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Wednesday
June 2, 1999

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Title 3—

The President

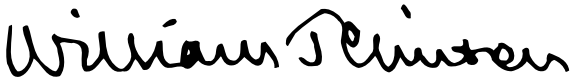
Presidential Determination No. 99–25 of May 24, 1999

Waiver and Certification of Statutory Provisions Regarding the Palestine Liberation Organization

Memorandum for the Secretary of State

Pursuant to the authority vested in me under section 540(d) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1999, Public Law 105–277, I hereby determine and certify that it is important to the national security interests of the United States to waive the provisions of section 1003 of the Anti-Terrorism Act of 1987, Public Law 100–204, through October 21, 1999.

You are authorized and directed to transmit this determination to the Congress and to publish it in the **Federal Register.**



THE WHITE HOUSE,
Washington, May 24, 1999.

[FR Doc. 99–14062
Filed 6–1–99; 8:45 am]
Billing code 4710–10–M

Presidential Documents

Memorandum of May 26, 1999

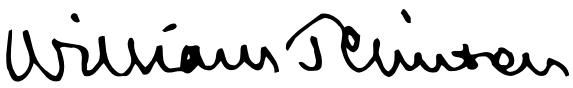
Delegation of Authority Under Section 2106 of the Foreign Affairs Reform and Restructuring Act of 1998, as contained in the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Public Law 105–277)

Memorandum for the Secretary of State

By virtue of the authority vested in me by the Constitution and laws of the United States of America, including section 301 of title 3 of the United States Code, I hereby delegate the functions and authorities conferred upon the President by section 2106 of the Foreign Affairs Reform and Restructuring Act of 1998, as contained in the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Public Law 105–277), to the Secretary of State, who is authorized to redelegate these functions and authorities consistent with applicable law.

Any reference in this memorandum to the provision of any Act shall be deemed to include references to any hereafter-enacted provision of law that is the same or substantially the same as such provision.

You are authorized and directed to publish this memorandum in the **Federal Register.**



THE WHITE HOUSE,
Washington, May 26, 1999.

[FR Doc. 99–14063
Filed 6–1–99; 8:45 am]
Billing code 4710–10–M

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.

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 96–016–24]

RIN 0579–AA83

Karnal Bunt Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are adopting as a final rule, with changes, an interim rule that amended the Karnal bunt regulations by modifying the criteria for classifying regulated areas and by modifying the classification of restricted areas. The interim rule required that a bunted wheat kernel be found in or associated with a field within an area before that area would be designated as a regulated area. The interim rule also established separate restricted areas for seed and for regulated articles other than seed. The actions taken in the interim rule were necessary because tests currently available for use in identifying spores do not allow us to differentiate between small numbers of Karnal bunt spores and the spores of an as yet unnamed, but widely distributed, ryegrass smut. The interim rule had the effect of removing some areas in Arizona and California from the list of regulated areas and relieving restrictions on the movement of grain and other regulated articles from additional areas in Arizona, California, New Mexico, and Texas.

EFFECTIVE DATE: June 2, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Stefan, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–8247.

SUPPLEMENTARY INFORMATION: Karnal bunt is a fungal disease of wheat (*Triticum aestivum*), durum wheat (*Triticum durum*), and triticale (*Triticum aestivum* X *Secale cereale*), a hybrid of wheat and rye. Karnal bunt is caused by the smut fungus *Tilletia indica* (Mitra) Mundkur and is spread by spores, primarily through the movement of infected seed. In the absence of measures taken by the U.S. Department of Agriculture (USDA) to prevent its spread, the establishment of Karnal bunt in the United States could have significant consequences with regard to the export of wheat to international markets. The regulations regarding Karnal bunt are set forth in 7 CFR 301.89–1 through 301.89–14.

In an interim rule effective on April 25, 1997, and published in the **Federal Register** on May 1, 1997 (62 FR 23620–23628, Docket No. 96–016–19), we amended the Karnal bunt regulations by modifying the criteria for classifying regulated areas. We required that a bunted wheat kernel be found in or associated with a field within an area before that area would be designated as a regulated area. In that interim rule, we also modified the classification of restricted areas by establishing separate restricted areas for seed and for regulated articles other than seed.

We solicited comments concerning the interim rule for 60 days ending June 2, 1997. We received 13 comments by that date. They were from five State agricultural agencies, three associations representing grain growers and processors, a food corporation, a grain handler, a wheat grower, and a scientific society. One of the commenters fully supported the interim rule as written. The remaining 12 commenters expressed concerns or made suggestions regarding certain aspects of the interim rule, although 8 of those commenters did offer their support for the changes contained in the interim rule. The issues raised by those 12 commenters are discussed in detail below.

