot long dam comprising: (a) a 157-foot-long concrete powerhouse section, (b) a 313-foot-long concrete spillway with 10 taintor gates and one hydraulic flap gate, and (c) two earth embankment sections having a combined total length of 730 feet; (2) a 7-mile-long reservoir having a 660-acre surface area at a normal pool elevation of 684.4. feet USGS; (3) a powerhouse containing two generating units with a total installed capacity of 3,250 kW; and (4) other appurtenances.

m. Locations of the application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20246, or by calling (202) 208–1371. The application may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h. above.

n. With this notice, we are initiating consultation with the State Historic Preservation Officer as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

o. Under § 4.32(b)(7) of the Commission's regulations (18 CFR 4.32(b)(7)), if any resource agency, Indian Tribe, or person believes that the applicant should conduct an additional scientific study to form an adequate factual basis for a complete analysis of the application on its merits, they must file a request for the study with the Commission, not later than 60 days after the date the application is filed, and must serve a copy of the request on the applicant.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–9647 Filed 4–16–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File an Application for a New License

April 13, 1999.

a. Type of filing: Notice Of Intent To File An Application For A New License.

b. Project No.: 2720.

c. Date Filed: March 19, 1999.

d. Submitted By: City of Norway—current licensee.

e. Name of Project: Sturgeon Falls Project.

f. Location: On the Menominee River, in Dickinson County, Michigan, and Marinette County, Wisconsin.

g. Filed Pursuant To: Section 15 of the Federal Power Act.

h. Licensee Contact: City of Norway, Mark Isackson, City Manager, City Hall, 915 Main Street, Norway, MI 49870, (906) 563–9961.

i. FERC Contact: Any questions on this notice should be addressed to Patti Leppert-Slack, E-mail patricia.leppertslack@ferc.fed.us, or telephone (202) 219–2767.

j. Effective Date Of current License: August 1, 1953.

k. Expiration Date Of current License: July 31, 2004.

l. The existing project consists of: (1) A 300-foot-long overflow spillway with 44-inch-high flashboards; (2) a reservoir with an estimated surface area of 400 acres and a normal pool elevation of 830.1 feet; (3) a concrete headworks structure, located 200 feet upstream of the dam, which controls inflow to the powerhouse with seven 10-foot-wide by 11-foot-high gates; (4) a 300-foot-long by 60-foot-wide and 12-foot deep canal section; (5) a powerhouse containing four generating units for a total installed capacity of 5,136 kilowatts; (6) a tailrace; (7) a 300-foot-long transmission line; and (8) appurtenant facilities.

m. Each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by July 31, 2002.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–9648 Filed 4–16–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File An Application for a New License

April 13, 1999.

a. *Type of Filing:* Notice of Intent to File An Application for a New License.

b. *Project No.:* 2984.

c. *Date Filed:* March 30, 1999.

d. *Submitted By:* S.D. Warren Company-current licensee.

e. *Name of Project:* Eel Weir Project.

f. *Location:* On the Presumpscot River and Sebago Lake, in Cumberland County, Maine.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act.

h. *Licensee Contact:* S.D. Warren Company, 89 Cumberland Street, P.O. Box 5000, Westbrook, ME 04098–1597, Thomas P. Howard, (207) 856–4000.

i. *FERC Contact:* Any questions on this notice should be addressed to Tom Dean, E-mail address, thomas.dean@ferc.fed.us, or telephone (202) 219–2778.

j. *Effective date of current license:* April 1, 1962.

k. *Expiration date of current license:* March 31, 2004.

l. *Description of the Project:* The project consists of the following existing facilities: (1) a 115-foot-long, 23-foot-high stone masonry spillway dam; (2) a 150-foot-long, 10-foot-high east abutment; (3) a 90-foot-long, 5-foot-high west abutment; (4) five 6.5-foot-high by 4.75-foot-wide discharge gates; (5) four 8.8-foot-high by 7-foot-wide canal intake gates; (6) the 12-mile-long Sebago Lake at elevation 266.65 msl; (7) a 4,826-foot-long, 15-foot-deep earthen power canal; (8) a powerhouse containing three generating units with a total installed capacity of 1,800 kW; (9) a 3.5-mile-long, 11-kV transmission line; and (10) other appurtenances.

m. Each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by March 31, 2002.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–9649 Filed 4–16–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

April 13, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Preliminary Permit.

b. Project No.: P–11691–000.

c. Date Filed: March 5, 1999.

d. Applicant: Universal Electric Power Corporation.

e. Name of Project: Gainesville L & D.

f. Location: On the Tombigbee River in Greene County, Alabama, utilizing federal lands administered by the U.S. Army Corps of Engineers.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Applicant Contact: Mr. Ronald S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. FERC Contact: Any questions on this notice should be addressed to Charles T. Raabe, E-mail address, Charles.Raabe@ferc.fed.us, or telephone (202) 219–2811.

j. Deadline Date: 60 days from the issuance date of this notice.

k. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers' Gainesville Lock and Dam and would consist of: (1) Seven new 50-foot-long, 96-inch-diameter steel penstocks; (2) a new 300-foot-long, 50-foot-wide, 40-foot-high powerhouse containing seven generating units with a total installed capacity of 23,200-kW; (3) a new exhaust apron; (4) a new 600-foot-long, 14.7-kV transmission line; and (5) appurtenant facilities.

Applicant estimates that the average annual generation would be 102 GWh and that the cost of the studies to be performed under the terms of the permit would be $2,800,000. Project energy would be sold to utility companies, corporations, municipalities, aggregators, or similar entities.

l. Locations of the application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy

is also available for inspection and reproduction at the address in item h above.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'' ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–9650 Filed 4–16–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

April 13, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11693–000

c. *Date Filed:* March 5, 1999.

d. *Name of Project:* Universal Electric Power Corporation.

e. *Name of Project:* Barren River Lake Dam.

f. *Location:* On the Barren River near the towns of Austin, Scottsville, and Glasgow, Barren County, Kentucky, utilizing federal land administered by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Ronald S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, OH 44301 (330) 535–7115.

i. *FERC Contact:* Any questions on this notice should be addressed to Charles T. Raabe, E-mail address, Charles.Raabe@ferc.fed.us, or telephone (202) 219–2811.

j. *Deadline Date:* 60 days from the issuance date of this notice.

k. *Description of Project:* The proposed project would utilize the existing U.S. Army Corps of Engineers' Barren River Lake Dam and would consist of: (1) two new 50-foot-long, 48-inch-diameter steel penstocks; (2) a new 60-foot-long, 40-foot-wide, 30-foot-high powerhouse containing two generating units with a total installed capacity of 3,900-kW; (3) a new exhaust apron; (4) a new 500-foot-long, 14.7-kV transmission line; and (5) appurtenant facilities.

Applicant estimates that the average annual generation would be 24 GWh and that the cost of the studies to be performed under the terms of the permit would be $1,000,000. Project energy would be sold to utility companies, corporations, municipalities, aggregators, or similar entities.

l. Locations of the application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at http://

www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protests, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc 99–9651 Filed 4–16–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, and Protests

April 13, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Filing:* Preliminary Permit.

b. *Project No.:* P–11700–000.

c. *Date Filed:* March 15, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* New Savannah Bluff L&D.

f. *Location:* On the Savannah River near the town of Augusta, Richmond County, Georgia, utilizing federal lands administered by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Ronald S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, OH 44301 (330) 535–7115.

i. *FERC Contact:* Any questions on this notice should be addressed to Charles T. Raabe, E-Mail address, Charles.Raabe@ferc.fed.us, or telephone (202) 219–2811.

j. *Deadline Date:* 60 days from the issuance date of this notice.

k. *Competing Application:* Project No. 11655–000; Date filed: January 4, 1999; Due Date: April 12, 1999.

l. *Description of Project:* The proposed project would utilize the existing U.S. Army Corps of Engineers' New Savannah bluff Lock and Dam and would consist of: (1) three new 50-foot-long, 36-inch-diameter steel penstocks; (2) a new 60-foot-long, 40-foot-wide, 25-foot-high powerhouse containing three generating units with a total installed capacity of 3,600-kW; (3) a new exhaust apron; (4) a new 500-foot-long, 14.7-kV transmission line; and (5) appurtenant facilities.

Applicant estimates that the average annual generation would be 22 GWh and that the cost of the studies to be performed under the terms of the permit would be $1,000,000. Project energy would be sold to utility companies, corporations, municipalities, aggregators, or similar entities.

m. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Washington, D.C. 20426, or by calling

(202) 208–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

n. This notice also consists of the following standard paragraphs: A8, A10, B, C, and D2.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTESTS'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-name documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–9681 Filed 4–11–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6327–8]

Agency Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following two continuing Information Collection Requests (ICR) to the Office of Management and Budget (OMB). Before submitting the ICRs to OMB for review and approval, EPA is soliciting comments on specific aspects of the information collections as described at the beginning of **SUPPLEMENTARY INFORMATION.**

DATES: Comments must be submitted on or before June 18, 1999.

ADDRESSES: Office of Air and Radiation, Atmospheric Pollution Prevention Division, Mail Code: 6202–J, 401 M St., SW, Washington, DC 20460. A hard copy of an ICR may be obtained without charge by calling the identified information contact individual for each ICR in Section B of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: For specific information on the individual ICRs see Section B of the **SUPPLEMENTARY INFORMATION.**

SUPPLEMENTARY INFORMATION:

For All ICRs

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed in 40 CFR part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

A. List of ICRs Planned To Be Submitted

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following two continuing Information Collection Requests (ICR) to the Office of Management and Budget (OMB):

(1) *Title:* Reporting and Record Keeping Requirements under EPA's

Green Light Program, ICR #1614.01, OMB #2060–0255, expires April 30, 1999.

(2) *Title:* Information Collection Activities Associated with EPA's Energy Star Buildings Program, ICR #1772.01, OMB #2060–0347, expires April 30, 1999.

B. Contact Individuals for ICRs

(1) *Title:* Reporting and Record Keeping Requirements under EPA's Green Light Program; Contact: Denessa Moses at EPA, (202) 564–9789, FAX number (202) 565–2083; Internet address: *moses.denessa@epa.gov.* (OMB #2060–0255, ICR #1614.01, expires April 30, 1999.)

(2) *Title:* Information Collection Activities Associated with EPA's Energy Star Buildings Program; Contact: Denessa Moses at EPA, (202) 564–9789, FAX number (202) 565–2083; Internet address: *moses.denessa@epa.gov.* (OMB #2060–0347, ICR #1772.01, expires April 30, 1999.)

C. Individual ICRs

(1) *Title:* Reporting and Record Keeping Requirements under EPA's Green Light Program, ICR #1614.01, OMB #2060–0255, expires April 30, 1999.

Affected Entities: Entities potentially affected by this action are the participants in the EPA Green Lights Program.

Abstract: Green Lights is a voluntary EPA program that encourages corporations, state and local governments, colleges and universities, and other organizations to adopt energy efficient lighting as a profitable mean of preventing pollution and improving lighting quality. The program consists of three types of participants: partners, allies, and endorsers. Green Lights partners agree survey and upgrade lighting fixtures, if profitable. Allies work with EPA to increase awareness of energy-efficient lighting and provide information on products and services. Allies also agree to survey and upgrade their lighting. Endorsers agree to encourage their members to promote the Green Lights goal of using lighting in the most energy-efficient manner possible.

Partners and allies in the Green Lights program sign a Memorandum of Understanding (MOU) that outlines the responsibilities of both the Green Lights participant and EPA. The MOU commits a Green Lights participant to survey all of its U.S. facilities and consider a full set of lighting options that maximize energy savings while being profitable and not compromising lighting quality. The participants agrees to complete lighting upgrades within five years of signing the MOU in 90% of the square footage of its facilities that meet these criteria. Upon completion of a lighting upgrade, partners and allies must complete and submit to EPA an implementation report that documents energy-efficient improvements and cost savings.

EPA needs to collect information to evaluate a participant's progress and performance, and overall program results including energy savings and pollution prevented. The information provided also allows EPA to identify the fixture types, lighting controls, maintenance methods, and implementation methods most commonly utilized, and to provide technical and other assistance to participants in completing their planned upgrades. By agreeing to participate in the Green Lights program, the participant agrees to complete and submit this information upon completion of a project. However, because Green Lights is a voluntary program, responses to the collection of this information are voluntary.

Burden Statement: The estimated annual burden to the respondent for this collection of information will vary, depending upon the type of participant and the length of time the respondent has participated in the program. With this in mind, it is estimated that the annual burden for respondents is approximately 107,997 hours with an annual cost of approximately $5,977,935. The average annual respondent burden is estimated at approximately 40 hours and the average number of participants is approximately 2,700. The frequency of response is estimated to be once per year.

(2) *Title:* Information Collection Activities Associated with EPA's Energy Star Buildings Program, ICR #1772.01, OMB #2060–0347, expires April 30, 1999.

Affected Entities: Entities affected by this action will be those that agree to participate in EPA's Energy Star Buildings Program, which is a voluntary program for increasing the energy efficiency of existing commercial and industrial buildings.

Abstract: EPA's Energy Star Buildings Program is a voluntary, non-regulatory program for increasing the energy efficiency of existing commercial and industrial buildings. The program encourages corporations, state and local governments, and other organizations to participate in a partnership with EPA to make cost-effective energy-efficiency improvements in their buildings. In return, EPA provides technical support to help program participants apply proven technologies to achieve maximum efficiency at the lowest cost. EPA also publicly recognizes participants for their efforts and publicizes participant achievements. The overall goal of the program is to reduce utility-generated emissions by reducing the energy consumed in commercial and industrial buildings.

Participation in the program is initiated by completing and signing an Energy Star Buildings Memorandum of Understanding (MOU). The MOU outlines the responsibilities of the participant and EPA, and is used to establish participation in the program and agreement to the terms of participation. Through the MOU, EPA obtains general information on the new participant such as contact information for the energy director and communications director and building information including the size and type of building.

As a condition of program participation, partners agree to complete and submit to EPA an annual facility report on each building undergoing energy efficiency improvements. On the annual reports, partners provide information such as stage of project completion, project cost, historical and current energy use and cost data, and ancillary information such as building name, location, and size. EPA reviews the annual facility reports to track project implementation efforts and to obtain data on the costs and benefits of the energy efficiency improvements being made. This information is used to calculate the amount of utility-generated emissions prevented, evaluate program effectiveness, and publicize partner achievements and program results. By agreeing to participate in the Energy Star Buildings Program, the participant agrees to complete and submit this information annually. However, because Energy Star Buildings is a voluntary program, responses to the collection of this information are voluntary.

EPA will also collect additional, project-specific technical information from some partners concerning the energy-efficiency improvements made. This collection will include information such as building age and construction, utility and fuel rates, financial and economic criteria used to evaluate and select investment opportunities, types and sources of project financing, project and equipment costs and rates of return, and technical details concerning the building's lighting, heating, ventilating, and air conditioning equipment and systems. EPA will use this information to evaluate and refine its technical strategies and implementation support tools.

Burden Statement: EPA estimates an average annual respondent burden of 4,362 hours for the information collection activities associated with the Energy Star Buildings program. The total burden is comprised of the following information collections:

(i) MOU: EPA estimates that, on average, 191 new partners will join the Energy Star Buildings program each year by completing and submitting an MOU. The total annual respondent burden for the MOU is 1,385 hours, or 7.25 hours per MOU. The frequency of collection will be one time per respondent.

(ii) Annual Facility Report: EPA estimates that, on average, a total of 565 annual facility reports will be submitted by 353 partners (respondents) each year, for a total annual respondent burden of 2,697 hours. This equates to 1.6 annual facility reports per partner, or 4.8 hours per report.

(iii) Additional Technical Information: EPA estimates that, on average, 35 partners (respondents) each year will submit additional technical information on their actual upgrade projects. The burden for this information collection is 280 hours, or 8 hours per response. The frequency of collection is annually.

These estimates include the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: April 13, 1999.

Jean Lupinacci,

Chief, Energy Star Commercial and Industrial Buildings Customer Support Branch.

[FR Doc. 99–9717 Filed 4–16–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6328–2]

Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses; Public Review of a Notification of Intent To Certify Equipment

AGENCY: Environmental Protection Agency.

ACTION: Notice of Agency receipt of a notification of intent to certify equipment and initiation of 45-day public review and comment period.

SUMMARY: Turbodyne Systems, Inc. (Turbodyne) has submitted to the Agency a notification of intent to certify urban bus retrofit/rebuild equipment to a 0.10 gram per brake-horsepower-hr(g/bhp-hr) particulate matter(PM) standard pursuant to 40 CFR part 85, subpart O. The equipment, referred to by Turbodyne consists of the base engine components used on the 25% reduction retrofit/rebuild kit certified by DDC (October 2, 1995), components from the 25% retrofit catalyst kit previously certified under the program by Engine Control Systems, Ltd. (January 6, 1997), and a TurboPac supercharger system supplied by Turbodyne which supplies additional charge air during engine acceleration. The candidate kit is applicable to all 6V–92TA MUI engine models made by DDC for model years 1979 to 1989 and equipped with mechanical unit injectors (MUI). In a letter dated September 28, 1998 Turbodyne has stated that there are no differences between the Turbodyne kit and the kit which was certified for the Detroit Diesel Corporation to meet the 0.10 g/bhp-hr PM standard under the Urban Bus Retrofit/Rebuild program on April 6, 1998 and notification published in the **Federal Register** on May 14, 1998 (63 FR 26798). Turbodyne intends this equipment to be certified to the PM level of 0.10 g/bhp-hr. If the Agency certifies that this equipment complies with the 0.10 g/bhp-hr level, then operators with affected engines will have the choice of using this equipment or other equipment that is already required for use and certified to the 0.10 g/bhp-hr standard.

Pursuant to section 85.1407(a)(7), today's **Federal Register** document summarizes the notification, announces that the notification is available for public review and comment, and initiates a 45-day period during which comments can be submitted. The Agency will review this notification of intent to certify, as well as any comments it receives, to determine whether the equipment described in the notification of intent to certify should be certified. If certified, the equipment can be used by urban bus operators to reduce the particulate matter of urban bus engines.

The notification of intent to certify, as well as other materials specifically relevant to it, are contained in Category XXIII–A of Public Docket A–93–42, entitled ''Certification of Urban Bus Retrofit/Rebuild Equipment.'' This docket is located at the address listed below.

Today's document initiates a 45-day period during which the Agency will accept written comments relevant to whether or not the equipment included in this notification of intent to certify should be certified. Comments should be provided in writing to the addresses below.

DATES: Comments must be submitted on or before June 3, 1999.

ADDRESSES: Submit separate copies of comments to each of the two following addresses:

1. U.S. Environmental Protection Agency, Public Air Docket A–93–42 (Category XXIII–A), Room M–1500, 401 M Street S.W., Washington, DC 20460.

2. Anthony Erb, Engine Compliance Programs Group, Engine Programs and Compliance Division (6403J), U.S. Environmental Protection Agency, 401 ''M'' Street S.W., Washington, DC 20460.

The DDC notification of intent to certify, as well as other materials specifically relevant to it, are contained in the public docket indicated above. Docket items may be inspected from 8:00 a.m. until 5:30 p.m., Monday through Friday. As provided in 40 CFR part 2, a reasonable fee may be charged by the Agency for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Anthony Erb, Engine Programs and Compliance Division (6403J), U.S. Environmental Protection Agency, 401 M St. SW, Washington, D.C. 20460. Telephone: (202) 564–9259.

SUPPLEMENTARY INFORMATION:

I. Background

On April 21, 1993, the Agency published final Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses (58 FR 21359). The retrofit/rebuild program is intended to reduce the ambient levels of particulate matter in urban areas and is limited to 1993 and earlier model year (MY) urban buses operating in metropolitan areas with 1980 populations of 750,000 or more, whose engines are rebuilt or replaced after January 1, 1995. Operators of the affected buses are required to choose between two compliance options: Option 1 establishes particulate matter emissions requirements for each urban bus engine in an operator's fleet which is rebuilt or replaced; Option 2 is a fleet averaging program that establishes a specific annual target level for average PM emissions from urban buses in an operator's fleet.

A key aspect of the program is certification of retrofit/rebuild equipment, which begins when an equipment manufacturer submits an application for certification (referred to in the rule as a notification of intent to certify). To meet either of the two compliance options, operators of the affected buses must use equipment that has been certified by EPA. Emissions requirements under either of the two options depend on the availability of retrofit/rebuild equipment certified for each engine model. To be used for Option 1, equipment must be certified as meeting a 0.10 g/bhp-hr PM standard or as achieving a 25 percent reduction in PM. Equipment used for Option 2 must be certified as providing some level of PM reduction that would in turn be claimed by urban bus operators when calculating their average fleet PM levels attained under the program.

Under Option 1, additional information regarding cost must be submitted in the notification, in order for certification of that equipment to initiate (or trigger) program requirements for a particular engine model. In order for the equipment to serve as a trigger, the certifier must guarantee that the equipment will be offered to affected operators for $7,940 or less at the 0.10 g/bhp-hr PM level, or for $2,000 or less for the 25 percent or greater reduction in PM. Both of the above amounts are based on 1992 dollars and include life cycle costs incremental to the cost of a standard rebuild.

II. Notification of Intent To Certify

In a notification of intent to certify equipment signed November 14, 1997, Turbodyne applied for certification of equipment under the Environmental Protection Agency's (the Agency) Urban Bus Retrofit/Rebuild Program. In a letter dated September 28, 1998 Turbodyne provided additional information indicating that the Turbodyne kit was identical to the Detroit Diesel 0.10 g/bhp-hr PM kit which was certified by letter on April 6, 1998 and applicable to the same engine models. The candidate kit is applicable to all 6V–92TA, urban bus engine models made by Detroit Diesel Corporation from model year 1979 to 1989 and equipped with mechanical unit injectors (MUI). The equipment, consists of the base engine components used on the 25% reduction retrofit/rebuild kit certified by DDC, components from the 25% retrofit catalyst kit certified by Engine Control Systems, Ltd. (ECS) and a TurboPac supercharger system supplied by Turbodyne Systems, Inc. that supplies additional charge air during engine acceleration. The kit would be available in three horsepower levels (253, 277, and 294) for 6V–92TA engines.

The equipment to be certified includes three distinct hardware sets. The three sets included are as follows:

Base engine components include the equipment certified by DDC to provide a 25% reduction in PM (60FR 51472; October 2, 1995. These components are provided in two separate sets of parts. The first set of components is comprised of newly manufactured parts, including a gasket kit, air inlet hose, cylinder kits (piston assemblies and cylinder liners) a by-pass valve and a truck type throttle delay. The second set of components includes Reliabilt™ remanufactured parts, including the fuel injectors, camshafts, blower assembly, turbocharger, and head assemblies. Kit usage is based on engine rotation (righthand (RH) or lefthand (LH)), engine orientation, right bank cam gear mounting (bolt or nut), and engine power output based on injector size. The only differences from the previously certified equipment is the inclusion of a truck style throttle delay, adjustment to the throttle delay and injector timing settings to improve driveability.

The converter/muffler supplied by ECS was certified by EPA (see 62 FR 746; January 6, 1997) to provide a 25% reduction in PM emissions. The kit consists of an oxidation converter/muffler (CM) which was developed specifically for diesel applications, and is packaged as a direct replacement for the vehicle's muffler. Several kits will be provided to accommodate the installation requirements of the various engine and vehicle configurations.

The third component set consists of an electrically powered supercharger system which is supplied by Turbodyne Systems, Inc. This component set, referred to as the TurboPac™ supplies additional intake air during engine acceleration from low engine speeds. Based on the Turbodyne information presented, in addition to decreasing PM emissions and visible smoke during engine acceleration, the supercharger also improves engine response and vehicle driveability by reducing the fuel modulation during acceleration. The basic kit consists of a blower, a diverter valve, a boost pressure sensor, an electrical control box and power cables, and a throttle switch for detecting the start of the engine acceleration mode. The equipment will be supplied in two kits, one includes those components common to all installations and a second kit to accommodate the installation requirements of the various engine and vehicle configurations.

To complete an engine rebuild two (2) base engine component kits, one (1) converter muffler kit, and two (2) supercharger kits would be required. The specific kits used will depend on the engine/vehicle combination.

There are no differences in the service intervals or maintenance practices for the base engine associated with the installation of the upgrade kit. The converter/muffler requires no regularly scheduled maintenance, only an occasional cleaning if the maximum backpressure of the exhaust system is exceeded according to DDC. The supercharger does not require scheduled maintenance: however, a visual inspection for air leaks is recommended whenever the engine is serviced.

Standard procedures as described in the service manual for 92 Series engines are to be used when rebuilding the base engines using the candidate equipment. No unique rebuild procedures are required.

Use of the candidate kit is restricted to 6V–92TA Detroit Diesel engines manufactured from January 1979 through December 1989, equipped with mechanical unit fuel injectors (MUI), and originally certified to meet Federal emission standards. The required fuel is low sulfur (0.05% max by weight) diesel fuel, either number 1 or number 2.

The notification states that the candidate equipment achieves a particulate matter (PM) level of 0.10 g/bhp-hr. Turbodyne has not supplied life cycle cost information and is not requesting certification based on cost to operators. The use of the equipment by transit operators to meet program requirements is discussed below.

Turbodyne presents exhaust emissions data from testing a Detroit Diesel Corporation (DDC) engine in accordance with procedures set forth at 40 CFR part 86, subparts N and I. This is the same test engine and test data that was presented in the Detroit Diesel notification that was approved for certification on April 6, 1998 and referenced earlier in this document. A 1984 model year DDC 6V92TA MUI model engine (277 HP) was rebuilt to the 1989 urban bus configuration as per the previously certified DDC kit and was retrofit with the specified components of the 0.1 g/bhp-hr kit prior to testing. In the rebuild process, all parts not included in the rebuild kit were inspected. Prior to testing the engine was tuned with the injector timing set at 1.460 in. The throttle delay was set for optimum vehicle driveability. The data is summarized in Table A below.

TABLE A.—EXHAUST EMISSIONS SUMMARY

Gaseous and particulate test	g/bhp-hr	
	1989 HDDE standards	6V92TA MUI with kit
HC	1.3	0.1
CO	15.5	0.4
NO_X	10.7	9.8
PM	0.60	0.091
BSFC[1]	.....	0.464
Smoke Test	Standards	
ACCEL	20%	3.3%
LUG	15%	2.5%
PEAK	50%	4.2%

[1] Brake Specific Fuel Consumption (BSFC) is measured in units of lb/bhp-hr.

The data of Table A indicate that, when rebuilt with the kit, PM emissions of the test engine are less than 0.10 g/bhp-hr, and emissions of hydrocarbon (HC), carbon monoxide (CO), and smoke opacity are within applicable Federal standards. The Agency requests comments on whether the emissions test data presented by Turbodyne demonstrate that all engines for which certification is requested will meet applicable Federal standards with the candidate kit installed.

Applicability of the candidate is restricted to 6V92TA, urban bus engine models made by Detroit Diesel Corporation (DDC) from model years 1979 to 1989 and equipped with mechanical unit injectors (MUI). The Agency requests comments on whether the emissions data presented demonstrate that all engines for which certification is intended will meet the 0.10 g/bhp-hr PM standard. The part numbers of the specified rebuild components are provided in the notification.

Turbodyne's notification does not provide life cycle cost information for the candidate kit. Therefore, this kit will not be certified to comply with the life-cycle cost requirements of the program. The 0.10 g/bhp-hr PM level has already been triggered for all the engines covered by this notification. If certified as proposed in the notification, this equipment may be used by operators who are required to use equipment that meets the 0.10 g/bhp-hr PM level based on earlier trigger certification.

The engine is to be rebuilt according to the engine manufacturer's standard written rebuild procedures and specifications except where amended by written instructions. The incremental maintenance cost and fuel economy impact are not provided in the notification and are not necessary for certification as the cost limitation is not being certified to by Turbodyne.

The Turbodyne notification provides a product warranty that references the emissions performance and emissions defect warranties required in accordance with section 85.1409 of the program regulations.

Even if ultimately certified by the Agency, the equipment described in Turbodyne's notification may require additional review by the California Air Resources Board (CARB) before use in California. The Agency recognizes that special situations may exist in California that are reflected in the unique emissions standards, engine calibrations, and fuel specifications of the State. While requirements of the Federal urban bus program apply to several metropolitan areas in California, the Agency understands the view of CARB that equipment certified under the urban bus program, to be used in California, must be provided with an executive order exempting it from the anti-tampering prohibitions of that State. Those interested in additional information should contact the Aftermarket Part Section of CARB, at (626) 575–6848.

If the Agency certifies the candidate equipment, then urban bus operators who choose to comply with compliance Option 1 of this regulation will have the option to use this equipment or other equipment which has previously been certified to the 0.10 g/bhp-hr standard when applicable engines are rebuilt or replaced. If certified, then operators using Option 2 will use the 0.10 g/bhp-hr certification level in calculations for fleet level attained (FLA).

The date of this document initiates a 45-day period during which the Agency will accept written comments relevant to whether the equipment described in the Turbodyne notification of intent to certify should be certified pursuant to the urban bus retrofit/rebuild regulations. Interested parties are encouraged to review this notification, and provide written comments during the 45-day review period. Separate comments should be provided in writing to each of the addresses listed under the Addresses section of this document.

At a minimum, the Agency expects to evaluate this notification of intent to certify, and other materials submitted as applicable, to determine whether there is adequate demonstration of compliance with: (1) the certification requirements of section 85.1406, including whether the testing accurately substantiates the claimed emission reduction or emission levels; and, (2) the requirements of section 85.1407 for a notification of intent to certify.

The Agency requests that those commenting also consider these regulatory requirements, plus provide comments on any experience or knowledge concerning: (a) problems with installing, maintaining, and/or using the equipment on applicable engines; and, (b) whether the equipment is compatible with affected vehicles.

The Agency will review this notification of intent to certify, along with comments received from the interested parties, and attempt to resolve or clarify issues as necessary. During the review process, the Agency may add additional documents to the docket as a result of the review process. These documents will also be available for public review and comment within the 45-day period.

Dated: April 8, 1999.

Robert Perciasepe,

Assistant Administrator for Air and Radiation.

[FR Doc. 99–9719 Filed 4–16–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6328–3]

Ambient Air Monitoring Reference and Equivalent Methods: Designation of a New Reference Method

AGENCY: Environmental Protection Agency.

ACTION: Notice of designation and receipt of application.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) has designated, in accordance with 40 CFR part 53, a new reference method for measuring concentrations of $PM_{2.5}$ in ambient air. Notice is also given that EPA has received a new application for an equivalent method determination from Environnement S.A., Poissy, France for a long path monitoring system for ozone.

FOR FURTHER INFORMATION CONTACT: Frank F. McElroy, Human Exposure and Atmospheric Sciences Division (MD–46), National Exposure Research Laboratory, U.S. EPA, Research Triangle Park, North Carolina 27711. Phone: (919) 541–2622, email: mcelroy.frank@epamail,epa.gov.

SUPPLEMENTARY INFORMATION: In accordance with regulations at 40 CFR part 53, the EPA examines various methods for monitoring the concentrations of certain pollutants in the ambient air. Methods that are

determined to meet specific requirements for adequacy are designated as either reference or equivalent methods, thereby permitting their use under 40 CFR part 58 by States and other agencies for determining attainment of the National Ambient Air Quality Standards. EPA hereby announces the designation of a new reference method for measuring $PM_{2.5}$ in ambient air. This designation is made under the provisions of 40 CFR part 53, as amended on July 18, 1997 (62 FR 38764).

The new reference method for $PM_{2.5}$ is a manual monitoring method based on a particular commercially available $PM_{2.5}$ sampler. The newly designated method is identified as follows.

RFPS–0499–129, ''Rupprecht & Patashnick Company, Inc. Partisol® Model 2000 PM–2.5 Audit Sampler,'' configured as a $PM_{2.5}$ reference method and operated with software (firmware) version 1.2, for 24-hour continuous sample periods at a flow rate of 16.67 liters/minute, in accordance with the Partisol® Model 2000 Operating Manual and with the requirements and sample collection filters specified in 40 CFR part 50, appendix L.

An application for a reference method determination for this method based on the Rupprecht & Patashnick Company, Inc. Partisol® Model 2000 $PM_{2.5}$ Audit Sampler was received by the EPA on August 10, 1998, and a notice of the receipt of this application was published in the **Federal Register** on October 29, 1998. The method is available commercially from the applicant, Rupprecht & Patashnick Company, Inc., 25 Corporate Circle, Albany, New York 12203.

Test samplers representative of this method have been tested by the applicant in accordance with the test procedures specified in 40 CFR part 53 (as amended on July 18, 1997). After reviewing the results of those tests and other information submitted by the applicant, EPA has determined, in accordance with part 53, that this method should be designated as a reference method. The information submitted by the applicant will be kept on file at EPA's National Exposure Research Laboratory, Research Triangle Park, North Carolina 27711 and will be available for inspection to the extent consistent with 40 CFR part 2, (EPA's regulations implementing the Freedom of Information Act).

As a designated reference method, this method is acceptable for use by states and other air monitoring agencies under the requirements of 40 CFR part 58, Ambient Air Quality Surveillance. For such purposes, the method must be used in strict accordance with the operation or instruction manual associated with the method, the specifications and limitations (*e.g.*, sample period or flow rate) specified in the applicable designation method description (see identification of the method above), and the specifications and requirements set forth in appendix L to 40 CFR part 50. Use of the method should also be in general accordance with the guidance and recommendations of applicable sections of the ''Quality Assurance Guidance Document 2.12.'' Vendor modifications of a designated reference or equivalent method used for purposes of part 58 are permitted only with prior approval of the EPA, as provided in part 53. Provisions concerning modification of such methods by users are specified under section 2.8 of appendix C to 40 CFR part 58 (Modifications of Methods by Users).

In general, a method designation applies to any sampler or analyzer which is identical to the sampler or analyzer described in the application for designation. In some cases, similar samplers or analyzers manufactured prior to the designation may be upgraded (*e.g.*, by minor modification or by substitution of the approved operation or instruction manual) so as to be identical to the designated method and thus achieve designated status at a modest cost. The manufacturer should be consulted to determine the feasibility of such upgrading.

Part 53 requires that sellers of designated reference or equivalent method analyzers or samplers comply with certain conditions. These conditions are given in 40 CFR 53.9 and are summarized below:

(a) A copy of the approved operation or instruction manual must accompany the sampler or analyzer when it is delivered to the ultimate purchaser.

(b) The sampler or analyzer must not generate any unreasonable hazard to operators or to the environment.

(c) The sampler or analyzer must function within the limits of the applicable performance specifications given in parts 50 and 53 for at least one year after delivery when maintained and operated in accordance with the operation or instruction manual.

(d) Any sampler or analyzer offered for sale as part of a reference or equivalent method must bear a label or sticker indicating that it has been designated as part of a reference or equivalent method in accordance with part 53 and showing its designated method identification number.

(e) If such an analyzer has two or more selectable ranges, the label or sticker must be placed in close proximity to the range selector and indicate which range or ranges have been included in the reference or equivalent method designation.

(f) An applicant who offers samplers or analyzers for sale as part of a reference or equivalent method is required to maintain a list of ultimate purchasers of such samplers or analyzers and to notify them within 30 days if a reference or equivalent method designation applicable to the method has been canceled or if adjustment of the sampler or analyzer is necessary under 40 CFR 53.11(b) to avoid a cancellation.

(g) An applicant who modifies a sampler or analyzer previously designated as part of a reference or equivalent method is not permitted to sell the sampler or analyzer (as modified) as part of a reference or equivalent method (although it may be sold without such representation), nor to attach a label or sticker to the sampler or analyzer (as modified) under the provisions described above, until the applicant has received notice under 40 CFR 53.14(c) that the original designation or a new designation applies to the method as modified, or until the applicant has applied for and received notice under 40 CFR 53.8(b) of a new reference or equivalent method determination for the sampler or analyzer as modified.

(h) An applicant who offers $PM_{2.5}$ samplers for sale as part of a reference or equivalent method is required to maintain the manufacturing facility in which the sampler is manufactured as an ISO 9001-certified facility.

(i) An applicant who offers $PM_{2.5}$ samplers for sale as part of a reference or equivalent method is required to submit annually a properly completed Product Manufacturing Checklist, as specified in part 53.

Aside from occasional breakdowns or malfunctions, consistent or repeated noncompliance with any of these conditions should be reported to: Director, Human Exposure and Atmospheric Sciences Division (MD–77), National Exposure Research Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of this reference method is intended to assist the States in establishing and operating their air quality surveillance systems under 40 CFR part 58. Questions concerning the commercial availability or technical aspects of this method should be directed to the applicant.

Receipt of New Application

EPA is also hereby announcing that it has received a new application for an equivalent method determination under 40 CFR part 53. Publication of a notice of receipt of such applications is required by section 53.5.

On February 17, 1999, EPA received an application for an equivalent method determination from Environnement S.A, 111 bd Robespierre, BP 4513, 78304 Poissy Cedex, France for that Company's SANOA Multigas Longpath Air Quality Monitoring System for monitoring ozone in the atmosphere. If, after appropriate technical study, the Administrator determines that this method should be designated as an equivalent method under 40 CFR part 53, notice thereof will be published in a subsequent issue of the **Federal Register**.

Norine E. Noonan,

Assistant Administrator for Research and Development.

[FR Doc. 99–9720 Filed 4–16–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 6328–4]

Meeting; Notice of Cancellation of the Gulf of Mexico Program's Habitat Focus Team

AGENCY: U.S. Environmental Protection Agency (US EPA).

ACTION: Notice.

SUMMARY: The Gulf of Mexico Program has cancelled its Habitat Focus Team Meeting announced in the **Federal Register** on March 23, 1999 at (64 FR 13994).

DATES: The Habitat Focus Team Meeting was scheduled for Thursday, April 15, 1999 from 10:00 a.m. to 5:00 p.m. and on Friday, April 16, from 8:00 a.m. to 12:00 p.m.

ADDRESSES: The meeting site was the River House Conference Facility, Stennis Space Center, MS (228) 688–7618.

FOR FURTHER INFORMATION CONTACT: Gloria D. Car, Designated Federal Officer, Gulf of Mexico Program Office, Building 1103, Room 202, Stennis Space Center, MS 39529–6000 at (228) 688–2421.

Dated: April 12, 1999.

Gloria D. Car,

Designated Federal Officer.

[FR Doc. 99–9718 Filed 4–16–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6328–1]

Oxygenate Use in Gasoline Panel Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting,

SUMMARY: On November 30, 1998, U.S. Environmental Protection Agency Administrator Carol M. Browner announced the creation of a blue-ribbon panel of leading experts from the public health and scientific communities, automotive fuels industry, water utilities, and local and State government to review the important issues posed by the use of MTBE and other oxygenates in gasoline. EPA created the panel to gain a better understanding of the public health concerns raised by the discovery of MTBE in some water supplies. The panel will be chaired by Mr. Daniel Greenbaum, President of the Health Effects Institute (HEI) of Cambridge, Massachusetts.

This document announces the time and place for the fourth meeting of the panel.

DATES: The blue-ribbon panel reviewing the use of oxygenates in gasoline will conduct its fourth meeting on Thursday and Friday, April 29 and 30, 1999, in Arlington, VA beginning at 8:30 a.m.

ADDRESSES: The meeting will be held from 8:30 a.m. to 5:00 p.m. on Thursday, April 29th and from 8:30 a.m. until approximately 12:00 p.m. on Friday, April 30th at the Sheraton Crystal City, 1800 Jefferson Davis Hwy, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Karen Smith at U.S. Environmental Protection Agency Office of Air and Radiation, 401 M Street, SW (6406J), Washington, D.C. 20460, (202) 564–9674, or John Brophy at (202) 564–9068. Information can also be found at www.epa.gov/oms/consumer/fuels/oxypanel/blueribb.htm

SUPPLEMENTARY INFORMATION: This is the fourth in a series of meetings at locations around the country to hear from regional and national experts on the facts concerning oxygenate use in fuel. There will be no open public comment period during this meeting. Written comments to the panel can be mailed to US EPA, 401 M Street, SW, Mail Code 6406J (Attn: Blue-Ribbon Panel), Washington, DC 20460. Panel members will be provided with copies of all written submissions.

Dated: April 12, 1999.

Margo T. Oge,

Director, Office of Mobile Sources.

[FR Doc. 99–9716 Filed 4–16–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6327–6]

National Advisory Committee to the U.S. Representative to the Commission for Environmental Cooperation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Public Law 92–463), the U.S. Environmental Protection Agency (EPA) gives notice of a meeting of the National Advisory Committee (NAC) to the U.S. Government Representative to the Commission for Environmental Cooperation (CEC).

The Committee is established within the U.S. Environmental Protection Agency (EPA) to advise the Administrator of the EPA in her capacity as the U.S. Representative to the CEC. The Committee is authorized under Article 17 of the North American Agreement on Environmental Cooperation, and the North American Free Trade Agreement Implementation Act (NAFTA), Public Law 103–182. Federal government responsibilities relating to the committee are set forth in Executive Order 12915, entitled ''Federal Implementation of the North American Agreement on Environmental Cooperation. The Committee is responsible for providing advice to the U.S. Representative on implementation and further elaboration of the agreement.

The Committee consists of 12 independent representatives drawn from among environmental groups, business and industry, public policy organizations and educational institutions.

DATES: The Committee will meet on May 20 and 21, 1999. On May 20, the Committee will meet from 8:30 a.m. until 5:30 p.m. On May 21, the Committee will meet from 8:30 a.m. until 3:30 p.m.

ADDRESSES: The Hyatt Regency Hotel, Two Fountain Plaza, Buffalo, NY 14202. The meeting is open to the public, with limited seating on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Hardaker, Designated Federal

Officer, U.S. EPA, Office of Cooperative Environmental Management, telephone 202–260–2477.

Dated: April 5, 1999.

Robert Hardaker,

Designated Federal Officer, National Advisory Committee.

[FR Doc. 99–9721 Filed 4–16–99; 8:45 am]

BILLING CODE: 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6327–7]

Governmental Advisory Committee to the U.S. Representative to the Commission for Environmental Cooperation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), the U.S. Environmental Protection Agency (EPA) gives notice of a meeting of the Governmental Advisory Committee (NAC) to the U.S. Government Representative to the Commission for Environmental Cooperation (CEC).

The Committee is established within the U.S. Environmental Protection Agency (EPA) to advise the Administrator of the EPA in her capacity as the U.S. Representative to the CEC. The Committee is authorized under Article 18 of the North American Agreement on Environmental Cooperation, and the North American Free Trade Agreement Implementation Act (NAFTA), Public Law 103–182. Federal government responsibilities relating to the committee are set forth in Executive Order 12915, entitled ''Federal Implementation of the North American Agreement on Environmental Cooperation. The Committee is responsible for providing advice to the U.S. Representative on implementation and further elaboration of the agreement.

The Committee consists of 12 independent representatives drawn from state, local and tribal governments.

DATES: The Committee will meet on May 20 and 21, 1999. On May 20, the Committee will meet from 8:30 a.m. until 5:30 p.m. On May 21, the Committee will meet from 8:30 a.m. until 3:30 p.m.

ADDRESSES: The Hyatt Regency Hotel, Two Fountain Plaza, Buffalo, NY 14202. The meeting is open to the public, with limited seating on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Joyce, Designated Federal Officer, U.S. EPA, Office of Cooperative Environmental Management, telephone 202–260–6889.

Dated: April 5, 1999.

Mark Joyce,

Designated Federal Officer, Governmental Advisory Committee.

[FR Doc. 99–9722 Filed 4–16–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00235A; FRL–6074–6]

Printed Wiring Board Cleaner Technologies Substitute Assessment, Making Holes Conductive; Notice of Availability; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability; correction.

SUMMARY: The Environmental Protection Agency's (EPA) Design for The Environment (DfE) Program published a document in the **Federal Register** of January 29, 1999 announcing the availability of a document providing pollution prevention and human health and environmental risk reduction information for the Printed Wiring Board industry. This document will correct two errors made in the earlier **Federal Register** Notice of Availability.

FOR FURTHER INFORMATION CONTACT: Dipti Singh, Design for the Environment Program, Office of Pollution Prevention and Toxics (7406), Environmental Protection Agency, 401 M St., SW., Washington, DC, 20460; Telephone: 202-260-1678, fax: 202-260-0981, e-mail: oppt.dfe@epa.gov.

SUPPLEMENTARY INFORMATION:

Background and Correction

EPA published a document in the **Federal Register** of January 29, 1999 (64 FR 4653) (FRL–5772–5) announcing the availability of the document entitled ''Printed Wiring Board Cleaner Technologies Substitutes Assessment: Making Holes Conductive''. As published, there were two errors relating to the EPA reference number and the release date of the draft report. This notice corrects those errors.

On page 4653, in the second column, in the **SUPPLEMENTARY INFORMATION**, in the first paragraph under ''**I. Project Background**'', in the fourth and fifth lines, the EPA reference number should read ''(EPA 744–R–98–004a and b);'' and in the fifth line from the bottom, ''August 1996'' should read ''August 1997.''

Dated: April 9, 1999.

Larry E. Longanecker,

Acting Director, Economics Exposure and Technology Division, Office of Pollution Prevention and Toxics.

[FR Doc. 99–9724 Filed 4–16–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6325–8]

Final NPDES General Permit for New and Existing Sources and New Dischargers in the Offshore Subcategory of the Oil and Gas Extraction Category for the Western Portion of the Outer Continental Shelf of the Gulf of Mexico (GMG290000) and Notice of a Proposed Modification to That Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Final NPDES General Permit and proposed modification.

SUMMARY: EPA Region 6 today issues, in part, the National Pollutant Discharge Elimination System (NPDES) general permit for the Western Portion of the Outer Continental Shelf of the Gulf of Mexico (No. GMG290000) for discharges from new sources, existing sources, and new dischargers in the Offshore Subcategory of the Oil and Gas Extraction Point Source Category (40 CFR part 435, subpart A). The existing permit published in the **Federal Register**, at 63 FR 58722 on November 2, 1998, authorizes discharges from exploration, development, and production facilities located in and discharging to Federal waters of the Gulf of Mexico seaward of the outer boundary of the territorial seas offshore off Louisiana and Texas. Today's action adds the authorization to discharge produced water to that permit.

A modification to the permit is also proposed in this **Federal Register** Notice which will authorize the discharge of drill cuttings generated using non-aqueous based drilling fluids. EPA is also considering authorizing the new discharge of chemically treated seawater or freshwater which has been used to hydrostatically test existing pipelines and would like to solicit information on authorizing that new discharge under the permit. The public comment period for the drill cuttings modification and consideration of the new discharges of hydrostatic test water from existing

pipelines will close June 18, 1999. Unchanged terms of the existing permit will not be reopened and shall remain effective.

FOR FURTHER INFORMATION CONTACT: Ms. Wilma Turner, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202, Telephone: (214) 665–7516, or via EMAIL to the following address: turner.wilma@epa.gov

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are those which operate offshore oil and gas extraction facilities located in the Outer Continental Shelf Offshore of Louisiana and Texas.

Category	Examples of regulated entities
Industry	Offshore Oil and Gas Extraction Platforms.

This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your [facility, company, business, organization, etc.] is regulated by this action, you should carefully examine the applicability criteria in Part I. Section A.1. of the general permit. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Pursuant to section 402 of the Clean Water Act (CWA), 33 U.S.C. 1342, EPA proposed and solicited comments on NPDES general permit GMG290000 at 63 FR 2238 (January 14, 1998). Notice of this proposed permit was also published in the New Orleans Times Picayune on January 24, 1998. The comment period closed on March 16, 1998.

Region 6 received comments from the Offshore Operators Committee, American Petroleum Institute, Willie R. Taylor—United States Department of Interior, Shell Offshore, Inc., BP Exploration, Inc., and Exxon Company, U.S.A.

EPA Region 6 has considered all comments received. In response to those comments, the final decision to authorize the discharge of produced water was postponed. The remainder of the permit was reissued on November 2, 1998 and authorized all other discharges which were proposed. The Region has since responded to all issues raised regarding the proposed permit's limitations and monitoring requirements for produced water and today issues that remaining portion of the permit.

The comments which delayed issuance of the produced water portion of the permit related to the dilution model EPA used to calculate the produced water toxicity limitations. EPA conducted a thorough review of the CORMIX model in response to those comments. As a result of that review it was found that CORMIX, version 3.20 calculates critical dilutions which are reasonably representative of produced water discharges. EPA also determined that several changes in the ambient conditions used as model input were appropriate and would result in more accurate results. The proposed permit's critical dilution tables were recalculated for this final permit and incorporated those changes in ambient conditions.

CORMIX, version 3.20 was also used to calculate the toxicity limitations for the newly authorized discharges of freshwater and seawater which have been chemically treated. Those discharges were authorized by the recently issued permit at the request of the Offshore Operators Committee, even though unanswered questions remained concerning the accuracy of the CORMIX model. In response to that request by the Offshore Operators Committee, EPA agreed to revise the toxicity limitations if changes were deemed appropriate after reexamination of the CORMIX model. See 63 FR 58722, published on November 2, 1998. Based on that review, EPA has determined that changes in the input parameters for CORMIX are appropriate and has revised the associated limits accordingly.

Proposed Permit Modification

At this time, EPA is also proposing to modify the permit to authorize the discharges of drill cuttings generated using non-aqueous based drilling fluids. This proposal corresponds to a recent effluent limitations guidelines proposal for this new discharge (see 64 FR 5487, February 3, 1999). In response to its performance needs and regulatory requirements, the oil and gas extraction industry has developed new synthetic and other non-aqueous based drilling fluids, hereafter referred to as non-aqueous based drilling fluids. The new drilling fluids are used in cases such as deep water or directional drilling, where use of water based fluids is not practical and traditionally oil based drilling fluids would have been used.

Several of the existing permit's limitations and prohibitions are proposed to apply to these new drill cuttings discharges. Cadmium and mercury in stock barite are proposed to be limited to 3mg/kg and 1 mg/kg respectively. The discharge of free oil as measured with the static sheen test is proposed to be prohibited. Also, the proposed permit's discharge prohibitions of cuttings generating using: oil-based drilling fluids, oil contaminated drilling fluids, drilling fluids which contain diesel oil, and mineral oil as a base are proposed to apply to the new category of cuttings generated using non-aqueous based drilling fluids.

Based on the proposed effluent limitations guidelines sediment toxicity, polynuclear aromatic hydrocarbons, biodegradation, formation oil, and percent of drilling fluids retained on cuttings are proposed to be limited for cuttings generated using non-aqueous based drilling fluids. In addition, seafloor monitoring is proposed to be required to address Ocean Discharge Criteria requirements of section 403(c) of the Clean Water Act. The seafloor sampling will be conducted at leases where cuttings generated using non-aqueous based drilling fluids are discharged. The intent of the monitoring is to learn the extent of the effects of these drill cuttings and the rate of recovery of the affected biological communities.

Additionally, the Agency is considering authorizing the discharge of seawater and freshwater which has been used to hydrostatically test existing pipelines. The permit presently authorizes the discharges of seawater and freshwater which has been used to hydrostatically test new pipelines. Those discharges are included in the list of miscellaneous discharges of freshwater and seawater which have been chemically treated and are limited for: the concentration of treatment chemicals, free oil, and toxicity. EPA solicits information on the appropriateness of those limits and monitoring requirements for the discharge being considered.

A copy of the proposed permit language or a detailed fact sheet for the modification (neither of which are included in this **Federal Register** notice) may be obtained from Ms. Turner at the address or telephone number listed above. That information may also be obtained on the Internet at the following address: http://www.epa.gov/earth1r6/6wq/6wq.htm. Additional information regarding the proposed limitations and monitoring requirements for the proposed drill cuttings discharges can also be found in the **Federal Register** notice for the proposed effluent limitations guidelines published at 64 FR 5487.

Other Legal Requirements

Ocean Discharge Criteria Evaluation

At 63 FR 2238 EPA Region 6 determined that discharges in compliance with the proposed general permit for the Western Gulf of Mexico Outer Continental Shelf general permit (GMG290000) would not cause unreasonable degradation of the marine environment. No comments have been received which disagree with that determination.

Coastal Zone Management Act

The Region found the proposed general permit consistent with approved Coastal Zone Management Plans for Louisiana and Texas and submitted those determinations to the appropriate State agencies for certification. Such certification was received from the Coastal Management Division of the Louisiana Department of Natural Resources. However, the Texas General Land Office informed EPA that this action is not subject to their consistency review, since the area covered under the permit is outside the Texas Coastal Management Program's boundary.