Comment: The definition of *infestation (infected)* in § 301.89–1 of the regulations states that an area is infected if any stage of the fungus *Tilletia indica* (Mitra) Mundkur is present. Section 301.89–3(e) lists several criteria that are used to classify regulated areas, with the classification of regulated areas being based on the discovery of bunted kernels. If the discovery of bunted kernels is now the criterion on which an area is regulated, rather than the detection of spores, should the definition of *infestation (infected)* be modified to reflect that change?

Response: If the discovery of bunted kernels was the sole criterion on which an area's regulatory status was based, it would be appropriate to modify the definition of *infestation (infected)* as suggested by the commenter. However, § 301.89–3(e) still provides for the designation of regulated areas based on the detection of spores in a field when that field is found to be associated with grain at a handling facility containing a bunted wheat kernel. Therefore, it would be inaccurate to base the definition of *infestation (infected)* only on the detection of bunted kernels.

Comment: Is the designation of regulated areas in § 301.89–3(f) valid only for the 1996–1997 crop production year? Since those regulated areas differ from those regulated in the 1995–1996 crop year, will the 1996–1997 regulated areas be modified for the 1997–1998 crop year? If so, what criteria will be used to define those areas?

Response: We do not intend to update the list of regulated areas in § 301.89–3(f) on a ''crop year'' basis as envisioned by the commenter. Rather, we will continue to amend the list of regulated areas when the situation warrants, removing areas from the list when we determine that it is no longer necessary to regulate them to prevent the spread of Karnal bunt and adding new areas to the list based upon the detection of Karnal bunt. The criteria used to define regulated areas are found in § 301.89–3.

Comment: In § 301.89–3(d), we would suggest that State plant regulatory officials be included in the written notification of the designation of an area as a regulated area. It is vital that State and Federal agencies interact closely with industry on this issue.

Response: Paragraph (d) of § 301.89–3 deals with the temporary designation of a nonregulated area as a regulated area. Because the movement of regulated articles from the temporarily designated regulated area will be subject to the regulations, the written notification is directed to the person most immediately affected by the designation of an area as a regulated area, i.e., the owner or person in possession of the land or, in the case of

publicly owned land, the person responsible for the management of the land. The notification of State plant regulatory officials in such cases is handled by the Animal and Plant Health Inspection Service (APHIS) State Plant Health Director in each State and through updates to the National Agricultural Pest Information Service database that is maintained by the joint APHIS/State Cooperative Agricultural Pest Survey. We do not, therefore, believe that it is necessary to include State officials in the notification provisions of § 301.89–3(d) to ensure that they receive timely notice of the temporary designation of nonregulated areas as regulated areas.

Comment: Intensive surveys should be conducted to ensure continued confidence in the freedom of areas released from regulation and areas outside the regulated area. It would be scientifically invalid to assume that the bunted kernel fields now regulated will be the only fields in which viable Karnal bunt spores may exist. The needs of the wheat industry in the Southwest should be considered in APHIS' regulatory decisionmaking, but the credibility of the U.S. export certification program must be maintained for the benefit of the entire nation. A thorough survey program will validate the regulatory program and ensure continued confidence in our exports.

Response: We agree with the commenter's position regarding the need for maintaining adequate delimiting surveys and detection programs. Our work in that respect continues on two fronts. First, there are the survey and detection activities that are carried out as part of the regulatory program within those areas of Arizona, California, New Mexico, and Texas that have been designated as regulated areas. In addition to the regulatory program, we are also conducting an ongoing National Survey of all wheat production areas in the United States in order to gather information about the presence or absence of Karnal bunt. The phytosanitary requirements of some of our trading partners necessitate the collection of documentable evidence that production areas are not infested at detectable levels. Without that documentation, we cannot provide the certifications that allow wheat to be sold into certain foreign markets. The intensity of this survey will provide a high level of confidence that Karnal bunt is not detectable in those parts of our wheat production system that contribute to the export trade. As well as identifying areas that are free of Karnal bunt infestations, the National Survey will provide information about potential infections in new areas. By the end of 1997, the National Survey had covered all wheat growing areas of the United States where Karnal bunt had not previously been detected. In the National Survey, composite wheat samples are collected at county elevators, feed mills, seed laboratories, and seed trade and research locations. During 1996, the first year Karnal bunt was known to be present in the United States, 15,000 samples were collected and processed. By the end of 1997, over 11,000 additional composite samples had been collected, in proportion to wheat production, from wheat-producing areas where Karnal bunt had not been detected. We believe that our ongoing regulatory program and National Survey activities provide the assurances sought by the commenter and by our trading partners regarding the Karnal bunt status of areas released from regulation and areas outside the regulated areas.