Marine Protection, Research, and Sanctuaries Act

The Marine Protection, Research and Sanctuaries Act (MPRSA) of 1972 regulates the dumping of all types of materials into ocean waters and establishes a permit program for ocean dumping. In addition the MPRSA establishes Marine Sanctuaries Program, implemented by the National Oceanographic and Atmospheric Administration (NOAA), which requires NOAA to designate ocean waters as marine sanctuaries for the purpose of preserving or restoring their conservation, recreational, ecological or aesthetic values. Pursuant to the Marine Protection and Sanctuaries Act, the National Oceanographic and Atmospheric Administration has designated the Flower Garden Banks, an area within the coverage of the OCS general permit, a marine sanctuary. The OCS general permit prohibits discharges in areas of biological concern, including marine sanctuaries. No change adopted today affects that prohibition.

Endangered Species Act

As explained at 63 FR 2238, EPA has found that issuance of the General Permit for the Outer Continental Shelf for the Western Gulf of Mexico will not adversely affect any listed threatened or endangered species or designated critical habitat and requested written concurrence on that determination from the National Marine Fisheries Service. The National Marine Fisheries Service provided such concurrence on the proposed NPDES General Permit for the Western Portion of the Outer Continental Shelf of the Gulf of Mexico.

State Water Quality Standards and State Certification

Because state waters are not included in the area covered by this NPDES general permit, no state waters are affected by the discharges it authorizes. Thus, the state water quality certification provisions of CWA section 401 do not apply to this permit.

Executive Order 12866

The Office of Management and Budget (OMB) has exempted this action from the review requirements of Executive Order 12291 pursuant to Section 8(b) of that order. Guidance on Executive Order 12866 contain the same exemptions on OMB review as existed under Executive Order 12291. In fact, however, EPA prepared a regulatory impact analysis in connection with its promulgation of guidelines on which a number of the permit's provisions are based and submitted it to OMB for review. See 58 FR 12494.

Paperwork Reduction Act

The information collection required by this permit has been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, in submission made for the NPDES permit program and assigned OMB control numbers 2040–0086 (NPDES permit application) and 2040–0004 (discharge monitoring reports).

Since this permit is very similar in reporting and application requirements and in discharges which are required to be monitored as the previous Western Gulf of Mexico Outer Continental Shelf (OCS) general permit (GMG290000) the paperwork burdens are expected to be nearly identical. When it issued the previous OCS general permit, EPA estimated it would take an affected facility three hours to prepare the request for coverage and 38 hours per year to prepare discharge monitoring reports. It is estimated that the time required to prepare the request for coverage and discharge monitoring reports for the reissued permit will be approximately the same.

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq*, requires that EPA prepare a regulatory flexibility analysis for regulations that have a significant impact on a substantial number of small entities. As indicated below, the permit issued today is not a ''rule'' subject to the Regulatory Flexibility Act . EPA prepared a regulatory flexibility analysis, however, on the promulgation of the Offshore Subcategory guidelines on which many of the permit's effluent limitations are based. That analysis shows that issuance of this permit will not have a significant impact on a substantial number of small entities.

Unfunded Mandates Reform Act

Section 201 of the Unfunded Mandates Reform Act (UMRA), Public Law 104–4, generally requires Federal agencies to assess the effects of their ''regulatory actions'' on State, local, and tribal governments and the private sector. As stated in the **Federal Register** notice for the proposed permit, this permit is not a rule which is subject to the requirements of the UMRA. The permit also would not uniquely affect small governments because compliance with the proposed permit conditions affects small governments in the same manner as any other entities seeking coverage under the permit. Additionally, EPA does not expect small governments to operate facilities authorized to discharge by this permit. No comments were received which challenge EPA's interpretation of the Unfunded Mandates Reform Act, as it applies to this permit.

National Environmental Policy Act (NEPA)

As stated in the **Federal Register** notice for the proposed permit (see 63 FR 2238, January 14, 1998) EPA determined that reissuance of this NPDES general permit will not result in any new impacts which were not subjected to NEPA analysis in either Mineral Management Service's EIS or the SEIS produced by EPA Region 6. All discharges authorized by this reissued permit were addressed in that NEPA Review. Thus EPA did not prepare a supplemental environmental impact statement for this action. No comments, on the proposed permit, were received which would suggest additional actions are required to meet the requirements of NEPA.

Authorization To Discharge Under the National Pollutant Discharge Elimination System

In compliance with the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et. seq. the ''Act''), operators of lease blocks in the Oil and Gas Extraction Point Source Category which are located in Federal waters of the Western Portion of the Gulf of Mexico (defined as seaward of the outer boundary of the territorial seas off

Louisiana and Texas) are authorized to discharge to the Western Portion of the Federal Waters of the Gulf of Mexico in accordance with effluent limitations, monitoring requirements, and other conditions set forth in Parts I, II, and III hereof. Also, operators of lease blocks located in the territorial seas of Louisiana and Texas are authorized to discharge produced water from wells located in those lease blocks to the Western Portion of the Federal Waters of the Gulf of Mexico in accordance with effluent limitations, monitoring requirements, and other conditions set forth in Parts I, II, and III hereof.

Operators of lease blocks located within the general permit area must submit written notification to the Regional Administrator that they intend to be covered (See Part I.A.2). Unless otherwise notified in writing by the Regional Administrator after submission of the notification, owners or operators requesting coverage are authorized to discharge under this general permit. Operators of lease blocks within the general permit area who fail to notify the Regional Administrator of intent to be covered by this general permit are not authorized under this general permit to discharge pollutants from those facilities. Operators who have previously submitted a written notification of intent to be covered by a subsequent permit, as required by the previous permit, need not submit an additional notification of intent to be covered.

Facilities which adversely affect properties listed or eligible for listing in the National Register of Historic Places are not authorized to discharge under this permit.

This permit shall become effective at Midnight Central Standard Time on July 19, 1999.

This permit and the authorization to discharge shall expire at midnight, Central Standard Time, November 3, 2003.

Signed this 9th day of April, 1999.

Jack V. Ferguson,

Acting Director, Water Quality Protection Division, EPA Region 6.

Part I. Requirements for NPDES Permits

Section A. Permit Applicability and Coverage Conditions

1. Operations Covered

This permit establishes effluent limitations, prohibitions, reporting requirements, and other conditions on discharges from oil and gas facilities engaged in production, field exploration, developmental drilling, well completion, well treatment operations, and well workover and abandonment operations.

The permit coverage area consists of lease blocks located in and discharging to Federal waters in the Gulf of Mexico seaward of the outer boundary of the territorial seas offshore of Louisiana and Texas and shall include lease blocks west of the western boundary of the outer continental shelf lease areas defined as: Mobile, Viosca Knoll (north part), Destin Dome, Desoto Canyon, Lloyd, and Henderson. In Texas, where the state has mineral rights to 3 leagues, some operators with state lease tracts are required to request coverage under this Federal NPDES general permit. In addition, permit coverage consists of produced water discharges to those Federal waters from lease blocks located in the territorial seas of Texas and Louisiana. This includes produced water from wells located in the area of coverage, which is sent on-shore for treatment and subsequently sent back to the Outer Continental Shelf to be discharged. This permit does not authorize discharges from facilities located in or discharging to the territorial seas of Louisiana or Texas or from facilities defined as ''coastal'', ''onshore'', or ''stripper'' (see 40 CFR part 435, subparts C, D, and E).

2. Notification Requirements

Written notification of intent to be covered including the legal name and address of the operator, the lease block number assigned by the Department of Interior or the state or, if none, the name commonly assigned to the lease area shall be submitted at least fourteen days prior to the commencement of discharge. If the lease block was previously covered by this or another permit, the operator shall also include the previous permit number in the notification. The notice of intent must also identify any facility which is a New Source and state the date on which the facility's protection from more stringent new source performance standards or technology based limitations ends. That date is the soonest of: ten years from the date that construction is completed, ten years from the date the source begins to discharge process or non-construction related waste water, or the end of the period of depreciation or amortization of the facility for the purposes of section 167 or 169 (or both) of the Internal Revenue code of 1954.

Additionally, if an application for an individual permit for the activity was previously submitted to EPA Region 6, the notice of intent shall include the application/permit number of that application or the permit number of any individual NPDES permit issued by EPA Region 6 for this activity.

Permittees located in lease blocks that (a) are neither in nor adjacent to MMS-defined ''no activity'' areas, or (b) do not require live-bottom surveys are required only to submit a notice of intent to be covered by this general permit. Permittees who are located in lease blocks that are either in or adjacent to ''no activity'' areas or require live bottom surveys are required to submit both a notice of intent to be covered that specifies they are located in such a lease block, and in addition are required to submit a notice of commencement of operations.

Permittees located in lease blocks either in or immediately adjacent to MMS-defined ''no activity'' areas, shall be responsible for determining whether a controlled discharge rate is required. The maximum discharge rate for drilling fluids is determined by the distance from the facility to the ''no activity'' area boundary and the discharge rate equation provided in Part I.B.1.b. of this permit. The permittee shall report the distance from the permitted facility to the ''no activity'' area boundary and the calculated maximum discharge rate to EPA with its notice of commencement of operations.

For permittees located in lease blocks that require live-bottom surveys, the final determination of the presence or absence of live-bottom communities, the distance of the facility from identified live-bottom areas, and the calculated maximum discharge rate shall be reported with the notice of commencement of operations.

All notifications of intent to be covered and any subsequent reports under this permit shall be sent to the following address: Water Enforcement Branch (6EN–WC), Region 6, U.S. Environmental Protection Agency, P.O. Box 50625, Dallas, TX 75250. Operators who have previously submitted a written notification of intent to be covered by a subsequent permit, as required by the previous permit, need not submit an additional notification of intent to be covered.

3. Termination of Operations

Lease block operators shall notify the Regional Administrator within 60 days after the permanent termination of discharges from their facilities within the lease block.

Section B. Effluent Limitations and Monitoring Requirements

1. Drilling Fluids

The discharge of drilling fluids shall be limited and monitored by the

permittee as specified in Table 3 of Appendix A and as below.

Special Note: The permit prohibitions and limitations that apply to drilling fluids, also apply to fluids that adhere to drill cuttings. Any permit condition that may apply to the drilling fluid discharges, therefore, also applies to cuttings discharges.

(Exception) The discharge rate limit for drilling fluids does not apply to drill cuttings.

(a) Prohibitions

Oil-Based Drilling Fluids. The discharge of oil-based drilling fluids and inverse emulsion drilling fluids is prohibited.

Oil Contaminated Drilling Fluids. The discharge of drilling fluids which contain waste engine oil, cooling oil, gear oil or any lubricants which have been previously used for purposes other than borehole lubrication, is prohibited.

Diesel Oil. Drilling fluids to which any diesel oil has been added as a lubricant may not be discharged.

(b) Limitations

Mineral Oil. Mineral oil may be used only as a carrier fluid (transporter fluid), lubricity additive, or pill.

Cadmium and Mercury in Barite. There shall be no discharge of drilling fluids to which barite has been added, if such barite contains mercury in excess of 1.0 mg/kg (dry weight) or cadmium in excess of 3.0 mg/kg (dry weight). The permittee shall analyze a representative sample of all stock barite used once, prior to drilling each well, and submit the results for total mercury and cadmium in the Discharge Monitoring Report (DMR).

If more than one well is being drilled at a site, new analyses are not required for subsequent wells, provided that no new supplies of barite have been received since the previous analysis. In this case, the results of the previous analysis should be used on the DMR.

Alternatively, the permittee may provide certification, as documented by the supplier(s), that the barite being used on the well will meet the above limits. The concentration of the mercury and cadmium in the barite shall be reported on the DMR as documented by the supplier.

Analyses shall be conducted by absorption spectrophotometry (see 40 CFR part 136, flame and flameless AAS) and the results expressed in mg/kg (dry weight).

Toxicity. Discharged drilling fluids shall meet both a daily minimum and a monthly average minimum 96-hour LC50 of at least 30,000 ppm in a 9:1 seawater to drilling fluid suspended particulate phase (SPP) volumetric ratio using Mysidopsis bahia. Monitoring shall be performed at least once per month for both a daily minimum and the monthly average. In addition, an end-of-well sample is required for a daily minimum. The type of sample required is a grab sample, taken from beneath the shale shaker, or if there are no returns accross the shale shaker, the sample must be taken from a location that is characteristic of the overall mud system to be discharged. Permittees shall report pass or fail on the DMR using either the full toxicity test or the partial toxicity test as specified at 58 FR 12512; however, if the partial toxicity test shows a failure, all testing of future samples from that well shall be conducted using the full toxicity test method to determine the 96-hour LC50.

Free Oil. No free oil shall be discharged. Monitoring shall be performed using the static sheen method once per week when discharging. The number of days a sheen is observed must be recorded.

Discharge Rate. All facilities are subject to a maximum discharge rate of 1,000 barrels per hour.

For those facilities subject to the discharge rate limitation requirement because of their proximity to areas of biological concern, the discharge rate of drilling fluids shall be determined by the following equation:

$$R=10^{[3 \text{ Log } (d/15) + Tt]}$$

Where:

R=discharge rate (bbl/hr)

d=distance (meters) from the boundary of a controlled discharge rate area

T_t=toxicity-based discharge rate term=$[\log (LC50 \times 8 \times 10^{-6})] / 0.3657$

Drilling fluids discharges (based on a mud toxicity of 30,000 ppm) equal to or less than 544 meters from areas of biological concern shall comply with the discharge rate obtained from the equation above. Drilling fluids discharges which are shunted to the bottom as required by MMS are not subject to this discharge rate control requirement.

All discharged drilling fluids, including those fluids adhering to cuttings must meet the limitations of this section except that discharge rate limitations do not apply before installation of the marine riser.

(c) Monitoring Requirements

Drilling Fluids Inventory. The permittee shall maintain a precise chemical inventory of all constituents and their total volume or mass added downhole for each well.

2. Drill Cuttings

The discharge of drill cuttings shall be limited and monitored by the permittee as specified in Appendix A, Table 2 and as below.

(a) Prohibitions

Cuttings from Oil Based Drilling Fluids. The discharge of cuttings that are generated while using an oil-based or invert emulsion mud is prohibited.

Cuttings from Oil Contaminated Drilling Fluids. The discharge of cuttings that are generated using drilling fluids which contain waste engine oil, cooling oil, gear oil or any lubricants which have been previously used for purposes other than borehole lubrication, is prohibited.

Cuttings Generated Using Drilling Fluids which Contain Diesel Oil. Drill cuttings generated using drilling fluids to which any diesel oil has been added as a lubricant may not be discharged.

Cuttings Generated Using Mineral Oil. The discharge of cuttings generated using drilling fluids which contain mineral oil is prohibited except when the mineral oil is used as a carrier fluid (transporter fluid), lubricity additive, or pill.

Cadmium and Mercury in Barite. Drill cuttings generated using drilling fluids to which barite has been added shall not be discharged if such barite contains mercury in excess of 1.0 mg/kg (dry weight) or cadmium in excess of 3.0 mg/kg (dry weight).

Toxicity. Drill cuttings generated using drilling fluids with a daily minimum or a monthly average minimum 96-hour LC50 of less than 30,000 ppm in a 9:1 seawater to drilling fluid suspended particulate phase (SPP) volumetric ratio using *Mysidopsis bahia* shall not be discharged.

(b) Limitations

Free Oil. No free oil shall be discharged. Monitoring shall be performed using the static sheen test method once per week when discharging. The number of days a sheen is observed must be recorded.

3. Deck Drainage

Limitations

Free Oil. No free oil shall be discharged, as determined by the visual sheen method on the surface of the receiving water. Monitoring shall be performed once per day when discharging, during conditions when an observation of a visual sheen on the surface of the receiving water is possible in the vicinity of the discharge, and the facility is manned. The number of days a sheen is observed must be recorded.

4. Produced Water

(a) Limitations

Oil and Grease. Produced water discharges must meet both a daily maximum of 42 mg/l and a monthly average of 29 mg/l for oil and grease. The sample type shall be either grab, or a 24-hour composite which consists of the arithmetic average of the results of 4 grab samples taken over a 24-hour period. If only one sample is taken for any one month, it must meet both the daily and monthly limits. Samples shall be collected prior to the addition of any seawater to the produced water waste stream. The analytical method is that specified at 40 CFR part 136 or the alternate method described in Part I.D.5 of this permit.

Toxicity. The 7-day average minimum and monthly average minimum No Observable Effect Concentration (NOEC) must be equal to or greater than the critical dilution concentration specified in Table 1 of this permit. Critical dilution shall be determined using Table 1 of this permit and is based on the discharge rate most recently reported on the discharge monitoring report, discharge pipe diameter, and water depth between the discharge pipe and the bottom. Facilities which have not previously reported produced water flow on the discharge monitoring report shall use the highest monthly average flow measured during the previous twelve months for determining the critical dilution from Table 1 of this permit. The monthly average minimum NOEC value is defined as the arithmetic average of all 7-day average NOEC values determined during the month.

(Exception) Permittees wishing to increase mixing may use a horizontal diffuser, add seawater, or may install multiple discharge ports.

Permittees using a horizontal diffuser shall install the diffuser designed so that the 7-day average minimum and monthly average minimum No Observable Effect Concentration (NOEC) is equal to or greater than the critical dilution concentration as calculated using CORMIX2 version 3.20 or newer, with the following input conditions:

Density Gradient = 0.15 σ_t/m
Ambient seawater density at diffuser depth = 1017 kg/m^3
Produced water density = 1070 kg/m^3
Current speed = 10 cm/sec.

Permittees shall submit a certification that the diffuser has been installed and state the critical dilution corresponding to the diffuser in the certification. The CORMIX2 model runs shall be retained by the permittee as part of its NPDES records.

Permittees discharging produced water at a rate greater than 75,000 bbl/day shall determine the critical dilution using CORMIX (version 3.20 or newer) with the input parameters shown above. Permittees shall retain the model run as a part of the NPDES records.

Permittees using vertically aligned multiple discharge ports shall provide vertical separation between ports which is consistent with Table 1–G of this permit. When multiple discharge ports are installed, the depth difference between the discharge port closest to the sea floor and the sea floor shall be the depth difference used to determine the critical dilution from Table 1 of this permit. The critical dilution value shall be based on the port flow rate (total flow rate divided by the number of discharge ports) and based on the diameter of the discharge port (or smallest discharge port if they are of different styles).

When seawater is added to produced water prior to discharge, the total produced water flow, including the added seawater, shall be used in determining the critical dilution from Table 1.

(b) Monitoring Requirements

Flow. Once per month, an estimate of the flow (MGD) must be recorded.

Toxicity. The flow used to determine the frequency of toxicity testing shall be the flow most recently reported on the discharge monitoring report for the facility. Facilities which have not previously reported produced water flow on the discharge monitoring report shall use the highest monthly average flow measured during the past twelve months. The required frequency of testing shall be determined as follows:

Discharge rate	Toxicity testing frequency
0–4,599 bbl/day	Once per year.
4,600 bbl/day and above.	Once per calendar quarter.

The calendar quarters are defined as the following periods: January 1 to March 31, April 1 to June 30, July 1 to September 30, and October 1 to December 31.

Toxicity testing requirements for new discharges shall become effective at the start of the first calendar quarter after discharge begins. Toxicity testing requirements shall become effective [Insert the first calendar quarter start date following the date of permit issuance].

Samples for monitoring produced water toxicity shall be collected after addition of any added substances, including seawater that is added prior to discharge, and before the flow is split for multiple discharge ports. Samples also shall be representative of produced water discharges when scale inhibitors, corrosion inhibitors, biocides, paraffin inhibitors, well completion fluids, workover fluids, and/or well treatment fluids are used in operations.

If the permittee has been subject to quarterly testing and has been compliant with these toxicity limits for one full year (four consecutive quarters), the required testing frequency shall be reduced to once per year. If the permittee has been subject to annual testing and has been compliant for the first year, the required toxicity testing frequency shall remain at once per year even if the discharge rate subsequently exceeds 4,599 bbl/day. Also, if the permittee monitored produced water toxicity at the reduced frequency of once per year under the previous Outer Continental Shelf general permit, the required monitoring frequency shall remain at once per year as long as the discharge is compliant with the toxicity limits. See also Part I.D.3.d of this permit.

Visual Sheen. The permittee shall monitor free oil using the visual sheen test method on the surface of the receiving water. Monitoring shall be performed once per day when discharging, during conditions when observation of a sheen on the surface of the receiving water is possible in the vicinity of the discharge, and when the facility is manned.

Oil and Grease. A produced water sample shall be collected and analyzed for oil and grease when a sheen is observed in the vicinity of the produced water discharge. At a minimum a sample shall be collected and analyzed once per month.

5. Produced Sand

There shall be no discharge of produced sand.

6. Well Treatment Fluids, Completion Fluids, and Workover Fluids

(a) Limitations

Free Oil. No free oil shall be discharged. Monitoring shall be performed using the static sheen test method once per day when discharging and the facility is manned. The number of days a sheen is observed must be recorded.

Oil and Grease. Well treatment, completion, and workover fluids must meet both a daily maximum of 42 mg /l and a monthly average of 29 mg/l limitation for oil and grease. The sample type may be either grab, or a 24-hour composite consisting of the arithmetic average of the results of 4 grab samples

taken within the 24-hour period. If only one sample is taken for any one month, it must meet both the daily and monthly limits. The analytical method is that specified at 40 CFR part 136 or the alternate method described in part I.D.5 of this permit.

Priority Pollutants. For well treatment fluids, completion fluids, and workover fluids, the discharge of priority pollutants is prohibited except in trace amounts. Information on the specific chemical composition of any additives containing priority pollutants shall be recorded.

Note: If materials added downhole as well treatment, completion, or workover fluids contain no priority pollutants, the discharge is assumed not to contain priority pollutants except possibly in trace amounts.

(b) Monitoring Requirements

This discharge shall be considered produced water for monitoring purposes when commingled with produced water.

7. Sanitary Waste (Facilities Continuously Manned by 10 or More Persons)

(a) Prohibitions

Solids. No floating solids may be discharged to the receiving waters. An observation must be made once per day for floating solids. Observation must be made during daylight in the vicinity of sanitary waste outfalls following either the morning or midday meal and at a time during maximum estimated discharge. The number of days solids are observed must be recorded.

(b) Limitations

Residual Chlorine. Total residual chlorine is a surrogate parameter for fecal coliform. Discharge of residual chlorine must meet a minimum of 1 mg/l and shall be maintained as close to this concentration as possible. A grab sample must be taken once per month and the concentration recorded (approved method, Hach CN–66–DPD).

(Exception) Any facility which properly operates and maintains a marine sanitation device (MSD) that complies with pollution control standards and regulations under section 312 of the Act shall be deemed in compliance with permit limitations for sanitary waste. The MSD shall be tested yearly for proper operation and the test results maintained at the facility.

8. Sanitary Waste (Facilities Continuously Manned by 9 or Fewer Persons or Intermittently by Any Number)

(a) Prohibitions

Solids. No floating solids may be discharged to the receiving waters. An observation must be made once per day for floating solids. Observation must be made during daylight in the vicinity of sanitary waste outfalls following either the morning or midday meal and at a time during maximum estimated discharge. The number of days solids are observed must be recorded.

(Exception) Any facility which properly operates and maintains a marine sanitation device (MSD) that complies with pollution control standards and regulations under section 312 of the Act shall be deemed to be in compliance with permit limitations for sanitary waste. The MSD shall be tested yearly for proper operation and the test results maintained at the facility.

9. Domestic Waste

(a) Prohibitions

Solids. No floating solids or foam shall be discharged.

(b) Monitoring Requirements

An observation shall be made once per day during daylight in the vicinity of domestic waste outfalls following the morning or midday meal and at a time during maximum estimated discharge. The number of days solids are observed must be recorded.

10. Miscellaneous Discharges

Desalination Unit Discharge
Diatomaceous Earth Filter Media
Blowout Preventer Fluid
Uncontaminated Ballast Water
Uncontaminated Bilge Water
Mud, Cuttings, and Cement at the Seafloor
Uncontaminated Freshwater
Uncontaminated Seawater
Boiler Blowdown
Source Water and Sand
Excess Cement Slurry

Limitations

Free Oil. No free oil shall be discharged. Discharge is limited to those times that a visual sheen observation is possible unless the operator uses the static sheen method. Monitoring shall be performed using the visual sheen method on the surface of the receiving water once per week when discharging, or by use of the static sheen method at the operator's option. The number of days a sheen is observed must be recorded.

(Exceptions) Uncontaminated seawater, uncontaminated freshwater, source water and source sand, uncontaminated bilge water, and uncontaminated ballast water may be discharged from platforms that are on automatic purge systems without monitoring for free oil when the facilities are not manned. Additionally, discharges at the seafloor of: muds and cuttings prior to installation of the marine riser, cement, and blowout preventer fluid may be discharged without monitoring with the static sheen test when conditions make observation of a visual sheen on the surface of the receiving water impossible.

11. Miscellaneous Discharges of Seawater and Freshwater Which Have Been Chemically Treated

Excess seawater which permits the continuous operation of fire control and utility lift pumps
Excess seawater from pressure maintenance and secondary recovery projects
Water released during training of personnel in fire protection
Seawater used to pressure test new piping and new pipelines
Ballast water
Once Through Non-contact cooling water
Desalinization unit discharge

(a) Limitations

Treatment Chemicals. The concentration of treatment chemicals in discharged seawater or freshwater shall not exceed the most stringent of the following three constraints:

(1) The maximum concentrations and any other conditions specified in the EPA product registration labeling if the chemical is an EPA registered product
(2) the maximum manufacturer's recommended concentration
(3) 500 mg/l

Free Oil. No free oil shall be discharged. Discharge is limited to those times that a visible sheen observation is possible unless the operator uses the static sheen method. Monitoring shall be performed using the visual sheen method on the surface of the receiving water once per week when discharging, or by use of the static sheen method at the operator's option. The number of days a sheen is observed must be recorded.

Toxicity. The 48-hour minimum and monthly average minimum No Observable Effect Concentration (NOEC), or if specified the 7-day average minimum and monthly average minimum NOEC, must be equal to or greater than the critical dilution

concentration specified in this permit in Table 2–A for seawater discharges and 2–B for freshwater discharges. Critical dilution shall be determined using Table 2 of this permit and is based on the discharge rate, discharge pipe diameter, and water depth between the discharge pipe and the bottom. The monthly average minimum NOEC value is defined as the arithmetic average of all 48-hour average NOEC (or 7-day average minimum NOEC) values determined during the month.

(b) Monitoring Requirements

Flow. Once per month, an estimate of the flow (MGD) must be recorded.

Toxicity. The required frequency of testing for continuous discharges shall be determined as follows:

Discharge rate	Toxicity testing frequency
0–499 bbl/day	Once per year.
500–4,599 bbl/day	Once per quarter.
4,600 bbl/day and above	Once per month

Intermittent or batch discharges shall be monitored once per discharge but are required to be monitored no more frequently than the corresponding frequencies shown above for continuous discharges.

Samples shall be collected after addition of any added substances, including seawater that is added prior to discharge, and before the flow is split for multiple discharge ports. Samples also shall be representative of the discharge. Methods to increase dilution previously described for produced water in Part I.B.4.a also apply to seawater and freshwater discharges which have been chemically treated.

If the permittee has been compliant with this toxicity limit for one full year (12 consecutive months) for a continuous discharge of chemically treated seawater or freshwater, the required testing frequency shall be reduced to once per year for that discharge.

Section C. Other Discharge Limitations

1. Floating Solids or Visible Foam

There shall be no discharge of floating solids or visible foam from any source in other than trace amounts.

(Exception) For new sources, this limitation only applies to miscellaneous discharges and domestic waste discharges.

2. Halogenated Phenol Compounds

There shall be no discharge of halogenated phenol compounds as a part of any waste stream authorized in this permit.

3. Dispersants, Surfactants, and Detergents

The facility operator shall minimize the discharge of dispersants, surfactants and detergents except as necessary to comply with the safety requirements of the Occupational Safety and Health Administration and the Minerals Management Service. This restriction applies to tank cleaning and other operations which do not directly involve the safety of workers. The restriction is imposed because detergents disperse and emulsify oil, thereby increasing toxicity and making the detection of a discharge of oil more difficult.

4. Garbage

The discharge of garbage (See Part II.G.32) is prohibited.

(Exception) Comminuted food waste (able to pass through a screen with a mesh no larger than 25 mm, approx. 1 inch) may be discharged when 12 nautical miles or more from land.

5. Area of Biological Concern

There shall be no discharge in Areas of Biological Concern, including marine sanctuaries. The Flower Garden Banks has been determined to be a Marine Sanctuary and is within the geographical area covered under this permit.

Section D. Other Conditions

1. Samples of Wastes

If requested, the permittee shall provide EPA with a sample of any waste in a manner specified by the Agency.

2. Drilling Fluids Toxicity Test

The approved test method for permit compliance is identified as: Drilling Fluids Toxicity Test at 40 *CFR* part 435, subpart A, appendix 2.

3. Produced Water Toxicity Testing Requirements (7-Day Chronic NOEC Marine Limits)

The approved test methods for permit compliance are identified in 40 CFR part 136.

(a) The permittee shall utilize the *Mysidopsis bahia* (Mysid shrimp) chronic static renewal 7-day survival and growth test using Method 1007.0.

(b) The permittee shall utilize the *Mendia beryllina* (Inland Silverside minnow) chronic static renewal 7-day survival and growth test (Method 1006.0.

(c) The NOEC (No Observed Effect Concentration) is defined as the greatest effluent dilution which does not result in lethality that is statistically different from the control (0% effluent) at the 95% confidence level.

(d) If the effluent fails the survival endpoint at the critical dilution, the permittee shall be considered in violation of this permit limit. Also, when the testing frequency stated above is less than monthly and the effluent fails the survival endpoint at the critical dilution, the monitoring frequency for the affected species will increase to monthly until such time as compliance with the Lethal No Observed Effect Concentration (NOEC) effluent limitation is demonstrated for a period of three consecutive months, at that time the premittee may return to the testing frequency stated in Part I.B.4.b of this permit. During the period the permittee is out of compliance, test results shall be reported on the DMR for the reporting period.

(e) This permit may be reopened to require chemical specific effluent limits, additional testing, and/or other appropriate actions to address toxicity.

(f) The permittee shall prepare a full report of the results of all tests conducted pursuant to this section in accordance with the Report Preparation Section of ''Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms,'' EPA/600/4–91/003, or the most current publication, for every valid or invalid toxicity test initiated whether carried to completion or not. The permittee shall retain each full report pursuant to the provisions of Part II.C.3 of this permit. The permittee shall submit full reports only upon the specific request of the Agency.

(g) In accordance with Part II.D.4 of this permit, the permittee shall report on the DMR for the reporting period the lowest Whole Effluent Lethality values determined for either species for the 30-Day Average Minimum and 7-Day Minimum under Parameter No. 22414, and the permittee shall report only the results of the valid toxicity test as follows:

1. *Menidia Beryllina* (Inland Silverside Minnow)
   (A) If the Inland Silverside minnow No Observed Effect Concentration (NOEC) for survival is less than the critical effluent dilution, enter a ''1''; otherwise, enter a ''0''. Parameter No. TLP6B on the Discharge Monitoring Report.
   (B) Report the Inland Silverside minnow NOEC value for survival, Parameter No. TOP6B on the Discharge Monitoring Report.
   (C) Report the Inland Silverside minnow NOEC value for growth, Parameter No. TPP6B on the Discharge Monitoring Report.

2. *Mysidopsis Bahia (Mysid Shrimp)*

(A) If the Mysid Shrimp NOEC for survival is less than the critical effluent dilution, enter a ''1''; otherwise, enter a ''0''. Parameter No. TLP3E on the Discharge Monitoring Report.

(B) Report the Mysid shrimp NOEC value for survival, Parameter No. TOP3E on the Discharge Monitoring Report.

(C) Report the Mysid shrimp NOEC value for growth, Parameter No. TPP3E on the Discharge Monitoring Report.

4. Chemically Treated Seawater and Freshwater Toxicity Testing Requirements (48-Hour Acute NOEC Marine Limits)

The approved test methods for permit compliance are identified in 40 CFR part 136.

(a) The permittee shall utilize the *Mysidopsis bahia* (Mysid shrimp) acute static renewal 48-hour definitive toxicity test using EPA/600/4–90/027F.

(b) *Menidia beryllina* (Inland Silverside minnow) acute static renewal 48-hour definitive toxicity test using EPA/600/4–90/027F.

(c) The NOEC (No observable Effect Concentration) is defined as the greatest effluent dilution which does not result in lethality that is statistically different from the control (0% effluent) at the 95% confidence level.

(d) If the effluent fails the survival endpoint at the critical dilution, the permittee shall be considered in violation of this permit limit. Also, when the testing frequency stated above is less than monthly and the effluent fails the survival endpoint at the critical dilution, the monitoring frequency for the affected species will increase to monthly until such time as compliance with the Lethal No Observed Effect Concentration (NOEC) effluent limitation is demonstrated for a period of three consecutive months, at which time the permittee may return to the testing frequency stated in Part I.B.11.b of this permit. During the period the permittee is out of compliance, test results shall be reported on the DMR for that reporting period.

(e) This permit may be reopened to require chemical specific effluent limits, additional testing, and/or other appropriate actions to address toxicity.

(f) Test Acceptance. The permittee shall repeat a test, including the control and all effluent dilutions, if the procedures and quality assurance requirements defined in the test methods or in this permit are not satisfied, including the following additional criteria:

i. Each toxicity test control (0% effluent) must have a survival equal to or greater than 90%.

ii. The percent coefficient of variation between replicates shall be 40% or less in the control (0% effluent) for the Mysid shrimp survival test and the Inland Silverside minnow survival test.

iii. The percent coefficient of variation between replicates shall be 40% or less in the critical dilution, unless significant lethal effects are exhibited for the Mysid shrimp survival test and the Inland Silverside minnow survival test.

Test failure may not be construed or reported as invalid due to a coefficient of variation value of greater than 40%. A repeat test shall be conducted within the required reporting period of any test determined to be invalid.

(g) Statistical Interpretation. For the Mysid shrimp survival test and the Inland Silverside minnow survival test, the statistical analyses used to determine if there is a statistically significant difference between the control and the critical dilution shall be in accordance with the methods for determining the No Observed Effect Concentration (NOEC) as described in EPA/600/4–90/027F or the most recent update thereof.

If the conditions of Test Acceptability are met in Item 4.f above and the percent survival of the test organism is equal to or greater than 80% in the critical dilution concentration and all lower dilution concentrations, the test shall be considered to be a passing test, and the permittee shall report an NOEC of not less than the critical dilution for the DMR reporting requirements found in Item i below.

(h) The permittee shall prepare a full report of the results of all tests conducted pursuant to this section in accordance with the Report Preparation Section of ''Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms,'' EPA/600/4–90/027F, or the latest update thereof, for every valid or invalid toxicity test initiated whether carried to completion or not. The permittee shall retain each full report pursuant to the provisions of Part II.C.3 of this permit. The permittee shall submit full reports only upon the specific request of the Agency.

(i) In accordance with Part II.D.4 of this permit, the permittee shall report on the DMR for the reporting period whether the lowest Whole Effluent Lethality values determined for either species passed the 30-Day Average Minimum and 48-Hour Minimum NOEC. In addition, the permittee shall report on the DMR the lowest NOEC survival value of the two species.

5. Oil and Grease Alternative Test Procedure: Interim Limited Use Approval

Proposed Method 1664 (61 FR 1730, January 23, 1996), may be used as an alternative test procedure for NPDES permit compliance monitoring purposes. This approval shall expire at the time of the publication in the **Federal Register** of the final rule governing the use of Method 1664. This approval includes all of the analytical options within Method 1664 provided the equivalency demonstration is performed and all performance specifications are met.

6. Visual Sheen Test

The visual sheen test is used to detect free oil by observing the surface of the receiving water for the presence of a sheen while discharging. The operator must conduct a visual sheen test only at times when a sheen could be observed. This restriction eliminates observations when atmospheric or surface conditions prohibit the observer from detecting a sheen (e.g., overcast skies, rough seas, etc.).

The observer must be positioned on the rig or platform, relative to both the discharge point and current flow at the time of discharge, such that the observer can detect a sheen should it surface down current from the discharge. For discharges that have been occurring for a least 15 minutes previously, observations may be made any time thereafter. For discharges of less than 15 minutes duration, observations must be made during both discharge and at 5 minutes after discharge has ceased.

7. Static Sheen Test

The approved test method for permit compliance is identified as: Static Sheen Test at 40 CFR part 435, subpart A, appendix 1.

Part II. Standard Conditions for NPDES Permits

Section A. General Conditions

1. Introduction

In accordance with the provisions of 40 CFR part 122.41, et. seq., this permit incorporates by reference ALL conditions and requirements applicable to NPDES permits set forth in the Clean Water Act, as amended, (herein-after known as the ''Act'') as well as ALL applicable regulations.

2. Duty To Comply

The permittee must comply with all conditions of this permit. Any permit

noncompliance constitutes a violation of the Act and is grounds for enforcement action or for requiring a permittee to apply and obtain an individual NPDES permit.

3. Toxic Pollutants

a. Notwithstanding Part II.A.4, if any toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under section 307(a) of the Act for a toxic pollutant which is present in the discharge and that standard or prohibition is more stringent than any limitation on the pollutant in this permit, this permit shall be modified or revoked and reissued to conform to the toxic effluent standard or prohibition.

b. The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the Act for toxic pollutants within the time provided in the regulations that established those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

4. Permit Flexibility

This permit may be modified, revoked and reissued, or terminated for cause in accordance with 40 CFR 122.62–64. The filing of a request for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

5. Property Rights

This permit does not convey any property rights of any sort, or any exclusive privilege.

6. Duty To Provide Information

The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit.

7. Criminal and Civil Liability

Except as provided in permit conditions on ''Bypassing'' and ''Upsets,'' nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for noncompliance. Any false or materially misleading representation or concealment of information required to be reported by the provisions of the permit, the Act, or applicable regulations, which avoids or effectively defeats the regulatory purpose of the permit may subject the permittee to criminal enforcement pursuant to 18 U.S.C. 1001.

8. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under section 311 of the Act.

9. State Laws

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State Law or regulation under authority preserved by section 510 of the Act.

10. Severability

The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

Section B. Proper Operation and Maintenance

1. Need To Halt or Reduce Not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit. The permittee is responsible for maintaining adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failure either by means of alternate power sources, standby generators or retention of inadequately treated effluent.

2. Duty To Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

3. Proper Operation and Maintenance

a. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by permittee as efficiently as possible and in a manner which will minimize upsets and discharges of excessive pollutants and will achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of this permit.

b. The permittee shall provide an adequate operating staff which is duly qualified to carry out operation, maintenance and testing functions required to insure compliance with the conditions of this permit.

4. Bypass of Treatment Facilities

a. Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Parts II.B.4.b and 4.c.

b. Notice:

(1) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.

(2) Unanticipated bypass. The permittee shall, within 24 hours, submit notice of an unanticipated bypass as required in Part II.D.7.

c. Prohibition of Bypass:

(1) Bypass is prohibited, and the Director may take enforcement action against a permittee for bypass, unless:

(a) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgement to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and,

(c) The permittee submitted notices as required by Part II.B.4.b.

(2) The Director may allow an anticipated bypass after considering its adverse effects, if the Director determines that it will meet the three conditions listed at Part II.B.4.c(1).

5. Upset Conditions

a. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of Part II.B.5.b. are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

b. Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(1) An upset occurred and that the permittee can identify the cause(s) of the upset;

(2) The permitted facility was at the time being properly operated;

(3) The permittee submitted notice of the upset as required by Part II.D.7; and

(4) The permittee complied with any remedial measures required by Part II.B.2.

c. Burden of proof. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

6. Removed Substances

Solids, sewage sludges, filter backwash, or other pollutants removed in the course of treatment or wastewater control shall be disposed of in a manner such as to prevent any pollutant from such materials from entering navigable waters. Any substance specifically listed within this permit may be discharged in accordance with specified conditions, terms, or limitations.

Section C. Monitoring and Records

1. Inspection and Entry

The permittee shall allow the Director, or an authorized representative, upon the presentation of credentials and other documents as may be required by the law to:

a. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices or operations regulated or required under this permit; and

d. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

2. Representative Sampling

Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

3. Retention of Records

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report, or application. This period may be extended by request of the Director at any time.

The operator shall maintain records at development and production facilities for 3 years, wherever practicable and at a specific shore-based site whenever not practicable. The operator is responsible for maintaining records at exploratory facilities while they are discharging under the operators control and at a specific shore-based site for the remainder of the 3-year retention period.

4. Record Contents

Records of monitoring information shall include:

a. The date, exact place, and time of sampling or measurements;

b. The individual(s) who performed the sampling or measurements;

c. The date(s) and time(s) analyses were performed;

d. The individual(s) who performed the analyses;

e. The analytical techniques or methods used; and

f. The results of such analyses.

5. Monitoring Procedures

a. Monitoring must be conducted according to test procedures approved under 40 CFR part 136, unless other test procedures have been specified in this permit or approved by the Regional Administrator.

b. The permittee shall calibrate and perform maintenance procedures on all monitoring and analytical instruments at intervals frequent enough to insure accuracy of measurements and shall maintain appropriate records of such activities.

c. An adequate analytical quality control program, including the analyses of sufficient standards, spikes, and duplicate samples to insure the accuracy of all required analytical results shall be maintained by the permittee or designated commercial laboratory.

6. Flow Measurements

Appropriate flow measurement devices and methods consistent with accepted scientific practices shall be selected and used to ensure the accuracy and reliability of measurements of the volume of monitored discharges. The devices shall be installed, calibrated, and maintained to insure that the accuracy of the measurements is consistent with the accepted capability of that type of device. Devices selected shall be capable of measuring flows with a maximum deviation of less than 10% from true discharge rates throughout the range of expected discharge volumes.

Section D. Reporting Requirements

1. Planned Changes

The permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

(1) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 CFR 122.29(b); or,

(2) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements listed at Part II.D.10.a.

2. Anticipated Noncompliance

The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

3. Transfers

This permit is not transferable to any person except after notice to the Regional Administrator. The Regional Administrator may require modification or revocation and reissuance of the permit to change the name of the permittee and to incorporate such requirements as may be necessary under the Act.

4. Discharge Monitoring Reports and Other Reports

The operator of each lease block shall be responsible for submitting monitoring results for all facilities within each lease block. The monitoring results for the facilities (platform,

drilling ship, or semisubmersible) within the particular lease block shall be summarized on the annual Discharge Monitoring Report for that lease block.

Monitoring results obtained during the previous 12 months shall be summarized and reported on a Discharge Monitoring Report (DMR) form (EPA No. 3320–1).

If any category of waste (discharge) is not applicable for all facilities within the lease block, due to the type of operations (e.g., drilling, production) no reporting is required; however, ''no discharge'' must be recorded for those categories on the DMR. Operators may list a summary of all lease blocks where there is no activity in lieu of DMRs for those lease blocks. The summary must state each lease block name and outfall number and must include the monitoring period. All pages of the DMR, or summary of no activity lease blocks, must be signed and certified as required by Part II.D.11 of this permit and returned when due.

Additionally, the lease block number assigned by the Department of the Interior shall be listed on all Discharge Monitoring Reports.

5. Additional Monitoring by the Permittee

If the permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR part 136 or as specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the Discharge Monitoring Report (DMR). Such increased monitoring frequency shall also be indicated on the DMR.

6. Averaging of Measurements

Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified.

7. Twenty-Four Hour Reporting

a. The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. Alternatively to oral reporting, the permittee may report by EMAIL at the following address: R6GENPERMIT@epa.gov. A written submission shall be provided within 5 days of the time the permittee becomes aware of the circumstances. The report shall contain the following information:

(1) A description of the noncompliance and its cause;

(2) The period of noncompliance including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and,

(3) Steps being taken to reduce, eliminate, and prevent recurrence of the noncomplying discharge.

b. The following shall be included as information which must be reported within 24 hours:

(1) Any unanticipated bypass which exceeds any effluent limitation in the permit;

(2) Any upset which exceeds any effluent limitation in the permit; and,

(3) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Director in Part II of the permit to be reported within 24 hours.

c. The Director may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

8. Other Noncompliance

The permittee shall report all instances of noncompliance not reported under Parts II.D.4 and D.7 at the time monitoring reports are submitted. The reports shall contain the information listed at Part II.D.7.

9. Other Information

Where the permittee becomes aware that he failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, he shall promptly submit such facts or information.

10. Signatory Requirements

All applications, reports, or information submitted to the Director shall be signed and certified.

a. All permit applications shall be signed as follows:

(1) For a corporation—by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:

(a) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions for the corporation; or,

(b) The manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(2) For a partnership or sole proprietorship—by a general partner or the proprietor, respectively.

(3) For a municipality, State, Federal, or other public agency—by either a principal executive officer or ranking elected official. For purposes of this election, a principal executive officer of a Federal agency includes:

(a) The chief executive officer of the agency, or

(b) A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

b. All reports required by the permit and other information requested by the Director shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(1) The authorization is made in writing by a person described above;

(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or an individual occupying a named position; and,

(3) The written authorization is submitted to the Director.

c. Certification. Any person signing a document under this section shall make the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

11. Availability of Reports

Except for applications, effluent data, permits, and other data specified in 40 CFR 122.7, any information submitted pursuant to this permit may be claimed as confidential by the submitter. If no claim is made at the time of submission, information may be made available to the public without further notice.

Section E. Penalties for Violations of Permit Conditions

1. Criminal

a. Negligent Violations. The Act provides that any person who negligently violates permit conditions implementing section 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less $2,500 nor more then $25,000 per day of violation, or by imprisonment for not more than 1 year, or both.

b. Knowing Violations. The Act provides that any person who knowingly violates permit conditions implementing sections 301, 302, 306, 307, 308, 318 or 405 of the Act is subject to a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or both.

c. Knowing Endangerment. The Act provides that any person who knowingly violates permit conditions implementing sections 301, 302, 303, 306, 307, 308, 318, or 405 of the Act and who knows at that time that he is placing another person in imminent danger of death or serious bodily injury is subject to a fine of not more than $250,000, or by imprisonment for not more than 15 years, or both.

d. False Statements. The Act provides that any person who knowingly makes any false material statement, representation, or certification in any application, record report, plan, or other document filed or required to be maintained under the Act or who knowingly falsifies, tampers with, or renders inaccurate, any monitoring device or method required to be maintained under the Act, shall upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than 2 years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $20,000 per day of violation, or by imprisonment of not more than 4 years, or by both. (See section 309.c.4 of the Clean Water Act)

2. Civil Penalties

The Act provides that any person who violates a permit condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a civil penalty not to exceed $27,500 per day for each violation.

3. Administrative Penalties

The Act provides that any person who violates a permit conditions implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to an administrative penalty, as follows:

a. Class I Penalty. Not to exceed $11,000 per violation nor shall the maximum amount exceed $27,500.

b. Class II Penalty. Not to exceed $11,000 per day for each day during which the violation continues nor shall the maximum amount exceed $137,500.

Section F. Additional General Permit Conditions

1. When the Regional Administrator May Require Application for an Individual NPDES Permit

The Regional Administrator may require any person authorized by this permit to apply for and obtain an individual NPDES permit when:

(a) The discharge(s) is a significant contributor of pollution;

(b) The discharger is not in compliance with the conditions of this permit;

(c) A change has occurred in the availability of the demonstrated technology or practices for the control or abatement of pollutants applicable to the point sources;

(d) Effluent limitations guidelines are promulgated for point sources covered by this permit;

(e) A Water Quality Management Plan containing requirements applicable to such point source is approved;

(f) The point source(s) covered by this permit no longer:

(1) Involve the same or substantially similar types of operations;

(2) Discharge the same types of wastes;

(3) Require the same effluent limitations or operating conditions;

(4) Require the same or similar monitoring; and

(5) In the opinion of the Regional Administrator, are more appropriately controlled under an individual permit than under a general permit.

(g) The bioaccumulation monitoring results show concentrations of the listed pollutants in excess of levels safe for human consumption.

The Regional Administrator may require any operator authorized by this permit to apply for an individual NPDES permit only if the operator has been notified in writing that a permit application is required.

2. When an Individual NPDES Permit May Be Requested

(a) Any operator authorized by this permit may request to be excluded from the coverage of this general permit by applying for an individual permit.

(b) When an individual NPDES permit is issued to an operator otherwise subject to this general permit, the applicability of this permit to the owner or operator is automatically terminated on the effective date of that individual permit.

(c) A source excluded from coverage under this general permit solely because it already has an individual permit may request that its individual permit be revoked, and that it be covered by this general permit. Upon revocation of the individual permit, this general permit shall apply to the source.

3. Permit Reopener Clause

If applicable new or revised effluent limitations guidelines or New Source Performance Standards covering the Offshore Subcategory of the Oil and Gas Extraction Point Source Category (40 CFR part 435) are promulgated in accordance with sections 301(b), 304(b)(2), and 307(a)(2), and the new or revised effluent limitations guidelines or New Source Performance Standards are more stringent than any effluent limitations in this permit or control a pollutant not limited in this permit, the permit may, at the Director's discretion, be modified to conform to the new or revised effluent limitations guidelines.

Notwithstanding the above, if an offshore oil and gas extraction point source discharge facility is subject to the ten year protection period for new source performance standards under the Clean Water Act section 306(d), this reopener clause may not be used to modify the permit to conform to more stringent new source performance standards or technology based standards developed under section 301(b)(2) during the ten year period specified in 40 CFR 122.29(d).

The Director may modify this permit upon meeting the conditions set forth in this reopener clause.

Section G. Definitions

All definitions contained in section 502 of the Act shall apply to this permit and are incorporated herein by references. Unless otherwise specified in this permit, additional definitions of words or phrases used in this permit are as follows:

1. ''Act'' means the Clean Water Act (33 U.S.C. 1251 et. seq.), as amended.

2. ''Administrator'' means the Administrator of the U.S. Environmental Protection Agency.

3. ''Annual Average'' means the average of all discharges sampled and/or measured during a calendar year in which daily discharges are sampled and/or measured, divided by the number of discharges sampled and/or measured during such year.

4. ''Applicable effluent standards and limitations'' means all state and Federal effluent standards and limitations to which a discharge is subject under the Act, including, but not limited to, effluent limitations, standards or performance, toxic effluent standards and prohibitions, and pretreatment standards.

5. ''Applicable water quality standards'' means all water quality standards to which a discharge is subject under the Act.

6. ''Areas of Biological Concern'' means a portion of the OCS identified by EPA, in consultation with the Department of Interior as containing potentially productive or unique biological communities or as being potentially sensitive to discharges associated with oil and gas activities.

7. ''Blow-Out Preventer Control Fluid'' means fluid used to actuate the hydraulic equipment on the blow-out preventer or subsea production wellhead assembly.

8. ''Boiler Blowdown'' means discharges from boilers necessary to minimize solids build-up in the boilers, including vents from boilers and other heating systems.

9. ''Bulk Discharge'' any discharge of a discrete volume or mass of effluent from a pit tank or similar container that occurs on a one-time, infrequent or irregular basis.

10. ''Bypass'' means the intentional diversion of waste streams from any portion of a treatment facility.

11. ''Completion Fluids'' means salt solutions, weighted brines, polymers and various additives used to prevent damage to the well bore during operations which prepare the drilled well for hydrocarbon production. These fluids move into the formation and return to the surface as a slug with the produced water. Drilling muds remaining in the wellbore during logging, casing, and cementing operations or during temporary abandonment of the well are not considered completion fluids and are regulated by drilling fluids requirements.

12. ''Controlled Discharge Rates Areas'' means zones adjacent to areas of biological concern.

13. ''Daily Discharge'' means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in terms of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the sampling day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the sampling day. Daily discharge determination of concentration made using a composite sample shall be the concentration of the composite sample. When grab samples are used, the daily discharge determination of concentration shall be arithmetic average (weighted by flow value) of all samples collected during that sampling day.

14. ''Daily Average'' (also known as monthly average) discharge limitations means the highest allowable average of daily discharge(s) over a calendar month, calculated as the sum of all daily discharge(s) measured during a calendar month divided by the number of daily discharge(s) measured during that month. When the permit establishes daily average concentration effluent limitations or conditions, the daily average concentration means the arithmetic average (weighted by flow) of all daily discharge(s) of concentration determined during the calendar month where C = daily concentration, F = daily flow, and n = number of daily samples; daily average discharge =

$$\frac{C_1F_1 + C_2F_2 + \cdots + C_nF_n}{F_1 + F_2 + \cdots + F_n}.$$

15. ''Daily Maximum'' discharge limitations means the highest allowable ''daily discharge'' during the calendar month.

16. ''Desalinization Unit Discharge'' means wastewater associated with the process of creating freshwater from seawater.

17. ''Deck Drainage'' means any waste resulting from deck washings, spillage, rainwater, and runoff from gutters and drains including drip pans and work areas within facilities covered under this permit.

18. ''Development Drilling'' means the drilling of wells required to efficiently produce a hydrocarbon formation or formations.

19. ''Development Facility'' means any fixed or mobile structure that is engaged in the drilling of productive wells.

20. ''Diatomaceous Earth Filter Media'' means filter media used to filter seawater or other authorized completion fluids and subsequently washed from the filter.

21. ''Diesel Oil'' means the grade of distillate fuel oil, as specified in the American Society for Testing and Materials Standard Specification D975–81, that is typically used as the continuous phase in conventional oil-based drilling fluids.

22. ''Director'' means the U.S. Environmental Protection Agency Regional Administrator or an authorized representative.

23. ''Domestic Waste'' means material discharged from galleys, sinks, showers, safety showers, eye wash stations, hand washing stations, fish cleaning stations, and laundries.

24. ''Drill Cuttings'' means particles generated by drilling into the subsurface geological formations including cured cement carried to the surface with the drilling fluid.

25. ''Drilling Fluids'' means the circulating fluid (mud) used in the rotary drilling of wells to clean and condition the hole and to counterbalance formation pressure. A water-based drilling fluid is the conventional drilling mud in which water is the continuous phase and the suspending medium for solids, whether or not oil is present. An oil based drilling fluids has diesel oil, mineral oil, or some other oil as its continuous phase with water as the dispersed phase.

26. ''End of well Sample'' means the sample taken after the final log run is completed and prior to bulk discharge.

27. ''Environmental Protection Agency'' (EPA) means the U.S. Environmental Protection Agency.

28. ''Excess Cement Slurry'' means the excess mixed cement, including additives and wastes from equipment washdown, after a cementing operation.

29. ''Exploratory Facility'' means any fixed or mobile structure that is engaged in the drilling of wells to determine the nature of potential hydrocarbon reservoirs.

30. ''Fecal Coliform Bacteria Sample'' consists of one effluent grab portion collected during a 24-hour period at peak loads.

31. ''Grab sample'' means an individual sample collected in less than 15 minutes.

32. ''Garbage'' means all kinds of food waste, wastes generated in living areas on the facility, and operational waste, excluding fresh fish and parts thereof, generated during the normal operation of the facility and liable to be disposed of continuously or periodically, except dishwater, graywater, and those substances that are defined or listed in other Annexes to MARPOL 73/78

33. ''Graywater'' means drainage from dishwater, shower, laundry, bath, and washbasin drains and does not include drainage from toilets, urinals, hospitals, and cargo spaces.

34. ''Inverse Emulsion Drilling Fluids'' means an oil-based drilling fluid which also contains a large amount of water.

35. ''Live bottom areas'' means those areas which contain biological assemblages consisting of such sessile invertebrates as seas fans, sea whips, hydroids, anemones, ascidians sponges, bryozoans, seagrasses, or corals living upon and attached to naturally occurring hard or rocky formations with fishes and other fauna.

36. ''Maintenance waste'' means materials collected while maintaining and operating the facility, including, but not limited to, soot, machinery deposits, scraped paint, deck sweepings, wiping wastes, and rags.

37. ''Maximum Hourly Rate'' means the greatest number of barrels of drilling fluids discharged within one hour, expressed as barrels per hour.

38. ''Muds, Cuttings, and Cement at the Seafloor'' means discharges that occur at the seafloor prior to installation of the marine riser and during marine riser disconnect, well abandonment and plugging operations.

39. ''National Pollutant Discharge Elimination System'' (NPDES) means the national program for issuing, modifying, revoking, and reissuing, terminating, monitoring, and enforcing permits, and imposing and enforcing pretreatment requirements, under section 307, 318, 402, and 405 of the Act.

40. ''New Source'' means any facility or activity that meets the definition of ''new source'' under 40 CFR 122.2 and meets the criteria for determination of new sources under 40 CFR 122.29(b) applied consistently with all of the following definitions:

(a) The term ''water area'' as used in the term ''site'' in 40 CFR 122.29 and 122.2 shall mean the water area and ocean floor beneath any exploratory, development, or production facility where such facility is conducting its exploratory, development, or production activities.

(b) The term ''significant site preparation work'' as used in 40 CFR 122.29 shall mean the process of surveying, clearing, or preparing an area of the ocean floor for the purpose of constructing or placing a development or production facility on or over the site.

41. ''No Activity Zones'' means those areas identified by the Minerals Management Service (MMS) where no structures, drilling rigs, or pipelines will be allowed. Those zones are identified in lease stipulations that are applied to MMS oil and gas lease sales. Additional no activity areas may be identified by MMS during the life of this permit.

42. ''Operational waste'' means all cargo associated waste, maintenance waste, cargo residues, and ashes and clinkers from incinerators and coal burning boilers.

43. ''Packer Fluid'' means low solids fluids between the packer, production string and well casing. They are considered to be workover fluids.

44. ''Priority Pollutants'' means those chemicals or elements identified by EPA, pursuant to section 307 of the Clean Water Act and 40 CFR 401.15.

45. ''Produced Sand'' means slurried particles used in hydraulic fracturing, the accumulated formation sands, and scale particles generated during production. Produced sand also includes desander discharge from produced water waste stream and blowdown of water phase from the produced water treating system.

46. ''Produced Water'' means the water (brine) brought up from the hydrocarbon-bearing strata during the extraction of oil and gas, and can include formation water, injection water, and any chemicals added downhole or during the oil/water separation process.

47. ''Production Facility'' means any fixed or mobile structure that is either engaged in well completion or used for active recovery of hydrocarbons from producing formations.

48. ''Sanitary Waste'' means human body waste discharged from toilets and urinals.

49. ''Severe property damage'' means substantial physical damage to property, damage to the treatment facilities which cause them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

50. ''Sheen'' means a silvery or metallic sheen, gloss, or increased reflectivity, visual color or iridescence on the water surface.

51. ''Source Water and Sand'' means water from non-hydrocarbon bearing formations for the purpose of pressure maintenance or secondary recovery including the entrained solids.

52. ''Spotting'' means the process of adding a lubricant (spot) downhole to free stuck pipe.

53. Synthetic Drilling Fluid'' means a drilling fluids which has synthetic material as its continuous phase with water as the dispersed phase.

54. ''Territorial Seas'' means the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of three miles.

55. ''Trace Amounts'' means that if materials added downhole as well treatment, completion, or workover fluids do not contain priority pollutants then the discharge is assumed not to contain priority pollutants, except possibly in trace amounts.

56. ''Treatment Chemicals'' means biocides, corrosion inhibitors, or other chemicals which are used to treat seawater or freshwater to prevent corrosion or fouling of piping or equipement.

57. ''Uncontaminated Ballast/Bilge Water'' means seawater added or removed to maintain proper draft.

58. ''Uncontaminated Freshwater'' means freshwater which is discharged without the addition of chemicals; included are (1) discharges of excess freshwater that permit the continuous operation of fire control and utility lift pumps, (2) excess freshwater from pressure maintenance and secondary recovery projects, (3) water red during training and testing of personnel in fire protection, and (4) water used to pressure test new piping.

59. ''Uncontaminated Seawater'' means seawater which is returned to the sea without the addition of chemicals. Included are (1) discharges of excess seawater which permit the continuous operation of fire control and utility lift pumps (2) excess seawater from pressure maintenance and secondary recovery projects (3) water red during the training and testing of personnel in fire protection (4) seawater used to pressure test piping, and (5) once through noncontact cooling water which has not been treated with biocides.

60. ''Upset'' means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

61. ''Well Treatment Fluids'' mean any fluid used to restore or improve productivity by chemically or physically altering hydrocarbon-bearing strata after a well has been drilled. These fluids move into the formation and return to the surface as a slug with the produced water. Stimulation fluids include substances such as acids, solvents, and propping agents.

62. ''Workover Fluids'' mean salt solutions, weighted brines, polymers, and other specialty additives used in a producing well to allow safe repair and

maintenance or abandonment procedures. High solids drilling fluids used during workover operations are not considered workover fluids by definition and therefore must meet drilling fluid effluent limitations before discharge may occur. Packer fluids, low solids fluids between the packer, production string and well casing, are considered to be workover fluids and must meet only the effluent requirements imposed on workover fluids.

63. The term ''MGD'' shall mean million gallons per day.

64. The term ''mg/l'' shall mean milligrams per liter or parts per million (ppm).

65. The term ''ug/l'' shall mean micrograms per liter or parts per billion (ppb).

Appendix A: Table 1.—Produced Water Critical Dilutions

TABLE 1–A.—CRITICAL DILUTION (PERCENT EFFLUENT) FOR DISCHARGES WITH A DEPTH DIFFERENCE BETWEEN THE DISCHARGE PIPE AND THE SEA FLOOR OF GREATER THAN 0 METERS TO 4 METERS

Discharge rate (bbl/day)	Pipe diameter (inches)					
	>0″ to 5″	>5″ to 7″	>7″ to 9″	>9″ to 11″	>11″ to 15″	>15″
0 to 500	0.05	0.05	0.05	0.05	0.05	0.05
501 to 1000	0.12	0.12	0.12	0.12	0.12	0.12
1001 to 2000	0.29	0.29	0.29	0.29	0.29	0.29
2001 to 3000	0.49	0.48	0.48	0.48	0.48	0.49
3001 to 4000	0.66	0.64	0.64	0.64	0.64	0.64
4001 to 5000	0.9	0.87	0.85	0.85	0.86	0.87
5001 to 6000	1.13	1.11	1.07	1.07	1.08	1.09
6001 to 7000	1.36	1.33	1.30	1.28	1.28	1.30
7001 to 8000	1.57	1.55	1.51	1.47	1.48	1.50
8001 to 9000	1.80	1.78	1.74	1.68	1.68	1.70
9001 to 10,000	2.02	2.00	1.95	1.89	1.88	1.90
10,001 to 15,000	3.09	3.17	3.08	3.02	2.92	2.88
15,001 to 20,000	3.90	4.26	4.15	4.07	3.95	3.77
20,001 to 25,000	4.60	5.26	5.25	5.10	5.00	4.60
25,001 to 35,000	5.68	6.92	7.28	7.00	6.86	6.30
35,001 to 50,000	6.83	8.80	9.67	9.80	9.35	8.74
50,001 to 75,000	8.23	11.1	12.8	13.9	14.2	13.1

TABLE 1–B.—CRITICAL DILUTION (PERCENT EFFLUENT) FOR DISCHARGES WITH A DEPTH DIFFERENCE BETWEEN THE DISCHARGE PIPE AND THE SEA FLOOR OF GREATER THAN 4 METERS TO 6 METERS

Discharge rate (bbl/day)	Pipe diameter (inches)					
	>0″ to 5″	>5″ to 7″	>7″ to 9″	>9″ to 11″	>11″ to 15″	>15″
0 to 500	0.05	0.05	0.05	0.05	0.05	0.05
501 to 1000	0.104	0.105	0.105	0.105	0.105	0.106
1001 to 2000	0.20	0.20	0.20	0.20	0.20	0.20
2001 to 3000	0.30	0.30	0.30	0.30	0.30	0.30
3001 to 4000	0.40	0.38	0.38	0.38	0.39	0.39
4001 to 5000	0.59	0.58	0.56	0.56	0.57	0.58
5001 to 6000	0.74	0.73	0.71	0.71	0.71	0.72
6001 to 7000	0.88	0.87	0.85	0.84	0.84	0.85
7001 to 8000	1.02	1.00	0.98	0.96	0.96	0.97
8001 to 9000	1.15	1.14	1.12	1.09	1.09	1.10
9001 to 10,000	1.28	1.28	1.25	1.22	1.21	1.22
10,001 to 15,000	1.92	1.97	1.93	1.90	1.84	1.82
15,001 to 20,000	2.46	2.57	2.54	2.51	2.45	2.36
20,001 to 25,000	2.92	3.14	3.14	3.08	3.03	2.85
25,001 to 35,000	3.60	4.15	4.26	4.18	4.13	3.85
35,001 to 50,000	4.32	5.38	5.85	5.83	5.68	5.43
50,001 to 75,000	5.17	6.94	7.88	8.36	8.41	7.94

TABLE 1–C.—CRITICAL DILUTION (PERCENT EFFLUENT) FOR DISCHARGES WITH A DEPTH DIFFERENCE BETWEEN THE DISCHARGE PIPE AND THE SEA FLOOR OF GREATER THAN 6 METERS TO 9 METERS

Discharge rate (bbl/day)	Pipe diameter (inches)					
	>0″ to 5″	>5″ to 7″	>7″ to 9″	>9″ to 11″	>11″ to 15″	>15″
0 to 500	0.05	0.05	0.05	0.05	0.05	0.05
501 to 1000	0.104	0.105	0.105	0.105	0.105	0.105
1001 to 2000	0.20	0.20	0.20	0.20	0.20	0.20
2001 to 3000	0.27	0.27	0.27	0.27	0.27	0.27
3001 to 4000	0.32	0.31	0.31	0.31	0.32	0.32

TABLE 1–C.—CRITICAL DILUTION (PERCENT EFFLUENT) FOR DISCHARGES WITH A DEPTH DIFFERENCE BETWEEN THE DISCHARGE PIPE AND THE SEA FLOOR OF GREATER THAN 6 METERS TO 9 METERS—Continued

Discharge rate (bbl/day)	Pipe diameter (inches)					
	>0″ to 5″	>5″ to 7″	>7″ to 9″	>9″ to 11″	>11″ to 15″	>15″
4001 to 5000	0.38	0.37	0.36	0.36	0.37	0.37
5001 to 6000	0.50	0.49	0.48	0.48	0.48	0.49
6001 to 7000	0.60	0.59	0.57	0.57	0.57	0.58
7001 to 8000	0.69	0.68	0.66	0.65	0.65	0.66
8001 to 9000	0.78	0.77	0.76	0.74	0.74	0.75
9001 to 10,000	0.86	0.86	0.85	0.83	0.82	0.83
10,001 to 15,000	1.29	1.32	1.30	1.28	1.25	1.24
15,001 to 20,000	1.64	1.72	1.71	1.69	1.65	1.60
20,001 to 25,000	1.97	2.08	2.09	2.06	2.04	1.93
25,001 to 35,000	2.50	2.74	2.81	2.78	2.75	2.6
35,001 to 50,000	3.05	3.60	3.80	3.82	3.76	3.62
50,001 to 75,000	3.70	4.83	5.40	5.62	5.60	5.40

TABLE 1–D.—CRITICAL DILUTION (PERCENT EFFLUENT) FOR DISCHARGES WITH A DEPTH DIFFERENCE BETWEEN THE DISCHARGE PIPE AND THE SEA FLOOR OF GREATER THAN 9 METERS TO 12 METERS

Discharge rate (bbl/day)	Pipe diameter (inches)					
	>0″ to 5″	>5″ to 7″	>7″ to 9″	>9″ to 11″	>11″ to 15″	>15″
0 to 500	0.05	0.05	0.05	0.05	0.05	0.05
501 to 1000	0.104	0.105	0.105	0.105	0.105	0.106
1001 to 2000	0.20	0.20	0.20	0.20	0.20	0.20
2001 to 3000	0.27	0.27	0.27	0.27	0.27	0.27
3001 to 4000	0.32	0.31	0.31	0.31	0.32	0.32
4001 to 5000	0.38	0.37	0.36	0.36	0.37	0.37
5001 to 6000	0.50	0.49	0.36	0.36	0.37	0.37
6001 to 7000	0.55	0.54	0.53	0.52	0.52	0.53
7001 to 8000	0.59	0.59	0.58	0.56	0.57	0.57
8001 to 9000	0.64	0.63	0.62	0.60	0.61	0.61
9001 to 10,000	0.67	0.67	0.66	0.64	0.64	0.65
10,001 to 15,000	0.82	0.84	0.83	0.82	0.80	0.80
15,001 to 20,000	1.00	1.05	1.04	1.03	1.02	1.00
20,001 to 25,000	1.20	1.27	1.28	1.26	1.25	1.20
25,001 to 35,000	1.57	1.67	1.72	1.70	1.69	1.62
35,001 to 50,000	2.00	2.22	2.31	2.33	2.31	2.24
50,001 to 75,000	2.50	3.10	3.37	3.47	3.50	3.43

TABLE 1–E.—CRITICAL DILUTION (PERCENT EFFLUENT) FOR LOWER VOLUME DISCHARGES WITH A DEPTH DIFFERENCE BETWEEN THE DISCHARGE PIPE AND THE SEA FLOOR OF GREATER THAN 12 METERS

Discharge rate (bbl/day)	Pipe diameter (inches)					
	>0″ to 5″	>5″ to 7″	>7″ to 9″	>9″ to 11″	>11″ to 15″	>15″
>0 to 500	0.05	0.05	0.05	0.05	0.05	0.05
501 to 1000	0.104	0.105	0.105	0.105	0.105	0.106
1001 to 2000	0.20	0.20	0.20	0.20	0.20	0.20
2001 to 3000	0.27	0.27	0.27	0.27	0.27	0.27
3001 to 4000	0.32	0.31	0.31	0.31	0.32	0.32
4001 to 5000	0.38	0.37	0.36	0.36	0.37	0.37
5001 to 6000	0.50	0.49	0.48	0.48	0.48	0.49
6001 to 7000	0.55	0.54	0.53	0.52	0.52	0.53
7001 to 8000	0.59	0.59	0.58	0.56	0.57	0.57

TABLE 1–F.—CRITICAL DILUTION (PERCENT EFFLUENT) FOR LARGER VOLUME DISCHARGES WITH A DEPTH DIFFERENCE BETWEEN THE DISCHARGE PIPE AND THE SEA FLOOR OF GREATER THAN 12 METERS

Discharge rate (bbl/day)	Pipe diameter (inches)					
	>0″ to 5″	>5″ to 7″	>7″ to 9″	>9″ to 11″	>11″ to 15″	>15″
Depth Difference Greater than 12 Meters to 14 Meters						
8001 to 9,000	0.64	0.63	0.62	0.60	0.61	0.61

TABLE 1–F.—CRITICAL DILUTION (PERCENT EFFLUENT) FOR LARGER VOLUME DISCHARGES WITH A DEPTH DIFFERENCE BETWEEN THE DISCHARGE PIPE AND THE SEA FLOOR OF GREATER THAN 12 METERS—Continued

Discharge rate (bbl/day)	Pipe diameter (inches)					
	>0″ to 5″	>5″ to 7″	>7″ to 9″	>9″ to 11″	>11″ to 15″	>15″
9001 to 10,000	0.67	0.67	0.66	0.64	0.64	0.65
10,001 to 15,000	0.82	0.84	0.83	0.82	0.80	0.80
15,001 to 20,000	0.92	0.96	0.96	0.95	0.93	0.91
20,001 to 25,000	1.00	1.06	1.06	1.05	1.04	1.00
25,001 to 35,000	1.13	1.20	1.23	1.22	1.22	1.17
35,001 to 50,000	1.40	1.51	1.57	1.58	1.57	1.53
50,001 to 75,000	1.83	2.15	2.27	2.34	2.37	2.33
Depth Difference Greater than 14 Meters to 16 Meters						
8001 to 9,000	0.64	0.63	0.62	0.60	0.61	0.61
9001 to 10,000	0.67	0.67	0.66	0.64	0.64	0.65
10,001 to 15,000	0.82	0.84	0.83	0.82	0.80	0.80
15,001 to 20,000	0.92	0.96	0.96	0.95	0.93	0.91
20,001 to 25,000	1.00	1.06	1.06	1.05	1.04	1.00
25,001 to 35,000	1.13	1.20	1.23	1.22	1.22	1.17
35,001 to 50,000	1.28	1.37	1.43	1.44	1.43	1.39
50,001 to 75,000	1.54	1.74	1.82	1.88	1.90	1.88
Depth Difference Greater than 16 Meters to 19 meters						
8001 to 9000	0.64	0.63	0.62	0.60	0.61	0.61
9001 to 10,000	0.67	0.67	0.66	0.64	0.64	0.65
10,001 to 15,000	0.82	0.84	0.83	0.82	0.80	0.80
15,001 to 20,000	0.92	0.96	0.96	0.95	0.93	0.9
120,001 to 25,000	1.00	1.06	1.06	1.05	1.04	1.00
25,001 to 35,000	1.13	1.20	1.23	1.22	1.22	1.17
35,001 to 50,000	1.28	1.37	1.43	1.44	1.43	1.39
50,001 to 75,000	1.30	1.44	1.51	1.56	1.57	1.55
Depth Difference Greater than 19 Meters						
8001 to 9000	0.64	0.63	0.62	0.60	0.61	0.61
9001 to 10,000	0.67	0.67	0.66	0.64	0.64	0.65
10,001 to 15,000	0.82	0.84	0.83	0.82	0.80	0.80
15,001 to 20,000	0.92	0.96	0.96	0.95	0.93	0.91
20,001 to 25,000	1.00	1.06	1.06	1.05	1.04	1.00
25,001 to 35,000	1.13	1.20	1.23	1.22	1.22	1.17
35,001 to 50,000	1.28	1.37	1.43	1.44	1.43	1.39
50,001 to 75,000	1.28	1.42	1.49	1.53	1.54	1.53

TABLE 1–G.—MINIMUM VERTICAL PORT SEPARATION DISTANCE TO AVOID INTERFERENCE

Port flow rate (bbl/day)	Minimum separation distance (m)
0–500	3.7
501–1000	4.5
1001–2000	5.4
2001–5000	6.4
5001–7000	6.6
7001–10000	6.6

TABLE 2–A.—CRITICAL DILUTIONS (PERCENT EFFLUENT) FOR TOXICITY LIMITATIONS FOR SEAWATER TO WHICH TREATMENT CHEMICALS HAVE BEEN ADDED

Depth difference (meters)	Discharge rate (bbl/day)	Pipe Diameter			
		>0″ to 2″	>2″ to 4″	>4″ to 6″	>6″
All	0 to 1,000	12	24.7	24.5	24.6
	>1,000 to 10,000	11.2	12.4	12.2	14
	> 10,000	9.6	24	23	20

TABLE 2–B.—CRITICAL DILUTIONS (PERCENT EFFLUENT) FOR TOXICITY LIMITATIONS FOR FRESHWATER TO WHICH TREATMENT CHEMICALS HAVE BEEN ADDED

Depth difference (meters)	Discharge rate (bbl/day)	Pipe diameter			
		>0″ to 2″	>2″ to 4″	>4″ to 6″	>6″
All	0 to 1,000	1.1	1.2	2.9	2.9
	>1,000 to 10,000	19	39	28	24
	>10,000	13	63	41	74

TABLE 3.—EFFLUENT LIMITATIONS, PROHIBITIONS AND MONITORING REQUIREMENTS

Discharge	Regulated monitored discharged parameter	Discharge limitation/prohibition	Monitoring requirement		
			Measurement frequency	Sample type/method	Recorded value(s)
Drilling Fluid	Free oil	No free oil	Once week [1]	Static sheen	Num. of days sheen observed.
	Toxicity [2] 96-hr LC50.	30,000 ppm daily min, 30,000 ppm monthly avg min.	Once/month	Grab	96-hr LC50.
			Once/end of well [3]	Grab	96-hr LC50.
			once/month	Grab	96-hr LC50.
	Discharge Rate.	1,000 barrels/hour.	Once/hour [1]	Estimate	Max. hourly rate.
	Discharge Rate for cntrld rate areas.	([4])	Once/hour [1]	Measure	Max. hourly rate.
	Mercury and cadmium.	No disch. of drilling fluids to which barite has been added, if such barite contains mercury in excess of 1.0 mg/kg or cadmium in excess of 3.0 mg/kg (dry weight).	Once prior to drilling each well.[6]	Absorption	mg mercury/kg barite.
				Spectro-photometry	mg cadmium/kg barite.
	Oil Based or Inverse Emulsion Drilling Fluids.	No discharge.			
	Oil Contaminated Drilling Fluids.	No discharge.			
	Diesel Oil	No discharge of drilling fluids to which diesel oil has been added.			
	Mineral Oil	Mineral oil may be used only as a carrier fluid, lubricity additive, or pill.			
Drilling Cuttings	Free oil	No free oil	Once/week [1]	Static sheen	Number of days sheen observed.

TABLE 3.—EFFLUENT LIMITATIONS, PROHIBITIONS AND MONITORING REQUIREMENTS—Continued

Discharge	Regulated monitored discharged parameter	Discharge limitation/prohibition	Monitoring requirement		
			Measurement frequency	Sample type/method	Recorded value(s)
	Toxicity [2] 96-hr LC50.	No discharge of cuttings generated using drilling fluids which exhibit a toxicity of less than 30,000 ppm daily min. or 30,000 ppm monthly avg. min.			
	Mercury and cadmium.	No discharge if generated using drilling fluids to which barite has been added which contains mercury in excess of 1.0 mg/kg or cadmium in excess of 3.0 mg/kg (dry weight).			
	Cuttings generated using Oil Based or Inverse Emulsion Drilling Fluids.	No discharge.			
	Cuttings generated using Oil Contaminated Drilling Fluids.	No discharge.			
	Cuttings generated using drilling fluids to which Diesel Oil has been added.	No discharge.			
	Cuttings generated using drilling fluids to which Mineral Oil has been added.	Mineral oil may be used only as a carrier fluid, lubricity additive, or pill.			
Deck Drainage	Free oil	No free oil	Once/day [7]	Visual sheen	Number of days sheen observed.
Produced Water	Oil and grease	42 mg/l daily max., 29 mg/l monthly avg.	Once/month (19)	Grab [8]	Daily max., monthly average.
	Toxicity	7-day min NOEC [9] and mthly avg min NOEC [9].	Rate Dependent [16]	Grab	Lowest NOEC for either species.
	Free oil	Monitor	Once/day [7],[17]	Visual sheen	Number of days sheen observed.
	Flow (MGD)	Monitor	Once/month	Estimate	Monthly Average.
Produced Sand	No Discharge.				

TABLE 3.—EFFLUENT LIMITATIONS, PROHIBITIONS AND MONITORING REQUIREMENTS—Continued

Discharge	Regulated monitored discharged parameter	Discharge limitation/prohibition	Monitoring requirement		
			Measurement frequency	Sample type/method	Recorded value(s)
Well treatment fluids, completion fluids, and workover fluids (includes packer fluids) [10].	Free oil	No free oil	Once/day [1]	Static sheen	Number of days sheen observed.
	Oil & Grease	42 mg/l dly max., 29 mg/l mthly avg.	Once/month	Grab [8]	Daily max., monthly average.
Sanitary waste [12] continuously manned by 10 or more persons.	Residual chlorine [13].	1 mg/l (minimum).	Once/month	Grab	Concentration.
	Solids	No Floating Solids.	Once/day	Observation [15]	Number of days solids observed.
Sanitary waste [12] continuously manned by 9 or fewer persons or intermittently by any number.	Solids	No floating solids.	Once/day	Observation [15]	Number of days solids observed.
Domestic waste [14]	Solids	No floating solids or foam.	Once/day	Observation [15]	Number of days observed.
Miscellaneous discharges: Desalinization unit discharge; blowout pre-venter fluid; uncontaminated ballast water; uncontaminated bilge water; uncontaminated freshwater; mud, cuttings and cement at seafloor; un-contaminated seawater; boiler blow-down; source water and sand; diatomaceous earth filter media; excess cement slurry.	Free oil	No free oil	Once/week [11]	Visual sheen	Number of days sheen observed.
Miscellaneous discharges of seawater and freshwater to which treatment chemicals have been added: excess seawater which permits the continuous operation of fire control and utility lift pumps, excess seawater from pressure maint. and secondary recovery prjcts, water released during training of personnel in fire protection, seawater used to pressure test new piping and new pipelines, ballast water, once-through non-contact cooling water, desalinization unit.	Treatment chemicals.	Most stringent of: EPA label registration, maximum manufacturers recommended dose, or 500 mg/l.			
	Free oil	No free oil	1/week	Visual Sheen	Number of days sheen observed.

TABLE 3.—EFFLUENT LIMITATIONS, PROHIBITIONS AND MONITORING REQUIREMENTS—Continued

Discharge	Regulated monitored discharged parameter	Discharge limitation/prohibition	Monitoring requirement		
			Measurement frequency	Sample type/method	Recorded value(s)
	Toxicity	48-hour average min. NOEC and monthly avg minimum NOEC [5].	Rate Dependent [18]	Grab	Lowest NOEC observed for either of the two species.

Footnotes

[1] When discharging.

[2] Suspended particulate phase (SPP) with *Mysidopsis bahia* following approved test method The sample shall be taken beneath the shale shaker; or if there are no returns across the shaker then the sample must be taken from a location that is characteristic of the overall mud system to be discharged.

[3] Sample shall be taken after the final log run is completed and prior to bulk discharge.

[4] See Part I.B.1.b of this permit.

[5] See Appendix A, Table 2 of this permit.

[6] Analyses shall be conducted on each new stock of barite used.

[7] When discharging and facility is manned. Monitoring shall be accomplished during times when observation of a visual sheen on the surface of the receiving water is possible in the vicinity of the discharge.

[8] May be based on the arithmetic average of four grab sample results in a 24 hr. period.

[9] See Appendix A, Table 1 of this permit.

[10] No discharge of priority pollutants except in trace amounts. Information on the specific chemical composition shall be recorded but not reported unless requested by EPA.

[11] When discharging for muds, cuttings, and cement at the seafloor and blowout preventer fluid. All other miscellaneous discharges: when discharging, discharge is authorized only during times when visual sheen observation is possible, unless the static sheen method is used. Uncontaminated seawater uncontaminated freshwater, source water and source sand, uncontaminated bilge water, and uncontaminated ballast water from platforms on automatic purge systems may be discharged without monitoring from platforms which are not manned.

[12] Any facility which properly operates and maintains a marine sanitation device (MSD) that complies with pollution control standards and regulations under section 312 of the Act shall be deemed to be in compliance with permit limitations for sanitary waste The MSD shall be tested yearly for proper operation, and test results maintained at the facility.

[13] Hach method CN–66 DPD approved. Minimum of 1 mg/l and maintained as close to this concentration as possible.

[14] The discharge of food waste is prohibited within 12 nautical miles from nearest land. Comminuted food waste able to pass through a 25 mm mesh screen (approximately 1 inch) may be discharged more than 12 nautical miles from nearest land.

[15] Monitoring shall be accomplished during daylight by visual observation of the surface of the receiving water in the vicinity of sanitary and domestic waste outfalls Observations shall be made following either the morning or midday meals at a time of maximum estimated discharge.

[16] Once/year for discharges from 0 bbl/day to 4599 bbl/day, once/calender quarter for discharges of 4,600 bbl/day and greater.

[17] See Part I.B.4.b of this permit.

[18] See Part I.B.11.b of this permit.

[FR Doc. 99–9605 Filed 4–16–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection being Reviewed by the Federal Communications Commission

April 7, 1999.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 18, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, 445 12th Street, SW, Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0795

Title: ULS TIN Registration and FCC Form 606

Form Number: FCC 606

Type of Review: Revision to a currently approved collection.

Respondents: Individuals or households; business or other for-profit; not-for-profit institutions; State, Local or Tribal Government

Number of Respondents: 429,000

Estimated Time Per Response: 1 hour

Total Annual Burden: 429,000 hours

Total Annual Cost: None.

Needs and Uses: FCC Form 606 is used (1) To register a licensee's Taxpayer Identification Number (TIN) and its associated Wireless Telecommunications call signs with the FCC; (2) to register the Taxpayer Identification Number (TIN) of a first time application for a Wireless Telecommunications license with the FCC; or (3) to register the Taxpayer Identification Number (TIN) of the owner of an antenna structure and its associated antenna structure registration

numbers with the FCC. This form is also used by an antenna structure tenant licensee who is required to register the antenna structure because the owner is subject to the Anti-Drug Abuse Act of 1988. It must be submitted before filing any subsequent applications associated with the existing license or antenna structure registration and prior to applying for a Wireless Telecommunications license or antenna structure registration for the first time.

The form and its instructions are being revised to add information about the antenna structure owner TIN registration requirements due to the implementation of Antenna Structure Registration in the Universal Licensing System (ULS).

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–9630 Filed 4–16–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection being Reviewed by the Federal Communications Commission

April 7, 1999.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 18, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, 445 12th Street, SW, Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0697.

Title: Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems (Proposed Rule).

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals and Households, Business or other for-profit.

Number of Respondents: 1,275.

Estimated Time per Response: 3.22 hours (avg.).

Frequency of Responses: On occasion reporting requirements.

Total Annual Burden: 4,100 hours.

Total Annual Costs: $1,007.

Needs and Uses: The information will be used to update the Commission's licensing database and thereby facilitate the successful coexistence of wide-area and incumbent (site-based) paging licensees; to ensure that incumbents are timely notified of possible relocation, thus allowing relocation to occur in an orderly, efficient, and expedient manner; and to determine whether an applicant is eligible for special provisions for small businesses.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–9632 Filed 4–16–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Submitted to OMB for Review and Approval.

March 26, 1999.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before May 19, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, Room 1-A804, 445 Twelfth Street., S.W., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at 202–418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0687.

Title: Access to Telecommunications Equipment and Services by Persons with Disabilities, CC Docket No. 87–124.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for profit entities.

Number of Respondents: 806,100.

Estimated Time Per Response: 1.2 to 11.4 hours

Frequency of Response: On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 991,000 hours.

Total Annual Costs: $638,500.

Needs and Uses: The Commission requires that telephones with electro-magnetic coil hearing aid compatibility be stamped with the letters HAC. Section 68.112(b)(3)(E) requires that employees with fifteen or more

employees provide emergency telephones for use by employees with hearing disabilities and that the employers ''designate'' such telephones for emergency use. Section 68.224(a) requires a notice to be contained on the surface of the packaging of a non-hearing aid compatible telephone that the telephone is not hearing aid compatible. The requirements were implemented to assist the Commission in carrying out its responsibilities.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–9631 Filed 4–16–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Submitted to OMB for Review and Approval

April 7, 1999.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before May 19, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0754.

Title: Children's Television Programming Report.

Form Number: FCC 398.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit entities.

Number of Respondents: 1,215.

Estimated Time Per Response: 4.5 hours (4 times/year).

Frequency of Response: Quarterly recordkeeping; Annual reporting requirements.

Total Annual Burden: 21,870 hours.

Total Annual Costs: $480,800.

Needs and Uses: The FCC Form 398 is required to be filed by commercial television broadcast stations. This form is used to provide information on the efforts of commercial television stations to provide children's educational and informational programs aired to meet its obligation under the Children's Television Act of 1990 (CTA). The form also requests information on educational and informational programs that the station plans to air in the next quarter. Each licensee is required to place in its public inspection file quarterly, a Children's Televsion Programming Report and to file the quarterly forms annually with the FCC. Commercial television broadcast station licensees will be required to file the FCC 398 electronically with the January 10, 1999 annual filing. The FCC 398 will assist in efforts by the public and the Commission to monitor station compliance with the CTA.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–9633 Filed 4–16–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 13, 1999.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. Penn Laurel Financial Corporation, Curwensville, Pennsylvania; to acquire 100 percent of the voting shares of Clearfield Bank and Trust Company, Clearfield, Pennsylvania.

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Independent Bank Corporation, Ionia, Michigan; to acquire 100 percent of the voting shares of Mutual Savings Bank, f.s.b., Bay City, Michigan. Mutual Savings Bank will be merged immediately into a state chartered commercial bank.

Board of Governors of the Federal Reserve System, April 13, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–9551 Filed 4–16–99; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 99065]

National Institute for Occupational Safety and Health; Research on Young Worker Safety and Health Risks in Construction; Notice of Availability of Funds; Amendment

A notice announcing the availability of Fiscal Year 1999 funds for the Research on Young Worker Safety and Health Risks in Construction was published in the **Federal Register** on April 9, 1999, [Vol. 64 FR No. 68]. The notice is amended as follows:

On page 17392, first column, agency docket number should be changed to read [Program Announcement 99065].

On page 17392, third column, paragraph F, first paragraph, line 7, fourth word should read ''99065''.

On page 17392, third column, paragraph F, second paragraph, line 8, fourth word should read ''99065''.

On page 17393, third column, paragraph J, second paragraph, line 7, second word should read ''99065''.

Dated: April 13, 1999.

Diane D. Porter,

Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–9740 Filed 4–16–99; 8:45 am]

BILLING CODE 4163–19–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–1110]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; CGMP Regulations for Finished Pharmaceuticals

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 May 19, 1999.

ADDRESSES: Submit written comments on the collection of information to the 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: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

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.

CGMP Regulations for Finished Pharmaceuticals—21 CFR Parts 210 and 211 (OMB Control Number 0910–0139)—Reinstatement

Under section 501(a)(2)(B) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 351(a)(2)(B)), a drug is adulterated if the methods used in, or the facilities or controls used for, its manufacture, processing, packing, or holding do not conform to or are not operated or administered in conformity with current good manufacturing practices (CGMP's) to ensure that such drug meets the requirements of the act as to safety and has the identity and strength, and meets the quality and purity characteristics, which it purports or is represented to possess.

FDA has the authority under section 701(a) of the act (21 U.S.C. 371(a)) to issue regulations for the efficient enforcement of the act regarding CGMP procedures for manufacturing, processing, and holding drugs and drug products. The CGMP regulations help ensure that drug products meet the statutory requirements for safety and have their purported or represented their purported or represented identity, strength, quality, and purity characteristics. The information collection requirements in the CGMP regulations provide FDA with the necessary information to perform its duty to protect public health and safety.

Although CGMP must be current in the industry, a practice need not be widely prevalent providing such practice is both feasible and valuable in ensuring drug quality. CGMP requirements establish accountability in the manufacturing and processing of drug products, provide for meaningful FDA inspections, and enable manufacturers to improve the quality of drug products over time. The recordkeeping requirements also serve preventive and remedial purposes and provide crucial information if it is necessary to recall a drug product.

The general requirements for recordkeeping under part 211 (21 part 211) are set forth in § 211.180. Any production, control, or distribution record associated with a batch and required to be maintained in compliance with part 211 must be retained for at least 1 year after the expiration date of the batch and, for certain OTC drugs, 3 years after distribution of the batch (§ 211.180(a)). Records for all components, drug product containers, closures, and labeling are required to be maintained for at least 1 year after the expiration date and 3 years for certain OTC products (§ 211.180(b)).

All part 211 records must be readily available for authorized inspections during the retention period (§ 211.180(c)), and such records may be retained either as original records or as true copies (§ 211.180(d)). In addition, 21 CFR 11.2(a) provides that ''For records required to be maintained but not submitted to the agency, persons may use electronic records in lieu of paper records or electronic signatures in lieu of traditional signatures, in whole or in part, provided that the requirements of this part are met.'' To the extent this electronic option is used, the burden of maintaining paper records should be substantially reduced as should any review of such records.

In order to facilitate improvements and corrective actions, records must be maintained so that data can be used for evaluating, at least annually, the quality standards of each drug product to determine the need for changes in drug product specifications or manufacturing or control procedures (§ 211.180(e)). Written procedures for these evaluations are to be established and include provisions for a review of a representative number of batches and, where applicable, records associated with the batch, and provisions for a review of complaints, recalls, returned or salvaged drug products, and investigations conducted under § 211.192 for each drug product.

Written procedures, referred to here as standard operating procedures (SOP's), are required for many part 211 records. The current SOP requirements were initially provided in a final rule published in the **Federal Register** of September 29, 1978 (43 FR 45014), and are now an integral and familiar part of the drug manufacturing process. The major paperwork impact of SOP's results from their creation. Thereafter, SOP's need to be periodically updated. A combined estimate is provided in

Table 1 of this document for routine maintenance of SOP's. Estimates for specific recordkeeping requirements are listed individually.

The 25 SOP's provisions under part 211 in the combined maintenance estimate include: (1) § 211.22(d) (responsibilities and procedures of the quality control unit); (2) § 211.56(b) (sanitation procedures); (3) § 211.56(c) (use of suitable rodenticides, insecticides, fungicides, fumigating agents, and cleaning and sanitizing agents; (4) § 211.67(b) (cleaning and maintenance of equipment); (5) § 211.68(a) (proper performance of automatic, mechanical, and electronic equipment); (6) § 211.80(a) (receipt, identification, storage, handling, sampling, testing, approval or rejection of components and drug product containers or closures); (7) § 211.94(d) (standards or specifications, methods of testing, and methods of remove pyrogenic properties for drug product container and closures); (8) § 211.100(a) (production and process control; (9) § 211.110(a) (sampling and testing of in-process materials and drug products); (10) § 211.113(a)(prevention of objectionable microorganisms in drug products not required to be sterile); (11) § 211.113(b) (prevention of microbiological contamination of drug products purporting to be sterile, including validation of any sterilization process); (12) § 211.115(a) (system for reprocessing batches that do not conform to standards or specifications, to insure that reprocessed batches conform with all established standards, specifications, and characteristics); (13) § 211.122(a) (receipt, identification, storage, handling, sampling, examination and/or testing of labeling and packaging materials); (14) § 211.125(f) (control procedures for the issuance of labeling); (15) § 211.130 (packaging and label operations, prevention of mixup and cross contamination, identification and handling of filed drug product containers that are set aside and held in unlabeled condition, identification of the drug product with a lot or control number that permits determination of the history of the manufacture and control of the batch); (16) § 211.142 (warehousing); (17) § 211.150 (distribution of drug products); (18) § 211.160 (laboratory controls); (19) § 211.165(c) (testing and release for distribution); (20) § 211.166(a) (stability testing); (21) § 211.167 (special testing requirements); (22) § 211.180(f) (notification of responsible officials of investigations, recalls, reports of inspectional observations, and any regulatory actions relating to good manufacturing practice); (23) § 211.198(a) (written and oral complaint procedures, including quality control unit review of any complaint involving specifications failures, and serious and unexpected adverse drug experiences); (24) § 211.204 (holding, testing, and reprocessing of returned drug products); and (25) § 211.208 (drug product salvaging).

The following burden estimates for routine maintenance and for specific recordkeeping requirements are based on FDA's institutional experience regarding creation and review of such procedures and similar recordkeeping requirements, and data provided by the Eastern Research Group (ERG), which is a consulting group hired by FDA's economics staff to prepare an economic analysis of the potential economic impact of the May 3, 1996 (61 FR 20104), proposed rule. ERG prepared a report for FDA that estimated the recordkeeping burden for the proposed rule entitled ''Current Good Manufacturing Practice; Proposed Amendment of Certain Requirements for Finished Pharmaceuticals'' (61 FR 20104). This report provided information on the current number of establishments affected by FDA's recordkeeping requirements and the agency has relied on these figures to estimate the number of establishments affected by part 211 recordkeeping provisions. ERG estimated that there are 1,077 establishments involved in pharmaceutical preparations, diagnostic substances, and biological products; 948 repackers or relabelers; and 2,159 medical gas establishments for a total estimate of 4,184 recordkeepers subject to CGMP recordkeeping requirements. ERG used a variety of sources to obtain its estimates including reports from the Department of Commerce and FDA's registration files. The ERG report is available at the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, under Docket No. 95N–0362.

ERG also provided estimates on the burden involved in creating SOP's. While most of the CGMP provisions covered in this document were created many years ago, there will be some existing firms expanding into new manufacturing areas and start-up firms that will need to create SOP's. FDA is assuming that approximately 100 firms will have to create up to 25 SOP's for a total of 2,500 records, and the agency estimates that it will take 20 hours per recordkeeper to create 25 new SOP's for a total of 50,000 hours as a one-time burden. Annual SOP's maintenance is estimated to involve 1 hour annually per SOP, totaling 25 hours annually per recordkeeper.

The proposed rule revising part 211 CGMP requirements of May 3, 1996, would require additional SOP's. Cost estimates for those additional SOP's were included in the proposed rule, but are not included here. Any comments on those estimates will be evaluated in any final rule based on that proposal.

In the **Federal Register** of December 24, 1998 (63 FR 71291), the agency requested comments on the proposed collections of information. One comment was received from a pharmaceutical trade association. The comment said that the agency's estimates of paperwork needed to comply with the CGMP regulations were far too low. The comment based its conclusion on : (1) An informal poll of seven pharmaceutical firms; (2) the assertion that the agency had not considered the records that are required by several specific sections of the regulations; (3) the added recordkeeping attendant to agency guidances; and (4) the premise that part 11 (21 CFR part 11) (electronic records; electronic signatures) imposed costs that do not offset savings of electronic recordkeeping.

The agency has carefully considered the comment and concludes that the agency's estimates of the CGMP paperwork are reasonable and correct. The agency's estimates are based upon not only the ERG report, but its extensive experience with a broad spectrum of industry, including small and large firms, makers of generic and innovator drug products, and repackers. FDA believes these estimates reflect a more accurate characterization of the industry than the comment suggests. FDA's estimates are based on information received from large and small pharmaceutical firms. The numbers in the burden chart reflect an average of all firms involved in the review process.

With respect to the comment that FDA had not considered several sections of the regulations, the agency believes there may have been some misunderstanding on the part of comments. In fact, all sections of the regulations were considered, including those which the comments stated ''were ignored.'' Part of the misunderstanding is likely due to the fact that sections the comments considered to be ''ignored'' were those that contained no paperwork and therefore were not factored into the final analysis.

With respect to recordkeeping that is referenced in agency guidance documents, where a guidance document

addresses recordkeeping requirements that are already codified, the guidance documents themselves create no new paperwork burdens. However, the agency acknowledges that, on occasion, the information collection contained in guidance documents is beyond the scope of the regulation. FDA recognizes the need to ensure all potentially new paperwork burdens are identified, and that public comment is sought accordingly.

Regarding electronic recordkeeping, the agency fully met its obligations under the paperwork reduction act in developing and issuing part 11 and received no objections to the rule with respect to paperwork reduction. In fact, extensive discussions were held with industry throughout the development of the rule. FDA believes that the benefits of electronic recordkeeping, especially with regard to paperwork reduction, far outweigh the costs of compliance with part 11 to ensure that the electronic records are trustworthy, reliable, and compatible with FDA's mandate to protect and promote public health.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
SOP Maintenance (See previous list of 25 SOP's)	4,184	1	4,184	25	104,600
One-time Burden (New Start-up SOP's)[2]	100	25	2,500	20	50,000
211.34	4,184	.25	1,046	.5	523
211.67(c)	4,184	50	209,200	.25	52,300
211.68	4,184	2	8,368	1	8,368
211.68(a)	4,184	10	41,840	.5	20,920
211.68(b)	4,184	5	20,920	.25	5,230
211.72	4,184	.25	1,046	1	1,046
211.80(d)	4,184	.25	1,046	.1	105
211.100(b)	4,184	3	12,552	2	25,104
211.105(b)	4,184	.25	1,046	.25	262
211.122(c)	4,184	50	209,200	.25	52,300
211.130(e)	4,184	50	209,200	.25	52,300
211.132(c)	1,698	20	33,960	.5	16,980
211.132(d)	1,698	.2	340	.5	170
211.137	4,184	5	20,920	.5	10,460
2111.160(a)	4,184	2	8,368	1	8,368
211.165(e)	4,184	1	4,184	1	4,184
211.166(c)	4,184	2	8,368	.5	4,184
211.173	1,077	1	1,077	.25	269
211.180(e)	4,184	.2	837	.25	209
211.180(f)	4,184	.2	837	1	837
211.182	4,184	2	8,368	.25	2,092
211.184	4,184	3	12,552	.5	6,276
211.186	4,184	10	41,840	2	83,680
211.188	4,184	25	104,600	2	209,200
211.192	4,184	2	8,368	1	8,368
211.194	4,184	25	104,600	.5	52,300
211.196	4,184	25	104,600	.25	26,150
211.198	4,184	5	20,920	1	20,920
211.204	4,184	10	41,840	.5	20,920
Total					848,625

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] This is a one-time burden.

Dated: April 12, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–9636 Filed 4–16–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99F–0804]

Rohm and Haas Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Rohm and Haas Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 4,5-dichloro-2-n-octyl-3(2H)-isothiazolone as a preservative and slimicide in the manufacture of paper and paperboard in contact with food.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3086.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5)(21 U.S.C. 348(b)(5), notice is given that a food additive petition (FAP 9B4645) has been filed by Rohm and Haas Co., 100 Independence

Mall West, Philadelphia, PA 19106. The petition proposes to amend the food additive regulations in § 176.170 Components of paper and paperboard in contact with aqueous and fatty foods and § 176.300 Slimicides to provide for the safe use of 4,5-dichloro-2-n-octyl-3(2H)-isothiazolone as a preservative and slimicide in the manufacture of paper and paperboard for use in contact with food.

The agency has determined under 21 CFR 25.32(q) that this action is of the 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.

Dated: March 30, 1999.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–9674 Filed 4–16–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute: Opportunity for a Cooperative Research and Development Agreement (CRADA) for the Research and Development of Software for Managing Distributed Knowledgebases Consisting of Large Numbers of Objects of Diverse Categories Spanning Administrative, Scientific and Other Knowledge Domains

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice.

SUMMARY: The National Cancer Institute seeks a Cooperative Research and Development Agreement (CRADA) with a software company with demonstrated excellence in the development and deployment of software applications for the enterprise and individuals. NCI has recently developed a powerful but user-friendly computer-based system which enables its users to create, use and share a knowledge base of information consisting of diverse objects related to each other by semantically meaningful links. This system, provisionally called ''KBTool'', can be considered a new class of software application since it is sufficiently different from existing applications. The system provides a knowledge base that is seamless, allowing individuals to store information on a virtually unlimited range of objects and concepts. In addition, dense and informative links between many types of concepts are constructed. The system is extensible so that it is suited for use in distributed systems in which information is shared between users and stored at different physical locations. Because of the power of the system and its relevance to many domains of knowledge and types of applications, the NCI is seeking a commercial partner for its continued development and deployment. The software was originally created to organize and link vast quantities of scientific data; however, NCI predicts that KBTool's functionality will be applicable to a wide variety of fields. The Collaborator must have a demonstrated record of success in privately producing and marketing information resources.

DATES: Interested parties should notify this office in writing of their interest in filing a formal proposal no later than June 18, 1999. They will then have an additional thirty (30) days to submit a formal proposal.

ADDRESSES: Inquiries and proposals regarding this opportunity should be addressed to Holly S. Symonds, Ph.D. (Tel. #301–496–0477, FAX #301–402–2117), Technology Development and Commercialization Branch, National Cancer Institute, 6120 Executive Blvd., Suite 450, Rockville, MD 20852. Inquiries directed to obtaining patent license(s) needed for participation in the CRADA opportunity may be addressed to John Fahner-Vihtelic, Office of Technology Transfer, National Institutes of Health, 6011 Executive Blvd., Suite 325, Rockville, MD 20852, (Tel. 301–496–7735, ext. 270; FAX 301–402–0220).

SUPPLEMENTARY INFORMATION: A Cooperative Research and Development Agreement (CRADA) is the anticipated joint agreement to be entered into by the NCI pursuant to the Federal Technology Transfer Act of 1986 and Executive Order 12591 of April 10, 1987 as amended by the National Technology Transfer Advancement Act of 1995. The NCI is looking for a CRADA partner to collaborate in the development of the properties of the KBTool data management system. The expected duration of the CRADA would be from one (1) to five (5) years.

KBTool is a data management system and process for efficiently storing and retrieving data. The Experimental Immunology Branch of the NCI has designed KBTool to combine maximum data management flexibility and stability into unified knowledgebase applications. As a result, it has a diverse functionality which can replace users' fragmented world of specialized applications such as contact manager, administrative database, bookmark keeper, and fact finder. Some unique features of this software-based invention are: (1) ability to handle any number of conceptually distinct categories of items (such as people, events, institutions, tasks, concepts, processes, document types); (2) tools for creating relationships between any two or more objects, with the ability to categorize types of relationships and decide which categories they apply to; (3) use of parent-child relationship as a singularly important relationship to organize, view and navigate information; (4) flexibility in adding diverse categories of objects and relationships, while maintaining a simple underlying data structure and programming environment; (5) ability to view complex relationships in flexible and informative ways; (6) tools for managing names which are indispensable for finding the relevant objects; and (7) efficient ways to search information and filter retrievals to limit to relevant information.