Comment: APHIS should use the selective sieve technique, rather than a bunted kernel search technique, to check samples from the pre-release survey. The selective sieve technique can be used to eliminate samples that do not require further inspection so that efforts can be concentrated on those samples that do. In addition, all samples should be processed in a timely manner, rather than being processed as time allows.

Response: We have not limited ourselves to using any one method of examining samples, and we do not believe it is necessary to do so. In order to make the best use of our resources, we use the methodology best suited to the situation and operational circumstances at hand. Currently, the bunted kernel search technique is used in our survey activities in the regulated areas. The selective sieve technique, which involves the washing of grain samples and the subsequent examination of only those samples from which spores were collected, cannot be performed in the field. The bunted kernel search technique can be performed expeditiously in the field. Therefore, while the selective sieve technique may meet our operational needs in other situations, it does not meet the need for quick results in the field test situation.

Comment: The current seed treatment requirement is a costly procedure that could be a marketing problem within California and abroad if it is determined that excess chemicals were used in the production of California wheat. APHIS should review the efficacy of the required seed treatments, their adverse effects on germination, and whether the prescribed use of carboxin thiram and pentachloronitrobenzene is consistent with the labeling of those chemicals.

Response: We are satisfied that the use of carboxin thiram and pentachloronitrobenzene as a double-fungicide treatment under § 301.89–13(d) is consistent with the labeling of those chemicals. With regard to their effects on germination, preliminary data from research gathered by APHIS' Karnal bunt regulatory program staff and the Arizona Department of Agriculture suggested that the double-fungicide treatment may negatively affect germination in some varieties of seed. Specifically, this research data indicated that for the seed varieties tested, double-treated seed may germinate at a lower rate than untreated seed in some cases. However, as a result of our continuing efficacy research, three single-fungicide treatment options have been made available for seed originating in a regulated area that will be planted within a regulated area. Those single-fungicide treatments were added to § 301.89–13(d) by an interim rule that was effective on November 28, 1997, and published in the **Federal Register** on December 5, 1997 (62 FR 64263–64265, Docket No. 96–016–27). In answer to the commenter's concerns, the single-fungicide treatments now available will reduce the cost of seed treatment and lessen the level of chemicals used in the production of wheat. Further, we anticipate that single-treated seeds may in some cases have germination rates slightly higher than double-treated seeds. It should be noted, however, that many factors affect germination, and it is not possible to attribute increase or decrease in germination only to seed treatments.

Comment: The presence of regulated areas within California has resulted in Mexico placing restrictions on the importation of wheat from all wheat-producing areas of California. APHIS should ensure that California wheat produced outside the regulated areas receives the same consideration by our trading partners as wheat produced elsewhere in the United States.

Response: APHIS routinely seeks to answer any concerns raised by our trading partners regarding the phytosanitary status of U.S.-grown agricultural commodities. Addressing concerns related to Karnal bunt has been a part of our activities since the disease was first detected in this country. Since that initial detection, APHIS has been able to maintain export markets for U.S. wheat in more than three dozen countries with concerns about Karnal bunt. In an instance such

as that brought up by the commenter, APHIS will act to address the concerns of our trading partners and will seek the removal of any unjustifiable phytosanitary restrictions.

Comment: The move by APHIS to regulate areas based on their association with bunted kernels was a good one. However, the restrictions placed on wheat grown as seed in the regulated area is not consistent with that approach. If wheat seed grown in a regulated area was found to contain spores (and is thus ineligible for planting), the seed could be designated as grain and moved out of the regulated area without restriction if it was grown in the area outside the surveillance area. On the other hand, if grain to be moved from within a surveillance area is found to have spores, it must move under a limited permit. If testing cannot positively determine the presence of Karnal bunt on the basis of spores alone, then none of this seed or grain can be considered infected.

Response: We explained in the interim rule that grain from a surveillance area found to contain spores must be moved under a limited permit because it originated in an area that includes at least one field in which a bunted wheat kernel had been detected, and that the link to bunted wheat kernels gave us reason to believe that grain containing spores was at greater risk for being infected with Karnal bunt. We agree with the commenter's observation that current testing methods cannot be used to determine the presence of Karnal bunt on the basis of spores alone. It was that fact that led to the interim rule's amendments to the Karnal bunt regulations to require that an area or regulated article be associated with a bunted kernel before regulatory restrictions would be applied. Following the publication of the interim rule, we further amended the regulations (63 FR 50747–50752, Docket No. 96–016–32, published September 23, 1998) to allow the certified movement of grain for uses other than seed if the grain was tested prior to movement from the field, or before being commingled with other grain, and found free of bunted kernels only, rather than Karnal bunt spores and bunted kernels.