The prototype implementation of KBTool is already a highly functional system. For example, it manages information on more than 50,000 ''concepts''. These concepts are classified into more than 200 distinct categories. The 10 most highly represented categories are biased towards biological and software knowledge domains: genes, transcripts, proteins, protein spots; humans, institutions, journals, scientific publications, visuals, software applications, and scientific methods. However, its diversity is reflected in categories such as tasks, events, equipment, accounts, documents, areas of expertise and geographical locations. It has more than 50,000 links between these items; each of which conveys not simply the existence of a relationship, but the character of that relationship. This data is distributed into multiple linked databases. The most remarkable feature of the design of the data engine and knowledge representation is its simplicity and generality.

KBTool was designed to allow the maintenance of a ''fabric'' of information regarding biological systems. It's current implementation can be viewed as the first in a sequence of many steps towards a ''virtual cell'', which allows modeling of the enormous complexity of a human cell. Having taken this first step, NCI would like to solidify the prototype and subsequent steps in the process. Because of the myriad of components in a biological cell, KBTool had to be designed with

great flexibility. As a result, it has matured into an approach which is unusually broad in its cope, and its ability to create a fabric of information out of very disparate data types.

The described methods are the subject of a patent application, USPA SN 09/203,037 filed November 30, 1998 by the Government.

Under the present proposal, the goal of the CRADA will be to enhance the development in one or more of the following areas:

1. Client Software Development

The prototype client software, KBTool is written in Microsoft Visual Basic 6.0 running under Windows operating systems. Planned evolution includes steps such as the following:

(a) flexible interfaces for information viewing and update via the WWW;

(b) rewriting parts of the application in C++ and Java;

(c) porting to other operating systems (or re-writing in portable code);

(d) enhanced graphical interfaces to view and manipulate the thought objects in a graphical way; and

(e) development of specific enhancement for use for specific tasks such as workflow management, document and library management, simulation of biological processes, expert systems.

2. Database Engine/Server Development

The prototype knowledge base is stored in a standard relational database manipulated primarily via SQL. In the long run, the application will likely benefit from using a database engine optimized for it. This would likely include speed improvements, and ability to handle validation and integrity issues at the level of the engine rather than the client software.

3. Content Development

The design of this system is well adapted to many different kinds of content. Such content can be added by a range of strategies: human input, automated transfer from existing information resources, and combinations thereof. NCI seeks collaborative partner for optimizing input in areas related to cancer which encompasses many aspects of biology. For example, NCI seeks sophisticated textual analysis tools to facilitate harvest information from existing sources such as MEDLINE.

Party Contributions

The role of the NCI includes the following:

(1) Provide staff, expertise and materials for the further development of the KBTool system;

(2) Evaluate the work product of the Collaborator to ensure progress toward meeting the CRADA goals;

(3) Provide work space and equipment for production and testing of any components or improvements of the KBTool system.

The role of the successful Collaborator will include the following:

(1) Provide funding, if and as necessary, in support of the development of the KBTool system;

(2) Provide expertise and assistance in the extension of KBTool in areas outlined above and in the production and market of any products resulting from CRADA;

(3) Provide expertise and materials to aid in the development of the KBTool system during this CRADA collaboration; and

(4) Provide, assist, or advise the NCI in quality assurance testing, operator training, and user support for any products resulting from this CRADA.

Selection Criteria

Proposals submitted for consideration should fully address each of the qualifications shown below. The importance of individual criteria will differ between the three areas for a proposed CRADA: client software development, database engine/server development, and content development. Please address the criteria that relate to the area(s) in which your proposal will contribute.

(1) Expertise:

A. Demonstrated expertise in the creation of important new approaches in software design, database design, data visualization, and data mining, or expert systems.

B. Demonstrated expertise in software engineering, data warehousing, data visualization, textual analysis;

C. Demonstrated ability to secure national and international marketing and distribution of software;

D. Demonstrated expertise in overseeing all aspects of product development;

E. Demonstrated expertise in serving and supporting a significant client base;

F. Familiarity with application of knowledgebase techniques to biomedical fields.

(2) Demonstrated experience in the software industry with regards to:

A. Producing, marketing and supporting knowledgebase and related applications;

B. Indications of high levels of satisfaction by software experts and users of knowledgebase products; and

C. The range of products and services it produces.

(3) Physical Resources:

A. An established headquarters with offices, space and equipment;

B. Access to the organization during business hours by telephone, mail, email, the Internet, and other evolving technologies; and

C. Sufficient financial and technological resources to support, at a minimum, the then current activities of the CRADA to meet the needs of the NCI.

(4) Other:

A. The willingness to accept the legal provisions and language of the CRADA with only minor modifications, if any. These provisions govern the distribution of patent rights to CRADA inventions. Generally, the rights of ownership are retained by the organization that is the employer of the inventor, with (1) the grant of a license for research and other Government purposes to the Government when the CRADA Collaborator's employee is the sole inventor, or

(2) the grant of an option to elect an exclusive or nonexclusive license to the CRADA Collaborator when the Government employee is the sole inventor.

B. The willingness to cooperate with National Cancer Institute in the timely publication of research results.

C. The level of financial support the CRADA Collaborator will provide for CRADA-related Government activities.

D. The willingness to commit best effort and demonstrated resources to the research and development of this technology, as outlined in the CRADA Collaborator's proposal.

Dated: April 8, 1999.

Kathleen Sybert,

Chief, Technology Development and Commercialization Branch, National Cancer Institute, National Institutes of Health.

[FR Doc. 99–9757 Filed 4–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute (NCI); Opportunity for a Cooperative Research Agreement (CRADA) for the Scientific and Commercial Development of an Improved Cytologic Sampler for the Early Detection of Esophageal Cancer

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice of a Cooperative Research and Development Agreement (CRADA) opportunity.

SUMMARY: The National Cancer Institute seeks a company to collaboratively pursue the preclinical and clinical development of an orally administered cytologic sampler for the early detection of esophageal cancer. The National Cancer Institute has preclinical data and evidence that currently available sampling devices need to be and can be improved. Thus, the overall goal of this research project is to develop an improved cytologic sampler for the early detection of esophageal cancer.

ADDRESSES: Inquiries and statements of interest regarding this opportunity should be addressed to Rita Khanna, Technology Development and Commercialization Branch, National Cancer Institute, Executive Plaza South, Suite 450, 6120 Executive Blvd., Rockville, MD 20852 (Tel. # 301–496–0477 Fax # 301–402–2117).

DATE TO RESPOND: In view of the important priority of developing an orally administered cytologic sampler for the early detection of esophageal cancer, interested parties should notify this office in writing no later than thirty (30) days from date of publication of this announcement.

SUPPLEMENTARY INFORMATION: Cooperative Research and Development Agreement or ''CRADA'' means the anticipated joint agreement to be entered into by NCI pursuant to the Federal Technology Transfer Act of 1986 and Executive Order 12591 of October 10, 1987 as amended by the National Technology Transfer Advancement Act of 1995. The goal of this CRADA will be to collaborate on the specific research project described below. Under the present proposal, the Government is seeking a collaborator, who can develop an improved cytologic sampler to a marketable status to meet the public need for the early detection of esophageal cancer. The expected duration of the CRADA will be four years.

Currently, the most widely used esophageal screening method is to obtain a cytologic sample of the esophageal mucosa using an inflatable balloon or an encapsulated sponge. Although cytologic screening of asymptomatic high-risk individuals remains a promising method for the early detection of curable squamous esophageal dysplasia and cancer, a recent study by the NCI Division of Cancer Prevention and Control showed that current cytologic samplers had a low sensitivity for identifying these lesions.

Under a CRADA, the NCI can offer the selected collaborator access to facilities, staff, materials, and expertise. The collaborator may contribute facilities, staff, materials, expertise and funding to the collaboration. the NCI CANNOT CONTRIBUTE FUNDING. The CRADA collaborator may elect an option to an exclusive or non-exclusive license to Government intellectual property rights arising under the CRADA and may qualify as a co-inventor of new technology developed under the CRADA.

The role of the National Cancer Institute, the Division of Clinical Sciences under the CRADA will include the following;

1. Providing intellectual expertise in the form of cytologic and histologic evaluation of biological samples for preneoplastic and neoplastic lesions;
2. Making suggestions regarding sampler design based on its clinical experience with existing cytologic samplers;
3. Arranging field studies to test the efficacy of new samplers;
4. Evaluating each of the active studies as they progress to ensure that the appropriate questions are being addressed and to ensure that the studies are modified as required based on the developing data; and
5. Providing technological considerations for patient safety, position and comfort.

The role of the successful corporate partner under the CRADA will include the following:

1. Understanding the biological and physiological obstacles that need to be overcome and contributing its expertise in innovative engineering toward overcoming these obstacles;
2. Providing proven competence to carry out the work of developing an improved cytologic sampler;
3. Providing technical support including design concepts, engineering analysis, detailed design, fabrication management and contribution to experimental design;
4. Performing studies to assess the physical properties of new designs in an effort to improve patient tolerance and design efficacy; and
5. Commercializing the resulting device including providing the necessary resources.

Criteria for choosing the collaborating company will include the following:

1. Experience in aspects of innovative engineering necessary for the development of cytologic samplers;
2. Scientific expertise and demonstrated commitment to the development of cytologic samplers;
3. Willingness to cooperate with the NCI in the collection and evaluation of data;
4. Experience and track record of taking such products to market;
5. Nature of resources to be contributed to the collaboration;
6. Willingness to accept the legal provisions and language of the CRADA with only minor modifications, if any. These provisions govern the distribution of patent rights to CRADA inventions. Generally, the right of ownership are retained by the organization that is the employer of the inventor, with (1) the grant of a license for research and other Government purposes to the Government when the CRADA Collaborator's employee is the sole inventor, or (2) the grant of an option to elect an exclusive or nonexclusive license to the CRADA Collaborator when the Government employee is the sole of inventor;
7. Willingness to cooperate with the National Cancer Institute in the timely publication of research results;
8. Level of financial support the CRADA Collaborator will provide for CRADA-related Government activities; and
9. Willingness to commit best effort and demonstrated resources to the research and development of this technology, as outlined in the CRADA Collaborator's proposal.

Dated: April 9, 1999.

Kathleen Sybert,

Director, Technology Development & Commercialization Branch, National Cancer Institute, National Institutes of Health.

[FR Doc. 99–9758 Filed 4–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C., Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the discloser of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial

Review Group Population Research Subcommittee.

Date: May 5, 1999.

Time: 10:00 AM to 5:00 PM.

Agenda: To be reviewed evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Jon M. Ranhand, Health Scientist Administrator, Division of Scientific Review, National Institute of Child Health, and Human Development, 6100 Executive Blvd., Room 5E01, MSC 7510, Bethesda, MD 20892, (301) 435–6884.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: April 13, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–9667 Filed 4–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel Use of Nimodipine in the Management of Service Preeclampsia.

Date: April 26, 1999.

Time: 1:00 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: 6100 Executive Blvd., DSR Conf. Rm., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Hameed Khan, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E01, Bethesda, MD 20892, (301) 496–1485.

The notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: April 13, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–9668 Filed 4–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel HIV Vaccine Production: Part C FDA Submissions.

Date: April 26, 1999.

Time: 12:00 PM to 3:00 PM.

Agenda: To review and evaluate contract proposals.

Place: Solar Building, Room 4C07, 6003 Executive Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Dianne E. Tingley, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Solar Building, Room 4C07, 6003 Executive Boulevard MSC 7610, Bethesda, MD 20892–7610, 301/496–0818.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 13, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–9669 Filed 4–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel HIV Vaccine Production: Part A in response to DAIDS–99–21.

Date: April 29, 1999.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate contract proposals.

Place: Hyatt Arlington, The Gallery Room, 1325 Wilson Boulevard, Arlington, VA 22209.

Contact Person: Dianne E. Tingley, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Solar Building, Room 4C07, 6003 Executive Boulevard MSC 7610, Bethesda, MD 20892–7610, 301/496–0818.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856; Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 13, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–9670 Filed 4–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special emphasis Panel.

Date: April 18–19, 1999.

Time: April 18, 1999, 7:00 PM to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Omni Colonnade Hotel, 180 Aragon Avenue, Coral Gables, FL 33134.

Contact Person: Mary Ann Guadagno, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: April 13, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–9671 Filed 4–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institutes of Child Health and Human Development Special Emphasis Panel, Extremity Constraint Induced Therapy Eval (Excite) Trial.

Date: May 5, 1999.

Time: 1:00 pm to 2:30 pm.

Agenda: To review and evaluate grant applications.

Place: 6100 Executive Blvd., Room 5E01, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Hameed Khan, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E01, Bethesda, MD 20892, (301) 496–1485.

(Catalog of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: April 13, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–9752 Filed 4–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: April 22, 1999.

Time: 1 PM to 3 PM.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: David Chananie, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–1340.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: April 28, 1999.

Time: 4 PM to 6 PM.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Phyllis D. Artis, Lead Grants Technical Assistant, Division of Extramural Activities, National Institute of Mental Health, NIH Neuroscience Center, 6001 Executive Blvd., Rm. 6138, MSC 9606, Bethesda, MD 20892–9606, 301–443–6470.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: April 13, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 99–9753 Filed 4–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose

confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel Efficacy, Safety & Incomplete Spontaneous Abortion: A Clinical Trial.

Date: June 9, 1999.

Time: 1 PM to 2:30 PM.

Agenda: To review and evaluate grant applications.

Place: 6100 Executive Blvd., DSR Conf. Room. Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Hameed Khan, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E01, Bethesda, MD 20892, (301) 496–1485.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: April 13, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 99–9754 Filed 4–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the National Institutes of Neurological Disorders and Stroke Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of person privacy.

Name of Committee: National Advisory Neurological Disorders and Stroke Council.

Date: May 19–21, 1999.

Open: May 20, 1999, 8:30 AM to 5 PM.

Agenda: Report by the Director, NINDS; Reported by the Associate Director for Extramural Research; and other administrative and program developments.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Closed: May 21, 1999, 8:30 AM to 12 PM.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Constance W. Atwell, Associate Director for Extramural Research, National Institute of Neurological Disorders and Stroke, National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Suite 3309, MSC 9531, Bethesda, MD 20892–9531, (301) 496–9248.

Name of Committee: National Advisory Neurological Disorders and Stroke Council, Council Review Committee.

Closed: May 19, 1999.

Time: 6 PM to 9 PM.

Agenda: to review and evaluate grant applications.

Place: National Institutes of Health, 31 Center Drive, Building 31, Room 8A28, Bethesda, MD 20892.

Contact Person: Constance W. Atwell, Associate Director for Extramural Research, National Institute of Neurological Disorders and Stroke, National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Suite 3309, MSC 9531, Bethesda, MD 20892–9531, (301) 496–9248.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: April 13, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 99–9755 Filed 4–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: April 29, 1999.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate contract proposals.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Phillip F. Wiethorn, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: April 13, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 99–9756 Filed 4–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program: Call for Public Comment on 11 Substances, Mixtures and Exposure Circumstances To Be Reviewed in 1999 for Listing in or Delisting (Removing) From the Report on Carcinogens, Tenth Edition; Amendments

ACTION: Notice; Amendments.

SUMMARY: The NTP published in the **Federal Register** of April 2, 1999, a list of substances to be reviewed for possible listing in or delisting from the Report on Carcinogens, Tenth Edition. The notice is being amended to (1) extend the deadline for public comment period to June 3, 1999 and (2) to expand the section on ''Clarification of the

Criteria'' to address some misunderstandings regarding the application of the final paragraph of the criteria for listing agents, substances of mixtures in the Report on Carcinogens.

AMENDMENTS: In the **Federal Register** of April 2, 1999, in FR Doc. 99–8098, on page 15984, in the fist column under the section ''Public Comment Requested'' the 8th line with the sentence starting ''Comments received by April 30, 1999 * * *'' and the rest of the section is being deleted and the following added: ''Comments received by June 3, 1999 will be considered by the review groups in the preparation of the background documents for each substance. Comments or questions should be directed to Dr. C.W. Jameson at the address listed below.''

In the section ''Clarification of the Criteria'' on page 15983, in the third column, a second paragraph is added as follows: There have also been some misunderstandings regarding the application of the final paragraph of the criteria which begins, ''Conclusions regarding carcinogenicity in humans or experimental animals * * *'' Since these criteria were first published on September 26, 1998 (61 FR 50499), the paragraph has applied to both the ''known to be human carcinogen'' and the ''reasonably anticipated to be human carcinogen'' categories and will continue to apply.

FOR FURTHER INFORMATION CONTACT: Dr. C.W. Jameson, National Toxicology Program, Report on Carcinogens, 79 Alexander Drive, Building 4401, Room 3127 MD: EC–14, P.O. 12233, Research Triangle Park, NC 27709; phone: (919) 541–4096, fax: (919) 541–0947, email: jameson@niehs.nih.gov. The Criteria, the Original **Federal Register** Notice and Background on the Report on Carcinogens can also be found on the NTP Web Site at; http://ntp-server.niehs.nih.gov.

Dated: April 9, 1999.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 99–9666 Filed 4–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4441–N–20]

Submission for OMB Review: Comment Request

AGENCY: Office of the Assistant Secretary for Administration HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: May 19, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable, (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: April 9, 1999.

David S. Cristy,

Director, ISP and Management.

Title of Proposal: Section 202 Supportive Housing for the Elderly, Application Submission Requirements.

Office: Housing.

OMB Approval Number: 2502–0267.

Description Of The Need For The Information And Its proposed Use: This information collection is necessary to assist HUD in determining applicant eligibility and capacity to develop housing for the elderly within statutory and program criteria. This information collection is also necessary to protect the Government's financial interest in protecting public funds.

Form Number: HUD–92015–CA.

Respondents: Not-For-Profit Institutions.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per reponse	=	Burden hours
Application Package	400		1		39.90		15,960

Total Estimated Burden Hours: 15, 960.

Status: Reinstatement with change.

Contact: Aretha Williams, HUD, (202) 708–2866 x 2480; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: April 9, 1999.

[FR Doc. 99–9661 Filed 4–16–99; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Meetings

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meetings.

SUMMARY: This notice announces the winter meeting, field trip, and awards presentation of the Aquatic Nuisance Species Task Force and meetings of its Ballast Water Program Effectiveness and Adequacy Criteria Committee, Western Regional Panel, Recreational Activities Committee, and Great Lakes Panel to be held in conjunction with the Ninth International Zebra Mussel and Aquatic Nuisance Species Conference. The focus of the field trip and other events and meeting topics are identified in the **SUPPLEMENTARY INFORMATION.**

DATES: The ANS Task Force events will occur as follows:

ANS Task Force Awards Presentation, Monday, April 26, 1999, 12:25 to 12:45 p.m.

Criteria Committee Meeting, Monday, April 26, 1999, 7:00 to 10:00 p.m.

Western Regional Panel Breakfast Roundtable, Tuesday, April 27, 1999, 7:15 to 8:30 a.m.

Recreational Activities Committee Meeting, Tuesday, April 27, 1999, 10:00 a.m. to 12:00 noon

ANS Task Force Harbor Tour, Tuesday, April 27, 1999, 12:45 to 3:00 p.m.

Great Lakes Panel Ballast Water Research Agenda Symposium, Thursday, April 29, 1999, 8:30 a.m. to 3:30 p.m.

ANS Task Force Meeting, Thursday, April 29, 1999, 1:30 to 5:00 p.m.; Friday, April 30, 1999, 8:30 to 4:00 p.m.

ADDRESSES: All events will occur at or depart from the Duluth Entertainment Convention Center, 350 Harbor Drive, Duluth, Minnesota 55802.

FOR FURTHER INFORMATION CONTACT: Robert A. Peoples, Executive Secretary, Aquatic Nuisance Species Task Force, at 703–358–2025 or robert__peoples@fws.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting, field trip, and awards presentation of the Aquatic Nuisance Species Task Force and meetings of its Ballast Water Program Effectiveness and Adequacy Criteria Committee, Western Regional Panel, Recreational Activities Committee, and Great Lakes Panel to be held in conjunction with the Ninth International Zebra Mussel and Aquatic Nuisance Species Conference. The Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4701–4741). The activities or topics for each event are summarized below.

ANS Task Force Awards Presentation

The First Annual ANS Task Awards for an individual and an organization recognizing significant long-term contributions to identifying and responding to ANS issues and problems will be presented during the Conference luncheon.

Ballast Water Program Effectiveness and Adequacy Criteria Committee

This brief inaugural meeting of the Criteria Committee will identify the requirements to be addressed and begin exploring how to address them.

Western Regional Panel

During this Breakfast Roundtable, the Panel will receive updates from its members, discuss the status of its annual report, work plan, and October 1999 meeting agenda, discuss the Western Informational Strategy, and honor the Panel Chair upon his retirement.

Recreational Activities Committee

The Committee will discuss ideas for a plan to disseminate the recommended national voluntary recreational activities guidelines recently submitted to the ANS Task Force. This will involve the implementation of Task B of the Committee's February 1998 draft Action Plan, i.e, develop an education/outreach strategy.

Duluth/Superior Harbor Tour

Weather permitting, a brief boat tour of this major international port in the middle of North America will explore introduced fish ecology, monitoring and impacts, highlight industry generated voluntary Great Lakes ballast water management guidelines, and visit the Great Lakes Ballast Demonstration Project facility.

Great Lakes Panel Ballast Water Research Agenda Symposium

This Symposium will identify current initiatives in ballast water research, allow the research community and users to provide their perspectives on gaps and unmet needs in ballast water research, and begin identifying points of consensus on priorities for additional research and next steps.

ANS Task Force Meeting

Topics to be covered Thursday afternoon will include briefings about the Chicago Waterways Nonindigenous Species Dispersal Barrier, the voluntary national ballast water management guidelines and regulatory changes, and the U.S. position on the IMO Marine Environmental Protection Committee's proposal for a new international instrument requiring ballast water management such as a new annex to MARPOL. In addition, updates on mitten crab and *Caulerpa taxifolia* efforts, an overview of Executive Order 13112 and its implementation (including agency efforts), a legislative update, regional panel updates, and the report of the National Nonindigenous Aquatic Species Survey Program Work Group will be presented. Topics to be covered on Friday include the Gulf of Mexico Regional Panel, recommended voluntary national recreational activity guidelines, the 100th Meridian Initiative to Prevent Westward Spread of Zebra Mussels, adoption of the Ballast Exchange Study, ballast water management initiatives under the Clean Water Act, establishment of a Legislative Committee, and the Executive Secretary's report.

Minutes of all meetings will be maintained by the Executive Secretary, Aquatic Nuisance Species Task Force, Suite 840, 4401 North Fairfax Drive, Arlington, Virginia 22203–1622. Minutes of the committee and panel meetings will also be maintained by the committee chairs and panel administrators as follows:

Criteria Committee: Professor Jim Carlton, Williams College-Mystic Seaport Maritime Studies Program, 75 Greenmanville, Avenue, Mystic, CT 06355–0990. 860–572–5359, Ext. 3, jcarlton@williams.edu

Western Regional Panel: Linda Drees, U.S. Fish and Wildlife Service, 315 Houston Street, Suite E, Manhattan, KS 66502. 785–539–3474, Ext. 20, linda__drees@fws.gov

Recreational Activities Committee: Patricia Carter, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Room 240, Atlanta, GA 30345. 404–679–7108, pat__carter@fws.gov

Great Lakes Panel: Michael Donahue, Executive Director, Great Lakes Commission, The Argus II Building, 400 Fourth Street, Ann Arbor, MI 48103–4816. 734–665–9135, mdonahue@glc.org

Minutes for the meeting will be available at these locations for public inspection during regular business hours, Monday through Friday.

Dated: April 13, 1999.

Gary Edwards,

Co-Chair, Aquatic Nuisance Species Task Force, Assistant Director—Fisheries.

[FR Doc. 99–9763 Filed 4–16–99; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Migratory Bird Hunting; Application for Approval of HEVI–METAL™ as a Nontoxic Shot Material for Waterfowl Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of review.

SUMMARY: We have reviewed Standard Resources Corporation's (Standard) application for approval of HEVI–METAL™ shot as nontoxic for waterfowl hunting in the United States. We have found that the information provided in the application is inconclusive and we are requiring additional information from the manufacturer before further consideration is given.

ADDRESSES: Standard's application may be reviewed in Room 634 at the Fish and Wildlife Service, Office of Migratory Bird Management, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Jon Andrew, Chief, Office of Migratory Bird Management, (703) 358–1714, or James R. Kelley, Jr., Wildlife Biologist, Office of Migratory Bird Management, (703) 358–1964.

SUPPLEMENTARY INFORMATION: We continue to provide opportunity for submission for approval of alternative types of shot for waterfowling that, when spent, does not pose a significant toxic hazard to migratory birds and other wildlife when ingested. Currently, only bismuth-tin and steel shot are unconditionally approved by the Service for use in waterfowling. Tungsten-iron (published October 7, 1998; 63 FR 54016), tungsten-polymer (published October 7, 1998; 63 FR 54022), and tungsten-matrix (published October 19, 1998; 63 FR 55840) shot types received temporary conditional approval for the 1998–99 waterfowl hunting season. We are currently reviewing applications for approval for shot types other than those previously referenced in this notice. We anticipate that approval of additional suitable candidate shot materials as nontoxic is feasible in the near future.

On April 9, 1999 (64 FR 17308), we announced our intention to review Standard's Tier 1 application for approval of HEVI–METAL™ under the revised test procedures for shot and shot coatings that we published in 50 CFR 20.134 (December 1, 1997; 62 FR 63608). A toxicologist from the U.S. Geological Survey, Patuxent Wildlife Research Center, assisted in review of the application. Part A of the application contained a statement of proposed use, a chemical and physical description of the shot material, information on expected variability of shot during production, an estimate of yearly production, and a 5-pound sample of the fabricated shot. Part B of the application contained a discussion of the acute toxicities of HEVI–METAL™ components to mammals and to birds, information on the fate of ingested shot on a small sample of captive-reared mallard ducks, and a summary of the known toxicities of HEVI–METAL™ components for vertebrates. Part C of the application considered the effects of firing on the shot, the half-life of components of breakdown products, the estimated environmental concentration in soil and water, and other environmental impacts of components of the shot.

We have determined that the Tier 1 information provided for HEVI–METAL™ does not provide sufficient information to allow us to conclude that it does not impose a significant danger to migratory birds, other wildlife, and their habitats. Specific toxicological concerns have been provided to the applicant. In light of our concerns, the applicant is advised to proceed with the additional testing described for Tier 2 before further consideration is given to the candidate shot. Tier 2 test requirements are outlined in 50 CFR 20.134.

Authorship: The primary author of this document is James R. Kelley, Jr., Wildlife Biologist, Office of Migratory Bird Management.

Dated: April 2, 1999.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 99–9514 Filed 4–16–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–4210–05; N–62433]

Notice of Realty Action: Segregation Terminated, Lease/Conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management, DOI.

ACTION: Segregation terminated, Recreation and public purpose lease/conveyance.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada was segregated on July 23, 1997 for exchange purposes under serial number N–61855. The exchange segregation on the subject lands will be terminated upon publication of this notice in the **Federal Register**. The land has been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). Clark County proposes to use the lands for a public park.

Mount Diablo Meridian, Nevada

T. 19 S., R. 59 E., sec. 25,
W½SE¼NW¼NW¼, W½SW¼NW¼,
W½NE¼SW¼NW¼, SE¼SW¼NW¼,
N½NW¼SW¼, SW¼NW¼SW¼,
W½SE¼NW¼SW¼,

Containing 75.0 acres, more

or less, located at Ann Road and Puli Avenue. The land is not required for any federal purpose. The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patents, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe and will be subject to:

1. Easements in accordance with the Clark County Transportation Plan.

2. Those rights for distribution line purposes which have been granted to Nevada Power Company by Permit No. Nev-043546 under the Act of October 21, 1976 (43 U.S.C. 1761).

3. Those rights for distribution line purposes which have been granted to Nevada Power Company by Permit No. N–57071 under the Act of October 21, 1976 (43 U.S.C. 1761).

4. Those rights for roadway purposes which have been granted to Clark County by Permit No. N–60903 under the Act of October 21, 1976 (43 U.S.C. 1761). Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas Field Office, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral material disposal laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease/conveyance for classification of the lands to the Las Vegas Field Office Manager, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada 89108.

Classification Comments

Interested parties may submit comments involving the suitability of the land for park sites. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a park site.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for lease/conveyance until after the classification becomes effective.

Dated: April 6, 1999.

Rex Wells,

Assistant Field Office Manager, Las Vegas, NV.

[FR Doc. 99–9742 Filed 4–16–99; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–050–1610–00]

Public Notification of a 30-Day Period for Submission of Proposed Plan Amendments to the Approved Las Vegas Resource Management Plan

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice of plan amendment process. The Bureau of Land Management. (BLM) is designating a 30 day period for public submittal of proposed amendments to the Las Vegas Resource Management Plan.

SUMMARY: An integral step in ensuring a Resource Management Plan remains current is by amendment. The following criteria must be met before a plan amendment will be considered: (1) The proposed amendment is based on new data not considered when the plan was developed. (2) The information represents a change in legal or regulatory mandate. (3) The supporting detail is sufficient and the problem is clearly stated to allow consideration of the request. (4) The information represents a formal change in State or local government or agency plans.

If the proposed amendment cannot be considered due to legal or regulatory constraints or to improper submission, or if the situation can be resolved without a plan amendment, the amendment process will end at this point.

If a determination is made by the Las Vegas BLM Field Office Manager to proceed with the amendment process, the proposed plan amendments will be presented to the Resource Advisory Council for discussion and recommendations. The Council will serve only in an advisory capacity and their recommendations will not be binding on the District Manager.

The recommendations of the District Manager and the Resource Advisory Council will be forwarded to the State Director, who will decide to either: (1) Reject the proposed plan amendment, in which case the requestor will be notified of the decision and its rationale. (2) Further consider the proposed plan amendment, in which case the Director will determine the category of the amendment with regard to the level of environmental analysis.

DATES: A 30 day period starting September 1, 1999, and ending September 30, 1999, is identified as the designated time period for plan amendment submission to the BLM Las Vegas Field Office Manager.

ADDRESSES: All recommendations you may have are to be submitted to: Bureau of Land Management, Attention: Las Vegas District Manager, 4765 Vegas Drive, Las Vegas, Nevada, 89108. Recommendations can also be hand delivered to the same address.

FOR FURTHER INFORMATION CONTACT: Michael F. Dwyer, Las Vegas Field Office Manager, or Jeffrey G. Steinmetz, Environmental Protection Specialist, at (702)–647–5000.

SUPPLEMENTARY INFORMATION: Plan amendments would fall into either Category 1 of Category 2. Category 1 amendments would not involve a significant change to the goals, objectives, terms, conditions or decisions of the Resource Management Plan, whereas Category 2 amendments would involve a significant change.

Dated: April 8, 1999.

Michael F. Dwyer,

Field Office Manager, Las Vegas.

[FR Doc. 99–9643 Filed 4–16–99; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–957–00–1420–00: GP9–0162]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, DOT.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 39 S., R. 13 W., accepted February 3, 1999
T. 18 S., R. 2 W., accepted February 8, 1999
T. 20 S., R. 5 W., accepted February 26, 1999
T. 38 S., R. 4 E., accepted March 29, 1999
T. 27 S., R. 12 W., accepted March 29, 1999

Washington

T. 20 N., R. 12 W., accepted April 1, 1999

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the

filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1515 S.W. 5th Avenue, Portland, Oregon 97201, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey, and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, (1515 S.W. 5th Avenue) P.O. Box 2965, Portland, Oregon 97208.

Dated: April 6, 1999.

Sherrie L. Reid,

Acting Chief, Branch of Realty and Records Services.

[FR Doc. 99–9642 Filed 4–16–99; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Notice on Outer Continental Shelf Oil and Gas Lease Sales

AGENCY: Minerals Management Service, Interior.

ACTION: Revision to List of Restricted Joint Bidders.

In accordance with the joint bidding provisions of 30 CFR 256.41, the Minerals Management Service published in the **Federal Register** on March 26, 1999, at 64 FR 14751, the List of Restricted Joint Bidders covering Outer Continental Shelf oil and gas lease sales to be held during the period from May 1, 1999, through October 31, 1999.

That List of Restricted Joint Bidders inadvertently omitted from Group IV two new entities resulting from the merger of the BP group of companies and the Amoco group of companies.

The list of companies published under Group IV of the List of Restricted Joint Bidders is, by this Notice, revised to include these two additional companies:

BP Amoco Corporation; and
Amoco Production Company.

Dated: April 13, 1999.

Ralph V. Ainger,

Chief, Leasing Division.

[FR Doc. 99–9656 Filed 4–16–99; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF THE INTERIOR

National Park Service

Availability of Plan of Operations and Environmental Assessment for Proposed 3–D Seismic Survey; Cobra Exploration Company, Big Thicket National Preserve, Hardin County, TX

Notice is hereby given in accordance with Section 9.52(b) of Title 46 of the Code of Federal Regulations, Part 9, Subpart B, that the National Park Service has accepted a Plan of Operations from Cobra Exploration Company for Three Dimensional Seismic Survey within Big Thicket National Preserve, Hardin County, Texas.

The Plan of Operations and corresponding Environmental Assessment are available for public review and comment for a period of 30 days from the publication date of this notice. Both documents can be viewed during normal business hours at the Office of the Superintendent, Big Thicket National Preserve, 3785 Milam Street, Beaumont, Texas. Copies can be requested from the Superintendent, Big Thicket National Preserve, 3785 Milam Street, Beaumont, TX 77701.

Dated: April 7, 1999.

Richard R. Peterson,

Superintendent, Big Thicket National Preserve.

[FR Doc. 99–9446 Filed 4–16–99; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Scoping for Environmental Analysis of a Study Recommending a Timbisha Shoshone Tribal Homeland in and Around Death Valley National Park Inyo County, California and Esmeralda and Nye Counties, NV

SUMMARY: Notice is hereby given, in accordance with the provisions of the National Environmental Policy Act (42 U.S.C. 4321 *et. seq.*) that public scoping is being initiated for an environmental impact analysis process for a Draft Secretarial Report to Congress regarding a proposal to establish a permanent Timbisha Shoshone Tribal land base in and around Death Valley National Park. The purpose of this scoping effort is to identify public issues and concerns, and to assess the nature and extent of potential environmental impacts which should be addressed.

Background

During 1994 Congress enacted the California Desert Protection Act (Pub. L. 103–433), which in part addressed the need of the Timbisha Shoshone Tribe for a recognized land base. The Secretary of the Interior was directed (in Section 705(b) of the act) to conduct a study to identify lands suitable for a reservation for the Timbisha Shoshone Tribe.

As a direct result, a joint Federal-Tribal negotiating team was convened for the purposes of drafting a suitability study. In drafting their proposal, the factors scrutinized to date include: basic tribal needs for a land base (for housing, tribal administration, economic development, and cultural restoration); mandates prescribing federal land stewardship; complementary interests of the Timbisha Shoshone Tribe and the Federal government; geographical constraints; climate and availability of water; mining claims; special resource limitations such as Congressionally designated Wilderness and also Areas of Critical Environmental Concern; and availability of infrastructure such as roads, power, and other services. With due diligence the efforts of this government-to-government team have culminated in a comprehensive integrated draft proposal to establish a permanent Homeland for the Timbisha Shoshone Tribe.

Comment and Approval

As noted, the Department of the Interior including the National Park Service, Bureau of Land Management, Bureau of Indian Affairs, and Bureau of Reclamation have undertaken government-to-government negotiations with the Timbisha Shoshone Tribe to address suitable strategies and actions for establishing a permanent Timbisha Shoshone Tribal land base in and around Death Valley National Park. At this time, it has not been determined whether an Environmental Assessment or Environmental Impact Statement will be prepared; however, this scoping process will aid in the preparation of either document.

As part of this effort, a series of public scoping meetings will be held during May, 1999. California and Nevada cities

where this scoping activity will be conducted are listed below—all meetings are scheduled for 7:00–9:00pm. For confirmed details about meeting locations please contact: Superintendent, Death Valley National Park, P.O. Box 579, Death Valley, California, 92328 (telephone (760) 786–3243).

- May 24 in Pasadena, California;
- May 25 in Ridegecrest, California;
- May 26 in Lone Pine, California;
- May 27 in Goldfield, Nevada;
- May 28 in Pahrump, Nevada.

During the scoping period a study document—The Timbisha Shoshone Tribal Homeland: A Draft Secretarial Report to Congress to Establish a Permanent Tribal Land Base and Related Cooperative Activities—is available through Death Valley National Park. Topics addressed in the study document and anticipated to be discussed during these meetings include: background information on the government-to-government negotiation process; an historical perspective on the need for a permanent Timbisha Shoshone Tribal land base; identification of criteria used in the study process; the identification of legislative and administrative actions which would be necessary in order to implement the strategies identified to date; and the types and significance of the potential environmental effects, including potential cumulative impacts to wild burros and horses, wildlife, cultural and other natural resource use issues.

Interested individuals, organizations, and agencies are encouraged to provide comments or suggestions. Written comments regarding the Timbisha Shoshone Tribal Homeland proposal must be postmarked no later than June 15, 1999, and should be addressed to the Superintendent, Death Valley National Park (address as noted above). To obtain a copy of the study document or request other background information please contact the Superintendent, Death Valley National Park; the document and current information also are available via the park website (*www.nps.gov/deva*).

The U.S. Department of the Interior officials responsible for approval are: the Assistant Secretary for Fish, Wildlife, and Parks; the Assistant Secretary for Land and Minerals Management; and the Assistant Secretary for Indian Affairs. If approved, the plan would subsequently be submitted by the Secretary of the Interior to Congress for consideration. If enacted, the National Park Service officials responsible for implementation would be the Superintendent, Death Valley National Park and the Regional Director, Pacific West Region; as well as the State Directors, Bureau of Land Management, California and Nevada; the Assistant Secretary for Indian Affairs; and the Bureau of Indian Affairs, Central California Agency. The draft environmental document is expected to be available for public review in late summer or fall, 1999. At this time it is anticipated that the final plan and environmental document are to be completed in spring, 2000.

Dated: April 9, 1999.

John J. Reynolds,

Regional Director, Pacific West.

[FR Doc. 99–9672 Filed 4–16–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before April 10, 1999. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by May 4, 1999.

Beth Savage,

Acting Keeper of the National Register.

ARKANSAS

Boone County

Harrison Courthouse Square Historic District, Roughly bounded by N. Walnut, W. Ridge, N. Willow, and W. Stephenson Sts., Harrison vicinity, 99000523

Pulaski County

East Markham Street Historic District, 301–303, 305–307, 313 and 323 East Markham St., Little Rock vicinity, 99000522

FLORIDA

Broward County

Deerfield School, 323 North East Second St., Deerfield Beach, 99000525

Lee County

Edison Park Elementary School (Lee County, Florida MPS) 2401 Euclid Ave., Fort Myers, 99000524

IOWA

Carroll County

Leet, William A., and Frederick Hassler Farmstead District, 12196 311th St., Manning vicinity, 99000526

LOUISIANA

St. Martin Parish

Fourgeaud House, 130 South Main St., Breaux Bridge, 99000527

MASSACHUSETTS

Barnstable County

Collins Cottages Historic District, 150 MA 6, Eastham, 99000528

MISSOURI

Franklin County

New Haven Commercial Historic District, 111–139 Front St., New Haven, 99000531

Jackson County

National Bank of Commerce Building, 922–924 Walnut St., Kansas City, 99000530

Pulaski County

Onyx Cave, 14705 Private Drive 8541, Newburg vicinity, 99000529

NORTH CAROLINA

Guilford County

Whitsett Historic District, Jct. NC 61 and NC 3064, Whitsett, 99000532

OREGON

Hood River County

Hood River High School, 1602 May St., Hood River, 99000534

Jackson County

Ashland Railroad Additon Historic District, roughly bounded by Lithia Way, East Main, Oak St., A St. and 8th Sts., Ashland, 99000533

TENNESSEE

Madison County

Cedars, The, 260 Cotton Grove Rd., Jackson vicinity, 99000536

Obion County

Railroad Park (Union City, Tennessee MPS) 100 Park St., Union City, 99000535

VERMONT

Windham County

Hall, William A., House, 1 Hapgood St., Rockingham, 99000537

A Request for a MOVE has been made for the following resource:

NORTH CAROLINA

Iredell County

Houston, George, House, NC 115, Mount Mournie vicinity, 80002865

[FR Doc. 99–9673 Filed 4–16–99; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

Cotton Shop Towels From Bangladesh, China, Pakistan, and Peru[1]

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission determination to conduct full five-year reviews concerning the countervailing duty orders on cotton shop towels from Pakistan and Peru and the antidumping duty orders on cotton shop towels from Bangladesh and China.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the countervailing duty orders on cotton shop towels from Pakistan and Peru and the antidumping duty orders on cotton shop towels from Bangladesh and China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the reviews will be established and announced at a later date.

For further information concerning the conduct of this review and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: April 8, 1999.

FOR FURTHER INFORMATION CONTACT: Robert Eninger (202–205–3194), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter 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).

[1] The investigation numbers are as follows: Bangladesh is 731-TA–514 (Review), China is 731-TA–103 (Review), Pakistan is 701-TA–202 (Review), and Peru is 701-TA-E (Review).

SUPPLEMENTARY INFORMATION: On April 8, 1999, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act. The Commission, in consultation with the Department of Commerce, grouped these reviews because they involve similar domestic like products. See 19 U.S.C. 1675(c)(5)(D); 63 F.R. 29372, 29374 (May 29, 1998). The Commission found that the domestic interested party group response to its notice of institution (64 FR 371, Jan. 4, 1999) of the subject five-year reviews was adequate and the respondent interested party group responses were inadequate.[2] The Commission also found[3] that other circumstances warranted conducting full reviews. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: April 14, 1999

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–9693 Filed 4–16–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–101 (Review)]

Greige Polyester/Cotton Printcloth From China

Determination

On the basis of the record[1] developed in the subject five-year review, the United States International Trade Commission determines,[2] pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the antidumping duty order on greige polyester/cotton printcloth from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

[2] Commissioner Askey dissenting with respect to the adequacy of the respondent interested party group response for Peru.

[3] Chairman Bragg, Vice Chairman Miller, and Commissioner Crawford dissenting.

[1] The record is defined in § 207.2(f) of the Commission's rules of practice and procedure (19 CFR 207.2(f)).

[2] Vice Chairman Miller not participating; Commissioners Crawford and Askey dissenting.

Background

The Commission instituted this review on November 2, 1998 (63 FR 58763), and determined on February 4, 1999, that it would conduct an expedited review (64 FR 9175, February 24, 1999).

The Commission is scheduled to transmit its determination in this investigation to the Secretary of Commerce on April 15, 1999. The views of the Commission will be contained in USITC Publication 3184 (April 1999), entitled Greige Polyester/Cotton Printcloth from China: Investigation No. 731–TA–101 (Review).

Issued: April 12, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–9690 Filed 4–16–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–406]

Certain Lens-Fitted Film Packages; Notice of Determinations To Extend the Deadline for Determining Whether To Review an Initial Determination Terminating the Investigation and To Extend the Target Date For Completing the Investigation

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined: (1) To extend the deadline for determining whether to review the final initial determination (ID) on violation by one week, or until April 19, 1999, and (2) to extend the target date for completing the investigation by eight days, or until June 2, 1999.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC. 20436, telephone (202) 205–3104. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: This investigation was instituted on March

25, 1998, based on a complaint by Fuji Photo Film Co., Ltd. (Fuji) of Tokyo, Japan. 63 FR 14474. Fuji's complaint alleged unfair acts in violation of section 337 in the importation and sale of certain lens-2 fitted film packages (*i.e.*, disposable cameras). The complaint alleged that 27 respondents had infringed one or more claims of 15 patents held by complainant Fuji. On October 23, 1998, the Commission determined not to review two IDs finding a total of eight respondents, viz., Boshi Technology Ltd., Fast Shot, Haichi International, Innovative Trading Company, Labelle Time, Inc., Linfa Photographic Ind. Co. Ltd., Forcecam, Inc. and Rino Trading Co. Ltd., in default for failure to respond to the complaint and notice of investigation. An evidentiary hearing was held November 2–13, 1998. Eight respondents participated in the hearing, Achiever Industries Limited, Argus Industries, China Film Equipment, Dynatec International Inc., Jazz Photo Corp., Opticolor Camera, P.S.I. Industries, and Sakar International, Inc. (participating respondents). Ten respondents that had filed responses to the complaint and notice of investigation failed to appear at the hearing, viz., Ad-Tek Specialties Inc., AmerImage, Inc. d/b/a/ Rainbow Products, Boecks Camera LLC, BPS Marketing, E.T. Trading d/b/a Klikit, Penmax, Inc., PhilmEx Photographic Film, T.D.A. Trading Corp., Vantage Sales, Inc., and Vivitar Corp.

On February 24, 1999, the ALJ issued his final ID, finding a violation of section 337 by 26 of 27 named respondents. (Complainant Fuji admitted at closing argument that one named respondent, Opticam Inc, was not violating section 337). He found that Fuji had not carried its burden of proof in showing infringement of three design patents. The ALJ also issued his recommendations on remedy and bonding. Fuji, the Commission investigative attorney, and all participating respondents filed petitions for review of the ID.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and §§ 210. 42(h)(2) and 210.51(a) of the Commission Rules of Practice and Procedure, 19 CFR §§ 210.42(h)(2), 210.51(a).

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours 3 (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000.

Issued: April 12, 1999

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–9691 Filed 4–16–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Malleable Cast Iron Pipe Fittings From Brazil, Japan, Korea, Taiwan, and Thailand [1]

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission determination to conduct full five-year reviews concerning the antidumping duty orders on malleable cast iron pipe fittings from Brazil, Japan, Korea, Taiwan, and Thailand.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the antidumping duty orders on malleable cast iron pipe fittings from Brazil, Japan, Korea, Taiwan, and Thailand would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the reviews will be established and announced at a later date.

For further information concerning the conduct of this review and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 F.R. 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: April 8, 1999.

FOR FURTHER INFORMATION CONTACT: Robert Carpenter (202–205–3172), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter 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).

SUPPLEMENTARY INFORMATION: On April 8, 1999, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act. The Commission, in consultation with the Department of Commerce, grouped these reviews because they involve similar domestic like products. See 19 U.S.C. 1675(c)(5)(D); 63 FR 29372, 29374 (May 29, 1998).

With regard to malleable cast iron pipe fittings from Brazil and Thailand, the Commission found that both the domestic interested party group response and the respondent interested party group responses to its notice of institution [2] were adequate and voted to conduct full reviews.

With regard to malleable cast iron pipe fittings from Japan, Korea, Taiwan, the Commission found that the domestic interested party group response was adequate and the respondent interested party group responses were inadequate. The Commission also found [3] that other circumstances warranted conducting full reviews.

A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

Issued: April 14, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–9695 Filed 4–16–99; 8:45 am]

BILLING CODE 7020–02–P

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[1] The investigation numbers are as follows: Brazil is 731–TA–278 (Review), Japan is 731–TA–347 (Review), Korea is 731–TA–279 (Review), Taiwan is 731–TA–280 (Review), and Thailand is 731–TA–348 (Review).

[2] The notice of institution for all of the subject reviews was published in the **Federal Register** on Jan. 4, 1999 (64 FR 369).

[3] Commissioner Crawford dissenting.

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–244 (Review)]

Natural Bristle Paint Brushes From China

AGENCY: United States International Trade Commission.

ACTION: Scheduling of an expedited five-year review concerning the antidumping duty order on natural bristle paint brushes from China.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty order on natural bristle paint brushes from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: April 8, 1999.

FOR FURTHER INFORMATION CONTACT: Bonnie Noreen (202–205–3167), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter 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).

SUPPLEMENTARY INFORMATION:

Background

On April 8, 1999, the Commission determined that the domestic interested party group response to its notice of institution (64 FR 374, Jan. 4, 1999) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.

Staff Report

A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on May 6, 1999, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to § 207.62(d)(4) of the Commission's rules.

Written Submissions

As provided in § 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before May 11, 1999, and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by May 11, 1999. If comments contain business proprietary information (BPI), they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination

The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

Issued: April 14, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–9692 Filed 4–16–99; 8:45 am]

BILLING CODE 7020–02–P

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

[2] The Commission has found the response submitted by the Paint Applicator Division of the American Brush Manufacturers Association to be individually adequate. Comments from other interested parties will not be accepted (see 19 CFR 207.62(d)(2)).

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–282 (Review)]

Petroleum Wax Candles From China

AGENCY: United States International Trade Commission.

ACTION: Scheduling of an expedited five-year review concerning the antidumping duty order on petroleum wax candles from China.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty order on petroleum wax candles from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the rules of practice and procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: April 8, 1999.

FOR FURTHER INFORMATION CONTACT: Bonnie Noreen (202–205–3167), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter 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).

SUPPLEMENTARY INFORMATION:

Background

On April 8, 1999, the Commission determined that the domestic interested party group response to its notice of institution (64 FR 365, Jan. 4, 1999) of the subject five-year review was adequate [1] and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[2] Accordingly, the Commission determined [3] that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.

Staff Report

A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on May 20, 1999, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to § 207.62(d)(4) of the Commission's rules.

Written submissions.

As provided in § 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[4] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before May 25, 1999, and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by May 25, 1999. If comments contain business proprietary information (BPI), they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination

The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

Issued: April 14, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–9697 Filed 4–16–99; 8:45 am]

BILLING CODE 7020–02–P

[1] Commissioner Crawford dissenting.

[2] Commissioners Hillman and Koplan dissenting. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

[3] Commissioners Hillman and Koplan dissenting.

[4] The Commission has found responses submitted by Woodbridge Candles, Inc. and the National Candle Association to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

INTERNATIONAL TRADE COMMISSION

Certain Steel Wire Rope From Japan, Korea, and Mexico [1]

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission determination to conduct full five-year reviews concerning the antidumping duty orders on steel wire rope from Japan and carbon steel wire rope from Korea and Mexico.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the antidumping duty orders on steel wire rope from Japan and carbon steel wire rope from Korea and Mexico would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the reviews will be established and announced at a later date.

For further information concerning the conduct of this review and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 F.R. 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: April 8, 1999.

FOR FURTHER INFORMATION CONTACT: George Deyman (202–205–3197), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter 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).

SUPPLEMENTARY INFORMATION: On April 8, 1999, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act. The Commission, in consultation with the Department of Commerce, grouped these reviews because they involve similar domestic like products. See 19 U.S.C. 1675(c)(5)(D); 63 FR 29372, 29374 (May 29, 1998).

With regard to carbon steel wire rope from Korea, the Commission found that both the domestic interested party group response and the respondent interested party group response to its notice of institution [2] were adequate and voted to conduct a full review.[3]

With regard to steel wire rope from Japan and carbon steel wire rope from Mexico, the Commission found that the domestic interested party group response was adequate and the respondent interested party group responses were inadequate. The Commission also found that other circumstances warranted conducting full reviews.[4]

A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be

[1] The investigation numbers are as follows: Japan is AA1921–124 (Review), Korea is 731–TA–546 (Review), and Mexico is 731–TA–547 (Review).

[2] The notice of institution for all of the subject reviews was published in the **Federal Register** on Jan. 4, 1999 (64 FR 367).

[3] Commissioner Crawford dissenting with respect to the adequacy of the domestic interested party group response and with respect to conducting a full review.

[4] Commissioner Crawford dissenting with respect to the adequacy of the domestic interested party group response and with respect to finding other circumstances that warranted conducting a full review.

available from the Office of the Secretary and at the Commission's web site.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

Issued: April 14, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–9696 Filed 4–16–99; 8:45 am]

BILLING CODE 7020–01–P

INTERNATIONAL TRADE COMMISSION

[Investigation 332–405]

Probable Economic Effects of the Reduction or Elimination of U.S. Tariffs

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

EFFECTIVE DATE: April 13, 1999.

SUMMARY: Following receipt of a request on March 15, 1999, from the United States Trade Representative (USTR), the Commission instituted investigation No. 332–405, Probable Economic Effects of the Reduction or Elimination of U.S. Tariffs, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

As requested by USTR, the Commission will provide advice as to the probable economic effects on U.S. industries producing like or directly competitive articles, and on consumers, of modifying tariffs under three scenarios, as follows:

1. The effects resulting from changes in the levels of dutiable imports from all U.S. trading partners if all tariffs were reduced by at least 50 percent, with tariffs of 5 percent ad valorem or less reduced to free;

2. The effects resulting from changes in the levels of dutiable imports from all U.S. trading partners if tariffs were eliminated; and

3. The effects resulting from tariff elimination on dutiable imports from Free Trade Area of the Americas (FTAA) trading partners alone.

The request covers each article for which tariffs will remain after full implementation of the staged duty reductions resulting from the Uruguay Round or subsequent World Trade Organization (WTO) agreements (e.g., the Information Technology Agreement). The USTR requested the Commission to provide the advice in a confidential report by November 17, 1999.

In her letter, the USTR noted that ''[T]his request by no means implies that we intend to take action on these tariff measures. It merely indicates our interest in obtaining factual advice from the Commission on the probable economic effects of their reduction or elimination.''

FOR FURTHER INFORMATION CONTACT: Industry-specific information may be obtained from Robert Wallace, Project Leader (202–205–3458) or James Lukes, Deputy Project Leader (202–205–3426), 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). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202) 205–1810.

Background

In her letter to the Commission, the USTR stated that a new round of multilateral negotiations will be launched at the WTO's Third Ministerial Conference. The letter noted that the WTO Agreements mandate further negotiations on agriculture and that many WTO members are advocating new negotiations on industrial tariffs. The letter also noted that, within our hemisphere, President Clinton and other leaders at the Miami and Santiago Summits of the Americas have called for the completion of an FTAA no later than the year 2005, and that agricultural and industrial tariffs will be one area addressed in the FTAA negotiations.

The Commission will provide the probable economic effects advice at an 8-digit subheading level of the Harmonized Tariff Schedule of the United States (HTS). There are a total of 6,424 current HTS subheadings for which tariffs will remain after full implementation of the staged duty reductions resulting from the Uruguay Round or subsequent WTO agreements. A list of these HTS subheadings is available on the Commission's Internet site at http://www.usitc.gov/invfrn.htm#332. A printed copy of the list is also available for inspection in the docket section of the Secretary's office.

Public Hearing

A public hearing in connection with the investigation will be held at the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC, beginning at 9:30 a.m. on June 15, 1999, and continuing on June 16 if necessary. All persons shall have the right to appear, by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436, no later than 5:15 p.m., June 1, 1999. Any prehearing briefs (original and 14 copies) should be filed not later than 5:15 p.m., June 3, 1999; the deadline for filing post-hearing briefs or statements is 5:15 p.m., August 10, 1999. To allow sufficient time for full consideration, the Commission encourages all persons who appear at the public hearing to submit any prepared statements and accompanying material to the Secretary by 5:15 p.m., June 10, 1999. In the event that, as of the close of business on June 1, 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 of the Commission (202–205–1806) after June 1, 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 § 201.6 of the Commission's rules of practice and procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary of the Commission for inspection by interested parties. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than the close of business on August 10, 1999. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436. The Commission's rules do not authorize filing 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

WTO, FTAA, Tariffs, and Imports.

Issued: April 14, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–9694 Filed 4–16–99; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Bureau of Justice Assistance; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review; New Collection; Bulletproof Vest Partnership Grant Act of 1998 (Act)—Pub. L. 105–181 June 16, 1998 Funding Program.

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 April 15, 1999. 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. Alex Hunt, (202) 395–7860, 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 the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to (202) 514–1590.

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) *The title of the three form/collections:* Registration, Application for Funding, and Request for Payment.

(3) *The agency for number, if any, and the applicable component of the Department sponsoring the collection:* None. Bureau of Justice Assistance, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Federal Government, State, Local or Tribal, and any law enforcement agencies who may elect to assist their units of general government with completion of the Application for Funding or Request for Payment forms.

Other: Armor vest manufacturers or distributors, individual law enforcement officers, or other interested parties.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that between 25,000 and 30,000 eligible units of general government may complete the Registration and Application for Funding forms that may take one hour during one Fiscal Year, and may complete any number of Requests for Payment forms that may take as much as one hour total per Fiscal Year to complete as armor vests are received/accepted and Requests for Payment are made to the BVP.

(6) *An estimate of the total public burden (in hours) associated with the collection:* Estimated to be between 50,000 and 90,000 total hours for the 25,000 to 30,000 estimated applicants.

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: April 13, 1999.

Brenda E. Dyer,

Department Deputy Clearnace Officer, Department of Justice.

[FR Doc 99–9698 Filed 4–16–99; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

National Institute of Justice

[OJP (NIJ)–1221]

RIN 1121–ZB54

Announcement of the Availability of the National Institute of Justice Solicitation for Evaluation of Policies, Procedures, and Programs Addressing Violence Against Women

AGENCY: Office of Justice Programs, National Institute of Justice, Justice.

ACTION: Notice of solicitation.

SUMMARY: Announcement of the availability of the National Institute of Justice ''Evaluation of Policies, Procedures, and Programs Addressing Violence Against Women.''

DATES: Due date for receipt of proposals is close of business June 2, 1999.

ADDRESSES: National Institute of Justice, 810 Seventh Street, NW, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: For a copy of the solicitation, please call NCJRS 1–800–851–3420. For general information about application procedures for solicitations, please call the U.S. Department of Justice Response Center 1–800–421–6770.

SUPPLEMENTARY INFORMATION:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, secs. 201–03, as amended, 42 U.S.C. 3721–23 (1994).

Background

The National Institute of Justice (NIJ) is soliciting proposals for the evaluation of policies, procedures, and programs that address violence against women. Violence against women includes family and intimate partner violence, sexual assault, stalking, and violence

committed by acquaintances and strangers.

Evaluation studies aimed at addressing gaps in the current understanding of policies, programs, and practices are encouraged. The following are among some of the areas of interest, but applicants are not restricted to them:

- Assessing the extent of judges' knowledge regarding domestic violence and/or sexual assault.
- Assessing the impact of judges' training on decisionmaking in both civil and criminal cases involving violence against women, on improving judges' knowledge and awareness, and on the attitudes and practices of law enforcement and other court personnel in their approach to domestic violence or sexual assault victims.
- Documenting the long-term outcomes of domestic violence cases decided by judges who had training versus those who did not.
- Determining prosecution strategies that are most effective in reducing recidivism of domestic violence offenders, afford the most protection for the victim of sexual assault or domestic violence, and are most effective in sexual assault cases.
- Evaluating ''readiness to change'' or ''stages of change'' models with reference to the Transtheoretical model of change for offenders in the criminal justice response to domestic violence.
- Evaluating the impact of mandatory reporting by physicians and other health care providers of victims of domestic violence to law enforcement agencies.
- Evaluating the process and effects of mandatory divorce/custody mediation in cases involving domestic abuse.
- Assessing whether voluntary mediation can produce satisfactory outcomes for victims of domestic violence.

NIJ anticipates awarding up to 6 grants with a funding total of $1,250,000 for projects with award periods of up to 24 months. The duration and the budget for proposed evaluations should be justified by factors such as the complexity of the design, the number of sites, and the size of the sample.

Interested organizations should call the National Criminal Justice Reference Service (NCJRS) at 1–800–851–3420 to obtain a copy of ''Evaluation of Policies, Procedures, and Programs Addressing Violence Against Women'' (refer to document no. SL000337). For World Wide Web access, connect either to either NIJ at http://www.ojp.usdoj.gov/nij/funding.htm, or the NCJRS Justice Information Center at http://www.ncjrs.org/fedgrant.htm#nij.

Jeremy Travis,

Director, National Institute of Justice.

[FR Doc. 99–9687 Filed 4–16–99; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Investment Act: Job Corps Program; Notice to Employers

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This Notice describes the Job Corps Program and encourages employers to become involved with the Program.

ADDRESSES: Employers (both public and private) who are interested in learning more about the Job Corps Program as a meaningful source for skilled, entry-level workers are invited to request information. Please send requests to the Director, Division of Program Planning and Development, Office of Job Corps, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N4507, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Alan I. Lafferman, Office of Job Corps. Telephone: (202) 219–5556, ext. 140 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Job Corps Program offers qualified youth ages 16–24 the opportunity to become capable and reliable young adults with skills to succeed in business and at life. Students receive vocational training, social and employability skills development and academic education leading to a GED. At the core of the curriculum is a trade that each student selects from approximately 100 vocational offerings (e.g., construction, health services, business and administrative, computer services, culinary arts, automotive and truck repair, retail sales, welding, security, machinist, electronic assembler, lithographic printer and heavy equipment operator). Students receive competency-based, individualized instruction from instructors who have many years of experience in their trade.

In addition to academic and vocational development, Job Corps focuses on social and employability skills that help students adapt to different working and living environments. Each student goes through an extensive curriculum that stresses dependability in attendance, adaptability in tasks, working in a team environment, and interpersonal skills including conflict resolution. Job Corps also demands discipline and instills a strong work ethic, responsibility and good behavior. As part of their comprehensive program, students also volunteer to participate in Community Service Projects.

Under Job Corp's strict Zero Tolerance Program, a formal commitment is required from all students that they will be free of drugs and avoid any violence. Failure to meet this commitment results in dismissal from the program. Students are tested for drugs upon entry to the Program and upon suspicion during their enrollment.

Currently, there are 118 Job Corps centers located throughout the United States. Job Corps students are economically disadvantaged, unemployed youth, male and female, who have volunteered for the program. The average stay for a student is 7 months, and approximately 68,000 students participate in the program each year.

The primary purpose of this Notice is to inform employers that the Job Corps Program has great interest in developing meaningful partnerships with a wide variety of businesses that seek qualified, entry-level workers. Job Corps endeavors to make all of its program components (academic, social and employability skills, and vocational) responsive to the needs of the business community, and employer involvement can contribute significantly to this objective. Involvement activities can include a full range of tasks including, but not limited to: Updating curricula; mentoring students and staff; providing equipment, supplies and services; offering workplace tours; internships and work-based learning opportunities; recruiting other business participants; co-hosting Job Fairs at a Job Corps center and serving on a center's Industry Council.

Job Corps fully supports the economic goals of America's businesses—to expand market share and increase profits. A trained workforce is, perhaps, the most critical resource in achieving these goals and Job Corps is in the business of developing a trained workforce. You are encouraged to partner with the Job Corps Program in meeting this mutual objective.

Dated: April 13, 1999.

Raymond L. Bramucci,

Assistant Secretary for Employment and Training.

[FR Doc. 99–9685 Filed 4–16–99; 8:45 am]

BILLING CODE 4510–30–P

NATIONAL CAPITAL PLANNING COMMISSION

Review of a Mixed-Use Waterfront Destination Resort in Prince George County, MD; Final Environmental Impact Statement

AGENCY: National Capital Planning Commission.

ACTION: Notice.

SUMMARY: The National Capital Planning Commission (NCPC) has prepared a Final Environmental Impact Statement (FEIS) on the construction and operation of the proposed National Harbor project in accordance with section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA), the National Historic Preservation Act of 1966 (NHPA), and the Environmental Policies and Procedures implemented by NCPC. As the lead federal agency for the preparation and completion of the draft and final EIS, NCPC announces the availability of the FEIS on April 20, 1999.

DATES: Written comments on the FEIS may be submitted until close of business on May 24, 1999.

ADDRESSES: All such comments should be addressed to: National Capital Planning Commission, Attention: Eugene Keller, 801 Pennsylvania Avenue, NW, Suite 301, Washington, D.C. 20576.

Comments may also be sent by e-mail to *eugene@ncpc.gov*. Faxes may be sent to (202) 482–7272. All comments will be fully considered when the Commission reviews the project at a later date.

FOR FURTHER INFORMATION CONTACT: Eugene Keller, Environmental Officer, National Capital Planning Commission, (202) 482–7251 or Sandra Shapiro, General Counsel, National Capital Planning Commission, (202) 482–7223.

SUPPLEMENTARY INFORMATION: The National Harbor resort development is proposed to be built on two parcels totaling 533.9 acres in Prince George County just south of the Capital Beltway interchange at Indian Head Highway (Maryland Route 210). Approximately 241 acres of the site consists of land under Smoot Bay in the Potomac River. The development would include hotels, restaurants, retail and entertainment facilities, office space, and a visitor's center, as well as associated vehicular transportation and parking facilities, pedestrian walkways, and other infrastructure improvements. on April 20, 1999 the FEIS will be available at the offices of the National Capital Planning Commission and at the Prince George's Country Branch Library at 6200 Oxon Hill Road, Oxon Hill, Maryland.

Sandra H. Shapiro,

General Counsel, National Capital Planning Commission.

[FR Doc. 99–9688 Filed 4–16–99; 8:45 am]

BILLING CODE 7520–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting; Notice of Changes in Subject of Meeting

The National Credit Union Administration Board determined that its business requires the addition of the following two items to the previously announced closed meeting (Federal Register, Vol. 64. No. 69, page 17688, Monday, April 12, 1999) scheduled for Thursday, April 15, 1999.

4. Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii) and (9)(B).

5. Y2K 1999 Examination Program. Closed pursuant to exemption (8).

The Board voted unanimously that agency business requires that these items be considered with less than the usual seven days notice, that they be closed to the public, and that no earlier announcement of these changes was possible.

The previously announced items were:

1. Administrative Action under Section 107 of the Federal Credit Union Act and Part 701 of NCUA's Rules and Regulations. Closed pursuant to exemption (8).

2. Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (4), (7) and (8).

3. Two (2) Personnel Actions. Closed pursuant to exemptions (2) and (6).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 99–9831 Filed 4–15–99; 11:47 am]

BILLING CODE 7535–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–289]

GPU Nuclear, Inc., et al.; Three Mile Island, Unit No. 1; Order Approving Transfer of License and Conforming Amendment

I

GPU Nuclear, Inc., (GPUN or the licensee), Metropolitan Edison Company (Met-Ed), Jersey Central Power and Light Company (JCP&L), and Pennsylvania Electric Company (Penelec) are the holders of Facility Operating License No. DPR–50, which authorizes operation of Three Mile Island Nuclear Station, Unit No. 1 (TMI–1 or the facility) at steady-state power levels not in excess of 2568 megawatts thermal. The facility is located at the licensee's site in Dauphin County, Pennsylvania. The license authorizes GPUN to maintain and operate the facility and Met-Ed, JCP&L, and Penelec to possess but not operate TMI–1. GPUN is authorized to act as agent for Met-Ed, JCP&L, and Penelec in connection with the license. Met-Ed, JCP&L, and Penelec do business as GPU Energy and are wholly owned subsidiaries of GPU, Inc., which is also the parent of GPUN.

II

Under cover of a letter dated December 3, 1998, GPUN and AmerGen Energy Company, LLC, jointly submitted an application requesting approval of the proposed transfer of the TMI–1 facility operating license to AmerGen Energy Company, LLC. The licensee and AmerGen also jointly submitted an application for a conforming amendment to reflect the transfer. Supplemental information was provided under cover of letters dated January 11, February 4, March 4, March 10, and March 15, 1999. Hereinafter, the December 3, 1998, license transfer application and supplemental information will be referred to collectively as the ''application.'' GPUN stated that it was acting on behalf of itself and Met-Ed, JCP&L, and Penelec, co-owners of TMI–1, in submitting the application. AmerGen is a limited liability company that was formed to acquire and operate nuclear power plants in the United States. PECO Energy Company (PECO) and British Energy, Inc., each owns a 50 percent interest in AmerGen. The conforming amendment would remove the current licensees from the facility operating license and would add AmerGen in their place. After completion of the

proposed transfer, AmerGen will be the sole owner and operator of TMI–1.

Approval of the transfer of the facility operating license and conforming license amendment was requested by GPUN and AmerGen pursuant to 10 CFR 50.80 and 50.90. Notice of the applications for approval and an opportunity for a hearing was published in the **Federal Register** on December 21, 1998 (63 FR 70436). Pursuant to such notice, the Commission received a request for hearing dated January 11, 1999, from Camille ''Bud'' George, a Pennsylvania State representative. Mr. George also submitted a February 11, 1999, supplemental letter. The Commission issued a Memorandum and Order [1] on February 11, 1999, denying Mr. George's request for a hearing. The Commission received one comment postmarked January 15, 1999, from H. E. Williams, Jr. and forwarded that comment and Mr. George's two letters to the staff for its consideration. The comments contained in these letters are addressed in the staff's safety evaluation dated April 12, 1999.

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the application by GPUN and AmerGen, and other information before the Commission, and relying upon the representations and agreements contained in the application, the NRC staff has determined that AmerGen is qualified to hold the license, and that the transfer of the license to AmerGen is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. The NRC staff has further found that the application for the proposed license amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended, and the Commission's rules and regulations set forth in 10 CFR chapter 1; the facility will operate in conformity with the application, the provisions of the Act and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendment can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendment will not be inimical to the common defense and security or to the health and safety of the public; and the issuance of the proposed amendment will be in accordance with 10 CFR part 51 of the Commission's regulations and all applicable requirements have been satisfied.

III

Accordingly, pursuant to sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended; 42 U.S.C. 2201(b), 2201(i), and 2234; and 10 CFR 50.80, it is hereby ordered that the transfer of the license as described herein to AmerGen is approved, subject to the following conditions:

(1) The AmerGen Limited Liability Company Agreement dated August 18, 1997, may not be modified in any material respect concerning decision-making authority over ''safety issues'' as defined therein without the prior written consent of the Director, Office of Nuclear Reactor Regulation.

(2) At least half of the members of AmerGen's Management Committee shall be appointed by a non-foreign member group, all of which appointees shall be U.S. citizens.

(3) The Chief Executive Officer (CEO), Chief Nuclear Officer (CNO) (if someone other than the CEO), and Chairman of the Management Committee of AmerGen shall be U.S. citizens. These individuals shall have the responsibility and exclusive authority to ensure, and shall ensure, that the business and activities of AmerGen with respect to the TMI–1 license are at all times conducted in a manner consistent with the protection of the public health and safety and common defense and security of the United States, as set forth in Title 10 of the Code of Federal Regulations and Operating License No. DPR–50, including the Technical Specifications attached thereto.

(4) AmerGen shall cause to be transmitted to the Director, Office of Nuclear Reactor Regulation within 30 days of filing with the Securities and Exchange Commission, any Schedules 13D or 13G filed pursuant to the Securities and Exchange Act of 1934 that disclose beneficial ownership of a registered class of PECO stock.

(5) For purposes of ensuring public health and safety, AmerGen shall provide decommissioning funding assurance of no less than $303 million, after payment of any taxes, to be held in the decommissioning trust(s) for TMI–1 following the transfer of the TMI–1 license to AmerGen, including any amounts held in any decommissioning trust(s) that may continue to be maintained by GPU Energy for TMI–1 after such license transfer.

(6) AmerGen shall take all necessary steps to ensure that the decommissioning trust is maintained in accordance with the application for the transfer of the TMI–1 license and the requirements of this order and the safety evaluation.

(7) If the assets of any decommissioning trust maintained by GPU Energy for TMI–1 are retained in such trust following the transfer of the TMI–1 license to AmerGen instead of being transferred to any trust established by AmerGen, GPU Energy shall maintain the assets as retained in such trust in accordance with the application for the transfer of the TMI–1 license. In addition, the trust agreement shall contain the following provisions or be consistent with the following:

(a) In Article II of the trust agreement, section 2.01 shall include provisions to limit the use of assets in both the qualified and non-qualified funds, in the first instance, to the expenses related to decommissioning of TMI–1 as defined by the NRC in its regulations and issuances, and as provided in the TMI–1 license and any amendments thereto.

(b) In Article II, section 2.01(c) shall be deleted or the term ''property'' therein shall be limited to liquid assets.

(c) In Articles II and V, investments in the securities or other obligations of GPU Nuclear, Inc., PECO Energy, British Energy, plc, AmerGen, or affiliates thereof, or their successors or assigns shall be prohibited. Except for investments tied to market indexes or other non-nuclear sector mutual funds, investments in any entity owning one or more nuclear power plants is prohibited.

(d) In Article II, section 2.02 shall be amended to contain a provision that no disbursements or payments from the trust shall be made by the trustee until the trustee has first given the NRC 30 days notice of the payment. The section shall be further amended to contain a provision that no disbursements or payments from the trust shall be made if the trustee receives prior written notice of objection from the Director, Office of Nuclear Reactor Regulation.

(e) Article IV shall provide that the trust agreement cannot be modified in any material respect without the prior written consent of the Director, Office of Nuclear Reactor Regulation.

(f) Section 4 of the Special Terms shall specify that assets cannot be withdrawn from the decommissioning trust funds, but may be transferred

[1] GPU Nuclear, Inc., *et al.* (Three Mile Island, Unit No. 1), CLI–99–02, 49 NRC ____ slip. op. (February 11, 1999).

between the qualified and non-qualified funds for the purposes specified in this section.

(g) The appropriate section of the trust agreement shall reflect that the trustee, investment advisor, or anyone else directing the investments made in the trust must adhere to a ''prudent investor'' standard as specified in 18 CFR 35.32(a)(3) of the Federal Energy Regulatory Commission regulations.

(8) AmerGen, shall take no action to cause PECO or British Energy, plc to void, cancel, or diminish the $65 million contingency fund commitment from PECO and British Energy for TMI–1, the existence of which is represented in the application, or cause them to fail to perform or impair their performance under the commitment, or remove or interfere with AmerGen's ability to draw upon the commitment. Further, AmerGen shall inform the Director, Office of Nuclear Reactor Regulation, in writing, at such time that it draws upon the $65 million contingency fund. This provision does not affect the NRC's authority to assure that adequate funds will remain available to fund the transition to safe shutdown, should any question arise regarding availability of funds for such a purpose.

(9) AmerGen shall, prior to completion of the sale and transfer of TMI–1 to it, provide the Director, Office of Nuclear Reactor Regulation, satisfactory documentary evidence that AmerGen has obtained the appropriate amount of insurance required of licensees under 10 CFR part 140 of the Commission's regulations.

(10) After receipt of all required regulatory approvals of the transfer of TMI–1, GPU Nuclear, Inc., and AmerGen shall inform the Director, Office of Nuclear Reactor Regulation, in writing of such receipt within five business days, and of the date of the closing of the sale and transfer of TMI–1 no later than seven business days prior to the date of closing. Should the transfer of the license not be completed by December 31, 1999, this Order shall become null and void, provided, however, on written application and for good cause shown, such date may in writing be extended.

It is further ordered that, consistent with 10 CFR 2.1315(b), a license amendment that makes changes, as indicated in enclosure 2 to the cover letter forwarding this Order, to conform the license to reflect the subject license transfer is approved. The amendment shall be issued and made effective at the time the proposed license transfer is completed.

This Order is effective upon issuance.

For further details with respect to this Order, see the application dated December 3, 1998, and supplemental submittals dated January 11, February 4, March 4, March 10, and March 15, 1999, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, and at the local public document room located at the Law/Government Publications Section, State Library of Pennsylvania (REGIONAL DEPOSITORY), Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

Dated at Rockville, Maryland, this 12th day of April 1999.

For the Nuclear Regualtory Commission.

Roy P. Zimmerman,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 99–9748 Filed 4–16–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–334]

Duquesne Light Company; Ohio Edison Company; Pennsylvania Power Company; Beaver Valley Power Station, Unit No. 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–66, issued to Duquesne Light Company, (the licensee), for operation of the Beaver Valley Power Station, Unit 1 (BVPS–1), located in Beaver County, Pennsylvania.

Environmental Assessment

Identification of the Proposed Action

The proposed action would authorize changes to the Updated Final Safety Analysis Report (UFSAR) for the facility. Specifically, the proposed action would authorize changes to the UFSAR to reflect revisions to the Control Room radiological dose calculations for the waste gas system line break accident analysis. The BVPS–1 UFSAR would be revised as follows: in Table 11.3–7, the reported Gamma (whole body) dose value would be revised from 0.0031 REM to less than 0.01 REM; the reported Beta dose value would be revised from 0.013 REM to less than 1.0 REM; and Table 14.2–8 would be revised to reflect the assumptions that (1) the fraction of fuel with defects is one percent, and (2) the control room radiation monitors will not initiate control room isolation, which were used in the reanalysis.

The proposed action is in accordance with the licensee's application for amendment dated January 17, 1998, as supplemented by letters dated February 10, 1998, November 9, 1998, February 8, 1999, and February 26, 1999.

The Need for the Proposed Action

As a result of issues involving control room habitability, the licensee re-evaluated Beaver Valley Power Station, Units 1 and 2, (BVPS–1 and BVPS–2) control room dose calculations for Design Basis Accidents (DBA) which credited isolation of the control room during the DBA. When analyses associated with the waste gas system rupture were reviewed, an arithmetic error was discovered in the control room dose calculation for BVPS–1 which resulted in the associated values listed in the BVPS–1 UFSAR being incorrect. Therefore, it is necessary to correct the analysis and revise the BVPS–1 UFSAR.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the assumptions and methodology used by the licensee in the reanalysis are acceptable and that there is reasonable assurance, in the event of a postulated Waste Gas System Line Break, that the postulated control room operator doses would continue to be less than the criteria of 10 CFR part 50, Appendix A, General Design Criterion 19; and well within the occupational dose limits of 10 CFR part 20.

The proposed action will not increase the probability or consequences of accidents (although the corrections result in a higher calculated control room operator dose), no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant

environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for BVPS–1.

Agencies and Persons Consulted

In accordance with its stated policy, on March 25, 1999, the staff consulted with the Pennsylvania State official, Mr. M. Murphy of the Pennsylvania Department of Environmental Protection Bureau, Division of Nuclear Safety, regarding the environmental impact of the proposed action. The State official had no comments.

Findings of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated January 17, 1998, as supplemented by letters dated February 10, 1998, November 9, 1998, February 8, 1999, and February 26, 1999, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001.

Dated at Rockville, Maryland, this 12th day of April 1999.

For the Nuclear Regulatory Commission.

Daniel S. Collins,

Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–9749 Filed 4–16–99; 8:45 am]

BILLING CODE 7590–01–P

UNITED STATES NUCLEAR REGULATORY COMMISSION

[Docket No. 50–289]

GPU Nuclear, Inc., Et Al.; Three Mile Island Nuclear Generating Station, Unit 1 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of 10 CFR part 50, Appendix R for Facility Operating License No. DPR–50 issued to GPU Nuclear, Inc., *et al.*, (GPU or the licensee), for operation of the Three Mile Island Nuclear Generating Station, Unit 1 (TMI–1), located in Dauphin County, Pennsylvania.

Environmental Assessment

Identification of the Proposed Action

Section III.G.2.c of Appendix R to 10 CFR part 50 requires the enclosure of cable and equipment and associated non-safety circuits of one redundant train of systems necessary to achieve and maintain safe shutdown in a fire barrier having a 1-hour rating. In addition, fire detectors and an automatic fire suppression system shall be installed in the fire area. The licensee is seeking an exemption from these requirements for 10 fire areas/zones: AB–FZ–3, AB–FZ–4, AB–FZ–5, AB–FZ–7, CB–FA–1, FH–FZ–1, FH–FZ–2, FH–FZ–6, ISPH–FZ–1 and ISPH–FZ–2.

The proposed action is in accordance with the licensee's application for exemption dated December 31, 1996, as supplemented September 8 and December 30, 1997; May 21, October 14, November 25, and December 23, 1998.

The Need for the Proposed Action

The licensee is requesting an exemption from Appendix R, Section III.G.2.c because modifications to achieve full compliance would cost approximately $1.0 million. The proposed action is needed to reduce the financial hardship of modifying existing barriers to achieve a 1-hour fire rating, which modification would provide minimal safety benefit according to the licensee.

Environment Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that reasonable assurance has been provided in fire zones/areas AB–FZ–4, CB–FA–1, FH–FZ–1, FH–FZ–6, IPSH–FZ–1, and ISPH–FZ–2, that one division of components necessary to achieve safe shutdown will remain free of fire damage. Although the installed Thermo-Lag barriers in these fire zones/areas have less than a 1-hour fire endurance rating, they do have some significant resistance to fire. Additionally, the areas where most of the subject barriers are located have a low combustible loading, have manual suppression capability and are equipped with automatic detection and suppression. The licensee has committed to install automatic suppression in fire zone FH–FZ–6. Additionally, the licensee has committed to install combustible gas detectors in fire area CB–FA–1, which would provide prompt identification of an acetylene gas leak and allow isolation of the gas at its source prior to reaching the explosive limit. The staff has determined that the combination of these features and circumstances provides a level of protection adequate to meet the underlying purpose of the rule. The Commission has determined that the exemption for fire zones AB–FZ–3, AB–FZ–5, AB–FZ–7, and FH–FZ–2 should be denied because an adequate level of fire safety would not be achieved.

The proposed action (hereinafter to mean the granting of an exemption for fire zones/areas AB–FZ–4, CB–FA–1, FH–FZ–1, FH–FZ–6, ISPH–FZ–1, and ISPH–FZ–2) will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts.

The environmental impacts of the proposed action and alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Three Mile Island Nuclear Station.

Agencies and Persons Consulted

In accordance with its stated policy, on January 13, 1999, the staff consulted with the Pennsylvania State official, Mr. Stan J. Maingi, of the Bureau of Radiation Protection, Pennsylvania Department of Environmental Resources, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated December 31, 1996, as supplemented September 8 and December 30, 1997; May 21, October 14, November 25, and December 23, 1998, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW, Washington, DC, and at the local public document room located at the LAW/Government Publications Section, State Library of Pennsylvania, (Regional Depository) Walnut Street and Commonwealth Avenue, P.O. Box 1601, Harrisburg, PA 17105.

Dated at Rockville, Maryland, this 12th day of April 1999.

For the Nuclear Regulatory Commission.

James W. Clifford,

Chief, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–9747 Filed 4–16–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on May 5, 1999, 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, May 5, 1999—10:00 a.m. until the conclusion of business.

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. (EDT). 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: April 12, 1999.

Richard P. Savio,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 99–9750 Filed 4–16–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Safety Research Program; Notice of Meeting

The ACRS Subcommittee on Safety Research Program will hold a meeting on May 4, 1999, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, May 4, 1999—8:30 a.m. until the conclusion of business

The Subcommittee will review various elements of the NRC Safety Research Program and gather information for use in preparing report to the Commission on the NRC Safety Research Program. 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 engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

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 the cognizant ACRS staff engineer, Dr. Medhat El-Zeftawy (telephone 301/415–6889) between 7:30 a.m. and 4:15 p.m. (EDT). 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 potential changes in the proposed agenda, etc., that may have occurred.

Dated: April 12, 1999.

Richard P. Savio,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 99–9751 Filed 4–16–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Correction to Biweekly Notice; Applications and Amendments to Operating Licenses Involving No Significant Hazards Consideration

On April 7, 1999 (64 FR 17021), the **Federal Register** published the Biweekly Notice of Applications and Amendments to Operating Licenses Involving No Significant Hazards Consideration. On page 17022, the paragraph starting ''By April 23, 1999, the licensee may file'', should read ''By May 7, 1999, the licensee may file''.

Dated at Rockville, Maryland, this 13th day of April 1999.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–9745 Filed 4–16–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Public Comment on Recommended Improvements to the Oversight Processes for Nuclear Power Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for public comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing significant revisions to its processes for overseeing the safety performance of commercial nuclear power plants that include integrating the inspection, assessment, and enforcement processes. As part of its proposal, the NRC staff established a new regulatory oversight framework with a set of performance indicators and associated thresholds, developed a new baseline inspection program that supplements and verifies the performance indicators, and created a continuous assessment process that includes a method for consistently determining the appropriate regulatory actions in response to varying levels of safety performance. The changes are the result of continuing work on a concept as described in SECY–99–007A,'' Recommendations for Reactor Oversight Improvements (Follow-Up to SECY–99–007)'' dated March 22, 1999. The NRC is soliciting comments from interested public interest groups, the regulated industry, States, and concerned citizens. The NRC staff will consider comments it receives in developing the procedures for implementing the new processes.

DATES: The comment period expires May 14, 1999. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Submit written comments to: Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop: T–6 D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand deliver comments to: 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays. Copies of comments received may be examined at the NRC's Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC.

Copies of SECY–99–007A, ''Recommendations for Reactor Oversight Process Improvements (Follow-Up to SECY–99–007)'' and its attachments may be obtained from the NRC's Public Document Room at 2120 L St., NW, Washington, DC 20003–1527, telephone 202–634–3273. Copies also may be obtained from the NRC's Internet web site at: http://www.nrc.gov/NRC/COMMISSION/SECYS/index.html#1999.

FOR FURTHER INFORMATION CONTACT: Alan Madison, Mail Stop: O–5 H4, Inspection Program Branch, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–1490.

SUPPLEMENTARY INFORMATION:

Background

In September 1997, the NRC began an integrated review of the processes used for assessing safety performance by commercial nuclear power plant licensees. The NRC staff presented to the Commission a conceptual design for a new integrated assessment process in Commission paper SECY–98–045, dated March 9, 1998.

In parallel with the staff's work on the IRAP and the development of other assessment tools, the nuclear power industry independently developed a proposal for a new assessment and regulatory oversight process. This proposal, developed by the Nuclear Energy Institute (NEI), took a risk-informed and performance-based approach to the inspection, assessment, and enforcement of licensee activities on the basis of the results of a set of performance indicators.

The staff set out to develop a single set of recommendations for making improvements to the regulatory oversight processes in response to NEI's proposal, the Commission's comments on the IRAP proposal, and comments made at a Commission meeting on July 17, 1998, with public and industry stakeholders and the hearing before the Senate on July 31, 1998. The IRAP public comment period, a four day public workshop, and a series of public meetings were used to facilitate internal and external input into the development of these recommendations.

Following the public workshop, the NRC staff formed three task groups to complete the work begun at the workshop and to develop the recommendations for the integrated oversight processes: a technical framework task group, an inspection task group, and an assessment process task group. The technical framework task group was responsible for completing the assessment framework and for identifying the performance indicators (PIs) and appropriate thresholds that could be used to measure safety performance. The inspection task group was responsible for developing the scope, the depth, and the frequency of a risk-informed baseline inspection program that would be used to supplement and verify the PIs. The assessment process task group developed methods for integrating PI data and inspection data, determining NRC action on the basis of assessment results, and communicating results to licensees and the public. Other staff activities to improve the enforcement process were coordinated with these three task groups to ensure that changes to the enforcement process were properly evaluated in the framework structure and that changes to the inspection and assessment programs were integrated with the changes to the enforcement program.

The task groups completed their work between October and December 1998, and developed recommendations to be presented to the Commission. On January 20, 1999, the staff briefed the Commission on the staff's proposal as described in SECY–99–007, ''Recommendations for Reactor Oversight Improvements.'' Following the January Commission briefing, the staff analyzed the results of public comments on SECY–99–007, completed remaining concept development, and began development of detailed implementing procedures. Additional information and noteworthy changes as

a result of these activities was forwarded to the Commission in SECY–99–007A, ''Recommendations for Reactor Oversight Process Improvements (Follow-Up to SECY–99–007),'' to support final Commission approval of the proposed reactor oversight process. The staff briefed the Commission on SECY–99–007A and its attachments on March 26, 1999.

Scope of the Public Comment Period

The follow-up recommendations for an integrated oversight process are presented in SECY–99–007A,'' Recommendations for Reactor Oversight Process Improvements (Follow-Up to SECY–99-007),'' dated March 22, 1999, and its attachments. This paper includes further development of the Significance Determination Process (SDP) and the revised Enforcement policy.

A separate **Federal Register** notice will be issued to solicit public comment on the proposed enforcement policy. However, respondents are welcome to address any portion of the enforcement policy in this notice. This public comment period will focus on obtaining industry and public views on how the NRC should implement the processes for overseeing and assessing licensee safety performance as refined in SECY–99–007A and discussed in the Commission meeting on March 26, 1999.

The NRC seeks public comment and feedback on the topics discussed in the SECY and its attachments. Respondents are not limited to and are not obligated to provide comments on each attachment. In providing comments, please key your response to the applicable attachment and be as specific as possible. The use of examples is encouraged.

Dated at Rockville, Maryland, this 13th day of April 1999.

For the Nuclear Regulatory Commission.

Michael R. Johnson,

Acting Chief, Inspection Program Branch Division of Inspection Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–9744 Filed 4–16–99; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE BOARD OF GOVERNORS

Sunshine Act Meeting

TIMES AND DATES: 10:00 a.m., Monday, May 3, 1999; 8:30 a.m., Tuesday, May 4, 1999.

PLACE: Garden City, Long Island, New York, at the Garden City Hotel, 45 Seventh Street, in the Society A–C Rooms.

STATUS: May 3 (Closed); May 4 (Open).

MATTERS TO BE CONSIDERED:

Monday, May 3—10:00 a.m. (Closed).

1. Postal Rate Commission Opinion and Recommended Decision in Docket No. MC99–1, Nonletter-Size Business Reply Mail Experiment.
2. Filing with the Postal Rate Commission for Bulk Parcel Return Service (BPRS).
3. Financial Performance Indicators.
4. Midyear Budget Review.
5. Office of the Inspector General Budget Review.
6. Personnel Matters.

Tuesday, May 4—8:30 a.m. (Open).

1. Minutes of the Previous Meeting, March 29–30, 1999.
2. Remarks of the Postmaster General/Chief Executive Officer.
3. Consideration of Semiannual Report to Congress on Summary of Investigative Activities [Actions Under 39 U.S.C. 3005 and 3007].
4. Capital Investments.
   a. Remote Computer Reader 2000.
   b. Philadelphia, Pennsylvania, P&DC—Advance Site Acquisition.
5. Quarterly Report on Service Performance.
6. Quarterly Report on Financial Results.
7. Report on the New York Metro Area and Long Island Performance Cluster.
8. Tentative Agenda for the June 7–8, 1999, meeting in Washington, D.C.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Koerber, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, S.W., Washington, D.C. 20260–1000. Telephone (202) 268–4800.

Thomas J. Koerber,

Secretary.

[FR Doc. 99–9849 Filed 4–15–99; 12:23 pm]

BILLING CODE 7710–12–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3165]

Louisiana; and Contiguous Counties in Arkansas

Bossier Parish and the contiguous Parishes of Bienville, Caddo, Red River, and Webster in the State of Louisiana, and Lafayette and Miller Counties in the State of Arkansas constitute a disaster area as a result of damages caused by severe storms, tornadoes, and flooding which occurred on April 3, 1999. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on June 7, 1999 and for economic injury until the close of business on Jan. 7, 2000 at the address listed below or other locally announced locations:

Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Ft. Worth, TX 76155

The interest rates are:

	Percent
For Physical Damage:	
HOMEOWNERS WITH CREDIT AVAILABLE ELSEWHERE	6.375
HOMEOWNERS WITHOUT CREDIT AVAILABLE ELSEWHERE	3.188
BUSINESSES WITH CREDIT AVAILABLE ELSEWHERE	8.000
BUSINESSES AND NON-PROFIT ORGANIZATIONS WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000
OTHERS (INCLUDING NON-PROFIT ORGANIZATIONS) WITH CREDIT AVAILABLE ELSEWHERE	7.000
For Economic Injury:	
BUSINESSES AND SMALL AGRICULTURAL COOPERATIVES WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000

The numbers assigned to this disaster for physical damage are 316511 for Louisiana and 316611 for Arkansas. For economic injury the numbers are 9C1600 for Louisiana and 9C1700 for Arkansas.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: April 7, 1999.

Aida Alvarez,

Administrator.

[FR Doc. 99–9654 Filed 4–16–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Region I, Pittsburgh District Office, Pittsburgh, PA; Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration, Pittsburgh District Office, Advisory Council will hold a public meeting from 10:00 a.m., Thursday, April 22, 1999, at the U.S. Small Business Administration District Office, Federal Building—Room 1128, 1000 Liberty Avenue, Pittsburgh, PA 15222–4004. The meeting will be held in the conference room, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present. One of the key items on the agenda is: Seeking a tax credit in the state of PA for the loan guaranty fees that borrowers must pay.

FOR FURTHER INFORMATION CONTACT: Write or call, Carrie A. Herron, (412) 395–6560, U.S. Small Business

Administration, 1000 Liberty Avenue, Pittsburgh, PA 15222–4004.

Shirl Thomas,

Director, External Affairs.

[FR Doc. 99–9655 Filed 4–16–99:45 am]

BILLING CODE 8025–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–100a]

Implementation of WTO Recommendations Concerning the European Communities' Regime for the Importation, Sale and Distribution of Bananas

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of United States suspension of tariff concessions.

SUMMARY: The United States Trade Representative (USTR) has decided to suspend the application of tariff concessions and to impose a 100% *ad valorem* rate of duty on the articles described in the Annex to this notice that are the products of certain member States of the European Communities (EC) as a result of the EC's failure to implement the recommendations and rulings of the World Trade Organization (WTO) Dispute Settlement Body (DSB) concerning the EC's regime for the importation, sale and distribution of bananas (banana regime). This action constitutes the exercise of U.S. rights under Article 22.6 of the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) and is taken pursuant to the authority granted to the USTR under section 301 of the Trade Act of 1974, as amended.

EFFECTIVE DATE: The USTR has determined that, effective April 19, 1999, a 100% *ad valorem* rate of duty shall be applied to the articles described in the Annex to this notice that are the products of Austria, Belgium, Finland, France, the Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, Portugal, Spain, Sweden, or the United Kingdom and that are entered, or withdrawn from warehouse, for consumption on or after March 3, 1999. Any merchandise subject to this determination that is admitted to U.S. foreign-trade zones on or after April 19, 1999 must be admitted as ''privileged foreign status'' as defined in 19 CFR 146.41.

ADDRESSES: 600 17th Street, NW, Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Sybia Harrison, Staff Assistant to the Section 301 Committee, (202) 395–3419, for questions concerning documents and USTR procedures; William Busis, Associate General Counsel, (202) 395–3150 or Ralph Ives, Deputy Assistant U.S. Trade Representative, (202) 395–3320, for questions concerning WTO developments regarding the banana regime; John Valentine, Acting Director, International Agreements Staff, U.S. Customs Service, (202) 927–1219, for questions concerning classification; and Yvonne Tomenga, Program Officer, Office of Trade Compliance, U.S. Customs Service, (202) 927–0133, for questions concerning entries.

SUPPLEMENTARY INFORMATION: On September 27, 1995, the Office of the U.S. Trade Representative initiated an investigation pursuant to section 302(b)(1) of the Trade Act with respect to the EC banana regime and, in accordance with section 303(a) of the Trade Act, promptly requested consultations with the EC pursuant to the DSU and relevant provisions of several WTO agreements. [60 FR 52026]. The EC regime was designed, among other things, to take away a major part of the banana distribution business of U.S. companies. Subsequently the United States, Ecuador, Guatemala, Honduras, and Mexico jointly requested the establishment of a WTO dispute settlement panel to examine the regime. Both the panel and the WTO Appellate Body found the EC banana regime in violation of the General Agreement on Tariffs and Trade 1994 (GATT) and the General Agreement on Trade in Services (GATS). On September 25, 1997, the DSB adopted the report of the panel, as modified by the Appellate Body. The resulting DSB recommendations and rulings include, *inter alia,* the recommendation that the EC bring the measures found to be inconsistent with the GATT and the GATS into conformity with its obligations under those agreements. A WTO-appointed arbitrator subsequently determined that the ''reasonable period of time'' for the EC to implement the DSB recommendations and rulings would expire by January 1, 1999.

Based on the results of the WTO dispute settlement proceedings, the USTR on February 10, 1998, determined pursuant to section 304 of the Trade Act that the EC banana regime violates trade agreements. [63 FR 8248]. The USTR further determined that the EC's undertaking to implement all of the recommendations and rulings of the WTO reports by January 1, 1999 constituted for the purposes of section 301(a)(2)(B)(i) the taking of satisfactory measures to grant the rights of the United States under the those trade agreements. Therefore, pursuant to section 301(a)(2), the USTR terminated the investigation without taking action under section 301 of the Trade Act. The USTR stated in the termination notice that it would monitor the EC's implementation of the DSB recommendations and rulings under section 306 of the Trade Act.

On January 1, 1999, modifications to the EC banana regime became effective (EC Regulations 1637/98 and 2362/98), and the EC claimed that these modifications brought its banana regime into conformity with its WTO obligations. However, these regulations perpetuate discriminatory aspects of the EC banana regime that were identified in the DSB's recommendations and rulings as inconsistent with WTO agreements. Therefore, on January 14, 1999, in accordance with U.S. rights under Article 22 of the DSU, the United States requested authorization from the DSB to suspend the application to the EC, and member States thereof, of tariff concessions and related obligations under the GATT covering trade in an amount of US $520 million. [*www.ustr.org,* Press Release 99–01]. On January 29, the EC objected to the level of suspension proposed by the United States and the matter was referred to arbitration pursuant to Article 22.6 of the DSU. Under DSU procedures, the arbitration should have been completed by March 2, 1999. However, on March 2 the arbitrators issued only an initial decision and requested further information from the parties. On March 3, USTR announced that the U.S. Customs Service would begin withholding liquidation and reviewing the sufficiency of bonds on imports of selected European products. The purpose of this announcement was to ensure that, upon issuance of the arbitrators' final decision, the United States would be in the same position to take action as it would have been had the arbitrators issued their decision by the March 2 deadline.

On April 6, the arbitrators issued their final decision determining that the level of nullification or impairment suffered by the United States as a result of the EC's WTO-inconsistent banana regime is $191.4 million per year and that the United States is entitled to suspend the application to the European Communities and its member States of tariff concessions and related obligations under the GATT covering trade up to that amount. A meeting of the DSB was then scheduled for April 19, 1999, at which the DSB, pursuant to Article 22.7 of the DSU, shall grant

authorization for such suspension of concessions.

Prior Notice and Comment

On October 22, 1998, the USTR announced preparations for exercising its right to request authorization to suspend tariff concessions on European products if the EC failed to implement the DSB's recommendations and rulings concerning the banana regime by January 1, 1999. [63 FR 56687]. On November 10, the USTR sought public comment on a preliminary list of European products on which the United States was considering suspending tariff concessions. [63 FR 63099]. On December 9, USTR conducted a public hearing to receive testimony on the preliminary list. On December 21, the USTR announced a revised list of European products for which the United States intended to request authorization from the DSB to suspend tariff concessions. [*www.ustr.org,* Press Release 98–113]. On December 29, the USTR sought public comment on the possible addition of two products to the list. [63 FR 71665; *www.ustr.org,* Press Release 99–01].

Both the November 10 and December 21 **Federal Register** notices explained that the proposed imposition of a 100% *ad valorem* rate of duty would take effect on February 1, 1999, unless the EC requested arbitration on the proposed suspension of tariff concessions, in which case the proposed rate of duty would take effect on March 3. [63 FR at 63099; 63 FR at 7166].

Determination and Action

As a result of the EC's failure to implement the recommendations and rulings of the DSB concerning the EC's banana regime and following the WTO arbitrators' decisions of March 2 and April 6, the USTR has decided to suspend tariff concessions and related obligations under the General Agreement on Tariffs and Trade 1994 and to impose a 100% *ad valorem* rate of duty on the articles described in the Annex to this notice that are the products of certain EC member States. This action exercises the rights of the United States under Article 22 of the DSU and is taken pursuant to the authority granted to the USTR under section 301 of the Trade Act. The articles affected by this determination were selected in light of the comments submitted to the Section 301 Committee in response to the October 22, November 10, and December 23 notices, and the testimony presented at the public hearing held on December 9, 1998.

Accordingly, effective April 19, 1999, with respect to articles that are the products of Austria, Belgium, Finland, France, the Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, Portugal, Spain, Sweden, or the United Kingdom and that are entered, or withdrawn from warehouse, for consumption on or after March 3, 1999, the Harmonized Tariff Schedule of the United States (HTS) is hereby modified by inserting the provisions listed in the Annex to this notice in numerical sequence in subchapter III of chapter 99, with the content of the new subheadings and superior text set forth in the HTS columns designated ''Heading/Subheading,'' ''Article Description,'' and ''Rate of Duty General,'' respectively. Any merchandise subject to this determination that is admitted to U.S. foreign-trade zones on or after April 19, 1999 must be admitted as ''privileged foreign status'' as defined in 19 CFR 146.41. The amount of trade affected by this action, as measured by 1998 import values, is equivalent to the level of nullification or impairment determined by the WTO arbitrators in their decision of April 6, 1999.

Joanna K. McIntosh,

Chairman, Section 301 Committee.

BILLING CODE 3190–01–P

Annex

The Harmonized Tariff Schedule of the United States (HTS) is modified by adding in numerical sequence the following superior text and subheadings to subchapter III of chapter 99 to the HTS. The subheadings and superior text are set forth in columnar format, and material in such columns is inserted in the columns of the HTS designated "Heading/Subheading", "Article Description", "Rates of Duty 1-General", respectively.

	"Articles the product of Austria, Belgium, Finland, France, the Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, Portugal, Spain, Sweden, or the United Kingdom:	
9903.08.04	Bath preparations, other than bath salts (provided for in subheading 3307.30.50)	100%
9903.08.07	Handbags, whether or not with shoulder strap, including those without handle, with outer surface of sheeting of plastic (provided for in subheading 4202.22.15)	100%
9903.08.08	Articles of a kind normally carried in the pocket or in the handbag, with outer surface of sheeting of plastic, of reinforced or laminated plastics (provided for in subheading 4202.32.10)	100%
9903.08.09	Uncoated felt paper and paperboard in rolls or sheets (provided for in subheading 4805.50)	100%
9903.08.10	Folding cartons, boxes and cases, of noncorrugated paper or paperboard (provided for in subheading 4819.20)	100%
9903.08.11	Lithographs on paper or paperboard, not over 0.51 mm in thickness, printed not over 20 years at time of importation (provided for in subheading 4911.91.20)	100%
9903.08.13	Bed linen, other than knit or crocheted, printed, of cotton, other than containing any embroidery, lace, braid, edging, trimming, piping or applique work, not napped (provided for in subheading 6302.21.90)	100%
9903.08.14	Lead-acid storage batteries, other than of a kind used for starting piston engines or as the primary source of electrical power for electrically powered vehicles of subheading 8703.90 (provided for in subheading 8507.20.80)	100%
	Articles the product of Austria, Belgium, Finland, France, the Federal Republic of Germany, Greece, Ireland, Luxembourg, Portugal, Spain, Sweden, or the United Kingdom:	
9903.08.15	Electrothermic coffee or tea makers, of a kind used for domestic purposes (provided for in subheading 8516.71)	100%"

[FR Doc. 99–9703 Filed 4–16–99; 8:45 am]

BILLING CODE 3190–01–C

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–5402]

Notice of Receipt of Petition for Decision that Nonconforming 1993–1998 BMW K1100 and K1200 Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1993–1998 BMW K1100 and K1200 motorcycles are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1993–1998 BMW K1100 and K1200 motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is May 19, 1999.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports of Lansdale, Pennsylvania (''Champagne'') (Registered Importer 90–009) has petitioned NHTSA to decide whether non-U.S. certified 1993–1998 BMW K1100 and K1200 motorcycles are eligible for importation into the United States. The vehicles which Champagne believes are substantially similar are 1993–1998 BMW K1100 and K1200 motorcycles that were manufactured for importation into, and sale in, the United States and certified by their manufacturer, Bayerische Motoren Werke, A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1993–1998 BMW K1100 and K1200 motorcycles to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that non-U.S. certified 1993–1998 BMW K1100 and K1200 motorcycles, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1993–1998 BMW K1100 and K1200 motorcycles are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 106 *Brake Hoses*, 111 *Rearview Mirrors*, 116 *Brake Fluid*, 119 *New Pneumatic Tires for Vehicles other than Passenger Cars*, and 122 *Motorcycle Brake Systems*.

Petitioner additionally contends that the vehicles are capable of being readily altered to meet the following standard, in the manner indicated:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: (a) Installation of U.S.-model head lamp assemblies; (b) installation of U.S.-model reflectors on vehicles that are not already so equipped.