Comment: APHIS should recognize that Karnal bunt is a minor disease—it is more a quality or grading issue than it is a quarantine pest issue—and should remove its importation and interstate movement restrictions and encourage our trading partners to adopt the same view.

Response: Given the continuing international perception of Karnal bunt as a quarantine pest issue, we do not believe that it would serve the interests of American agriculture to unilaterally remove our regulatory restrictions through which we seek to prevent the introduction and dissemination of Karnal bunt. The position that Karnal bunt is a grading issue rather than a quarantine issue is one that has been discussed in international trade and scientific circles, but until such time as our trading partners view the disease as a grading issue, we believe that it will be necessary to continue our Karnal bunt-related regulatory activities and restrictions in order to protect our international agricultural standing.

Comment: The Palo Verde Valley of California should not be a surveillance area. The bunted kernels found in storage there were found in facilities that were not cleaned prior to the storage of the 1996 crop, and no bunted kernels were found in any trucks hauling the valley's 1996 crop. Given the low spore counts, it is unlikely any bunted kernels could now be found.

Response: As we stated in the interim rule, the regulatory status of the Palo Verde Valley is based on the presence of fields within the valley that are considered to be positive for Karnal bunt. Those fields had not been examined individually for bunted wheat kernels during the 1996 surveys, but they were found to contain spores. Further, grain from those fields was part of a commingled lot of grain at a storage facility that was found to contain bunted wheat kernels. However, because the grain in that commingled lot came from several sources, the bunted kernels could not be traced back to any individual field or fields. It is the combination of spores in the fields and bunted wheat kernels in grain associated with the fields that gives us reason to believe that those fields are affected with Karnal bunt. At the present time, we believe that regulatory restrictions on the Palo Verde Valley should remain in place because we do not possess sufficient data that would allow us to change our conclusion that those fields, and the areas that surround them, are associated with Karnal bunt. Although the programmatic classification of ''surveillance area'' was removed in a final rule effective on April 28, 1999, and published on May 4, 1999 (64 FR 23749–23754, Docket No. 96–016–36), we retained the Palo Verde Valley as a regulated area for the same reasons that the area was designated as a surveillance area in the interim rule. However, we will continue to reevaluate the regulatory status of areas, including the Palo Verde Valley, as additional information becomes available.

Comment: If seed treatment is truly effective and significantly reduces the possibility of spreading Karnal bunt, then seed treatment should be required for all seed planted in the United States. Similarly, if the treatment is effective, then treated seed from a regulated area should be approved for planting outside the regulated areas.

Response: With regard to requiring treatment for all seed planted in the United States, we believe that it would be an unjustifiable burden from a risk standpoint to require the treatment of seed that has no association with Karnal bunt. As for the commenter's suggestion about allowing treated seed from a regulated area to be planted outside the regulated areas, we did amend our regulations on September 23, 1998 (63 FR 50747–50752, Docket No. 96–016–32) to allow, among other things, commercial lots of treated seed from that portion of the restricted area for seed lying outside the surveillance area to be moved outside the regulated area for planting. However, that provision was rendered unnecessary, and was therefore removed, by a subsequent final rule effective on April 28, 1999, and published on May 4, 1999 (64 FR 23749–23754, Docket No. 96–016–36). The May 1999 final rule removed the programmatic classification of ''restricted area for seed'' and released nearly all of the areas that had been designated as such from regulation, thus making it possible for seed to be moved from those areas without restriction.

Comment: Paragraph (f) of § 301.89–3 of the interim rule states that the areas listed in the section are designated as ''regulated areas,'' and that those regulated areas are designated as either ''restricted areas'' or ''surveillance areas.'' Paragraph (a) of § 301.89–5 of the interim rule states that any regulated article (i.e., certain articles from a regulated area) may be moved into or through an area that is not regulated only if moved under certain conditions. That restriction on the movement of regulated articles would seem to apply to the movement of grain from any part of the regulated area, but it appears that this is not the intent of the interim rule. As explained in the interim rule, grain is a regulated article, but its movement is restricted only from a surveillance area and not from the entire regulated area, which includes the restricted area for seed that extends beyond the surveillance area.

Response: The commenter is correct. The intent of the interim rule was that:

- Grain (wheat, durum wheat, and triticale) may not be grown in a

restricted area for regulated articles other than seed. Because grain may not be grown in such an area, there was no need to provide for the movement of grain from a restricted area for regulated articles other than seed. This was spelled out in the interim rule.