Standard No. 120 *Tire Selection and Rims for Vehicles other than Passenger Cars*: Installation of a tire information label.

Standard No. 123 *Motorcycle Controls and Displays*: Installation of a U.S.-model speedometer calibrated in miles per hour.

The petitioner also states that a vehicle identification number plate will be affixed to the vehicle to meet the requirements of 49 CFR part 565.

Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: April 13, 1999.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 99–9707 Filed 4–16–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–5403]

Notice of Receipt of Petition for Decision that Nonconforming 1998 and 1999 Lexus RX300 Multi-Purpose Passenger Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1998 and 1999 Lexus RX300 multi-purpose passenger vehicles (MPVs) are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1998 and 1999 Lexus RX300 MPVs that were not originally

manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is May 19, 1999.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm].

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports, Inc. of Lansdale, Pennsylvania (''Champagne'') (Registered Importer 90–009) has petitioned NHTSA to decide whether 1998 and 1999 Lexus RX300 MPVs that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States. The vehicles which Champagne believes are substantially similar are 1998 and 1999 Lexus RX300 MPVs that were manufactured for sale in the United States and certified by their manufacturer, Toyota Motor Corporation, as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1998 and 1999 Lexus RX300 MPVs to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that the non-U.S. certified 1998 and 1999 Lexus RX300 MPVs, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1998 and 1999 Lexus RX300 MPVs are identical to their U.S. certified counterparts with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence* * * *, 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 119 *New Pneumatic Tires for Vehicles other than Passenger Cars,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Retention,* 219 *Windshield Zone Intrusion,* and 302 *Flammability of Interior Materials.*

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked ''Brake'' for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the appropriate symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamp assemblies that incorporate headlamps with DOT markings; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies; (d) installation of a center high mounted stop lamp on vehicles that are not already so equipped.

Standard No. 111 *Rearview Mirror:* Replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* Installation of a warning buzzer microswitch in the steering lock assembly and a warning buzzer.

Standard No. 118 *Power Window Systems:* Rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 120 *Tire Selection and Rims for Motor Vehicles other than Passenger Cars:* Installation of a tire information placard.

Standard No. 206 *Door Locks and Door Retention Components:* Replacement of the rear door locks and rear door locking buttons.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of a U.S.-model seat belt in the driver's position, or a belt webbing-actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch-actuated seat belt warning lamp and buzzer; (c) replacement of the driver's and passenger's side air bags and knee bolsters with U.S.-model components on vehicles that are not already so equipped. The petitioner states that the vehicles are equipped with combination lap and shoulder restraints that adjust by means of an automatic retractor and release by means of a single push button at both front designated seating positions, with combination lap and shoulder restraints that release by means of a single push button at both rear outboard designated seating positions, and with a lap belt in the rear center designated seating position.

Standard No. 301 *Fuel System Integrity:* Installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

The petitioner also states that a vehicle identification number plate must be affixed to the vehicles to meet the requirements of 49 CFR part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the

docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: April 13, 1999.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 99–9708 Filed 4–16–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–5116; Notice 2]

Johnston Sweeper Co.; Grant of Application for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 105

For the reasons explained in this notice, we are granting the application by Johnston Sweeper Company of Chino, California (''JSC''), for an exemption until March 1, 2002, from requirements of Motor Vehicle Safety Standard No. 105, *Hydraulic and Electric Brake Systems,* that became effective March 1, 1999. JSC applied for an exemption on the basis that ''compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.'' 49 CFR 555.6(a).

We published notice of receipt of the application on February 24, 1999 (64 FR 9215).

The discussion that follows is based on information contained in JSC's application.

Why JSC Needs a Temporary Exemption

On and after March 1, 1999, S5.5 of Standard No. 105 requires any motor vehicle with a GVWR greater than 10,000 pounds, except for a vehicle that has a speed attainable in 2 miles of 30 mph or less, to be equipped with an antilock brake system (''ABS''), as specified in S5.5.1 of the standard. JSC manufactures street sweepers. One of these, the Model M4000, is a ''truck'' as defined by our regulations. The M4000 is hydrostatically driven, and has two braking systems: Hydrostatic braking and hydraulically-braked front and rear axles. Both axles are specifically manufactured for JSC by proprietary axle manufacturers who produce customized versions of existing conventional vehicle axles, in order to make them economically viable. As far as JCS can ascertain, it is unique in producing a hydrostatically-driven vehicle that can achieve highway speeds of up to 60 mph. A supplier had promised axles by August 1998 that would be compatible with ABS control systems leading JSC to expect that it could conform with the new requirements of Standard No. 105 effective March 1, 1999. However, for the reasons discussed below, the supplier is unable to fulfill its commitment to JCS in a timely manner.

Why Compliance Would Cause JSC Substantial Economic Hardship

JSC produced 303 sweepers in 1998. Its net losses over the past three fiscal years have averaged $1,690,815 annually. It estimates that ''the loss of sales by not being granted an exemption would result in 20% less turnover.'' JSC stated that it employs 170 persons and contributes more than $30,000,000 to the American economy, and, if its application is denied, this would have a measurable effect on its employment force and the company's economic contributions.

JCS stated that it believes it will need 18 to 24 months to complete compliance work after receipt of prototype axles, in order to assure the reliability and endurance of its vehicles when the system is put into production.

How JSC Has Tried To Comply With the Standard in Good Faith

During 1997, JSC concluded a long search to find a manufacturer prepared to design and manufacture economically-viable front and rear axle and brake assemblies compatible with ABS control systems. Its supplier promised to provide axles by August 1998. According to JSC, ''the supplier subsequently acquired another axle manufacturer and instigated a rationalization review of the resulting combined product ranges.'' As a result, the supplier has decided not to produce the original axle design. JCS does not expect suitable prototypes to be available until mid to late 1999. The company has approached other axle manufacturers but has not yet located a better alternative. After it receives prototype axles, significant testing will be required to integrate the ABS with hydrostatic braking and to ensure the reliability and durability of the axles and braking system.

Why Exempting JSC Would Be Consistent With the Public Interest and Objectives of Motor Vehicle Safety

JCS said that it is a leading provider of road sweepers to municipalities, airports, and the like, which benefits the public by helping to reduce health hazards (''air borne, on the ground and in run-off water''). The company believes that the fact that its sweepers are reliable, durable, and cost effective is also in the public interest.

The sweepers operate at average speeds of from 2 to 8 mph for approximately 80 to 90 percent of the time, ''well below the limit requiring ABS brakes.'' JSC stated that its sweepers ''have inherently safe braking (hydrostatic) since the retardation force applied is proportional to the tractive effort being applied, at the time.''

Our Findings and Agreement With Johnston's Arguments

Well in advance of the effective date of the new requirements, Johnston found a supplier who would provide front and rear axle and brake assemblies compatible with ABS control systems. However, the supplier has decided not to produce the axle design agreed upon, and will not be able to provide an alternative axle until mid-1999. This last-minute change has prevented Johnston from complying with Standard No. 105 on March 1, 1999. The company has registered net losses in each of its past three fiscal years, and if it does not receive a temporary exemption, these losses can be expected to deepen.

Denial of its application would ''have a measurable effect on its employment force'' which numbers 170 persons, as well as reducing the number of sweepers available for the sanitary needs of municipalities. Although the sweepers are capable of highway speeds of up to 60 miles per hour, they are intended for use on city streets which are zoned for much lower speeds. The operating speeds average 2 to 8 miles per hour while the streets are being swept, below the level of effectiveness of ABS systems.

On the basis of the foregoing, we hereby find that a temporary exemption would be in the public interest and consistent with the objectives of traffic safety. We further find that compliance at this time would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.

The Temporary Exemption

Accordingly, Johnston Sweeper Company is hereby granted NHTSA Temporary Exemption No. 99–4 from

S5.5 of 49 CFR 571.105 Standard No. 105, Hydraulic and Electric Brake Systems, expiring March 1, 2002, for its Model M4000.

Authority: 49 U.S.C. 30113; delegation of authority at 49 CFR 1.50.

Issued on: April 12, 1999.

Ricardo Martinez,

Administrator.

[FR Doc. 99–9706 Filed 4–16–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33721]

Norfolk Southern Railway Company and The Cincinnati, New Orleans & Texas Pacific Railway Company—Trackage Rights Exemption—Consolidated Rail Corporation, at Columbus, OH

Consolidated Rail Corporation (CRC) has agreed to grant overhead trackage rights [1] to Norfolk Southern Railway Company, on behalf of itself and its wholly owned subsidiary The Cincinnati, New Orleans & Texas Pacific Railway Company (collectively referred to as NS), over a total distance of approximately 5.4 miles of CRC's lines at Columbus, Franklin County, OH, as follows: (1) between approximately milepost CP–134.3, at Clintonville Connection, and the connection between the parties at approximately milepost 138.0, at CP 138 near Scioto, a distance of approximately 3.7 miles on CRC's Columbus Line; and (2) between approximately milepost 138.0, at CP 138, and approximately milepost 139.7, in the vicinity of Auburn Switch, a distance of approximately 1.7 miles on CRC's Cincinnati Line. [2]

The transaction is scheduled to be consummated on or after April 14, 1999.

The trackage rights will permit NS to move overhead traffic more safely, efficiently, and quickly through the Columbus area.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it 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. 33721, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on James R. Paschall, Esq., Norfolk Southern Railway Company, Three Commercial Place, Norfolk, VA 23510–2191.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: April 13, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–9741 Filed 4–16–99; 8:45 am]

BILLING CODE 4915–00–P

[1] These trackage rights extend a trackage rights arrangement previously exempted by the Board on a line between Columbus and Cincinnati, OH. *See Norfolk and Western Railway Company and The Cincinnati, New Orleans and Texas Pacific Railway Company—Trackage Rights Exemption—Consolidated Rail Corporation,* Finance Docket No. 32843 (STB served Jan. 24, 1996). The trackage rights will permit NS to utilize its newly constructed and more efficient Clintonville Connection.

[2] As part of the transaction approved by the Board in *CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements,* STB Finance Docket No. 33388 (STB served July 23, 1998) (Decision No. 89), NS was authorized to obtain trackage rights over the portion of the line between milepost CP–134.3 and milepost CP–138.0 and was authorized to operate over the portion of the line between milepost CP–138.0 and milepost CP–139.7. Thus, once NS acts on those authorizations, which the applicants in STB Finance Docket No. 33388 have projected to be on approximately June 1, 1999, the trackage rights included in this notice will no longer be required, but NS will continue to provide service over these lines after that date pursuant to the other authorizations in Decision No. 89.

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

AGENCY: United States Information Agency.

SUBJECT: Culturally Significant Objects Imported For Exhibition Determinations.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985). I hereby determine that the objects to be included in the exhibit ''Cezanne to Van Gogh: The Collection of Doctor Gachet'' imported from abroad for temporary exhibition without profit within the United States, is of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the exhibition or display of the listed exhibit objects at the Metropolitan Museum of Art, New York, New York, from on or about May 17, 1999, to on or about August 15, 1999, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Neila Sheaban, Assistant General Counsel, 202/619–5030, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW., Washington, D.C. 20547–0001.

Dated: April 12, 1999.

Les Jin,

General Counsel.

[FR Doc. 99–9689 Filed 4–16–99; 8:45 am]

BILLING CODE 8230–01–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determinations: ''Ringing Thunder: Tomb Treasures From Ancient China''

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, march 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, ''Ringing Thunder: Tomb Treasures from Ancient China,'' imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with a foreign lender. I also determine that the exhibition or display of the list objects at the San Diego Museum of Art, San Diego, CA, from on or about June 12, 1999, to on or about August 29, 1999, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For a copy of the list of exhibit objects and for further information, contact Ms. Lorie Nierenberg, Assistant General Counsel, Office of the General Counsel, 202/619–6084. The address is Room 700, U.S. Information Agency, 301 4th Street, SW, Washington, DC 20547–0001.

Dated: April 9, 1999.

Les Jin,

General Counsel.

[FR Doc. 99–9629 Filed 4–16–99; 8:45 am]

BILLING CODE 8230–01–M

Corrections

Federal Register

Vol. 64, No. 74

Monday, April 19, 1999

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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

48 CFR Part 715

[AIDAR Notice 98-1]

Miscellaneous Amendments to Acquisition Regulations

Correction

In rule document 99–6609, beginning on page 16647, in the issue of Tuesday, April 6, 1999, make the following correction:

PART 715 [CORRECTED]

On page 16648, in the third column, in amendatory instruction 5., in the 10th line, ''715.370–'' should read ''715.370–1''.

[FR Doc. C9–6609 Filed 4–16–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR 301

[REG-105564-98]

RIN 1545-AW86

Modifications and Additions to the United Partnership Audit Procedure Hearing Cancellation

Correction

Proposed rule document 99-8372 was inadvertently published in the Rules section of the issue of Tuesday, April 6, 1999, on page 16640. It should have appeared in the Proposed Rules section.

[FR Doc. C9–8372 Filed 4–16–99; 8:45 am]

BILLING CODE 1505–01–D

federal register

Monday
April 19, 1999

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 108

Security of Checked Baggage on Flights Within the United States; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 108

[Docket No. FAA–1999–5536; Notice No. 99–05]

RIN 2120–AG51

Security of Checked Baggage on Flights Within the United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA is proposing that each certificate holder required under § 108.5 to adopt and implement an FAA-approved security program screen checked baggage or conduct passenger-to-bag matching for scheduled passenger operations within the United States when using an airplane having a passenger seating configuration of more than 60 seats. The security of checked baggage on domestic flights may be accomplished by screening the checked baggage of every passenger with FAA-certified explosives detection system (EDS) equipment, by 100% positive passenger bag matching (PPBM), or by utilizing the FAA-approved computer-assisted passenger screening (CAPS) system to select passengers whose checked baggage must be subjected to additional security measures. The checked baggage of CAPS selectees would be screened by EDS equipment, where available, or bag matching would be applied. These requirements for checked baggage on domestic flights are intended to prevent or deter the introduction of explosives or incendiary devices into the cargo holds of airplanes on flights within the United States. This proposal is necessary to provide a high level of security for domestic civil aviation.

DATES: Comments must be received on or before June 18, 1999.

ADDRESSES: Comments on this proposed rulemaking should be mailed or delivered, in duplicate, to: U.S. Department of Transportation Dockets, Docket No. FAA–1999–5336; 400 Seventh St., SW, Rm. Plaza 401, Washington, DC 20590. Comments may also be sent electronically to the following internet address: 9–NPRM–CMTS@faa.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: Mr. Lon M. Siro, Aviation Security Specialist, Civil Aviation Security Office of Policy and Planning, ACP–100, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3414.

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 duplicate 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–1999–5336.'' The postcard will be dated, stamped, and mailed to the commenter.

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), the Federal Register's electronic bulletin board service (telephone: (202) 512–1661), or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board service (telephone: (800) FAA–ARAC or (202) 267–5948).

Internet users may reach the FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm or the Federal Register's webpage at http://www.access.gpo.gov/su__docs/aces/aces140.html for access to recently published rulemaking documents.

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the notice number or docket number of this NPRM.

Persons interested in being placed on the mailing list for future NPRM's should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, that describes the application procedure.

Background

Over the past several years, the Federal Aviation Administration (FAA) has recognized that the threat against civil aviation has changed and grown. In particular, recent terrorist activities within the United States have forced the FAA and other federal agencies to reevaluate their assessment of the threat against civil aviation. For example, investigations into the February 1993 attack on the World Trade Center uncovered a foreign terrorist threat in the United States more serious than previously known. In addition, in 1995 a conspiracy was discovered involving Ramzi Ahmed Yousef and co-conspirators who intended to bomb twelve American airliners over the Pacific Ocean. This conspiracy showed that: (1) foreign terrorists conducting future attacks in the United States may choose civil aviation as a target, despite the many more easily accessible targets equally symbolic of America; (2) foreign terrorists have the ability to operate in the United States; and (3) foreign terrorists are capable of building and artfully concealing improvised explosive devices that pose a serious challenge to aviation security. In addition to threats posed by foreign terrorists, criminals operating within the United States also pose a threat. For example, the partial detonation of a bomb aboard American Airlines flight 444 while en route from Chicago to Washington, DC, in 1979, has been attributed to Theodore Kaczynski (known as ''the Unabomber'').

The serious consequences of an in-flight explosion were dramatically demonstrated on July 17, 1996, when Trans World Airlines (TWA) flight 800 crashed off the coast of Long Island, New York. While the Federal Bureau of Investigation (FBI) and the National Transportation Safety Board (NTSB) determined that this accident was not the result of a terrorist act, it did elevate concerns regarding the safety and security of civil aviation. This concern led to the formation of the White House

Commission on Aviation Safety and Security (the Commission).

The Commission made several recommendations that were published on February 12, 1997, in its ''Final Report to President Clinton.'' In reviewing civil aviation security, the Commission stated that ''the threat of terrorism is changing * * * it is no longer just an overseas threat from foreign terrorists. People and places in the United States have joined the list of targets, and Americans have joined the ranks of terrorists.'' The Commission indicated that aviation security would be enhanced by the use of sophisticated technology for determining the presence of explosives in checked baggage, such as use of explosives detection system (EDS) equipment. The Commission recommended that, until those machines are widely available, the FAA should implement bag matching, initially based on passenger profiling, by December 31, 1997, and that the FAA should develop an automated system for passenger profiling. (For the purposes of the discussion of the CAPS system in this NPRM, the terms ''passenger profiling'' and ''passenger screening'' are used interchangeably.) Because of the FAA's high degree of confidence in CAPS' ability to evaluate information from passenger name records and other passenger records already maintained by air carriers, as well as its confidence in CAPS' ability to identify the large majority of passengers who are not associated with a threat to a flight, the FAA concurs with the Commission's recommendations. In addition, due to the limited availability of EDS equipment and the significant operational and economic impacts that immediate compliance with the Commission's recommendations would have on the air carriers, the FAA has determined that a phase-in period is necessary. Security requirements for implementation of the Commission's recommendations are discussed below.

White House Commission Recommendations

Explosives Detection System (EDS) Equipment-The FAA defines an EDS machine as an automated device, or combination of devices, which has the ability to detect, in passengers' checked baggage, the amounts, types, and configurations of explosive materials likely to be used by terrorists to cause catastrophic damage to large aircraft. The term ''automated'' means that the system is able to detect explosive materials and does not depend exclusively on human skill, vigilance, or judgment. Because EDS equipment is capable of detecting the explosive materials used in bombs with minimal human intervention, the FAA has determined that it is highly effective and agrees with the Commission's contention that use of EDS equipment is preferable to other security measures for clearing checked baggage, including PPBM. The FAA and the Commission also agree that full deployment of EDS is not something that is operationally feasible in the near future, due to the limited availability of certified EDS equipment. Accordingly, the FAA believes use of EDS equipment should be phased in to eventually replace PPBM and other checked baggage security measures. For a further discussion of this alternative and others, see discussion under ''Alternatives Considered by the FAA'' below.

Bag Matching, Initially Based on Passenger Profiling—The Commission recommended that, until sophisticated technology for determining the presence of explosives in checked baggage is widely available, the FAA begin implementation of baggage matching, initially based on passenger profiling (discussed below), for domestic flights. The Commission stated, ''this approach is the most effective methodology available now.'' Positive passenger baggage matching involves matching the passengers who have boarded the airplane to the baggage that was checked for carriage in the airplane's baggage compartment so that a passenger's checked baggage is flown only if he or she is aboard that airplane. Although 100% PPBM is currently performed on all international flights, pursuant to the International Civil Aviation Organization (ICAO) requirements, the FAA has not required PPBM on domestic flights except in periodic emergency situations. While civil U.S. flag aircraft have long been an attractive target of terrorists overseas, bombings of airliners within the United States have been extremely rare, even though the U.S. civil aviation system is the largest and most complex in the world. Over 500 million passengers (40 percent of all passengers in the world) enplane at U.S. airports and check approximately 750 million bags. In addition, 14 of the world's 20 busiest airports are in the United States.

As stated above, the FAA recognizes the changing threat to civil domestic aviation and believes that, in lieu of screening by EDS equipment, checked baggage must be properly matched to passengers on domestic flights. The FAA, however, also recognizes that, while ICAO standards may be appropriate for international flights, there are significant differences between domestic and international flights due to the varying levels of threat to them and the economic impact of additional security measures. These differences include: (1) the much greater number of domestic flights; (2) the use of an extensive and highly concentrated ''hub and spoke'' system, in which flights converge on a central connection point, and scheduled connection times may be 25 minutes or less; (3) the significantly earlier check-in time for international flights, which allows PPBM reconciliation delays to be kept to a minimum; and (4) the higher rate of last-minute passenger no-shows and cancellations on domestic flights, which could result in a greater number of passenger reconciliation and baggage-pull delays.

Automated Passenger Profiling—The Commission's recommendation that bag matching be implemented was linked to another recommendation that it be initially based on profiling of passengers flying out of airports located in the United States. As with manual profiling, the purpose of automated profiling is to exclude from the additional security measures the great majority of passengers who are very unlikely to present any threat and, conversely, to identify passengers to whom heightened security measures should be applied. Unlike manual profiling, however, automated profiling offers numerous advantages, including elimination of the potential perception of personal biases, greater sophistication, speed, accuracy, flexibility, and protection against compromise of sensitive security information. The Commission discussed a computer-assisted passenger screening (CAPS) system developed by the FAA and Northwest Airlines and recommended that the FAA implement an automated profiling system by December 31, 1997. On January 1, 1998, several air carriers voluntarily implemented CAPS, and most other carriers have since opted to implement it as well. The few carriers that have yet to complete the phase-in of CAPS are in the process of systemwide implementation.

In April 1997, in accordance with provisions of an FAA grant, the FAA and Northwest Airlines completed final programming changes to a prototype CAPS system, which, as noted above, Northwest Airlines and most other carriers have since implemented. The CAPS system was developed as a more feasible alternative to 100% checked baggage matching and EDS screening of all passenger baggage by narrowing the pool of passengers on whom additional security measures should be focused, thus effectively utilizing the currently limited supply of highly technical

screening equipment (e.g. EDS), and minimizing the operational impact of applying other passenger and checked baggage security measures, such as PPBM.

The CAPS system is based on the same concept as the manual screening system, which is designed to exclude from additional security measures the great majority of passengers who are unlikely to present any threat. There are many advantages to CAPS, however. One important advantage is that it does not rely on the judgment of individual airline employees to reduce the population of persons to whom heightened security measures should be applied. The automated system ''scores'' passengers according to a set of weighted criteria to determine which should be subjected to additional security measures. Automated screening excludes from heightened security measures the great majority of passengers about whom enough is known to determine confidently that they present no threat.

The use of a profile for the screening of passengers dates back to the mid-1970's when the FAA began using manual passenger screening to combat hijackings and to prevent explosives or incendiary devices from being placed aboard airplanes on international flights departing from the United States. Manual screening has also been used on domestic flights during periodic emergency situations. This screening relies on an employee of an air carrier to determine whether a passenger meets the profile that the employee has been trained to use. Because manual screening allows for more extensive human interaction between passengers and air carrier employees, it carries the potential that, even though the factors used in conducting manual screening are not biased, an employee's personal bias can be evident, regardless of whether a given passenger is a selectee or not. While manual screening has been a successful tool in combating hijackings and preventing the introduction of explosives or incendiary devices onto aircraft, it has been criticized by persons who perceived it as discriminating against citizens on the basis of race, color, national or ethnic origin, religion, and gender. It has also been criticized for causing embarrassment to selectees when fellow passengers became aware of his or her selectee status. Because a technological substitute for individual employee judgment has not been available until now, the FAA has continued to require, in emergency situations, manual passenger screening for determining the need to implement heightened security measures for checked baggage in order to combat the placing of explosives aboard aircraft.

The CAPS system would, in addition to selecting persons pursuant to the profiling standards, randomly select a limited number of passengers, as specified in air carriers' FAA-approved security programs, for heightened security measures. The FAA has determined, and the Commission has recommended, that random selection, which ensures that each passenger has a chance of being a selectee, has a deterrent value that would increase airline passenger security. It means that, even if an individual with criminal intentions believed he or she had figured out how to circumvent the CAPS system, the individual still would have a chance of being designated as a selectee. In addition, random selection helps to ensure passengers' civil liberties by guaranteeing that no individual or group of individuals is excluded from the selection process.

The CAPS system represents a significant improvement over the existing manual system. It uses a greater number of factors and permits combinations of sets of factors to determine passengers' status with greater confidence. In contrast, there are inherent limitations on the number and complexity of factors that an air carrier employee can apply. In addition, air carrier employees performing the manual process have a limited amount of time available to assess the factors and determine whether a passenger is a selectee. For these reasons, the number of factors in a manual process must be small and the rules for applying them must be simple. The CAPS system virtually eliminates the possibility of subjective selection and inadvertent or deliberate discrimination by airline employees, as they would not be asked to implement any selection process themselves. Finally, the CAPS system provides a more secure system, as only a few key airline employees (i.e., those who program the computers and implement computer program changes) are provided with selection criteria and their relative weights. Other air carrier employees need only be aware of the output generated by the computer programs, without being aware of the criteria. Manual screening, though controlled, may be more easily compromised, as details are contained in FAA Security Directives, which are available to many airline employees.

The CAPS system is also intended to minimize the overt identification of passengers selected for additional security procedures. The CAPS system operates off the computer reservation systems utilized by the major U.S. air carriers as well as some smaller carriers. The CAPS system relies solely on information that passengers presently provide to air carriers for reasons unrelated to security. It does not depend on the gathering of any additional information from air travelers, nor is it connected to any law enforcement or intelligence database. Pursuant to a recommendation by the Department of Justice, as part of the proposed rule, the FAA would periodically review the CAPS system and its profiling factors to assure that they continue to be reasonable predictors of threat. For operations covered under this proposed rule, CAPS would replace the manual screening system as a baseline security measure.

Funding for Implementation of White House Commission Recommendations—The FAA subsidized a substantial portion of the air carriers' cost for development of the core CAPS system. In addition to grants of approximately $3.1 million to Northwest Airlines for the development of the prototype CAPS system, consultation to the FAA, and technical support to other air carriers, the FAA spent an additional $7.4 million for the development of core CAPS for other air carriers. In total, the $10.5 million subsidy has benefited eight lead carriers (provided to six separate Computer Reservation Systems (CRS)), all carriers associated with the lead carriers (e.g., feeder carriers), plus 19 other regional and national carriers. In total, approximately 95% of domestic airline passengers are served by the carriers receiving FAA subsidies. Also, by the end of fiscal year 1998, the FAA will have spent $129 million for the purchase, installation, initial training, and first-year maintenance of advanced security screening equipment designed to detect explosives in checked baggage. This equipment, which will be deployed at airports in the United States, includes EDS machines (54 new and 3 upgrades), advanced technology (AT) equipment (22 of which are assessed by the FAA as effective), and other high-technology equipment such as explosives trace detection technologies used to assist in alarm resolution for EDS and AT equipment. The FAA intends, subject to Congressional approval, to purchase an additional 20 EDS machines during fiscal year 1998 for $25.1 million, and has requested additional funding of $100 million in fiscal year 1999 to continue purchases of advanced security equipment to be installed at U.S. airports. The FAA intends to

request appropriations at similar levels in fiscal years 2000 and later.

Alternatives Considered by the FAA

In developing this proposed rule, the FAA considered the relative merits and disadvantages of the following alternatives:

(1) Maintaining the current policy for security of checked baggage on domestic flights. To date, the FAA has required domestic checked baggage screening and PPBM only when a heightened threat exists. Domestic baseline security measures under normal conditions, though not requiring checked baggage screening and PPBM, have thus far been adequate to counter the domestic threat. However, as evidenced by events such as the World Trade Center bombing, the FAA believes that the threat to civil aviation within the United States has increased and further rulemaking is vital. Though maintaining current baseline security measures would be the least costly course of action, the FAA does not believe this option is prudent given the current domestic threat.

(2) Phasing in mandatory use of EDS (without requirement for CAPS). The FAA considered requiring carriers to use EDS as it becomes available to them for screening 100% of checked baggage, and not requiring CAPS for those that would be using EDS. EDS offers the highest level of security because it is an automated system. To be certified, the system must have the ability to detect in passengers' checked baggage, the amounts, types, and configurations of explosive materials likely to cause catastrophic damage to an aircraft. The term ''automated'' means that the ability of an EDS to detect explosive materials does not depend on human skill, vigilance, or judgment. Baggage that clears through EDS screening does not require additional security measures on subsequent flight segments. In keeping with the White House Commission's recommendations, it is the FAA's goal to phase in EDS for all flights that would be subject to this proposed rule, which would make continued use of the CAPS system unnecessary in the future; however, because of the limited availability of EDS equipment, this goal of all carriers using EDS for 100% of its flights cannot be implemented in the near future. Under the alternative scenario of requiring carriers that have EDS to use it and not use CAPS, carriers that do not have EDS would not be required to do anything beyond what they are currently required to do (manual profiling or PPBM during heightened threats) until they are provided with EDS equipment. While the FAA recognizes that this would be a less costly approach for the carriers waiting to acquire EDS equipment, it could provide an unfair competitive advantage to those carriers that have not been provided EDS because of the additional costs associated with maintaining and staffing the equipment. Also, there would be little improvement in the level of security during the early phase-in period when few terminal gates have any EDS equipment. Moreover, overall aviation security may be reduced during the early phase-in period because a terrorist could more easily figure out which carriers were using EDS and which were not.

(3) Requiring 100% PPBM of each carrier while phasing in mandatory use of EDS. Although 100% PPBM is required for international flights, the FAA has determined that this approach is not feasible for domestic flights, even though it may be an effective alternative while EDS is being phased in, because it would be too costly. Domestic flights differ from international flights from the United States in the following respects: (1) There are a greater number of domestic flights; (2) they are coordinated around a hub and spoke system; (3) passengers can check in as late as 10 minutes prior to a flight; and (4) there is a significant rate of last-minute passenger cancellations and no-shows. The FAA believes that the passenger would ultimately feel the negative impact of 100% PPBM because the availability and affordability of air transportation would be affected. The FAA's studies show that air carriers would lose on average one rotation per aircraft in service per day. The loss of flights would be due to longer time needed to load the baggage for each flight and cumulative delays when problems loading one flight impact on connecting flights. These operational burdens on air carriers would result in passengers paying more for tickets and getting fewer discount offers. While the FAA recognizes that this approach would also provide a high level of security, it does not believe that the significant operational and economic costs associated with 100% PPBM are justified. The FAA also does not consider performing 100% PPBM a good allocation of air carrier resources, as the vast majority of passengers who would be subjected to it would not pose a threat. In addition, since it is the FAA's goal to require the use of EDS equipment for all flights in the next 10 years, conducting 100% PPBM, which is not as effective as screening by EDS, would ultimately be phased out.

(4) Bag matching on randomly selected passengers while phasing in EDS. While this alternative could be more effective than continuing to rely on manual profiling, which still has value as a security measure even though its effectiveness has eroded, the FAA does not believe it would be practical. Deciding how small or large a percentage to require would be difficult. Screening too small a percentage of passengers would not provide an adequate level of security, and screening too large a percentage would result in the same kinds of inconveniences and delays described above under ''Requiring 100% PPBM of each carrier while phasing in mandatory use of EDS.'' Even though the proposed rule would require that air carriers use an approved CAPS system that would be programmed to select some passengers at random, both as a deterrent and to ensure the nondiscriminatory application of CAPS, the use of an exclusively random selection process, even if it were done by computer and not manually, would not be a satisfactory security measure. The FAA therefore does not believe that it would be a good allocation of an air carrier's resources to conduct bag matching or EDS screening on the checked baggage of selectees chosen purely at random, as the vast majority of those selectees would not have posed any risk.

(5) Bag matching on passengers selected by CAPS with use of EDS, where available (the proposed rule). Until it is possible for air carriers to acquire and use EDS equipment for screening checked baggage on all scheduled operations subject to this rule, at which time the use of CAPS and PPBM would be replaced, the FAA believes that using CAPS to identify those passengers who possibly are a threat to the security of a flight and requiring bag matching or screening by EDS, when available, is the most practical and cost-efficient alternative currently available to increase the level of security on domestic flights. Using CAPS would enable air carriers to use already-existing data from reservations systems, eliminate the civil liberties concerns associated with manual passenger screening methods, and eliminate from consideration the majority of passengers who do not pose a threat to civil aviation. By limiting the pool of selectees to those who meet certain risk criteria, as opposed to those who are chosen randomly and most likely would not pose a threat, and subjecting only the checked baggage belonging to those selectees to bag matching, the air carriers would realize greater cost benefits than using the random method to identify selectees. While identifying selectees randomly or

by using CAPS would result in approximately the same cost to an air carrier, using the CAPS criteria would allow the carrier to concentrate its resources on clearing the baggage of passengers about whom there is insufficient information to confidently conclude that they pose no threat. For these reasons, the FAA has chosen this alternative as the basis for today's proposed rule.

(6) Performing bag matching on a limited number of CAPS selectees. This would be a modification of the proposed rule in that air carriers would use the CAPS system to determine a pool of selectees, but perform bag matching on only a portion of them. This would reduce the cost of implementing the regulations by keeping the pool of selectees as small as possible. However, this approach would offer a lower level of security and would essentially amount to reducing the value of the CAPS criteria.

For more detailed cost analyses of these alternatives, see the ''Regulatory Evaluation Summary'' below.

Discussion of the Proposed Rule

This proposal, if adopted, would amend part 108 (14 CFR part 108) to require each certificate holder required under § 108.5 to adopt and implement an FAA-approved security program to employ one of the following options—(1) use an FAA-approved CAPS system for each originating passenger checking baggage, then either use FAA-certified EDS equipment, where available, to screen the checked baggage of the CAPS selectee or conduct bag matching to ensure that the checked baggage of the CAPS selectee is not transported aboard an airplane unless that selectee is aboard the same airplane and flight; or (2) where CAPS is not used, conduct 100% EDS screening on checked baggage or 100% PPBM. This requirement would only be imposed on certificate holders that engage in operations with airplanes having a passenger seating configuration of more than 60 seats. Certificate holders that are engaged in operations with an airplane having a passenger seating configuration of 60 or fewer seats may choose to comply with this requirement, but they must adopt and implement an FAA-approved security program to do so.

Under the FAA-approved CAPS system, the checked baggage of the small percentage of passengers whom the CAPS system has identified as selectees would be subjected to screening by EDS or bag matching procedures would be applied. To further enhance the deterrence value of the system, the CAPS system would be required to also randomly select a small percentage of other passengers (the percentages to be specified in each air carrier's standard security program) whose checked baggage would be subjected to the same types of additional security measures as that of the other CAPS selectees. These additional security measures would include EDS, where available, or bag matching. The Department of Justice has reviewed the FAA's proposed CAPS system and found there to be no infringements on civil liberties (see discussion of ''Civil Liberties Issues'' below). For a more in-depth analysis of proposed rule, see discussion under ''Section-by-Section Analysis'' below.

Civil Liberties Issues

The Commission, while endorsing CAPS, recognized that care must be taken in implementing automated passenger profiling to ensure that there would be no infringements on the civil liberties of American citizens. Accordingly, the Commission convened a panel of civil liberties experts from outside the government to provide guidance. Based on the proposals made by this panel, the Commission made several recommendations, including that the Department of Justice (in consultation with other experts) review the FAA's proposed CAPS system prior to implementation ''to ensure that selection is not impermissibly based on national origin, racial, ethnic, religious, or gender characteristics.''

On October 1, 1997, following its review, the Department of Justice issued the ''Report by the Department of Justice to the Department of Transportation on the Department's Civil Rights Review Conducted of the Federal Aviation Administration's Proposed Automated Passenger Screening System.'' In its report, the Department of Justice stated that its principal finding is that the FAA's proposed CAPS system will not discriminate on the basis of race, color, national or ethnic origin, religion, or gender. The Department of Justice went on to state the following:

- CAPS fully complies with the equal protection guarantee incorporated in the Fifth Amendment to the Constitution. CAPS will not impermissibly select passengers for heightened security measures on the basis of race, color, national or ethnic origin, religion, or gender.
- CAPS does not violate the Fourth Amendment prohibition on unreasonable searches and seizures. CAPS itself involves no ''search'' or ''seizure;'' nor does bag matching, pursuant to CAPS, occasion any ''search'' or ''seizure.'' A search of a selectee's luggage pursuant to CAPS, such as by an EDS screening, is a permissible extension of the constitutional administrative search procedures that operate at U.S. airports today.
- CAPS does not involve any invasion of passengers' personal privacy. CAPS does not create any new database on passengers and is not linked to any database other than the existing airline computer reservation systems. CAPS selectee results will not be retained on a personally identifiable basis and the information used to calculate each CAPS result will not be retained on computer by the airline reservation systems.

In its report, the Department of Justice recommended that the Department of Transportation, with the Department of Justice, take five steps to further assure that airline passenger screening is implemented in a non-discriminatory and appropriate manner. The five recommendations are as follows:

1. The FAA should undertake regular, periodic reviews of CAPS (and any residual manual screening system) to ensure that the screening factors continue to be reasonable predictors of risk or the absence of risk;
2. The Department of Justice, with the assistance of the Office of the Secretary of Transportation and the FAA, should undertake a post-implementation review of CAPS (and any residual manual system), approximately one year after implementation begins, to ensure that selection in fact is not impermissibly being based on race, color, national or ethnic origin, religion, or gender, and should undertake additional reviews thereafter as appropriate;
3. The Office of the Secretary of Transportation and the FAA should expand their public education and outreach efforts to inform the American public about the purpose of airline passenger screening, as well as the right of passengers to file a complaint * * * if they believe they were the victim of discriminatory airline security procedures;
4. The FAA should require that domestic air carriers that implement CAPS (or any residual manual system) obtain pre-approval from the FAA before implementing any passenger screening system in addition to the screening procedures prescribed by the FAA, and the FAA should consult with the Department of Justice before approving any supplemental screening procedure; and
5. The FAA should require that air carriers implementing CAPS (or any residual manual system) establish procedures to ensure appropriate interactions between air carrier employees responsible for implementing passenger screening and airline passengers, and should provide appropriate training to these employees.

In conclusion, the Department of Justice report stated that the FAA's

proposed automated airline passenger screening system, as designed, would not infringe the civil rights or civil liberties of American citizens. In addition, the Department of Justice stated that the FAA has taken great care in designing CAPS so as to respect Americans' civil rights and civil liberties.

Finally, the Department of Justice stated that it would closely monitor the FAA's passenger screening procedures to ensure that they remain non-discriminatory.

Section-by-Section Analysis

Section 108.5 Security Program: Adoption and Implementation

This proposal would amend § 108.5 by requiring all holders of air carrier operating certificates, or holders of operating certificates for scheduled passenger operations, that engage in operations with an airplane having a passenger seating configuration of more than 60 seats, to comply with the provisions of proposed paragraph (a) of § 108.12 Security of checked baggage for operations within the United States. The proposal also allows other operators, where they operate under an FAA-approved security program, to comply with the provisions of § 108.12. Section 108.12, as more fully discussed below, would require the implementation of security measures for checked baggage on domestic flights by screening the checked baggage of every passenger with an FAA-certified EDS machine, by conducting 100% PPBM, or by utilizing an FAA-approved CAPS system for screening airline passengers and subjecting the selectees' checked baggage to screening by EDS equipment, where available, or bag matching.

While FAA-approved air carrier security programs, which implement § 108.9, require checkpoint security measures for the screening of passengers and their carry-on baggage to prevent or deter the introduction of deadly or dangerous weapons or incendiary devices carried aboard an aircraft by a passenger, the security programs prescribe limited measures to prevent the introduction of improvised explosive devices in checked baggage on flights within the United States, except in emergency situations. The FAA recognizes the potential danger associated with an increase in terrorism in the United States and the limited baseline domestic checked baggage security requirements to prevent or deter the introduction of explosives in checked baggage. This proposal addresses security measures for checked baggage.

Under this proposal, the FAA would require compliance with § 108.12 for all air carrier operations using aircraft with more than 60 passenger seats because the FAA has concluded that larger aircraft are at a significantly higher risk to terrorist attacks. Since air carriers with operations using aircraft with passenger seating configurations of 60 or fewer seats may also wish to comply with the provisions of § 108.12, the FAA has provided that as an option under this proposal. These operators would be required to adopt and implement a security program that includes provisions effecting compliance with § 108.12. Compliance with an FAA-approved security program would be required because the FAA believes that any carrier, regardless of the size of operation, that accepts the responsibility for conducting the important security measures for checked baggage on operations within the United States should also be accountable for other aspects of a security program related to the acceptance and control of checked baggage. For example, smaller operators with large interline partners, which use the same passenger reservation services, may decide to comply with § 108.12. This would include, but would not be limited to, ensuring that no unauthorized person has access to checked baggage once it has been subjected to security measures.

Section 108.7 Security Program: Form, Content, and Availability

This proposal would amend § 108.7 (b) to require that each air carrier's FAA-approved security program include a description of the procedures used to perform the checked baggage security functions specified in § 108.12 for scheduled passenger operations. This amendment is needed to ensure that each air carrier that adopts and implements an FAA-approved security program in accordance with § 108.5 would include the provisions for the security of checked baggage on flights within the United States.

Section 108.12 Security of Checked Baggage for Operations Within the United States

The FAA is proposing to amend part 108 by introducing a new section to address the security of checked baggage on flights within the United States. Under proposed § 108.12 (a), each air carrier required to adopt and implement a security program under § 108.5, would be required to apply the checked baggage security requirements of this section for scheduled passenger operations, in accordance with its security program, for flights within the United States. For each flight the air carrier would be required—(1) to apply a CAPS system approved by the Administrator for each originating passenger checking baggage; (2) to determine that the passenger associated with each originating checked bag is aboard the flight; or (3) that each originating bag not matched to a passenger aboard the flight has been screened by an FAA-certified EDS machine. To receive approval from the FAA, an air carrier's CAPS system would have to be capable of selecting passengers according to specific criteria (which had been assigned relative weights by the FAA) and at random, as provided in the air carrier's FAA-approved security program.

When compared to the screening of all checked baggage on flights within the United States by FAA-certified EDS equipment, or conducting 100% PPBM, the proposed rule would result in a much smaller percentage of passengers being subjected to additional security measures; however, the FAA believes at this time that performing 100% PPBM for operations within the United States is not an efficient use of air carrier resources because the majority of passengers who would be subjected to it would not pose a threat. In addition, implementation of 100% domestic PPBM would be impractical given the operational impact it would have. The FAA recognizes that 100% screening of all checked baggage on domestic flights by an FAA-certified EDS machine is not feasible in the near term, due to the limited availability of EDS equipment. The FAA views 100% screening or matching of checked bags on domestic flights as a reasonable long-term goal, but has determined that screening or matching based on CAPS will greatly strengthen the security of checked bags on domestic flights in the near term. Further, CAPS-based measures can be implemented without the time air carriers would need to attempt the 100% EDS screening or bag matching measures. Accordingly, this proposed rule would permit options for an air carrier to either subject all passengers to the FAA-approved CAPS system (with EDS screening of selectees' checked baggage or matching of selectees and their checked baggage), employ 100% checked baggage screening by EDS, or conduct 100% PPBM of passengers and their checked baggage for operations within the United States. The FAA has concluded, as did the Commission, that this proposal would provide the most effective methodology currently available for ensuring the security of checked baggage on domestic flights.

Proposed § 108.12 (b) would require that for each operation subject to proposed § 108.12 (a), the air carrier may not transport the checked baggage of a non-originating passenger, on-line or inter-line, unless: (1) the passenger is transported on the same airplane and flight; (2) the passenger associated with the checked baggage was screened by an FAA-approved CAPS system prior to an earlier flight or leg and information is available to the air carrier that the passenger was not selected for additional security measures; (3) information is available to the air carrier that the baggage was screened by an FAA-certified EDS machine prior to an earlier flight or leg; (4) the baggage is screened by an EDS machine prior to the current flight; or (5) the passenger is screened by an FAA-approved CAPS system for the current flight and, if selected, subjected to additional security measures (checked baggage screening by EDS or bag matching). The intended purpose of this proposed paragraph is to ensure that checked baggage on domestic flights would be adequately screened or matched regardless of where the baggage originated. For example, an air carrier may receive a non-originating inter-line transfer passenger whose checked baggage may not have been subjected to any screening requirements. This proposal would ensure that the non-originating inter-line transfer passenger's checked baggage would undergo checked baggage security requirements before being placed in the cargo compartment of the airplane. The FAA has determined that this proposed requirement is necessary to prevent explosive devices concealed in checked baggage transferred from earlier flights from being introduced into the holds of airplanes.

Proposed § 108.12 (c) would require that the checked baggage of a passenger selected by the CAPS system not be transported aboard the flight unless it had been screened by an FAA-certified EDS machine, where available, or had been matched to the selectee. The FAA is proposing under this paragraph to require the use of available EDS equipment for the screening of selectee checked baggage because EDS is highly effective in detecting explosives. To ensure that there is a consistent and realistic interpretation of when EDS is ''available,'' proposed § 108.12 (d) provides a description of what constitutes EDS availability. The FAA recognizes that, because of the various factors that play a role in baggage make-up operations (e.g., the physical lay-out of an airport's facilities), a definition of ''available'' might be difficult to apply uniformly in this context. For this reason, the FAA seeks specific comments on whether the proposed definition of the term is a reasonable one. The proposed section provides that EDS is considered to be available to an air carrier for screening checked baggage when the equipment is—

(1) Under the operational control of the air carrier. The carrier that has operational control of EDS equipment is generally the air carrier to which the FAA has provided the equipment. This carrier is usually responsible for the testing, maintenance, and staffing of the machine; however, it may be possible for one carrier to share or accept operational control under a contractual agreement with another air carrier.

(2) Functioning properly. Carriers with operational control of EDS equipment are required by their FAA-approved security programs to conduct daily testing to ensure that the equipment is functioning properly. Once it is determined, either by carrier testing or by periodic FAA testing, that the EDS equipment is not performing in accordance with minimum EDS certification standards, it cannot be used for the screening of checked baggage until it is repaired or replaced.

(3) Located proximate to where the baggage is tendered by the passenger or along the route the baggage normally travels during the process of being loaded onto the aircraft. This is intended to avoid a situation where an air carrier would be required to use EDS equipment that is not easily and readily accessible to it, and where using it would result in significant operational delays. For example, for its current flight, an air carrier may be authorized to use EDS equipment which has been installed at a location at the airport that is not at or near the point of checked baggage acceptance, or in the baggage make-up area.

(4) Staffed by appropriately trained personnel. Staffing and training requirements for EDS screeners are described in the air carrier's FAA-approved security program.

(5) Not in use to screen other identified baggage such that a significant delay in a flight might result from having to wait to use the EDS to screen the bag. This description is intended to avoid a situation where EDS equipment meets all other descriptions for availability and is performing in accordance with minimum throughput requirements, but baggage cannot be processed quickly enough to avoid a significant flight delay. This might occur, for example, when several flights serviced by the same EDS are leaving at the same time, resulting in a severe backup of bags waiting to be processed through the same EDS.

In proposed § 108.12(e), the FAA would require that each air carrier establish procedures for implementing the screening of checked baggage under proposed § 108.12. The proposal would also require the air carrier to ensure nondiscriminatory application, and to reduce to the extent practicable the overt identification of passengers selected for additional security procedures.

In proposed § 108.12(f), the FAA would require that each person used by an air carrier to implement its CAPS system whose job function will be likely to involve interactions with passengers shall be trained on the CAPS system. The proposed training would include— (1) an overview of the purpose of screening, including an explanation that selection does not imply that a passenger is suspected of any illegal activity; (2) a general description of the CAPS system and how it is designed to select passengers on a non-discriminatory basis; (3) an advisory that the CAPS system selects some passengers at random; (4) an explanation that the CAPS system is not connected to any law enforcement or intelligence data base; and (5) instruction on treating passengers selected by the CAPS system in a respectful and non-stigmatizing manner. These proposed paragraphs are based on recommendations from the Department of Justice, as discussed previously in the ''Civil Liberties Issues'' section. The FAA has determined that these proposed measures are necessary to implement the Justice Department's recommendations and to assure that CAPS is implemented in a non-discriminatory and appropriate manner.

In proposed § 108.12(g), the FAA would require that an air carrier may not modify the criteria of the CAPS system, or their weighting, without the written approval of the Administrator. This proposed paragraph would also provide that an air carrier may not apply any supplemental system of passenger screening to select passengers for additional security measures without the approval of the Administrator. The FAA has determined that this proposal is necessary to ensure that no impermissible factors are used to select passengers for additional security measures. This proposal also ensures that there is standardization among air carriers utilizing an FAA-approved CAPS system for screening checked baggage (i.e., the same factors are used in profiling passengers).

In proposed § 108.12(h), the FAA would require that each air carrier make available to the Administrator the information specified in its security program on the operation of its CAPS system; however, the FAA anticipates that this information would not be routinely requested. In overseeing compliance with proposed § 108.12, the FAA would need to know which individuals were actually being selected by the CAPS system in order to ensure that members of specific ethnic groups were not being unfairly targeted and that selectee rates did not vary, for example, between carriers or regions. The FAA believes that this requirement would be necessary to protect the civil rights and liberties of individuals selected by the CAPS system. The proposal would further require that an air carrier dispose of any information linking a passenger's name or other personal identifying data to whether that passenger was selected by the CAPS system no sooner than 24 hours, but no later than 72 hours, after a flight's departure. By specifying data retention for a minimum of 24 hours after a flight departure, the FAA intends to ensure that it can, when necessary, obtain information in the course of investigating accidents or security incidents, overseeing air carrier security programs (i.e., that the CAPS system has been properly applied and implemented throughout each step of processing checked baggage), or monitoring the nondiscriminatory application of the CAPS system. The data retention limit of 72 hours after a flight departure is intended to ensure that no long-term database of personally identifiable information is kept.

While the FAA has set forth an all-selectee data retention limit of 72 hours after flight departure as its proposed rule under § 108.12(h), the Department of Transportation's Office of the Assistant General Counsel for Aviation Enforcement and Proceedings has requested that the FAA seek comments on whether information relating to random selectees should be retained for a more extended period (eg., 18 months) than information on non-random CAPS selectees. The Office of Aviation Enforcement and Proceedings is the office that investigates airline security-related discrimination complaints filed with the Department of Transportation. That office has advised the FAA that, while it could effectively investigate the application of the non-random CAPS selection process, it is concerned that there would be no basis upon which to make determinations regarding the appropriate application of the random CAPS selection process. The Office of Aviation Enforcement and Proceedings notes that typically a complaint is received, and the investigation takes place, three to nine months after a passenger's flight, and it is not reasonable to expect that the air carrier employee involved in a particular selection (even if that employee's identity could be established) would have recollection of the specific incident being investigated. To determine whether or not an air carrier employee or the CAPS system made a particular selection, a record of any random selection would be needed. The Office of Aviation Enforcement and Proceedings believes that, as long as the only CAPS selection data retained for an extended period of time concerned the purely random selections, there would be no infringement on passengers' privacy rights, while their civil rights would be better protected. The FAA therefore requests comments (including implementation and maintenance cost estimates) on the recommendations of Office of Aviation Enforcement and Proceedings.

Finally, in proposed § 108.12(i), the FAA would require that an air carrier receive approval from the Associate Administrator for Civil Aviation Security before it may apply alternate procedures from its security program for the security of checked baggage in special situations. As provided under this proposal, these special situations would include: (1) baggage acceptance at off-airport locations; (2) the transportation of bags separated from a passenger for reasons outside the control of the passenger (e.g., lost bags); (3) CAPS system failures; (4) extraordinary operational circumstances (e.g., natural disasters or extreme weather conditions); (5) the use of technologies or equipment other than EDS to screen checked baggage; and (6) any other situation specified by the Associate Administrator for Civil Aviation Security in the air carrier's security program. The FAA has determined that this proposed paragraph is needed to provide relief to an air carrier for special circumstances and during those extraordinary and emergency situations where the passenger and air carrier do not have control over the circumstances.

Paperwork Reduction Act

This NPRM, Security of Checked Baggage on Flights Within the United States, contains information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted a copy of these proposed sections to the Office of Management and Budget (OMB) for its review.