- Grain may be grown in a surveillance area, and may be eligible for movement from a surveillance area with a certificate under the conditions set forth in § 301.89–6(b). This, too, was spelled out in the interim rule.
- Outside the surveillance area, grain may be grown in the restricted area for seed and may be moved from that area without a certificate or limited permit. This was not made clear in the interim rule and, as noted by the commenter, § 301.89–5(a) does not provide for the movement of grain from a restricted area for seed.

Although the commenter was correct in noting that the interim rule did not provide for the movement of grain from a restricted area for seed, we are not making any changes to the regulations as a result of that comment. Such a change is now unnecessary due to the changes made in a final rule that was effective on April 28, 1999, and published in the **Federal Register** on May 5, 1999 (64 FR 23749–23754, Docket No. 96–016–36), which removed the restricted area for seed classification.

Comment: APHIS' move to require only a single test for grain moved from a surveillance area was a good one, but the single test that is required should be for bunted kernels and not spores. It is illogical to have a bunted kernel standard for establishing regulated areas and a ''one spore and you're out'' standard for moving grain and other regulated articles. Placing restrictions on the movement of grain based on the presence of spores that are assumed—but not proven—to be associated with Karnal bunt holds growers to standards that are stricter than the disease demands. In that same vein, there is no explanation in the interim rule as to why double testing is still required for the movement of grain out of a restricted area.

Response: As we noted in the response to another comment, our September 23, 1998, final rule amended the regulations to allow the certified movement of grain for uses other than seed if the grain is tested prior to movement from the field, or before being commingled with other grain, and found free of bunted kernels only, rather than Karnal bunt spores and bunted kernels. Regarding the commenter's reference to double-testing for the movement of grain from a restricted area, that requirement, which had been found in § 301.89–6(d), was removed by the interim rule.

Comment: The interim rule contains an open-ended prohibition on the planting of wheat in restricted areas for regulated articles other than seed, i.e., the prohibition is not limited to a single crop season. Although it may not have been the intent of the interim rule, it appears that a significant amount of farm acreage could be permanently barred from growing wheat. APHIS should adopt a timetable for the release of those areas from regulation.

Response: In a final rule effective on April 28, 1999, and published on May 4, 1999 (64 FR 23749–23754, Docket No. 96–016–36), we removed the prohibition on the planting of Karnal bunt host material in those fields that had been designated as restricted areas for regulated articles other than seed, thus answering this commenter's concerns.

Comment: If APHIS is considering Mexico's request that the Mexicali Valley be declared free from Karnal bunt, then APHIS should also consider the adjacent areas in Yuma County, AZ, as free from Karnal bunt, since the two areas can be viewed as comprising a single ''distinct, definable area'' as that term is defined in § 301.89–1.

Response: Given that an international border lies between Mexico's Mexicali Valley and the adjacent areas of Yuma County, AZ, and given that restrictions are in place regarding the movement of Karnal bunt host material between the United States and Mexico, we do not believe that it is appropriate to consider the Mexicali Valley and Yuma County, AZ, as a single ''distinct, definable area.'' Rather, Mexico's request regarding the Karnal bunt status of the Mexicali Valley was evaluated on its own merits, as should any decision regarding the regulatory status of Yuma County, AZ.

Other Comments

In addition to the issues discussed above, several commenters questioned the continuing regulatory status of areas in New Mexico. Two commenters noted that Karnal bunt has been linked to New Mexico only through the 106 fields identified as having been planted with potentially contaminated seed. One of those commenters stated that those 106 fields should be the only regulated areas in New Mexico—i.e., there should be no restricted areas for seed in the State—while the other commenter took the position that even those 106 fields should be released from regulation because the wheat in those fields was destroyed before heading out and no bunted kernels have been detected in New Mexico in the course of subsequent testing. Other commenters asked that specific fields in New Mexico be removed from regulation due to their isolation from other farm areas and the lack of evidence—other than the contaminated seed that was planted there—pointing to the presence of Karnal bunt in New Mexico.

Even though the wheat in those 106 fields was plowed down and destroyed before heading out, available information regarding Karnal bunt indicates that viable *T. indica* inoculum could persist in the soil for several years. Therefore, we believe that it is necessary for those fields to continue to be designated as regulated areas. We have, however, removed the regulatory restrictions that applied to the areas surrounding those fields, which had been designated as restricted areas for seed. As noted elsewhere in this document, the ''restricted area for seed'' classification was eliminated by a final rule that was effective on April 28, 1999, and published on May 4, 1999 (64 FR 23749–23754, Docket No. 96–016–36), so those 106 individual fields are now the only regulated areas in New Mexico. We will continue to reevaluate the regulatory status of those fields in New Mexico, as well as the regulated areas in other States. As we continue to accumulate negative survey data, we will be in a better position to make and defend decisions regarding the further release of areas from regulatory restrictions.

Three of the commenters raised the issue of compensation. The issue of compensation was not raised in the interim rule and is, therefore, outside the scope of this final rule. Rather, compensation has been, and will continue to be, addressed in separate rulemakings that focus exclusively on that issue.

Changes Made in This Document

In the interim rule, we amended the regulations by redesignating footnotes 2 through 6 as footnotes 1 through 5, respectively. When we redesignated footnote 3 as footnote 2, we should have amended the text of what is now footnote 5, which refers the reader to footnote 3, to reflect the redesignation of footnote 3. We are correcting that omission in this document.

Since the interim rule that is the subject of this document became effective, we have published two other rulemakings in the **Federal Register** that amended the provisions established in the interim rule. This document does not affect those rulemakings. The provisions of those rulemakings are:

• In the interim rule, we revised paragraphs (e) and (f) of § 301.89–3. Those two paragraphs were revised again by a final rule effective on April 28, 1999, and published on May 4, 1999 (64 FR 23749–23754, Docket No. 96–016–36).

• In the interim rule, we revised § 301.89–4. That section was revised again by the May 1999 final rule.

• In the interim rule, we revised paragraph (b) of § 301.89–6. That paragraph was revised again by a final rule published and effective on September 23, 1998 (63 FR 50747–50752, Docket No. 96–016–32), and that September 1998 revision was further amended by the May 1999 final rule.

• In the interim rule, we amended § 301.89–6 by removing and reserving paragraph (d). In the September 1998 final rule, we added a new paragraph (d) to § 301.89–6. Then, in the May 1999 final rule, we removed the paragraph (d) that had been added by the September 1998 final rule and redesignated paragraph (e) as paragraph (d).

Therefore, for the reasons set forth in the interim rule and in this document, we are adopting the provisions of the interim rule as a final rule with the change discussed in this document.

This final rule also affirms the information contained in the interim rule concerning Executive Orders 12372 and 12988 and the Paperwork Reduction Act.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

This document adopts as a final rule, with one change, an interim rule that amended the Karnal bunt regulations by modifying the criteria for classifying regulated areas and by modifying the classification of restricted areas. The interim rule required that a bunted wheat kernel be found in or associated with a field within an area before that area would be designated as a regulated area. The interim rule also established separate restricted areas for seed and for regulated articles other than seed. The actions taken in the interim rule had the effect of removing some areas in Arizona and California from the list of regulated areas and relieving restrictions on the movement of grain and other regulated articles from additional areas in Arizona, California, New Mexico, and Texas.

In the interim rule, we stated that we were taking those actions on an expedited basis in order for the amended regulations to be in place prior to the spring wheat harvest in the affected States, and that the need to publish the interim rule on an expedited basis made compliance with section 603 and timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 603 and 604) impracticable.

The interim rule substantially reduced the amount of acreage regulated for Karnal bunt, which meant that regulated articles like grain, seed, and straw from the areas released from regulation could be moved without restriction. The interim rule also eased restrictions on the movement of grain and other regulated articles from those areas that remained under regulation. Given those changes, we stated our expectation that the interim rule would have a significant deregulatory impact on affected entities. We further stated that, because the majority of the affected entities in the regulated areas have been determined to be small entities, we would discuss the issues raised by section 604 of the Regulatory Flexibility Act in our Final Regulatory Flexibility Act Analysis. That Final Regulatory Flexibility Act Analysis, which also serves as our cost-benefit analysis, is set forth below.

Entities Affected

The Regulatory Flexibility Act requires that agencies assess the impact of regulations on small businesses, organizations, and governments. We have assumed that the majority of the wheat producers in the regulated area would be classified as small entities, based on criteria established by the Small Business Administration (SBA) that defines a ''small'' wheat producer as one having annual sales of less than $500,000. We have also assumed that the economic impacts on all wheat producers would tend to be lower over time, especially if wheat production and marketings increase in the regulated area in response to the deregulatory effects of the interim rule. The economic impact of the interim rule on seed producers, however, depends largely on the degree to which foreign and domestic markets are willing to accept seed produced in areas that had been regulated for Karnal bunt.

The interim rule greatly reduced the number of nonpropagative wheat (i.e., grain) growers operating under regulatory constraints. Prior to the effective date of the interim rule, there were an estimated 598 growers affected by the regulations (236 in California, 310 in Arizona, 40 in New Mexico, and 12 in Texas). Once the interim rule became effective, the number of affected growers dropped to 93, a decline of 84.4 percent. Of those remaining affected growers, 56 were located in restricted areas for seed (29 in Arizona, 2 in California, 23 in New Mexico, and 2 in Texas) and 37 were located in surveillance areas (20 in Arizona, 17 in California, and none in New Mexico and Texas).