The FAA expects that this proposed rule would affect 32 air carriers, and that the proposed rules under § 108.12 would impose additional reporting and recordkeeping requirements on those operators. This reporting and recordkeeping would be needed, when requested by the Administrator, as part of monitoring for the nondiscriminatory implementation of CAPS, accident and security incident investigations, oversight of air carrier SSP compliance, or evaluating personnel training records. Accordingly, it is estimated that all 32 affected air carriers would spend a total of 64 hours, in the first year, to provide compliance information, and 4,981 hours in all years to generate training information. Hence, there would be a total burden of 5,045 hours in the first year and 4,981 hours in all subsequent years. Over a ten-year period (2000–2009), the average estimated annual cost would be $827,678 per affected air carrier (a total of $26,485,695 for all 32 affected carriers). These cost figures are based on estimates provided in the FAA's ''Regulatory Impact Analysis.''

The FAA does not expect that there would be any additional record keeping burden on part 108 aircraft operators which either conduct 100% PPBM or use FAA-certified EDS equipment to screen checked baggage.

Organizations and individuals desiring to submit comments on the information collection requirements should do so by June 18, 1999. Comments should be directed to the Department of Transportation's rules docket (see **ADDRESSES** above). These comments should reflect whether the proposed collection is necessary; whether the agency's estimate of the burden is accurate; how the quality, utility, and clarity of the information to be collected can be enhanced; and, how the burden of the collection can be minimized.

International Compatibility

The FAA has determined that a review of the Convention on International Civil Aviation Standards and Recommended Practices is not warranted because the proposed rule would apply to domestic operations only.

Economic Evaluation Summary

This proposed rule is considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, is subject to review by the Office of Management and Budget. This proposed rule is considered significant under the regulatory policies

and procedures of the Department of Transportation (44 FR 11034; February 26, 1979).

Proposed and final rule 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 of 1980, as amended May 1996, requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that the proposed rule would generate benefits that justify its costs and is ''a significant regulatory action'' as defined in the Executive Order and the Department of Transportation Regulatory Policies and Procedures. The proposed rule will have a significant impact on a substantial number of small entities and will not constitute a barrier to international trade. In addition, this proposed rule does contain Federal intergovernmental or private sector mandates. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do apply. These analyses, available in the docket, are summarized below.

A. Costs

Although the proposed rule requires the use of EDS, where available, for screening the checked baggage of CAPS selectees, the FAA was unable to develop a cost of compliance due to the lack of information on how many EDS machines each air carrier would need at each airport. Since interpretation of ''where available'' may differ among air carrier operators, it becomes very difficult to estimate the potential cost of using EDS. As a result of this situation, the FAA estimated the cost of this proposed rule on the premise that all air carriers adopting CAPS would use baggage matching as the security measure. Baggage matching represents a worst case scenario in terms of costs.

This analysis has estimated the costs of the proposed rule by examining the incremental changes from the existing air carrier security regulations rather than from procedures required by emergency, temporary regulations. On occasion the FAA establishes security measures on an emergency basis, typically through limited duration Security Directives, to respond to specific or assessed threats. For the past several years, air carriers have been applying a manual passenger screening system, in most cases conducting bag matching on the checked baggage of passengers who were selected. At the time it was instituted, immediate implementation was deemed necessary to counter the then-prevailing security threat. These contingency measures are not permanent rules; accordingly, the FAA's analysis reflects the costs of instituting security measures beyond those required by permanent rules.

Costs for the bag matching implementation, operating, and delay portions of the proposed rule were based on estimates by SABRE Decision Technologies Group, South Lake, Texas (SABRE). SABRE based their costs on interpolation of data from a live study of the operational feasibility and cost impact of requiring 100% PPBM for part 108 aircraft operators. The proposed rule anticipates that only 5% of checked baggage would be subject to bag matching. In addition to SABRE, the National Center of Excellence in Aviation Operations Research (COE) assisted in the assessment of costs for this proposed rule. The FAA used cost data developed by SABRE as the potential maximum as the costs of the proposed rule. Cost estimates used in this analysis were based on SABRE's analysis of the aforementioned bag matching study. The data from the bag matching study included a wide diversion of cost experience by individual air carriers using procedures to accommodate all checked baggage. Substantially different and less expensive procedures with fewer delays and system-wide impacts may be applicable where bag matching is done for a pre-selected group of travelers. Descriptions of the potentially less costly implementation of the proposed rule are discussed in the FAA's forthcoming ''Report to Congress: Domestic Bag Match Pilot Program.''

1. Baggage Matching Costs

The proposed rule would impose an estimated cost of $2.8 billion ($2.0 billion, discounted) over the next 10 years in 1998 dollars, for baggage matching. This cost estimate is composed of two primary cost components: (1) Baggage Matching Startup and Operating Costs and (2) Baggage Matching Delay Costs. The manner by which costs for each of these two components were derived will be discussed in the following sections.

a. Baggage Matching Startup Costs. Based on cost information received from the SABRE Technologies Group (henceforth, referred to as ''SABRE''), baggage matching startup costs for all impacted air carriers would amount to an estimated $217 million ($203 million, discounted) over the next 10 years. Startup costs consist of several components. First, there is initial training for gate agents, ramp personnel, and skycap personnel. Air carriers would be expected to train their airport personnel in order to ensure compliance with the proposed rule. This training would familiarize airport terminal personnel with the new requirements of baggage matching procedures for 5% passenger screening. At some airports, skycap personnel currently load passenger baggage on a conveyer belt in the curbside area. Under the proposed rule, air carriers would have to either train skycap personnel or use trained ticket agents to handle the checked baggage of those passengers selected by CAPS, in order to prevent this and other potential problems. Second, additional hardware would be needed. Hardware would primarily consist of additional boarding pass readers, communications equipment, barcode scanners, and magnetic strip readers. Third, equipment such as radios and carts would be needed. Fourth, some airport facilities would be changed. The ticket counter, curbside, and gate areas may be expanded as a means of accommodating the implementation of baggage matching requirements. Additional staffing would be needed, as would additional gate agents and ramp personnel to minimize the number of lost or mishandled baggage.

SABRE obtained aggregated startup costs of $141 million (in 1997 dollars; this estimate was subsequently updated to 1998 dollars using the GDP Implicit Price Deflator) from seven major air carriers. To estimate startup costs for the two major air carriers that did not report cost data, SABRE projected cost based on annual departures. SABRE believed this procedure would take into account the size of the air carriers' operations on startup cost. A simple average of the seven air carriers' costs would have significantly overstated or understated the startup costs for the two air carriers that did not report cost data. The startup cost rate for ''majors'' was $36.24 per departure. This estimate and all other cost estimates were updated to 1998 dollars. Moreover, this estimate was derived by dividing the startup costs of $141 million by the number of 1997 domestic departures for those seven major air carriers that participated in SABRE's survey.

For national and regional jet air carriers, the same startup rate of $36.24 per departure was used to estimate their startup costs. National and regional operators operate on a much smaller scale than the majors do. While the

assumed startup rate for national and regional jet operators may be higher than what they may actually incur, it is believed to provide a reasonable first approximation of startup costs for this group of operators.

For national and regional turboprop air carriers, a startup cost estimate of $2.82 per departure is used, as estimated by SABRE, based on an earlier report (March 1996) for 100 % PPBM for national and regional turboprop air carriers. This estimate of $2.82 was extrapolated by SABRE in a manner similar to that of the aforementioned startup cost estimate of $36.24, to reflect an estimate of baggage matching with a 5% selectee rate. Turboprop airplane operators conduct significantly smaller scale operations than the jet air carriers. In addition, turboprop airplane operators have fewer employees, lower wage rates, smaller airplanes, etc.

b. Baggage Matching Operating Costs (Excluding Delays). Baggage matching operating costs would impose an estimated $2.0 billion ($1.4 billion, discounted) over the next 10 years. This estimate is comprised of equipment and hardware costs ($360 million), staffing costs ($1.6 billion) and training costs ($9 million). It is based on cost information received from SABRE. Annual costs were derived by multiplying the cost for each component times the number of projected domestic departures for part 108 air carriers over the next 10 years and summing to an annual total.

The cost per departure for the major air carriers has been estimated to be $30.30. The national and regional jet air carriers would incur an estimated cost of $21.19 per departure. The turboprop air carriers within the ''nationals and regionals'' category would incur an estimated operating cost of $5.88 per departure for baggage matching. All per-departure rates are based on cost information received from SABRE. These estimates represent costs for recurring maintenance, staffing, and staff training for baggage matching requirements of the proposed rule for CAPS.

c. Baggage Matching Delay Costs. Baggage matching delay costs would impose an estimated $467 million ($323 million, discounted) over the next 10 years (this cost is equal to 0.1% of the delay costs incurred by the entire air carrier system on an annual basis). These costs consist of local air carrier delays ($298 million), downstream delays ($135 million), passenger missed connections ($19 million), and extended operating days ($16 million). These costs, which are based on information received from SABRE, were derived by multiplying the cost per departure for each delay component times the number of projected annual domestic departures over the next 10 years and summed. The total delay cost per departure for the major, national and regional jet air carriers would be an estimated $6.85. For the national and regional turboprop air carriers, it would be an estimated cost of $1.18 per departure.

The baggage matching delay cost estimates are from the SABRE Decision Technologies Group's Dependability Predictor Model (DPM). The DPM is a proprietary simulation model that was developed for use by a major airline. The DPM analyzes schedule performance for a typical day by focusing on delays that could affect the scheduled operations. The model uses historical data distributions for gate delays (ramp service, passenger service, mechanical delays, air traffic control (ATC) gate holds, etc.) and block time delays to simulate the movement of each flight within the schedule.

While cost information has been received from SABRE, which was extrapolated from a sample of air carriers, the FAA believes there is still uncertainty associated with the estimates for startup, operations, and delay costs for major, national and regional air carriers. As the result of this uncertainty, the FAA solicits comments from the aviation industry on startup, operating, and delay costs for compliance with the baggage matching procedures portion of this proposed rule.

2. CAPS Program Costs

Part 108 air carriers expected to install CAPS on their computer reservation systems (CRS's) as the result of this proposed rule, would incur an estimated compliance cost of $70 million ($51 million, discounted) over the next 10 years, in 1998 dollars, $8 million from the federal government. This cost estimate can be further subdivided between those costs that air carriers would incur in their first year (2000), at approximately $18 million ($16 million, discounted). The cost of compliance for subsequent years (2001–2009) would amount to an estimated $52 million ($35 million, discounted).

The individual cost components for the first year include software design and construction, system testing, system implementation, additional capacity for Department of Justice inquiries into how the air carriers are complying with Department of Justice recommendations, and check-in personnel training costs. Subsequent year cost components include hardware and software maintenance, additional capacity for responding to Department of Justice inquiries, and recurrent check-in personnel training. The FAA has estimated these component costs for each impacted air carrier for 1997. In the discussion below, these components are expressed in terms of per-departure costs to be consistent for all the other costs discussed in this analysis are expressed in terms of per-departure costs. The agency has also determined that the best way to project future costs would be to calculate the per-departure costs. These per-departure costs are then multiplied by total departures to calculate costs for the years covered by this analysis.

The entire CAPS program is made up of three components. These three components include the computer program, the individualized screens that would be unique to each air carrier, and the data gatherer. All air carriers could obtain the necessary licenses from the FAA to use the computer program free of charge; however, all air carriers would incur costs modifying both the interface between CAPS and the rest of the system and the individualized screens for their specific needs.

To establish CAPS on their CRS's, air carriers have three viable options. These options include joining other air carriers' CRS's, building their own CAPS systems, and using part of the existing CAPS and revising other portions. The first option would be the least costly, while the middle option would be the most costly. Air carriers that would adopt this costly option would be those whose computers would not accept the original source code developed for CAPS or would want more privacy due to proprietary data.

The U.S. Congress has appropriated $8.0 million to the FAA to pay for the necessary software, hardware, and other costs needed to get the CAPS program up and running (this does not include the $2.5 million that the FAA had awarded to Northwest Airlines to develop CAPS). The FAA has established an Integrated Product Team (IPT) to work with the air carriers to determine their individual needs. The cost estimates gathered by the IPT were used by the FAA in this analysis to help determine first-year implementation costs for the following components: software design, system testing, and system implementation. For this analysis, the FAA divided the total costs among these components for all air carriers by the total number of departures to obtain the per-departure costs at $1.81, $0.13, and $0.10, respectively. Due to the need to keep records for Department of Justice inquiries, each air carrier would need to add additional computer capacity; the

per-departure cost for this added capacity is estimated to be $0.34. In addition, all check-in personnel would need training; the per departure cost for this training is estimated to be $0.33.

Each air carrier would have hardware and software maintenance costs in the subsequent years, and the software costs would depend on which of the aforementioned CAPS options the air carrier had chosen. The cost per departure for hardware and software maintenance is estimated to be $0.39. Meanwhile, the per-departure costs for the Department of Justice inquiries and training are $0.05 and $0.33, respectively. Hence, first year costs sum to $2.71 per departure, while subsequent year costs sum to $0.77 per departure.

For both the CAPS and baggage matching, the proposed rule would impose total compliance costs of $2.8 billion ($2.0 billion, discounted), over 10 years. This estimate is composed of the following components:

- Baggage Matching Startup Costs:
  $217 million ($203 million, discounted)
- Baggage Matching Implementation and Operating Costs:
  $2.0 billion ($1.4 billion, discounted)
- Baggage Matching Delay Costs:
  $467 million ($323 million, discounted)
- CAPS Program Implementation and Operating Costs:
  $70 million ($51 million, discounted)

The FAA expects that the total cost of compliance of $2.8 billion may represent a potential maximum cost estimate. Estimating the economic cost that this proposed rule would impose on airlines and passengers was a difficult undertaking, as suggested by the wide range of estimates that different airlines provided. As mentioned above, in addition to SABRE, COE assisted in the assessment of costs for this proposed rule. Because implementation of domestic baggage matching based on a passenger screening process such as CAPS was not the subject of any live tests, COE believes that substantial economies may be achieved by airlines beyond the experience of a live bag matching test that was conducted in the spring of 1997 and ''a priori'' estimates supplied by individual airlines. COE projected that the proposed rule would cost between $500 million (based on 7 cents per passenger enplanement) and $2.5 billion (based on 36 cents per passenger enplanement) over the next decade. In addition, according to COE, as part of a follow-up to the live test conducted for passenger baggage matching, air carriers stated that the costs they provided were overstated by at least 33%. This assessment is based on the fact that air carriers now have a much better idea how they would implement 100% PPBM if they were required to do so by regulation. Based on this information, coupled with the fact that there is some uncertainty as the result of the interpolation technique used by SABRE and COE to estimate costs, the FAA solicits comments from the aviation community as to the accuracy of this assessment of costs.

B. Benefits

The primary benefits of the proposed rule would be in significantly increased protection from terrorism for U.S. citizens and others traveling on U.S. domestic air carrier flights. Specifically, the proposed rule is aimed at deterring terrorism by preventing explosives from being placed on board commercial flights in checked baggage.

Terrorism can occur within the United States. Members of foreign state-sponsored terrorist groups and radical fundamentalist elements from many nations are present in the United States. In addition, Americans are joining terrorist groups. The activities of some of these individuals and groups go beyond fund-raising to recruiting other persons (both foreign and American) for activities that include training with weapons and making bombs. These extremists operate in small groups and can act without guidance or support from state sponsors. This makes it difficult to identify them or to anticipate and counter their activities. The following discussion outlines some of the concrete evidence of the increasing terrorist threat within the United States and to domestic aviation.

Investigation into the February 1993 attack on the World Trade Center uncovered a foreign terrorist threat in the United States that is more serious than previously known. The World Trade Center investigation disclosed that Ramzi Yousef arrived in the United States in September 1992 and presented himself to immigration officials as an Iraqi dissident seeking asylum. Yousef and a group of Islamic radicals in the United States then spent the next five months planning the bombing of the World Trade Center building and other acts of terrorism in the United States. Yousef returned to Pakistan on the evening of February 26, 1993, the same day that the World Trade Center bombing took place. Yousef traveled to the Philippines in early 1994, and by August of the same year had conceived a plan to bomb as many as twelve U.S. air carriers flying between East Asian cities and the United States.

Yousef and co-conspirators Abdul Murad and Wali Khan tested the type of explosive devices to be used in the aircraft bombings, and in December 1994 they demonstrated the group's ability to assemble such a device in a public place by bombing a Manila theater. Later in the same month, the capability to get an explosive device past airport screening procedures and detonate it aboard an aircraft also was successfully tested when a bomb was placed by Yousef aboard the first leg of Philippine Airlines Flight 424 from Manila to Tokyo. The device detonated during the second leg of the flight, after Yousef had deplaned at an intermediate stop in the Philippine City of Cebu.

Preparations for executing the plan were progressing rapidly; however, the airliner bombing plot was discovered in January 1995 only by chance after a fire led Philippine police to the Manila apartment where the explosive devices were being assembled. Homemade explosives, batteries, timers, electronic components, and a notebook full of instructions for building bombs were discovered. Subsequent investigation of computer files taken from the apartment revealed the plan in which five terrorists were to have placed explosive devices aboard United, Northwest, and Delta airline flights. In each case, a similar technique was to be used. A terrorist would fly the first leg of a flight out of a city in East Asia, plant the device aboard the aircraft and then get off at an intermediate stop. The explosive device would then destroy the aircraft as it continued on the subsequent leg of the flight to the United States. It is likely that thousands of passengers would have been killed if the plot had been successfully carried out.

Yousef, Murad and Khan were arrested and convicted in the bombing of Philippine Airlines Flight 424 and in the conspiracy to bomb U.S. airliners. Yousef was sentenced to life imprisonment for his role in the Manila plot, while the two other co-conspirators have been convicted. Yousef also was convicted and sentenced to 240 years for the World Trade Center bombing. However, there are continuing concerns about the possibility that other conspirators remain at large. The airliner bombing plot, as described in the files of Yousef's laptop computer, would have had five participants. This suggests that, while Yousef, Murad and Khan are in custody, there may be others at large with the knowledge and skills necessary to carry out a similar plot against civil aviation.

The fact that Ramzi Yousef was responsible for both the World Trade Center bombing and the plot to bomb as many as twelve U.S. air carrier aircraft

shows that: (1) foreign terrorists are able to operate in the United States, and (2) foreign terrorists are capable of building and artfully concealing improvised explosive devices that pose a serious challenge to aviation security. This, in turn, suggests that foreign terrorists conducting future attacks in the United States may choose civil aviation as a target. Civil aviation's prominence as a prospective target is clearly illustrated by the circumstances of the 1995 Yousef conspiracy. The bombing of a federal office building in Oklahoma City shows the potential for terrorism from domestic groups. While the specific motivation that led to the Oklahoma City bombing would not translate into a threat to civil aviation, the fact that domestic elements have shown a willingness to carry out attacks resulting in indiscriminate destruction is worrisome. At a minimum, the possibility that a future plot hatched by domestic elements could include civil aircraft among possible targets must be taken into consideration. Thus, an increased threat to civil aviation exists and needs to be prevented and/or countered from both foreign sources and potential domestic ones.

That both the international and domestic threats have increased is undeniable. While it is extremely difficult to quantify this increase in threat, the overall threat can be roughly estimated by recognizing the following:

- U.S. aircraft and American passengers are good representatives of the United States, and therefore are appealing targets;
- Up to 12 airplanes could have been destroyed in the actual plot described above, and thousands of passengers killed (while the proposed rule would not have prevented the plot described above, this plot is representative of the type and seriousness of the threat that this proposed rule is trying to prevent);
- These plots came close to being carried out; it was only through a fortunate discovery and tighter security after the discovery of the plot that these incidents were thwarted;
- It is just as easy for international terrorists to operate within the United States as domestic terrorists, as evidenced by the World Trade Center bombing; therefore
- Based on these facts, the increased threat to domestic aviation could be seen as equivalent to some portion of 12 Class I Explosions on U.S. airplanes. (The FAA defines a Class I Explosion as an incident that involves the loss of an entire aircraft and incurs a large number of fatalities.)

In 1996, both Congress and the White House Commission on Aviation Safety and Security recommended further specific actions to increase aviation security. The White House Commission stated that it believes that the threat against civil aviation is changing and growing, and recommended that the federal government commit greater resources to improving civil aviation security. President Clinton, in July 1996, declared that the threat to aviation of both foreign and domestic terrorism is a national threat. The U.S. Congress recognized this growing threat in the Federal Aviation Reauthorization Act of 1996 by: (1) authorizing money for the purchase of specific anti-terrorist equipment and the hiring of extra civil aviation security personnel; and (2) requiring the FAA to promulgate additional security-related regulations.

The cost of a catastrophic terrorist act can be estimated in terms of lives lost, property damage, decreased public utilization of air transportation, etc. Terrorists acts can result in the complete destruction of an aircraft with the loss of all on board.

In the absence of increased protection for the U.S. domestic passenger air transportation system, it is conceivable that the system would be targeted for future acts of terrorism. If even one such act were successful, the traveling public would demand immediate increased security. Providing immediate protection on an ad hoc emergency basis would result in major inconveniences, costs, and delays to air travelers that may substantially exceed those imposed by the planned and measured steps contained in this proposal.

Based on the above statement, and after evaluating feasible alternative measures, the FAA concludes that this proposed rule sets forth the best method to provide increased security at the present time. Notwithstanding the above, it is helpful to consider, to the limited extent possible, the benefits of this proposal in reducing the costs associated with terrorist acts to the threat level and other factors. The following analysis describes alternative assumptions regarding the number of terrorist acts prevented and potential market disruptions averted that result in the proposed rule benefits at least equal to the proposed rule costs. This is intended to allow the reader to judge the likelihood of benefits of the proposed rule equaling or exceeding its cost.

The FAA considers a Boeing 737 as representative of a typical airplane flown domestically. It flies with an average load factor of 64.7%, which translates into 73 passengers per flight; the airplane would also have two pilots and three flight attendants.

A terrorist catastrophic incident could also result in fatalities on the ground. There were 11 such fatalities in the Pan Am 103 explosion and 15 fatalities in a collision of an AeroMexico airplane with a Piper PA–28 airplane over Cerritos, California in 1986. However, looking at the number of accidents including aircraft covered by this proposed rule and the number of fatalities on the ground over the last ten years, the average fatality was less than 0.5 persons per accident. Therefore, the FAA will not assume any ground fatalities in this analysis.

In order to provide a benchmark comparison of the expected safety benefits of rulemaking actions with estimated costs in dollars, the FAA currently uses a value of $2.7 million to statistically represent a human fatality avoided. Applying this value, the total fatality loss of a single Boeing 737 is represented by a cost of $210.6 million (78 x $2.7 million).

Quantified undiscounted estimated costs of a single domestic Class I Explosion on civil aviation are summarized on Table 1.

TABLE 1.—COSTS OF A DOMESTIC CLASS I EXPLOSION

[1998 Dollars]

	Number	Value	Total cost
Fatalities	78	$2,700,000	$210,600,000
Aircraft	1	16,500,000	16,500,000
Property	1	12,508,028	12,508,028
Investigation	1	28,640,637	28,640,637
Legal Fees		3,569,383	3,569,383
Total			271,818,048

TABLE 1.—COSTS OF A DOMESTIC CLASS I EXPLOSION—Continued

[1998 Dollars]

	Number	Value	Total cost
Total, discounted			190,908,689

Source: U.S. DOT, FAA, APO–310, March 1999.

Certainly the primary concern of the FAA is preventing loss of life, but there are other considerations as well. Another large economic impact is related to decreased airline travel following a terrorist event. A study performed for the FAA by Pailen-Johnson Associates, Inc., *An Econometric Model of the Impact of Terrorism on U.S. Air Carrier North Atlantic Operations,* indicated that it takes about 9 to 10 months for passenger traffic to return to the pre-incident level after a single event. Such a reduction occurred immediately following the destruction of Pan Am Flight 103 over Lockerbie, Scotland in December 1988. In general, 1988 enplanements were above 1987's. There was a dramatic fall-off in enplanement in the first 3 months of 1989 immediately following the Pan Am 103 tragedy, and it took until November 1989 for enplanements to approximate their 1987 and 1988 levels.

Trans-Atlantic enplanements increased, from 1985 to 1988, at an annual rate of 10.7 percent. Projecting this rate to 1989 would have yielded 1989 enplanements of 8.1 million, or 1.6 million more than Pan Am actually experienced. This represents almost a 20 percent reduction in expected enplanements caused by the destruction of Pan Am 103 by terrorists.

The estimated effect of a successful terrorist act on the domestic market has not been studied. Although there are important differences between international and domestic travel (such as the availability of alternative destinations and means of travel), the FAA believes that the traffic loss associated with international terrorist acts is representative of the potential domestic disruption.

There is a social cost associated with travel disruptions and cancellations caused by terrorist events. The cost is composed of several elements. First is the loss associated with passengers opting not to fly—the value of the flight to the passenger (consumer surplus) in the absence of increased security risk and the profit that would be earned by the airline (producer surplus). Even if a passenger opts to travel by air, the additional risk may reduce the associated consumer surplus. Second, passengers who cancel plane trips would not purchase other goods and services normally associated with the trip, such as meals, lodging, and car rental, which would also result in losses of related consumer and producer surplus. Finally, although spending on air travel would decrease, pleasure and business travelers may substitute spending on other goods and services (which produces some value) for the foregone air trips. Economic theory suggests that the sum of the several societal value impacts associated with canceled flights would be a net loss. As a corollary, prevention of market disruption (preservation of consumer and producer welfare) through increased security created by the proposed rule is a benefit.

The FAA is not able to estimate the actual net societal cost of travel disruptions and the corollary benefit gained by preventing the disruptions. However, there is a basis for judging the likelihood of attaining benefits by averting market disruption sufficient, in combination with safety benefits, to justify the proposed rule. The discounted cost of this proposed rule is $2.0 billion, while the discounted benefits for each Class I Explosion averted (from Table 7) comes to $190 million. Hence, if only 1 Class I Explosion is averted, the present value of losses due to market disruption must at least equal $1.8 billion ($2.0 billion less $190 million—one Class I Explosion). If two Class I Explosions are averted, the value of the market losses must at least equal $1.6 billion ($2.0 billion less 2 times $190 million).

The value of market loss averted is the product of the number of foregone trips and the average market loss per trip (combination of all impacts on consumer and producer surplus). If one uses an average ticket price of $160 as a surrogate of the combined loss, preservation of 11.2 million lost trips would be suffered, in combination with the safety benefits of 1 averted Class I Explosion, for the benefits of proposed rule to equal costs. This represents 3 percent of annual domestic trips (the traffic loss caused by Pan Am 103 on trans-Atlantic routes was 20 percent). Calculations can be made on the number of averted lost trips needed if the net value loss was only 75 percent of the ticket price or exceeded the ticket price by 25 percent. If total market disruption cost was $130 or $200 per trip, retention of 13.8 and 9.0 million lost trips, respectively, would need to occur for the proposed rule benefits to equal the proposed rule costs, assuming 1 Class I Explosion would be prevented. The FAA requests comments on the potential size of market loss per trip and number of lost trips averted.

Table 2 presents combinations of the total number of trips not taken as a result of one to four Class I Explosions at alternative values per lost trip that would be sufficient to generate monetized benefits in excess of the estimated proposed rule costs.

TABLE 2.—NUMBER OF TRIPS NOT TAKEN AS A RESULT OF ONE TO FOUR CLASS I EXPLOSIONS AVOIDED

[For Benefits to Equal Costs]

Number of class I explosions avoided	Assumed net market loss per trip (in 1998 dollars)		
	$130 (million)	$160 (million)	$200 (million)
1	13.8	11.2	9.0
2	12.2	10.0	8.0
3	10.9	8.8	7.1
4	9.4	7.6	6.1

Source: FAA, APO–310, March 1999.

The FAA stresses that the range of trips not taken in Table 2 is shown for illustrative purposes and does not represent an explicit endorsement that these would be the exact number of trips that would actually be lost. As noted above, it is important to compare, to the limited extent possible, the cost of this proposal to some estimate of the benefit of increased security it would provide as that level of security relates to the threat level.

Based on the White House Commission recommendation, recent Congressional mandates and the known reaction of Americans to any air carrier disaster, the FAA determines that pro-active regulation is warranted to prevent terrorist acts (such as Class I Explosions) before they occur.

C. Analysis of Alternatives to the NPRM

The proposed rule is a ''significant regulatory action'' as defined by Executive Order 12866 (Regulatory Planning and Review) because it would impose costs exceeding $100 million annually. The Executive Order requires that agencies proposing significant rules

provide an assessment of feasible alternatives to their respective rulemaking actions. In addition, the Executive Order requires that an explanation of why the proposed rule, which is significant, is preferable to the identified potential alternatives. In the following discussion, FAA provides an assessment of six alternatives, with Alternative Number Five being chosen as the proposed rule:

1. The Status Quo

This alternative would maintain the status quo. Currently, the FAA mandates manual passenger screening or baggage matching based on this screening only in situations where the FAA has determined that a heightened security threat exists. Manual passenger screening is performed on a contingency basis when the FAA issues Security Directives (SD's). Security Directives are temporary conditions, which are considered part of the status quo. While costs are incurred to implement manual passenger screening whenever a threat exists, they are not considered permanent costs because they are associated with procedures required by emergency, temporary rules. The FAA believes that the threat to civil aviation within the United States has increased and further rulemaking is necessary.

2. Phasing In the Mandatory Use of Explosives Detection System (EDS) (Without Requirement for CAPS)

Alternative Two would phase in the mandatory use of EDS over a 10-year period of time, at a rate of 10% per year. By the end of the first year, approximately 10% of all passengers and baggage would be covered, by the end of the second year, 20% of all passengers and baggage would be covered, etc. Under Alternative Two, air carriers without EDS would be required to continue performing their status quo security procedures until they are provided with EDS equipment. Over 10 years, total EDS costs sum to $2.1 billion ($1.4 billion, discounted).

In terms of benefits, EDS equipment offers the highest level of security against explosives being stored in the cargo compartments of airplanes. Explosives detection system equipment is able to examine all baggage as it passes through on a conveyor belt. Baggage that clears on the first leg of travel does not require re-examination with subsequent transfers to other flights or other air carriers.

Alternative Two would, over the initial 10-year period, probably provide, on average, less benefits than the proposal. In the first year, only 10% of the passengers and baggage would be covered, so only 10% of the potential increase in overall security (and hence, benefits) associated with EDS would be attained. Only during the tenth year would there be full augmentation of EDS, and attainment of the full increase in security (and hence, benefits) associated with EDS. Averaging these increases over 10 years yields only 55% of the full EDS benefit. This contrasts with the proposed rule where each year there would be the full attainment of benefits.

The FAA believes that where it is applied, EDS would be more effective than the proposal; however, the benefits of complete EDS implementation would need to be roughly twice that of the proposal for Alternative Two to be superior.

A goal of all carriers using EDS for 100% of its flights cannot be realized immediately due, among other reasons, to the lack of production capability. This lack of full EDS coverage would lead to a window of vulnerability as only some flights would be covered. Under Alternative Two, the step-by-step annual improvements in the level of security would lead to a bifurcated security program. The public would realize that some flights would be safer than others. Terrorists may be able to determine which flights were cleared by EDS and act accordingly, potentially resulting in an airplane explosion. The FAA rejects Alternative Two on the basis that it would provide an unacceptable level of risk higher than the proposed rule.

3. Requiring 100% PPBM of Each Carrier While Phasing In Mandatory Use of EDS

Alternative Three would supplement the EDS required in Alternative Two by requiring 100% PPBM for those flights until EDS becomes available. Hence, the first year would have 10% of the passengers and baggage covered by EDS and 90% by baggage matching, etc., until the tenth year which would have 100% of the passengers and baggage covered by EDS.

This alternative would combine the costs of EDS with the costs of those flights on which full baggage matching is used. Over 10 years, total EDS costs sum to $2.1 billion ($1.4 billion, discounted). The costs of baggage matching portion of this alternative would be $4.6 billion ($3.7 billion, discounted), with total 10-year costs for Alternative Three at $6.7 billion ($5.0 billion, discounted).

Alternative Three would yield the highest level of security of any of the alternatives considered; however, this alternative could produce major operational obstacles. Large numbers of domestic flights are scheduled around a hub and spoke system. Under this alternative, a 100% PPBM alternative would probably result in substantial flight delays due to the unloading of unmatched baggage. These initial delays would impact and delay some connecting flights. This action would result in a daily ripple effect, which would get worse as the day wore on. These operational burdens on air carriers would result both in fewer flights and passengers paying more for tickets. Facility requirements for each passenger on each flight of a combined passenger bag match/EDS system could overload the existing system; the space and time required for screening all checked baggage by EDS could cause severe congestion at existing airport facilities.

The FAA has very high confidence in the effectiveness of the proposed rule in terms of countering the current threat. It believes that most of the current threat could be successfully countered through the implementation of CAPS. Alternative Three would be more effective in countering the threat, but the FAA does not believe that the incremental increase in security provided by Alternative Three is worth the additional cost of this alternative, which is about $4 billion more than the proposed rule.

4. Baggage Matching on Randomly Selected Passengers While Phasing In EDS

Like Alternatives Two and Three, Alternative Four would move towards a security system based on EDS screening. Random selection, rather than CAPS, would determine which passengers would be subjected to baggage matching.

The FAA believes, for analyzing this alternative, that a 10% screening rate would be a believable and effective random rate to provide deterrence to terrorists. Explosives detection systems would be phased in, such that, for the first year, 10% of the passengers and baggage would be subject to the full use of EDS and 90% to this reduced (10%) screening rate of baggage matching, etc. Ten-year costs for the partial baggage matching portion of this scenario would be $1.4 billion (net present value, $1.1 billion). With total EDS costs at $2.1 billion ($1.4 billion, discounted), total 10-year costs for this alternative sum to $3.5 billion ($2.5 billion, discounted).

As above, the FAA believes that where it is applied, EDS would be more effective than the proposal, so total benefits from 100% EDS screening would be higher than the proposal;

however, even with the greater effectiveness of EDS, the major problem with Alternative Four is the window of vulnerability that would still exist. In the first year, 90% of flights would depend on a randomly selected baggage matching alternative that would be much less effective than CAPS. As discussed above, the FAA assumes that CAPS would be very effective in countering the threat. Selecting 10% of the passengers at random would, on these flights, yield benefits only 10% of those that would be derived from the proposal. Until the tenth year, where full EDS implementation would be expected, there would be a major shortfall in benefits.

A goal of using EDS for 100% of flights cannot be implemented immediately due, among other reasons, to the lack of production capability. Even when partial EDS screening is combined with random baggage matching, only some flights would be covered, so many flights would remain vulnerable. Given that this alternative is more expensive than the proposal, yet does not close the window of vulnerability, the FAA rejects this alternative.

5. Baggage Matching on Passengers Selected by CAPS With Use of EDS, Where Available

This is the proposed rule, which was costed out in the discussion above.

6. Performing Baggage Matching on a Limited Number of CAPS Selectees

Alternative Six would modify the proposed rule in that the air carriers would use CAPS to form the pool of selectees, but only subject a random number of these selectees to baggage matching. For analysis purposes, the FAA is assuming that 50% of the pool of selectees would be subjected to baggage matching. This yields ten-year costs of $1.6 billion ($1.1 billion, discounted).

The proposed rule provides benefits by performing baggage matching on 100% of selectees. Reducing this pool would reduce the protection afforded by CAPS and baggage matching and would increase the likelihood that someone who would have been a CAPS selectee but who was excluded from heightened security measures under this alternative would be able to cause an explosion on an airplane. The FAA is calculating benefits by assuming that a 50% reduction in the pool of CAPS selectees would bring about a nearly 50% reduction in benefits from current levels.

The major problem with this alternative is that it would offer a lower level of security and would amount to reducing the effectiveness of the CAPS criteria. As discussed above, the FAA assumes that CAPS would be very effective in countering the threat. Reducing the selectee pool by 50% at random would yield benefits equal to roughly half of those that would be derived from the proposal. This creates a window of vulnerability on every flight, as only some passengers' baggage would be screened, and would not mitigate the threat as effectively as the proposed rule. It is not prudent to establish a computerized automated profiling system to select passengers and then ignore some of these selectees, hoping that the deterrence value of the possibility of being selected would equal or outweigh the benefits of performing baggage matching. This alternative could allow a selectee whose checked baggage was not subject to baggage matching to cause an explosion on an airplane.

Initial Regulatory Flexibility Determination and Analysis

A. Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities (small business and small not-for-profit government jurisdictions) are not unnecessarily and disproportionately burdened by Federal regulations. The RFA, which was amended May 1996, requires regulatory agencies to review rules that may have ''a significant economic impact on a substantial number of small entities.'' The Small Business Administration suggests that ''small'' represents the impacted entities with 1,500 or fewer employees. For this proposed rule, the small entity group is considered to be part 108 scheduled operators with airplanes having 61 or more passenger seats (Standard Industrial Classification Code 4512) and 1,500 or fewer employees. The FAA has identified a total of 12 operators that meet this definition.

To determine the impact of the proposed rule on small part 108 operators, the FAA has estimated the annualized cost impact on each of those small entities potentially impacted by the proposed rule. The proposed rule is expected to impose an estimated $122 million on the 12 small entities over the next 10 years. For purposes of this rulemaking, one percent of the annual median revenue ($823,000, in 1998 dollars) is considered economically significant in that it may entail either an increase in airline ticket fares or a requirement to create operating cost efficiencies to preserve the economic stability of impacted airlines. Ten of the 12 part 108 small entities would incur a substantial economic impact in the form of higher costs in excess of $823,000, as the result of the proposed rule. Furthermore, the cost burden is not strictly proportionate to the size of the airline as inferred by the number of employees. For these reasons, a regulatory flexibility analysis is presented below.

B. Initial Regulatory Flexibility Analysis

Under Section 603(b) of the RFA (amended May 1996), each initial regulatory flexibility analysis is required to address these points: (1) reasons why the FAA is considering the proposed rule, (2) the objectives and legal basis for the proposed rule, (3) the kind and number of small entities to which the proposed rule would apply, (4) the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, and (5) all Federal rules that may duplicate, overlap, or conflict with the proposed rule.

Reasons why the FAA is considering the proposed rule: Over the past several years, the FAA has recognized that the threat against civil aviation is changing and growing. See either the discussion under ''Background'' above, or the background section of the Regulatory Impact Analysis (RIA) for a more detailed discussion of this threat. Terrorist and criminal activities within the United States have forced the FAA and other federal agencies to reevaluate the domestic threat against civil aviation. The proposed rule is intended to counter this increased threat to U.S. civil aviation security.

The objectives and legal basis for the proposed rule: The objective of the proposed rule is to significantly increase protection to Americans and others traveling on U.S. domestic air carrier flights from acts of terrorism. Specifically, the proposed rule is aimed at preventing explosives from being placed on board commercial flights in checked baggage.

The legal basis for the proposed rule is found in 49 U.S.C. 44901 et seq. As a matter of policy, the FAA must consider, among other concerns, maintaining and enhancing safety and security in air commerce as its highest priorities (49 U.S.C. 40101(d)).

The kind and number of small entities to which the proposed rule would apply: The proposed rule applies to 32 operators of part 108 aircraft, of which 12 are small scheduled operators (with 1,500 or fewer employees) that use aircraft with more than 60 passenger seats (SIC Code 4512). A brief financial

profile of these small entities is provided in the full Regulatory Impact Analysis (which includes net income, assets, liabilities, and financial strength ratios) by category: Nationals, Large Regionals, and Medium Regionals.

Category	Annual revenues by category	Total No. of entities impacted	No. of small carriers impacted
Majors	More than $ 1.0b	9	0
Nationals	$100.0m–$ 1.0b	14	3
Large Regionals	$ 20.0m–$99.9m	6	6
Medium Regionals	$ 0.0m–$19.9m	3	3
Total		32	12

The projected reporting, recordkeeping, and other compliance requirements of the proposed rule: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted a copy of these proposed sections to the Office of Management and Budget (OMB) for its review.

All air carriers using either CAPS, 100% PPBM screening or checked baggage screening via FAA-certified EDS system, would need to provide compliance with the approved security program. The FAA estimates this compliance effort would take place on a one-time basis and impose an additional 24 hours of clerical labor for each of the small entities during the first year of compliance (2000 only). However, the employment of CAPS as a security procedure for screening passengers, requires air carriers to make available, where appropriate, certain information that the CAPS system has been programmed to generate to facilitate DOJ and OST reviews to ensure that selection is not impermissibly being based on race, color, gender, national or ethnic origin or religion. To comply with the recordkeeping requirements for DOJ inquiries, each small part 108 aircraft operator employing CAPS will have an estimated annual recordkeeping burden of 100 hours of clerical labor per year for a period of 10 years (based on having compliance information available for the DOJ inquiries, and records for personnel requiring CAPS training). Therefore, the additional recordkeeping burden, which would apply to each of the small entities, imposed by the proposed rule would be 124 hours in 2000 and 100 hours for each year during 2001—2009. The cost for this time would be $2,600 or an average of $218 per respondent for 2000. For the subsequent years (2001–2009), the additional cost for this time for small entities would be $2,100 or $176 per air carrier per year.

There are additional annual costs resulting from the collection of information. The first year (2000 only) estimated cost for the small entity respondents is estimated to be $523,200 or an average of $43,600 per respondent. For years 2000—2009, the additional recordkeeping costs for all of the small entities would be $96,500 or $8,000 per air carrier per year.

All federal rules that may duplicate, overlap, or conflict with the proposed rule: The FAA is unaware of any federal rules that either duplicate, overlap, or conflict with the proposed rule.

Other Considerations

Description of lower impact alternatives: A discussion of those alternatives that would impose less costs on the small entities subject to this proposed rule is provided below. In addition to the proposed rule and status quo, the analysis of alternatives reviewed three alternatives that had a range of compliance costs between $10 million and $122 million in a 10-year period.

Affordability analysis: For the purpose of this RIA, the degree to which small entities can ''afford'' the cost of compliance is predicated on the availability of financial resources. Initial implementation costs may be obtained from either existing company assets such as cash, by borrowing, or through the provision of additional equity capital. Continuing annual costs of compliance may be accommodated either by accepting reduced profits, by raising ticket prices, or by finding other offsetting costs.

In this analysis, the assessment of the availability of financial resources is based on the ability of each of the small entities to meet their short-term obligations. According to financial literature, a company's short-term financial strength is substantially influenced, among other things, by its working capital position and ability to pay short-term liabilities. Net working capital is the amount by which current assets exceed current liabilities. It represents the margin of short-term debt paying ability over existing short-term debt.

In addition to the amount of net working capital, two analytical indexes of current position are often computed: (1) current ratio and (2) quick ratio. The current ratio (current assets divided current liabilities) helps put the amount of net working capital into perspective by showing the relationship between current resources and short term debt. And the quick ratio (sometimes called the acid test ratio) focuses on immediate liquidity (cash, marketable securities, accounts receivable, etc., divided by current liabilities). A decline in net working capital, the current and quick ratios over a period of years (say, 3 years, 4 years, etc.) may indicate that a company is losing financial solvency. Negative net working capital is a clear indication of financial difficulty. If a company is experiencing such financial difficulty, it is less likely to be able to afford additional costs.

The following conclusions are based on the subject financial information:

- Based on current liquidity, at least three small entities would probably be able to afford the cost of compliance associated with this proposed rule. These entities have experienced increases in their net working capital as well as their current and quick ratios over the past three or four years, as shown in Table 11B. They are also generally profitable and may, therefore, have financial resources available to meet the requirements of this proposed rule.
- For one currently profitable small entity, its ability to afford the cost of compliance is less certain. This uncertainty stems from the fact that there is no financial performance history for the small entity from 1994 to 1996 because it has only been operating as a large passenger air carrier since second quarter of 1997. In 1997, this small entity had a net working capital in excess of $40 million and its current and quick ratios are at least 1.8, respectively. While this information is very positive, it does not necessarily serve as an indicator of future performance, especially in light of the proposed rule.

- For another air carrier, there is greater uncertainty than that for the aforementioned air carrier. Uncertainty for this entity is due to the fact that it has no financial performance history from 1994 to 1997. This lack of financial information is due to the fact that this air carrier did not receive its effective operating authority until mid 1997. Its ability to comply with the proposed rule and remain in business is unknown due to the lack of financial information on its performance history.
- The current liquidity of the remaining seven small entities will require action to finance the expected cost of compliance imposed by this NPRM. Over the past two or three years, each of these small entities has had negative net working capital. In addition, their respective current and quick ratios have generally been on a decline. They have frequently experienced financial losses.

Relative Cost Impact

- The other alternative of assessing affordability, annualized cost of compliance relative to the total operating revenues, for each of the 12 small entities impacted by this NPRM shows relatively small impacts for most of the small entities. The annualized cost of compliance relative to total operating revenues would be between 0.2 percent and 7.2 percent; in most cases, the impact would be less than 1.0 percent.
- For seven of the air carriers the ratio of annualized proposed rule costs to revenues would be less than 1.0 percent, on average, for the three-year period 1995 through 1997. For these air carriers, there appears to be a prospect of absorbing the cost of the proposed rule through some combination of fare increases and cost efficiencies. Even though the ratio of costs to revenues exceed 1.0 percent, on average, for the seven other air carriers, there is a prospect that two of these air carriers may have sufficient working capital to incur initial cost increases.

Disproportionality analysis: The FAA does not believe any of the 12 small entities would be disadvantaged relative to large air carriers, due solely to disproportionate cost impacts. All of the air carriers operating airplanes with 61 or more seats have to comply with the proposed rule for CAPS.

Many small air carriers are expecting to incur relatively smaller costs proportionate to the size of their operations because most of them have code-share arrangements with large air carriers within the majors category. These airlines would probably be able to employ the CAPS systems of their code-sharing partners and thereby avoid system development costs. Thus, because of code-share arrangements with larger air carriers, at least 8 of these 12 small air carriers may incur costs lower than they otherwise would. In the operating cost of compliance section of this RIA for passenger baggage matching, major jet air carriers are expected to incur an estimated departure cost of $30, national and regional jet air carriers estimated departure cost of $20.98. Some of the smallest air carriers that fall within the national and regional turboprop category would incur a departure cost of $5.82. Hence, on a per operation basis, lower operating costs are anticipated for carriers which operate smaller aircraft. In general, small entities are more likely to operate small aircraft than large aircraft.

Competitiveness analysis: The proposed rule, while it may impose financial burdens on small entities (see affordability and business closure analyses), is not anticipated to significantly change the competitiveness of small entity airlines relative to larger carriers on their domestic routes.

As discussed in the disproportionality analysis, the proposed rule is not expected to impose a greater relative financial burden on small compared to large airlines. Furthermore, small entities impacted by this proposed rule are more likely to either face no competition on individual route segments or compete among themselves rather than with large airlines. Medium and large regional airlines (annual revenues less than $100 million) do not compete directly with major carriers (annual revenues exceeding $1 billion). Instead, at least two of the impacted small entities are regional carriers code-share with major airlines—UFS Inc. with United and Alaska Airlines with US Airways and Northwest. Code-sharing is a device whereby regional carriers feed traffic to majors rather than compete for traffic. Thus, for nine of the small entities, which are classified as medium or large regionals, to the extent there is competition on routes, competition is generally limited to carriers within the same revenue categories. Three of the impacted small entities are classified as nationals (annual revenues between $100 million and $1 billion). Air Wisconsin, one of the small entities classified as a national is also affiliated with United Airlines—a major. Because of this affiliation, it seems unlikely that the cost impact of the proposed rule per se would significantly change the relative competitiveness of Air Wisconsin. The remaining two small entity carriers classified as nationals do compete both with major airlines, with other nationals, and some smaller revenue carriers (namely, large regionals). While the financial impact on these small entities may not be proportionally greater than that imposed on the majors, the nationals may have greater difficulty in recovering the costs of compliance with the proposed rule through ticket price increases. This is because they are engaged in competition with the majors for price sensitive travelers. Lower ticket prices are vital to maintaining a competitive edge. There is also another competition factor important for nationals—the cost of compliance would probably be less for carriers if they link to an existing computer reservation system (CRS) which has been modified for CAPS rather than building a new stand alone CAPS system. Thus, the proposed rule may tend to increase national carrier reliance on CRS systems controlled by major airlines. Again, this may exacerbate the competitive advantage of majors vis a vis national carriers because the terms and cost of CRS use are determined by the majors.

Business closure analysis: The FAA is unable to determine with certainty the extent to which those small entities that would be significantly impacted by the proposed rule for CAPS would have to close their operations. However, the profitability information (net income gains and losses) and the affordability analysis can be a factor in business closures.

In determining whether or not any of the 12 small entities would close business as the result of compliance with this proposed rule, one question must be answered: ''Would the cost of compliance be so great as to impair an entity's ability to remain in business?'' A number of these small entities are already in serious financial difficulty. For example, one small entity has already filed for bankruptcy under chapter 11. To what extent the proposed rule makes the difference in an entity remaining in business is difficult to answer. The FAA believes that if the potential cost of compliance materializes as expected, several small operators could go out business due at least in part to the proposed rule.

Alternatives Considered

As part of section 603(c) of the RFA, the following is an analysis of pros and cons of the alternatives to the proposed rule:

1. Status Quo

Under this alternative, the practice of maintaining the current policy for security of checked baggage on domestic flights would continue. Currently, the FAA mandates manual passenger screening or baggage matching only in situations where the FAA has determined that a heightened threat exists. Continuing with this policy would be the least costly course of action but less safe. The FAA believes that the threat to civil aviation within the United States has increased and further rulemaking is necessary. Thus,

this alternative is not considered to be acceptable because it permits continuation of an unacceptable level of risk to U.S. airline passengers. *Conclusion:* Under this alternative, there is a likelihood of one or more terrorist acts resulting in Class I Explosions involving large commercial airplanes that operate within the United States (discussed previously in the benefits portion of this Regulatory Evaluation Summary).

2. Current Proposal Would Apply to Small Entities Only When a Specific Threat Exists (Standby CAPS Program)

Under this alternative, all small entities (part 108 aircraft operators) would be required to implement requirements identical to those of the proposed rule only when the Assistant Administrator for Civil Aviation Security notified the certificate holder in writing that a security threat existed with respect to a particular operation. Under the proposed rule, all small entity operations with 61 or more seats would be required to implement CAPS for selectees for 5% of all passengers (originating only) and either 100% PPBM or EDS (where available). Under this alternative, however, small entity operators with airplanes having 61 or more passenger seats and 1,500 or fewer employees would only be required to have a ''standby security provision'' to implement CAPS and baggage matching for selectees.

This alternative may reduce the potential cost impact to the small entities. For example, such airlines might incur the initial implementation cost estimated for the proposed rule but avoid annual operating costs; however, the proposed rule is based upon the premise that a terrorist or criminal is not likely to ignore a larger aircraft (determined by FAA to be those with seating configurations of 61 or greater seats) merely because it is operated by a small entity.

Accordingly, this alternative is not considered feasible because it is unlikely to counter the existing terrorist threat. The potential cost of compliance associated with this alternative is estimated to be $10 million ($9 million, discounted) over 10 years, 1998 dollars, for all 12 small entities potentially impacted by this proposed rule. This cost estimate assumes that potentially impacted small entities would only incur startup costs for 1998, to be prepared in the event the Assistant Administrator for Civil Aviation Security requests that they implement and operate a CAPS program identical to that of the proposed rule. Further, this analysis assumes that air carriers could respond immediately to a CAPS program request, using existing personnel in the short run. *Conclusion:* This alternative would impose the smallest cost of compliance on part 108 small entities, and it would not impose a significant economic impact (less than one percent of the median annual revenues of the small entities or $823,000) on a substantial number of such small entities. This alternative would provide minimal improvement in protection against terrorism because it would be implemented only after an airline was known to be a target. This alternative is rejected on the basis that it would permit an unacceptable level of risk to continue and would jeopardize FAA's intent to address current security concerns related to U.S. civil aviation.