Although nonpropagative wheat (grain) growers are the entities primarily affected by the interim rule, there are other businesses that provide supplies and that harvest, transport, and process wheat grown in the regulated areas that were also affected by the interim rule. These entities include harvesters and grain trucks, grain storage and load-out facilities, railroad companies, grain handlers and marketers, seed producers and seed companies, seed research firms and universities, millers and other users of milling grain and millfeed, straw producers and users, and other entities involved in providing supplies to wheat growers and services to market and process their production.

Rationale for and Benefits of Regulation

Upon detection of Karnal bunt in the southwestern United States in the spring of 1996, quarantine and emergency actions were immediately imposed by APHIS in order to prevent the interstate spread of the disease to noninfected wheat producing areas in the country, which would have had serious economic impact on the $4 billion wheat export market,[1] given that 50 percent of exports were to countries that maintain restrictions against wheat imports from countries where Karnal bunt is known to occur. These actions included designating areas where Karnal bunt had been detected as regulated areas from which the movement of Karnal bunt host material was restricted or prohibited.

In addition to the quarantine, the Karnal bunt program consisted of a National Survey component in which samples of wheat from fields throughout the United States were collected and tested for Karnal bunt. The National Survey program provided assurances to wheat importing countries that fields outside the regulated areas were monitored for the disease. Countries that are willing to accept wheat from the regulated areas are assured that grain grown in those areas has been tested and found negative for the disease. Through these means, the Federal Karnal bunt program served to maintain and preserve the economic viability of

[1] About 1.2 billion bushels of wheat was exported from the United States in 1995, at a value of $4 billion.

the U.S. wheat export market. The main benefit of the regulatory program, therefore, can be viewed as the avoidance of the potentially significant losses to the wheat export market that would likely have occurred in the absence of regulation. Without Federal regulation, it is conceivable that farm income both within and outside the regulated areas could have been further jeopardized.

As additional information from sampling and testing became available, the Agency was able to ease the initial quarantine, which was necessarily broad due to the lack of data available at the time as to the extent of the infestation. Our subsequent modifications to the classification criteria for regulated areas and the classification of restricted areas, and the relief from restrictions that accompanied those changes, are the focus of this analysis. As a result of those modifications to the program, the Agency has been able to continue to assure importing countries that U.S. grain exports are coming from areas where Karnal bunt is not known to exist, but at a lower cost to producers and handlers than had been possible under the initial quarantine.

Changes in Planted Acreage

When Karnal bunt was first detected in the United States in March 1996, APHIS responded by placing nearly 1.7 million acres of agricultural land, including approximately 330,149 acres of wheat, under regulation through a series of interim rules in order to prevent the further spread of the disease. After gathering additional information through sampling, testing, and research, we published a final rule in the **Federal Register** on October 4, 1996 (61 FR 52189–52213, Docket No. 96–016–14), that amended the Karnal bunt regulations that had been established in that series of interim rules.

The October 1996 final rule established criteria for levels of risk, the movement of regulated articles, and the planting of seed from Karnal bunt host crops, and divided the regulated areas into surveillance areas and restricted areas. Under the October 1996 final rule, wheat could not be grown within the restricted areas (which amounted to about 16,859 acres), but grain could be grown in and moved from the surveillance areas (which amounted to about 207,670 acres of wheat grown for grain) if the grain was tested for spores and found negative. The final rule also prohibited the movement of commercial wheat seed from anywhere in a regulated area (i.e., both restricted areas and surveillance areas). On April 3, 1997, we published in the **Federal Register** (62 FR 15809–15819, Docket No. 96–016–18) the regulatory flexibility analysis prepared for the October 1996 final rule. While the October 1996 final rule did not reduce the size of the regulated area, it did ease restrictions on the movement of grain grown in regulated areas.

The May 1997 interim rule (Docket No. 96–016–19) that is the subject of this final rule reduced the size of the area regulated for Karnal bunt and further eased restrictions on the movement of grain and other regulated articles from those areas that remained under regulation, so its long-term economic effect is expected to be positive. The changes contained May 1997 interim rule were made possible in large part by research that led the Agency to conclude the detection of a bunted wheat kernel—and not spores alone—was necessary to confirm the presence of Karnal bunt in an area or article. The shift to this bunted kernel standard had an immediate positive effect on the States of Alabama, Florida, Georgia, and Tennessee, where grain in a number of storage facilities had been found to be contaminated with spores that appeared to be Karnal bunt spores, and on South Carolina, where seed from a seed lot contaminated with those spores had been planted. Because no bunted kernels were detected in those storage facilities or the seed lot, it was not necessary to place those areas under regulation.