3. Small Entities Do Nothing When Receiving Passengers From a Large Entity Air Carrier That Has Applied Proposed Rule

The proposed rule could be revised to require small entities (having operations using aircraft of 61 or greater seats) to apply the proposed rule only for originating passengers. For this alternative, when a passenger transfers from a large entity to a small entity (on which the flight is to the passenger's final destination), that small entity would not be required to perform additional security measures. The small entity would still be required to implement the proposed rule for originating passengers (including those transferring to a large entity). The checked baggage of some passengers previously identified as posing a threat, would be allowed to continue on the small entity if they had been subjected to heightened security measures by a major air carrier. The potential cost of compliance associated with this alternative is estimated to be $61 million ($43 million, discounted) over 10 years, 1998 dollars, for all 12 small entities potentially impacted by this proposed rule. This cost estimate was derived on the premise that the proposed rule would only apply to those passengers that start their trips on flights provided by the small entities. Since at least half of the passengers carried by small entities are received from larger air carriers, the cost of this alternative would be half of that cost imposed by the proposed rule. *Conclusion:* This alternative would impose the third highest cost of compliance impact on part 108 small entities. It would impose a significant economic impact on 6 of 12 small entities. This alternative would achieve only 50% of the potential safety of the proposed rule. This alternative is rejected on the basis that it would offer an unacceptably high level of threat to U.S. civil aviation security. While the potential safety level of this alternative is higher than that of Alternative Two, it is significantly lower than that of the proposed rule.

4. Small Entities Apply Proposed Rule on a Smaller Scale

The proposed rule could be revised to allow small entities to apply baggage matching for a smaller number of selectees. Under this alternative, the rate for selectees would be 1% (as opposed to 5% for the proposed rule). The cost savings to small entities would depend on the magnitude of the reduction in the number of selectees; however, this would involve reducing the number of selectees arbitrarily and not based on a prudent rationale. Under this alternative, 80% of the checked baggage of passengers who would have been identified as CAPS selectees under the proposed rule would be allowed to go through the system without undergoing additional security measures. Thus, under this alternative a high level of risk would still remain that would be mitigated by the proposed rule. The potential cost of compliance associated with this alternative is estimated to be $99 million ($71 million, discounted) over 10 years, 1998 dollars, for all 12 small entities potentially impacted by this proposed rule. This cost estimate is based on the premise that small entities would primarily experience a reduction in delay costs of about 80% of that to be incurred under the proposed rule. The 1% selectee rate of this alternative represents a reduction of 80% when compared to the proposed rule's selectee rate of 5%. With 80% fewer passengers as potential selectees, problems with reconciliation of checked baggage would be significantly reduced. This impact is assumed to be linear, for lack of more accurate information. According to technical personnel with SABRE, small changes in the selectee rate (between 1% and 20%, for example) would only have a linear affect on delay costs. That is, a 10% selectee rate would have twice the delay costs than a 5% selectee rate, etc. There may also be reductions in startup and operating costs, though to what extent is unknown. This alternative would only generate potential security benefits of about 20% (⅕ = 20%) of that of the proposed rule. *Conclusion:* This alternative would impose a lower cost of compliance on part 108 small entities than the proposed rule; however, this alternative (when compared to the proposed rule) would provide a less secure flight environment to small part

108 operators and passengers. It would also impose a significant economic impact on a substantial number of such small entities (more than 1% of the median annual revenues of the small entities, or $823,000). This alternative is rejected on the basis that it would not sufficiently reduce the risk of explosions due to terrorism.

5. The CAPS NPRM (Preferred)

This alternative represents the proposed rule for CAPS. Under this alternative, small entities (in addition to any other part 108 aircraft operators with airplanes having 61 or more seats) would be required to implement CAPS (estimated at selectee rate of 5% of all passengers (originating only) whose checked baggage would be subjected to additional security measures), or either conduct 100% PPBM or screen checked baggage by EDS (where available). The cost of compliance expected to be incurred by the 12 small entities subject to the requirements of the proposed rule is estimated to be $122 million ($85 million, discounted) over the next 10 years.

This alternative is preferred to the aforementioned alternatives because it would impose costs and generate benefits in a manner that would create the best balance between the cost of doing business for all affected part 108 operators and enhanced aviation security (in the form of threat reduction) for the traveling public (including operators).

International Trade Impact Statement

This proposed rule would not present a significant impediment to either U.S. firms doing business aboard, or foreign firms doing business in the United States. The proposed rule would only apply to and impact those part 108 scheduled air carriers (with 61 or more passenger seats) that conduct operations in the United States. Foreign air carriers do not compete with U.S. domestic air carriers in providing air transportation within the United States. Air carriers that conduct operations outside of the United States are required to conduct 100% PPBM, which is a more stringent requirement than contained in this proposal.

Initial Unfunded Mandates Assessment and Analysis

A. Applicability of the Unfunded Mandates Act

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 or rules.

Since this proposed rule contains a private sector mandate with a potential cost impact of more than $100 million annually, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do apply. For this reason, an assessment of the Unfunded Mandates Act on the impacted private sector is discussed below.

B. Unfunded Mandates Act Impact Assessment

To assess the potential impact of the Unfunded Mandates Reform Act (Act) of 1995 from this proposed rule, the Act identifies six components that must be addressed in the assessment of this proposed rule. Each of those components is discussed below.

1. Provision of Federal Law Under Which the Proposed Rule is Being Promulgated

The legal basis for the proposed rule is found in 49 U.S.C. 44901 *et seq.* As a matter of policy, the FAA must consider, among other concerns, maintaining and enhancing safety and security in air commerce as its highest priorities (49 U.S.C. 40101(d)).

2. Assessment of the Anticipated Costs and Benefits of the Federal Mandate

a. *Estimate of Costs*—The proposed rule would impose an estimated cost of $2.8 billion ($2.0 billion, discounted) over 10 years. This cost estimate is composed of three components: (1) checked baggage matching costs ($2.2 billion; $1.6 billion, discounted), (2) checked baggage matching flight delay costs ($473 million; $326 million, discounted), and (3) CAPS program costs ($70 million; $51 million, discounted). During the first year of the proposed rule (2000), which is also the most costly, part 108 air carriers are expected to incur costs of approximately $456 million ($426, discounted). This estimate includes fixed and recurring cost components.

b. *Estimate of Benefits*—The primary benefit of the proposed rule would be significantly increased protection to Americans and others traveling on U.S. domestic air carrier flights from the increasing threat of acts of terrorism. Specifically, the proposed rule is aimed at preventing explosives from being placed on board commercial flights in checked baggage. In order for security benefits to offset compliance costs, a terrorist act (such as a Class I Explosion) resulting in 380 aviation fatalities (including other types of casualty losses such as aircraft replacement, market loss, etc.) would have to be avoided over the 10 years.

c. *Estimates of Future Costs of Compliance of the Federal Mandate*—For the 32 aircraft operators that would potentially be impacted by the proposed rule, the total annual costs in each of the next 10 years would be greater than $100 million. The total cost of the proposed rule for the 10-year period (in 1998 dollars) would be approximately $2.8 billion ($2.0 billion, discounted) and the annualized present value of the costs of compliance would be approximately $234 million per year. A more detailed discussion of costs is shown in the analysis of costs section of this regulatory impact analysis summary.

d. *Estimates of Disproportionate Budgetary Effects of the Federal Mandate*—The 32 aircraft operators that would be impacted by the proposed rule are widely dispersed across the United States, as evident by their respective hub locations. For example, Delta Airlines has its main hub in Atlanta, GA; United Airlines has its main hub in Chicago, IL; American and Southwest Airlines have their main hubs in Dallas, TX. Smaller air carriers (namely regionals) also have their main hubs dispersed similarly to the majors and nationals since they primarily carry their passengers into small hub airports. It is for these reasons that the proposed rule would not impose any disproportionate budgetary effects on

any particular region of the country. The proposed rule would, however, impose costs on a particular segment of the private sector as noted previously in the estimate of costs section of this Unfunded Mandate Act Analysis.

e. *Estimates of the Effect of the Federal Mandate on the National Economy*—As the result of the proposed rule, the impacted part 108 air carriers are expected to increase staffing and training of airport terminal personnel. There is insufficient information to be able to estimate the multiplier effect the additional jobs spurred by this proposed rule would have on the local economy in the form of a lower unemployment rate, added tax revenues, and increased sales for consumer goods on local communities and the national economy. The FAA is reasonably certain that the creation of additional jobs by the proposed rule would have a positive impact.

f. *Discussion of the Least Burdensome Regulatory Alternative*—The FAA has identified four alternatives to the proposed rule in addition to maintaining the status quo: (1) require mandatory EDS (phased in) without CAPS; (2) require 100% PPBM during phase-in of EDS; (3) require random bag matching during EDS phase-in; or (4) require bag matching on only some CAPS selectees. Section V of the full Regulatory Impact Analysis (RIA) (contained in the docket) describes the four alternatives to the proposed rule as well as the costs to implement them. The FAA contends that using CAPS to identify those passengers who possibly are a threat to the security of a flight and requiring passenger baggage matching or screening by EDS, where EDS is available, is the most practical and cost-beneficial alternative currently available to increase the level of security on domestic flights. A more detailed discussion of alternatives is shown in the analysis of alternative section of the RIA.

C. Conclusion

The FAA has determined that the cost of compliance of the proposed rule would be greater than $100 million in each of the 10 years, but the economic impact on State, local and tribal governments would not exceed the $100 million threshold. The proposed rule would impose a Federal mandate of greater than $100 million per year on the private sector. Of all of the alternatives examined in this assessment of the Act and the analysis of alternatives section of the RIA, the proposed rule provides the largest net benefit.

Federalism Implications

The regulation 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 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.

List of Subjects in 14 CFR Part 108

Air carriers, Aircraft, Airmen, Airports, Arms and munitions, Explosives, Law enforcement officers, Reporting and recordkeeping requirements, Security measures, X-rays.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 108 of Title 14, Code of Federal Regulations (14 CFR part 108) as follows:

PART 108—AIRCRAFT OPERATOR SECURITY

1. The authority citation for part 108 continues to read as follows:

Authority: 49 U.S.C. 106(g), 5103, 40113, 40119, 44701–44702, 44705, 44901–44905, 44907, 44913–44914, 44932, 44935–44936, 46105.

2. Amend § 108.5 by revising paragraph (a) to read as follows:

§ 108.5 Security program: Adoption and implementation.

(a) Each certificate holder shall adopt and carry out a security program that meets the requirements of § 108.7 of this part for each of the following scheduled or public charter passenger operations:

(1) Each operation with an airplane having a passenger seating configuration of more than 60 seats.

(2) Each operation with an airplane having a passenger seating configuration of 60 or fewer seats that provides deplaned passengers access, that is not otherwise controlled by a certificate holder using an approved security program or a foreign air carrier using a security program required by § 129.25 of this chapter, to a sterile area, except that where the certificate holder elects to not carry out the provisions of § 108.12 of this part, that part of the program effecting compliance with the requirements listed in § 108.7(b)(9) of this part need only be implemented when the Associate Administrator for Civil Aviation Security, or a designee, notifies the certificate holder in writing that a security threat exists with respect to the operation.

(3) Each operation with an airplane having a passenger seating configuration of 60 or fewer seats where the certificate holder elects to carry out the provisions of § 108.12 of this part, except that where the operation does not provide deplaned passengers access to a sterile area, the requirements of § 108.7(b) (1) and (4) of this part need only be implemented when the Associate Administrator for Civil Aviation Security, or a designee, notifies the certificate holder in writing that a security threat exists with respect to the operation.

(4) Each operation with an airplane having a passenger seating configuration of more than 30 but less than 61 seats, that is not subject to paragraph (a)(2) of this section, except that those parts of the program effecting compliance with the requirements of § 108.7(b) (1), (2), (4) and (9) of this part need only be implemented when the Assistant Administrator for Civil Aviation Security notifies the certificate holder in writing that a security threat exists with respect to the operation.

* * * * *

3. Amend § 108.7 by adding paragraph (b)(9) to read as follows:

§ 108.7 Security program: Form, content, and availability.

* * * * *

(b) * * *

(9) The procedures used to perform the checked baggage security functions specified in § 108.12 of this part for scheduled passenger operations.

* * * * *

4. Add § 108.12 to read as follows:

§ 108.12 Security of checked baggage for operations within the United States.

(a) Each air carrier required to adopt and carry out a security program in accordance with § 108.5 of this part shall apply the checked baggage security requirements of this section in accordance with its security program for scheduled passenger operations within the United States. For each operation the air carrier shall—

(1) For each originating passenger checking baggage, use a computer-assisted passenger screening (CAPS) system, approved by the Administrator, capable of selecting passengers based on specific criteria and at random; or

(2) Determine that the passenger associated with each originating checked bag is aboard the flight or that each originating bag not matched to a passenger aboard the flight has been screened by an explosives detection system (EDS).

(b) For each operation subject to paragraph (a) of this section, the air carrier may not transport the baggage of a non-originating passenger unless—

(1) The passenger is aboard the flight;

(2) The passenger associated with the baggage was screened by a CAPS system approved by the Administrator prior to an earlier flight leg and information is available to the air carrier that the passenger was not selected;

(3) Information is available to the air carrier that the baggage was screened by an EDS prior to an earlier flight leg;

(4) The baggage is screened by an EDS prior to the current flight; or

(5) The passenger is screened for the current flight as an originating passenger in accordance with paragraph (a) (1) of this section.

(c) The checked baggage of a passenger selected by the CAPS system shall not be transported aboard the flight unless—

(1) The baggage is screened by an EDS where an EDS is available; or

(2) Where an EDS is not available, the passenger associated with the baggage is aboard the flight.

(d) An EDS is considered to be available to an air carrier for screening a checked bag when it is—

(1) Under the operational control of the air carrier;

(2) Functioning properly;

(3) Located proximate to where the baggage is tendered by the passenger or along the route the baggage normally travels during the process of being loaded onto the aircraft;

(4) Staffed by appropriately trained personnel; and

(5) Not in use to screen other identified baggage such that a significant delay in a flight might result from having to wait to use the EDS to screen the bag.

(e) Each air carrier shall establish procedures for implementing security measures for checked baggage under this section that—

(1) Ensures nondiscriminatory application; and

(2) Minimizes the overt identification of passengers selected for additional security procedures.

(f) Each person used by an air carrier to implement its CAPS system whose job function will be likely to involve interactions with passengers shall be trained on the CAPS system. The training shall include—

(1) An overview of the purpose of screening, including an explanation that selection does not imply that a passenger is suspected of any illegal activity;

(2) A general description of the CAPS system and how it is designed to select passengers on a nondiscriminatory basis;

(3) An advisory that the CAPS system selects some passengers at random;

(4) An advisory that the CAPS system is not connected to any law enforcement or intelligence data base; and

(5) Instruction on treating passengers selected by the CAPS system in a respectful and non-stigmatizing manner.

(g) An air carrier may not modify the selection criteria of the CAPS system without the written approval of the Administrator. Nor may an air carrier apply any supplemental system of passenger screening to select passengers for additional security measures without the approval of the Administrator.

(h) (1) Each air carrier shall make available to the Administrator the information specified in its security program on the general operation of its CAPS system.

(2) Each air carrier shall maintain, for at least 24 hours, but not longer than 72 hours, after flight departure, information linking a passenger's name or other identifying data to whether the passenger was selected by the CAPS system.

(3) Each air carrier shall provide the Administrator with CAPS system data for any specific flight, including selectee status of individuals on the flight, when requested as part of—

(i) An evaluation of the CAPS system to determine possible discriminatory impacts;

(ii) An accident investigation;

(iii) A security incident investigation; or

(iv) Security compliance oversight.

(i) An air carrier may apply alternate procedures that are established in its security program for screening checked bags to address special situations. These situations could include—

(1) Baggage acceptance at off-airport locations;

(2) The transportation of bags separated from a passenger for reasons outside the control of the passenger, e.g., lost bags;

(3) CAPS system failure;

(4) Extraordinary operational circumstances;

(5) The use of technologies or equipment other than an EDS to screen checked baggage; and

(6) Any other situation specified by the Associate Administrator for Civil Aviation Security in the air carrier's security program.

Issued in Washington, DC, on April 13, 1999.

Anthony Fainberg,

Director, Office of Civil Aviation Security Policy and Planning.

[FR Doc. 99–9635 Filed 4–14–99; 10:07 am]

BILLING CODE 4910–13–U

federal register

Monday
April 19, 1999

Part III

Department of Agriculture

Cooperative State Research, Education, and Extension Service

Proposed Guidelines for State Plans of Work for the Agricultural Research and Extension Formula Funds; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Proposed Guidelines for State Plans of Work for the Agricultural Research and Extension Formula Funds

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice and Request for Comment.

SUMMARY: The Cooperative State Research, Education, and Extension Service (CSREES) is requesting public comment on the proposed Guidelines for State Plans of Work for the Agricultural Research and Extension Formula Funds. These guidelines prescribe the procedures to be followed by the eligible institutions receiving Federal agricultural research and extension formula funds under the Hatch Act of 1887, as amended (7 U.S.C. 361a *et seq.*); sections 3(b)(1) and (c) of the Smith-Lever Act of 1914, as amended (7 U.S.C. 343 (b)(1) and (c)); and sections 1444 and 1445 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3221 and 3222). The recipients of these funds are commonly referred to as the 1862 land-grant institutions and 1890 land-grant institutions, including Tuskegee University. CSREES is also requesting public comment on the development of research and extension protocols used to evaluate the success of multistate, multi-institutional, and multidisciplinary research and extension activities, and joint research and extension activities, in addressing critical agricultural issues identified in the submitted plans of work.

DATES: Written comments are invited from interested individuals and organizations. To be considered in the formulation of the guidelines, comments must be received on or before May 19, 1999.

ADDRESSES: Address all comments to CSREES–USDA; Office of Extramural Programs; Policy and Program Liaison Staff; Mail Stop 2299; 1400 Independence Avenue, S.W.; Washington, D.C. 20250–2299. Comments may be hand-delivered to CSREES–USDA; Office of Extramural Programs; Room 302 Aerospace Center; 901 D Street, S.W.; Washington, D.C. 20024. Comments may also be mailed electronically to oep@reeusda.gov.

FOR FURTHER INFORMATION CONTACT: Dr. George Cooper; Deputy Administrator, Partnerships; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Washington, D.C. 20250; at 202–720–5285 or 202–720–5369, 202–720–4924 (fax) or via electronic mail at bhewitt@reeusda.gov.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

In accordance with the Office of Management and Budget (OMB) regulations (5 CFR Part 1320) that implement the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements imposed by the implementation of these guidelines have been submitted to OMB for approval. Those requirements will not become effective prior to OMB approval. The eligible institutions will be notified upon this approval.

Title: Reporting Requirements for State Plans of Work for Agricultural Research and Extension Formula Funds.

Summary: The purpose of this collection of information is to implement the requirements of section 7 of the Hatch Act of 1887, as amended (7 U.S.C. 361g); section 4 of the Smith-Lever Act, as amended (7 U.S.C. 343); and section 1444(d) and section 1445(c) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (NARETPA), as amended (7 U.S.C. 3221(d) and 3222 (c)), which require that before funds may be provided to a State or eligible institution under these Acts a plan of work must be submitted by the proper officials of the State or eligible institution, as appropriate, and approved by the Secretary of Agriculture.

Need for the Information: The Agricultural Research, Extension, and Education Reform Act of 1998 (AREERA), Pub. L. 105–185, amended the Hatch Act of 1887, Smith-Lever Act, and sections 1444 and 1445 of NARETPA to require plans of work to be received and approved by CSREES prior to the distribution of funding authorized under these Acts. This collection of information will satisfy the plan of work reporting requirements as imposed by these Acts. This collection of information includes three parts: the submission of a 5-year plan of work every five years; the submission of an annual update of the 5-year plan of work, if applicable; and the submission of an annual report of accomplishments and results.

The first two collections of information are required in order to satisfy the above amendments to the Acts that authorize the distribution of agricultural research and extension formula funds to States and eligible institutions. In addition to a description of planned programs, the 5-Year Plan of Work must include information on how critical short-term, intermediate, and long-term agricultural issues in the State will be addressed in research and extension programs; how the State or eligible institution has developed a process to consult users of agricultural extension and research in the identification of critical agricultural issues in the State and the development of programs and projects targeting these issues (also referred to as stakeholder input); how the State or eligible institution has made efforts to identify and collaborate with other universities and colleges that have a unique capacity to address the identified agricultural issues in the State and the extent of current and emerging efforts (including the regional and/or multistate efforts) to work with these institutions; the manner in which research and extension, including research and extension activities funded other than through formula funds, will cooperate to address the critical issues in the State, including activities to be carried out separately, sequentially, or jointly; and for extension, the education and outreach programs already underway to convey available research results that are pertinent to a critical agricultural issue, including efforts to encourage multicounty cooperation in the dissemination of research information.

Section 103(e) of AREERA (7 U.S.C. 7613(e)) also required, effective October 1, 1999, that a merit review process be established at the 1862 land-grant institutions and 1890 land-grant institutions in order to obtain agricultural research and extension formula funds. The 5-Year Plan of Work includes a section for the description of the merit review process to ensure that such a process is in place prior to the distribution of agricultural research and extension formula funds.

Sections 104 and 105 of AREERA also amended the Hatch Act and Smith-Lever Act to require that a specified amount of the agricultural research and extension formula funds be expended for multistate activities and that a description of these activities be reported in the plan of work. Section 204 of AREERA further amended the Hatch Act and Smith-Lever Act to require that a specified amount of the agricultural research and extension formula funds be expended for activities that integrate cooperative research and extension and that a description of these activities be included in the plan of work. Two components of the 5-Year Plan of Work submission on Multistate Activities and on Integrated Research

and Extension Activities have been included to meet these additional requirements.

The second collection of information will be an annual update to the 5-Year Plan of Work. This will be required only if there is a substantive change to planned programs or a significant change in funding as outlined in the proposed guidelines.

The third collection of information will be the Annual Report of Accomplishments and Results. This will be based on the 5-Year Plan of Work and will assist CSREES in ensuring that federally supported and conducted research and extension activities are accomplished in accordance with the management principles set forth under section 102(d) of AREERA (7 U.S.C. 7612(d)). These principles require that to the maximum extent possible, CSREES shall ensure that federally supported research and extension activities are accomplished in a manner that integrates agricultural research, extension, and education functions to better link research to technology transfer and information dissemination activities; encourages regional and multistate programs to address relevant issues of common concern and to better leverage scarce resources; and achieves agricultural research, extension, education objectives through multi-institutional and multifunctional approaches and by conducting research at facilities and institutions best equipped to achieve these objectives.

Respondents: Respondents will be the 57 1862 land-grant institutions and the 17 1890 land-grant institutions, including Tuskegee University, who will provide a 5-year plan of work once every five years; will update annually this 5-year plan of work, if necessary; and will report on the accomplishments and results of this 5-year plan of work annually to CSREES.

Estimate of Burden: The amendments to AREERA require a plan of work for funds that are distributed on an annual basis. To reduce the burden on respondents, CSREES proposes a 5-Year Plan of Work to be modified by an annual update only where there are substantive program changes and/or significant funding changes.

The total reporting and recordkeeping requirements for the submission of the ''5-Year Plan of Work'' is estimated to average 1,349.44 hours per response. There are five required components of this ''5-Year Plan of Work': ''Planned Programs,'' ''Stakeholder Input Process,'' ''Program Review Process,'' ''Multistate Activities,'' and ''Integrated Research and Extension Activities.'' The total reporting and recordkeeping requirement for ''Planned Programs'' is estimated at 690.00 hours; for ''Stakeholder Input Process'' is estimated at 9.19 hours; for ''Program Review Process'' is estimated at 276.00 hours; for ''Multistate Activities'' is estimated at 216.75 hours; and for ''Integrated Research and Extension Activities'' is estimated at 157.50 hours.

Estimated Number of Respondents: 57.

Estimated Number of Responses: 148.

Estimated Total Annual Burden on Respondents: 199,717.12 hours.

Frequency of Responses: Once every five years.

If the ''5-Year Plan of Work'' needs to be updated as an ''Annual Update to the 5-Year Plan of Work,'' the total reporting and recordkeeping requirement is estimated to average 134.94 hours per response.

Estimated Number of Respondents: 7.

Estimated Number of Responses: 15.

Estimated Total Annual Burden on Respondents: 2,024.16 hours.

Frequency of Responses: Annually.

The total annual reporting and recordkeeping requirements for the ''Annual Report of Accomplishments and Results'' is estimated to average 1,366.67 hours per response.

Estimated Number of Respondents: 57.

Estimated Number of Responses: 148.

Estimated Total Annual Burden on Respondents: 202,267.16 hours.

Frequency of Responses: Annually.

Comments: Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: CSREES–USDA; Office of Extramural Programs; Policy and Program Liaison Staff; Mail Stop 2299; 1400 Independence Avenue, S.W.; Washington, D.C. 20250–2299 by June 23, 1999 or to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20502. Reference should be made to the volume, page, and date of this **Federal Register** publication.

Background and Purpose

The Cooperative State Research, Education, and Extension Service (CSREES) proposes to implement the following Guidelines for State Plans of Work for the Agricultural Research and Extension Formula Funds in order to meet the plan of work reporting requirements enacted in the Agricultural Research, Extension, and Education Reform Act of 1998 (AREERA), Pub. L. 105–185. The AREERA amendments added new and consistent plan of work requirements for agricultural research and extension formula funds provided under the Hatch Act of 1887 (7 U.S.C. 361a *et seq.*), the Smith-lever Act (7 U.S.C. 341 *et seq.*), and sections 1444 and 1445 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (U.S.C. 3221 and 3222). The specific plan of work reporting requirements are outlined in the ''Preface and Authority'' section of the Guidelines.

These guidelines were developed by CSREES in consultation with the State partners at the 1862 land-grant institutions and the 1890 land-grant institutions, including Tuskegee University. Since the enactment of AREERA on June 23, 1998, the Agency has engaged in these consultations, under an exemption to the Federal Advisory Committee Act (7 U.S.C. 3124a(e)), with members of both the Federal and State partnership focusing on different aspects of the plan of work and requirements for the agricultural research and extension formula funds (i.e., stakeholder input, multistate and integrated activities), and has received input and comments from the 1862 and 1890 land-grant community to ensure that the Guidelines, while meeting the legal requirements of the legislation, address the issues and concerns of the recipients.

CSREES is committed to a set of basic principles regarding the plan of work emphasizing the content in the plan of work rather than the format. CSREES has developed guidance about what goes into a plan of work, not how it is to be reported. Thus, CSREES does not intend to develop a prototype, template, or a model plan of work. CSREES is committed to allowing all institutions maximum flexibility in responding to the content required by legislation.

The amendments to the Hatch and Smith-Lever Acts plan of work requirements made by section 202 of AREERA require the Secretary of Agriculture to develop protocols to

evaluate the success of multistate, multi-institutional, and multidisciplinary research and extension activities, and joint research and extension activities, in addressing the critical agricultural issues identified in the plans of work. Although not included in the Guidelines at present, CSREES also seeks comments on evaluation protocols and criteria for the plans of work that will eventually become part of the Guidelines. This section also stipulates that these protocols be developed by CSREES in shared consultation with the National Agricultural Research, Extension, Education, and Economics Advisory Board. CSREES is in the process of developing these protocols in consultation with this Advisory Board.

CSREES is proposing to use the Annual Reports of Accomplishments and Results to evaluate the success of multistate, multi-institutional, and multidisciplinary activities, and joint research and extension activities, in addressing critical agricultural issues identified in the 5-Year Plans of Work. At this time, CSREES proposes to use the following evaluation criteria: (1) Did the planned program address the critical issues of strategic importance, including those identified by the stakeholders? (2) Did the planned program address the needs of under-served populations of the State(s)? (3) Did the planned program describe the expected outcomes and impacts? and (4) Did the planned program result in improved program effectiveness and/or efficiency?

Pursuant to the plan of work requirements enacted in the Agricultural Research, Extension, and Education Reform Act of 1998, the Cooperative State Research, Education, and Extension Service hereby proposes to implement the Guidelines for State Plans of Work for Agricultural Research and Extension Formula Funds as follows:

Guidelines for State Plans of Work for Agricultural Research and Extension Formula Funds

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I. Preface and Authority

Sections 202 and 225 of the Agricultural Research, Extension, and Education Reform Act of 1998 (AREERA), Pub. L. 105–185, enacted amendments requiring all States and 1890 institutions receiving formula funds authorized under the Hatch Act of 1887, as amended (7 U.S.C. 361a *et seq.*), the Smith-Lever Act, as amended (7 U.S.C. 341 *et seq.*), and sections 1444 and 1445 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (NARETPA), as amended (7 U.S.C. 3221 and 3222), to prepare and submit to the Cooperative State Research, Education, and Extension Service (CSREES) a plan of work for the use of those funds.

While the requirement for the Hatch Act and Smith-Lever Act funds applies to the States, CSREES assumes that in most cases the function will be performed by the 1862 land-grant institution in the States. The only ''eligible institutions'' to receive formula funding under sections 1444 and 1445 of NARETPA are the 1890 land-grant institutions and Tuskegee University. Therefore, these guidelines refer throughout to ''institutions'' to include both the 1862 and 1890 land-grant institutions, including Tuskegee University.

Further, these guidelines require a plan of work that covers both research and extension. Although the District of Columbia receives extension funds under the District of Columbia Postsecondary Education Reorganization Act, Pub. L. 93–471, as opposed to the Smith-Lever Act, CSREES has determined that it should be subject to the plan of work requirements imposed under these guidelines except where expressly excluded.

All the requirements of AREERA with regard to agricultural research and extension formula funds were considered and were incorporated in these plan of work guidelines including descriptions of the following: (1) The critical short-term, intermediate, and long-term agricultural issues in the State and the current and planned research and extension programs and projects targeted to address the issues; (2) The process established to consult with stakeholders regarding the identification of critical agricultural issues in the State and the development of research and extension projects and programs targeted to address the issues; (3) The efforts made to identify and collaborate with other colleges and universities that have a unique capacity to address the identified agricultural issues in the State and the extent of current and emerging efforts (including regional and multistate efforts) to work with those other institutions; (4) The manner in which research and extension, including research and extension activities funded other than through formula funds, will cooperate to address the critical issues in the State, including the activities to be carried out separately, sequentially, or jointly; and (5) For extension, the education and outreach programs already underway to convey available research results that are pertinent to a critical agricultural issue, including efforts to encourage multicounty cooperation in the dissemination of research information.

These guidelines also take into consideration the requirement in section 102(c) of AREERA for the 1862, 1890, and 1994 land-grant institutions receiving agricultural research, extension, and education formula funds to establish a process for receiving stakeholder input on the uses of such funds. This stakeholder input requirement, as it applies to research and extension at 1862 and 1890 land-grant institutions, has been incorporated as part of the plan of work process.

The requirement of section 103(e) of AREERA also is addressed in these plan of work guidelines. This section requires that the 1862, 1890, and 1994 land-grant institutions establish a merit review process, prior to October 1, 1999, in order to obtain agricultural research, extension, and education funds. For purposes of these guidelines applicable to formula funds, a merit review process must be established for extension programs funded under sections 3(b)(1) and (c) of the Smith-Lever Act and under section 1444 of NARETPA, and for research programs funded under

sections 3(c)(1) and (2) of the Hatch Act (commonly referred to as Hatch Regular Formula Funds) and under section 1445 of NARETPA. Section 104 of AREERA amended the Hatch Act of 1887 also to stipulate that a scientific peer review process (that also would satisfy the requirements of a merit review process under section 103(e)) be established for research programs funded under section 3(c)(3) of the Hatch Act (commonly referred to as Hatch Multistate Research Funds). As previously stated, these program review processes must be established prior to October 1, 1999, in order for the institutions to obtain agricultural research and extension formula funds. Consequently, a description of the merit review and scientific peer review process has been included as a requirement in the submission of the 5-Year Plan of Work.

These plan of work guidelines also require reporting on the multistate and integrated research and extension programs. Section 104 of AREERA amended the Hatch Act of 1887 to redesignate the Hatch regional research funds as the Hatch Multistate Research Fund, specifying that these funds be used for cooperative research employing multidisciplinary approaches in which a State agricultural experiment station, working with another state agricultural experiment station, the Agricultural Research Service, or a college or university, cooperates to solve the problems that concern more than one State. Section 105 of AREERA amended the Smith-Lever Act to require that each institution receiving extension formula funds under sections 3(b) and (c) of the Smith-Lever Act expend for multistate activities in FY 2000 and thereafter a percentage that is at least equal to the lesser of 25 percent or twice the percentage of funds expended by the institution for multistate activities in FY 1997. Section 204 of AREERA amended both the Hatch and Smith-Lever Acts to require that each institution receiving agricultural research and extension formula funds under the Hatch Act and sections 3(b) and (c) of the Smith-Lever Act expend for integrated research and extension activities in FY 2000 and thereafter a percentage that is at least equal to the lesser of 25 percent or twice the percentage of funds expended by the institution for integrated research and extension activities in FY 1997. These sections also require that the institutions include in the plan of work a description of the manner in which they will meet these multistate and integrated requirements.

These applicable percentages apply to the Federal agricultural research and extension formula funds only. Federal formula funds that are used by the institution for a fiscal year for integrated activities may also be counted to satisfy the multistate activities requirement.

The multistate and integrated research and extension requirements do not apply to formula funds received by American Samoa, Guam, Micronesia, Northern Marianas, Puerto Rico, and the Virgin Islands. Since the Smith-Lever Act is not directly applicable, the multistate and integrated extension requirements do not apply to extension funds received by the District of Columbia, except to the extent it voluntarily complies.

The amendments made by sections 105 and 204 of AREERA also provide that the Secretary of Agriculture may reduce the minimum percentage required to be expended by the institution for multistate and integrated activities in the case of hardship, infeasibility, or other similar circumstance beyond the control of the institution. CSREES will issue separate guidance on the establishment of the FY 1997 baseline percentages for multistate activities and integrated activities and on requests for reduction in the required minimum percentage.

Also included in these guidelines are instructions on how to report on the annual accomplishments and results of the planned programs contained in the 5-Year Plan of Work, information on the evaluation of accomplishments and results, and information on when and how to update the 5-Year Plan of Work if necessary.

II. Submission of the 5-Year Plan of Work

A. General

1. Planning Option

This document provides guidance for preparing the plan of work with preservation of institutional autonomy and programmatic flexibility within the Federal-State Partnership. The plan of work is a 5-year prospective plan that covers the period of fiscal year 2000 through 2004, with the option to submit annual updates to the 5-Year Plan of Work. The 5-Year Plans of Work may be prepared for an institution's individual functions (i.e., research or extension activities), for an individual institution (including the planning of research and extension activities), or for state-wide activities (a 5-year research and/or extension plan of work for all the eligible institutions in a State). Each 5-Year Plan of Work must reflect the content of the program(s) funded by Federal agricultural research and extension formula funds and the required matching funds. This 5-Year Plan of Work must describe not only how the program(s) address critical short-term, intermediate, and long-term agricultural issues in a State, but how it relates to and is part of the broad national goals.

2. Period Covered

The 5-Year Plan of Work should cover the period from October 1, 1999, through September 30, 2004.

3. Projected Resources

The resources that are allocated for various planned programs in the 5-Year Plan of Work, in terms of human and fiscal measures, should be included and projected over the next five years. The baseline for the institution's or State's initial plan (for five years) should be the Federal agricultural research and extension formula funds for FY 1999 and the required matching funds. During the course of the 5-Year Plan of Work, if the baseline for the formula funds at the FY 1999 level changes by more than 10 percent in one year or by 20 percent or more cumulatively during the 5-year period, a revised 5-Year Plan of Work should be submitted as an annual update the following fiscal year.

4. Submission and Due Date

The 5-Year Plan of Work must be submitted by July 1, 1999, to the Partnerships Unit of the Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture. It is preferred that these 5-Year Plans of Work be submitted electronically to bhewitt@reeusda.gov in either WordPerfect file format, Microsoft Word file format, or ASCII file format. If this submission method is not available, an original and two copies of the 5-Year Plan of Work should be submitted to: Partnerships/POW; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Stop 2214; 1400 Independence Avenue, S.W.; Washington. D.C. 20250–2214.

5. Certification

The 5-Year Plan of Work must be signed by the 1862 Extension Director, 1862 Research Director, 1890 Extension Administrator, and/or 1890 Research Director, depending on the planning option chosen.

6. Definitions

For the purpose of implementing the Guidelines for State Plans of Work for Agricultural Research and Extension Formula Funds, the following definitions are applicable:

Formula funds for the purposes of the plan of work guidelines means funding

provided by formula to 1862 land-grant institutions under section 3 of the Hatch Act of 1887, as amended (7 U.S.C. 361a) and sections 3(b)(1) and (c) of the Smith-Lever Act, as amended (7 U.S.C. 343(b)(1) and (c)) and to the 1890 land-grant institutions under sections 1444 and 1445 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3221 and 3222).

Formula funds for the purposes of stakeholder input means the funding by formula to the 1862 land-grant institutions and 1890 land-grant institutions covered by these plan of work guidelines as well as the formula funds provided under the McIntire-Stennis Cooperative Forestry Research Program (16 U.S.C. 582, *et seq.*), the Animal Health and Disease Research Program (7 U.S.C. 3195), and the education payments made to the 1994 land-grant institutions under section 534(a) of Pub. L. 103–382 (7 U.S.C. 301 note).

Integrated or joint activities means jointly planned, funded, and interwoven activities between research and extension to solve problems. This includes the generation of knowledge and the transfer of information and technology.

Merit review means an evaluation whereby the quality and relevance to program goals are assessed.

Multi-institutional means two or more institutions within the same or different States or territories that will collaborate in the planning and implementation of programs.

Multistate means collaborative efforts that reflect the programs of institutions located in at least two or more States or territories.

Multi-disciplinary means efforts that represent research, education, and/or extension programs in which principal investigators or other collaborators from two or more disciplines or fields of specialization work together to accomplish specified objectives.

Outcome indicator means an assessment of the results of a program activity compared to its intended purpose.

Output indicator means a tabulation, calculation, or recording of activity of effort expressed in quantitative or qualitative manner which measures the products or services produced by the planned program.

Program review means either a merit review or a scientific peer review.

Scientific peer review means an evaluation performed by experts with scientific knowledge and technical skills to conduct the proposed work whereby the technical quality and relevance to program goals are assessed.

Seek stakeholder input means an open and fair process which allows opportunities for individuals, groups, and organizations a voice in a process that treats all with dignity and respect.

Stakeholder is any person who has the opportunity to use or conduct agricultural research, extension, and education activities in the State.

Under-served means individuals, groups, and/or organizations whose needs have not been addressed in past programs.

Under-represented means individuals, groups, and/or organizations especially those who may not have participated fully including, but not limited to, women, racial and ethnic minorities, persons with disabilities, and limited resource clients.

B. Components of the 5-Year Plan of Work

1. Planned Programs

a. National Goals. The 5-Year Plan of Work should be based on the five national goals established in the Cooperative State Research, Education, and Extension Service (CSREES) Agency Strategic Plans and linked to the five national goals within the Research, Education, and Economics (REE) Mission Area of the U.S. Department of Agriculture. These national goals were adopted by the National Agricultural Research, Extension, Education, and Economics Advisory Board. These goals were developed from stakeholder input in conjunction with existing Federal-State Partnerships. The body of the 5-Year Plan of Work narrative should focus on these goals and outcomes.

Currently the national goals are:

Goal 1: An agricultural system that is highly competitive in the global economy. Through research and education, empower the agricultural system with knowledge that will improve competitiveness in domestic production, processing, and marketing.

Goal 2: A safe and secure food and fiber system. To ensure an adequate food and fiber supply and food safety through improved science based detection, surveillance, prevention, and education.

Goal 3: A healthy, well-nourished population. Through research and education on nutrition and development of more nutritious foods, enable people to make health promoting choices.

Goal 4: Greater harmony between agriculture and the environment. Enhance the quality of the environment through better understanding of and building on agriculture's and forestry's complex links with soil, water, air, and biotic resources.

Goal 5: Enhanced economic opportunity and quality of life for Americans. Empower people and communities, through research-based information and education, to address economic and social challenges facing our youth, families, and communities.

b. Format. As mentioned under the Planning Options section, an institution or State may opt to submit independent plans for the various units (e.g. 1862 research) or an integrated plan which includes all units in the institution or State. Regardless of the option chosen, the 5-Year Plan of Work should be reported in the appropriate matrix format, each cell of which identifies planned programs that fall under one of the national program goals. If an integrated 5-Year Plan of Work is submitted, the various units within the entity for which the 5-Year Plan of Work has been developed (i.e., 1862 research, 1890 research, 1862 extension, 1890 extension) would appear on the vertical axis. Individual cells within the matrix would be used to summarize the State programs.

The following example illustrates the desired matrix.

	Goal 1	Goal 2	Goal 3	Goal 4	Goal 5
1862 Research 1862 Extension 1890 Research 1890 Extension					

c. Program Descriptions. Program descriptions presented in a narrative form or in each cell of the matrix for a planned program will be related to one of the five national goals and should reflect the following planning components:

1. The *statement of issue* to be addressed. This component should discuss the critical agricultural issue within the State that was identified and being targeted by this planned program. This component may also reference the stakeholder input which identified the critical agricultural issue in the State and the need for the targeted research and/or extension program.

2. The *performance goal(s)* is a target level of performance. The *output indicators* should reflect the tabulation, calculation, or recording of activity or effort expressed in quantitative or qualitative manner which measures the products or services produced by the program. The *outcome indicators* should assess the results of a program activity compared to its intended goal.

3. The *key program component(s)* identify the major efforts included in the work to be conducted.

4. The *internal and external linkages* include activities identified as integrated, multidisciplinary, multi-institutional, and/or multistate. This component may also address any efforts made to identify and collaborate with other colleges and universities that have a unique capacity to address the identified agricultural issues within the State and the extent of current and emerging efforts (including regional efforts) to work with those institutions.

5. The *target audiences* identifies the set of stakeholders, customers, and/or consumers for which the program is intended. The 5-Year Plans of Work should address the institution's commitment to facilitating equality of service and ease of access to all research and extension programs and services.

6. The *program duration* should be expressed as short-term, intermediate (one to five years), or long-term (over five years).

7. The *allocated resources* (human and fiscal measures) must be described for each planned program. This component may not only include the amount of Federal agricultural research and/or extension formula funds and matching funds allocated to this planned program, but also the manner in which funds, other than formula funds, will be expended to address the critical issues being targeted by this planned program.

8. *Education and outreach programs* must be described that are already underway to convey the research results that are pertinent to the critical agricultural issue identified in the ''Statement of Issue.'' Efforts to encourage multicounty cooperation in dissemination of research results should also be identified. This planning component applies only to those 5-Year Plans of Work incorporating extension activities of the 1862 and/or 1890 land-grant institutions.

2. Stakeholder Input Process

Section 102(c) of AREERA requires the 1862 land-grant institutions, 1890 land-grant institutions, and 1994 land-grant institutions receiving agricultural research, extension, and education formula funds from CSREES to establish a process for stakeholder input on the uses of such funds. CSREES will promulgate separately in the **Federal Register** regulations to implement this stakeholder input requirement.

As a component of the 5-Year Plan of Work, each institution must report on the actions taken to seek stakeholder input that encourages their participation and a brief statement of the process used by the institution to identify stakeholders and to collect input from them. This report will be required annually and may be submitted with the Annual Report of Accomplishments and Results. This component will satisfy the reporting requirements imposed by the separately promulgated regulations on stakeholder input.

3. Program Review Process

a. Merit Review. Effective October 1, 1999, each 1862 land-grant institution and 1890 land-grant institution must establish a process for merit review in order to obtain agricultural research or extension formula funds.

b. Scientific Peer Review. A scientific peer review is required for all research funded under the Hatch Act of 1887 Multistate Research Fund. For such research, this scientific peer review will satisfy the merit review requirement specified above.

c. Reporting Requirement. As a component of the 5-year Plan of Work, each institution depending on the type of program review required will provide a description of the merit review process or scientific peer review process established at their institution. This description should include the process used in the selection of reviewers with expertise relevant to the effort and appropriate scientific and technical standards.

4. Multistate Research and Extension Activities

a. Hatch Multistate Research. Effective October 1, 1998, the Hatch Multistate Research Fund replaced the Hatch Regional Research Program. The Hatch Multistate Research Fund must be used for research employing multidisciplinary approaches to solve research problems that concern more than one State. For such research, State agricultural experiment stations must partner with another experiment station, the Agricultural Research Service, or another college or university.

b. Smith-Lever Multistate Extension. Effective October 1, 1999, the cooperative extension programs at the 1862 land-grant institutions must expend up to 25 percent of their formula funds provided under sections 3(b)(1) and (c) of the Smith-Lever Act for activities in which two or more State extension services cooperate to solve problems that concern more than one State. As required by law, CSREES will work with each 1862 land-grant institution to identify the amount each institution expended for multistate extension activities for fiscal year (FY) 1997. For FY 2000 and thereafter, cooperative extension programs must commit two times their FY 1997 baseline percentage or 25 percent, whichever is less, for multistate activities. Institutions should describe the contributions of extension staff and programs toward impacts rather than to describe the programs. Each participating State or territory must be a collaborator towards objectives and involved in the outcomes. Evidence of the proposed collaboration must be provided in the 5-Year Plan of Work submitted by each State. This planning is documented through formal agreements, letters of memorandums, contracts, or other instruments that provide primary evidence that a multistate relationship exists.

c. Reporting Requirements. The 5-Year Plan of Work should include a description of the Multistate Research, where applicable, and Multistate Extension programs as specified above and these programs must be reported consistently across the units of an institution as well as with the 5-Year Plan of Work of the cooperating State(s) or State institutions.

5. Integrated Research and Extension Activities

Effective October 1, 1999, up to 25 percent of all funds provided under section 3 of the Hatch Act and under section 3(b)(1) and (c) of the Smith-Lever Act must be spent on activities that integrate cooperative research and extension. As required by law, CSREES will work with each 1862 land-grant institution to establish the institution's baseline for integrated research and extension activities for FY 1997. For FY 2000 and thereafter, 1862 land-grant institutions must commit twice the FY 1997 baseline percentage or 25 percent, whichever is less, for integrated activities. Integration may occur within the State or between units within two or

more States. Integrated programming must be reported in the 5-Year Plan of Work and be reported consistently across the units of the institutions as well as with the 5-Year Plan of Work submitted by cooperating State(s). Federal formula funds used by a State for integrated activities may also be counted to satisfy the multistate research and the multistate extension activity requirements.

C. 5-Year Plan of Work Evaluation by CSREES

1. Schedule

All 5-Year Plans of Work will be evaluated by CSREES. The 5-Year Plans of Work will either be accepted by CSREES without change or returned to the institution, with clear and detailed recommendations for its modification. The submitting institution(s) will be notified by CSREES of its determination within 90 days (review to be completed in 60 days, communications to the institutions allowing a 30-day response) of receipt of the document. Adherence to the Plan of Work schedule by the recipient institution is critical to assuring the timely allocation of funds by CSREES. Five Year Plans of Work accepted by CSREES will remain in effect for five years and will be publicly available in a CSREES database. CSREES will notify all institutions of a need for a new 5-year plan of work two years prior to the plan's expiration on September 30.

2. Review Criteria

CSREES will evaluate the 5-Year Plans of Work to determine if they address agricultural issues of critical importance to the State; identify the alignment and realignment of programs to address those critical issues; identify the involvement of stakeholders in the planning process; give attention to under-served populations; indicate the level of Federal formula funds in proportion to all other funds at the director or administrator level; provide evidence of multistate, multi-institutional, and multidisciplinary and integrated activities; and identify the expected outcomes and impacts from the proposed 5-Year Plan of Work.

3. Evaluation of Multistate and Integrated Research and Extension Activities

CSREES is proposing to use the Annual Reports of Accomplishments and Results to evaluate the success of multistate, multi-institutional, and multidisciplinary activities and joint research and extension activities, in addressing critical agricultural issues identified in the 5-Year Plans of Work. Once evaluation protocols are developed, these guidelines will be modified to specify the protocols that will be used to evaluate the Annual Reports of Accomplishments and Results.

III. Annual Update of the 5-Year Plan of Work

A. Applicability

An annual update to the 5-Year Plan of Work is optional and is only required if: (1) there is a substantive change in planned programs; (2) if the change in Federal agricultural research and extension formula funding is 10 percent or greater in one year from the FY 1999 base year; or (3) if the cumulative change during the five year period is 20 percent or greater than the FY 1999 base year.

B. Reporting Requirement

If a revised 5-Year Plan of Work is required, or if the institution(s) chooses to submit an optional update to the 5-Year Plan of Work, it should be submitted at the beginning of the next plan of work cycle (July 1) to either the same electronic mail address or regular mail address as listed for the submission of the 5-Year Plan of Work.

IV. Annual Report of Accomplishments and Results

1. Reporting Requirement

The 5-Year Plan of Work for a reporting unit, institution, or State should form the basis for annually reporting its accomplishments and results. This report will be due on or before December 31 each year with the first report being due on December 31, 2000, for FY 2000. This report should be submitted to either the same electronic mail address or regular mail address as listed for the submission of the 5-Year Plan of Work.

2. Format

This annual report should include the relevant information related to each component of the program in the matrix cells of the 5-Year Plan of Work. Accomplishments and results reporting should involve two parts. First, institutions should submit an annual set of impact statements linked to sources of funding. Strict attention to just the preceding year is not expected in all situations. Some impact statements may need to cover ten or more years of activity. Focus should be given to the benefits received by targeted end-users. Second, institutions should submit annual results statements based on the indicators of the outputs and outcomes for the activities undertaken the preceding year. These should be identified as short-term, intermediate, or long-term critical issues in the 5-Year Plan of Work. Attention should be given to highlighting multistate, multi-institutional, and multidisciplinary and integrated activities, as appropriate to the 5-Year Plan of Work.

Done at Washington, D.C., this 13th day of April 1999.

I. Miley Gonzalez,

Under Secretary, Research, Education, and Economics.

[FR Doc. 99–9638 Filed 4–16–99; 8:45 am]

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federal register

Monday
April 19, 1999

Part IV

Department of Commerce

Economic Development Administration

Economic Development Assistance Program—Availability of Funds Under Public Law 105–393; Correction; Notice

DEPARTMENT OF COMMERCE

Economic Development Administration

[Docket No. 981228325–9085–02]

RIN 0610–ZA07

Economic Development Assistance Programs—Availability of Funds Under Public Law 105–393; Correction

AGENCY: Economic Development Administration (EDA), Department of Commerce (DOC).

ACTION: Notice; correction.

SUMMARY: The Department of Commerce published a notice in the **Federal Register** of February 24, 1999 announcing EDA policies and application procedures for Economic Development Assistance Programs. The notice contained incorrect language.

FOR FURTHER INFORMATION CONTACT: Edward M. Levin, 202–482–4687.

Correction

1. In the **Federal Register** of February 24, 1999, in FR Doc. 99–4493 (64 FR 9221) on page 9224, in the second column, correct paragraph H. Other special need by adding a new heading after the second sentence and revise text thereafter to read:

* * * * *

H. Other special need—the area is experiencing other special and/or extraordinary economic adjustment need as determined by the Assistant Secretary. The applicant will be asked to present appropriate economic or demographic statistics to demonstrate a special need.

Eligibility Determination

Eligibility is determined at the time that EDA invites an application and is based on the most recent Federal data available for the area where the project will be located or where the substantial direct benefits will be received. If no Federal data are available to determine eligibility, an applicant must submit to EDA the most recent data available through the government of the State in which the area is located. Projects must be eligible on the date of submission of the application. In the case of any application received by EDA more than six months prior to the time of award, EDA will redetermine that the project is eligible before making the award.

EDA will reject any documentation of eligibility that it determines is inaccurate.

* * * * *

2. In the **Federal Register** of February 24, 1999, in FR Doc. 99–4493 (64 FR 9221) on page 9226, in the second column bottom of page, correct the room number and Internet Address and add Republic of Palau under the name FUJITA, Gail S. to read:

FUJITA, Gail S., P.O. Box 50264, 300 Ala Moaana Blvd., Federal Building, Room 5180, Honolulu, HI 96850, Telephone: (808) 541–3391, Internet Address: gfujita@doc.gov. Hawaii, Guam, American Samoa, Marshall Islands, Republic of Palau, Micronesia, and Northern Marianas.

Dated: April 9, 1999.

Phillip A. Singerman,

Assistant Secretary for Economic Development.

[FR Doc. 99–9679 Filed 4–16–99; 8:45 am]

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

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H.R. 193/P.L. 106–20

Sudbury, Assabet, and Concord Wild and Scenic River Act (Apr. 9, 1999; 113 Stat. 30)

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period July 1, 1997 to June 30, 1998. The volume issued July 1, 1997, should be retained.

[5] No amendments to this volume were promulgated during the period January 1, 1997 through December 31, 1997. The CFR volume issued as of January 1, 1997 should be retained.

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