Under both the October 1996 final rule and the May 1997 interim rule, the movement of grain from a surveillance area is subject to restrictions. However, in the interim rule, the size of the surveillance areas was greatly reduced by limiting the size of the surveillance area to an approximately 3-square-mile buffer around restricted fields, with the remainder of the former surveillance area being designated as a restricted area for seed from which grain could move without a certificate or limited permit. Thus, the interim rule reduced the size of the areas from which the movement of grain was subject to restrictions by about 95 percent, from 207,670 acres to 9,806 acres. By requiring that an area or article be associated with a bunted kernel (and not just spores), the interim rule eliminated the need to expand the regulated area into the five southeastern States where Karnal bunt-like spores had found and into any other area of the United States where such spores might have been found in the future. The interim rule also allowed grain grown in restricted areas for seed lying outside surveillance areas (which amounted to 91,924 acres of grain in the 1996–1997 crop season) to be moved without a certificate or limited permit. This represented an increase of more than 44 percent in the amount of grain eligible for unrestricted movement.

Additional positive impacts are expected to occur as a result of the reduction in the size of the areas in which the growing of wheat is prohibited. The restricted area acreage fell from 16,859 acres under the October 1996 final rule to 13,519 acres under the May 1997 interim rule, a reduction of nearly 20 percent. Table 1 summarizes the changes in regulatory designations and regulated acreage in the 1995–1996 and 1996–1997 crop seasons.

TABLE 1.—ACREAGE IN REGULATED AREAS UNDER 1995–96 REGULATIONS AND UNDER THE MAY 1997 INTERIM RULE

Year	Regulatory designation	Regulated acreage by state				Total
		AZ	CA	NM	TX	
1995–96 ...	Total planted wheat acreage in regulated areas	181,339	137,870	10,235	705	330,149
	Total agricultural acreage in regulated areas	928,542	500,000	215,000	35,000	1,678,542
1996–97 Acreage Regulated Under the October 4, 1996, Final Rule (Docket No. 96–016–14)						
1996–97 ...	Acreage in which wheat planting prohibited (restricted areas).	9,200	3,200	3,990	469	16,859
	Total planted wheat acreage in regulated areas	105,800	98,010	3,327	533	207,670
	Total agricultural acreage in regulated areas	928,542	500,000	215,000	35,000	1,678,542

TABLE 1.—ACREAGE IN REGULATED AREAS UNDER 1995–96 REGULATIONS AND UNDER THE MAY 1997 INTERIM RULE.—Continued

Year	Regulatory designation	Regulated acreage by state				Total
		AZ	CA	NM	TX	
1996–97 Acreage Regulated Under the May 1, 1997, Interim Rule (Docket No. 96–016–19)						
1996–97 ...	Acreage in which wheat planting prohibited (restricted areas for regulated articles other than seed).	5,947	3,113	3,990	469	13,519
	Planted wheat acreage in surveillance areas	7,023	2,783	0	0	9,806
	Planted wheat acreage in restricted areas for seed	81,977	6,087	3,327	533	91,924
	Total planted wheat acreage in regulated areas	89,000	8,870	3,327	533	101,730
	Total agricultural acreage in regulated areas	875,000	301,772	215,000	35,000	1,426,772

Although the May 1997 interim rule further reduced the size of the area regulated for Karnal bunt, there was an observed reduction in 1996–1997 wheat plantings. While those reductions were likely due in part to planting decisions influenced by the continuing Karnal bunt regulatory program, we do not believe that the reductions can be attributed entirely to Karnal bunt regulations. Accordingly, the analysis of impacts addresses certain factors that could explain the observed changes in plantings in the affected areas.

Impact of Karnal Bunt Regulations and Other Factors on Wheat Acreage Reductions in 1996–1997

Propagative (seed) and nonpropagative (grain) wheat acreage in the regulated area in the 1995–1996 crop season had been planted and was at various preharvest stages when Karnal bunt was first detected in early March 1996. The initial regulatory action, therefore, mainly affected wheat marketings and not wheat production. Production in the regulated areas had increased from the 1994–1995 crop season due to expected higher prices fueled by strong export demand (*California Farmer,* ''Scion of the Irrigated West,'' mid-March 1996, p. 14). However, by the time the 1995–1996 crop was marketed, wheat prices had dropped nationwide due to a number of reasons, including record increases in planted spring wheat acreage in the Midwest (*Agricultural Outlook,* USDA, Economic Research Service, August 1996). Due to lower prices and the changed regulatory environment, in addition to the risk of being infected with Karnal bunt, planted wheat acreage in the regulated areas was expected to be lower in the 1996–97 crop season. Assuming an average 25 percent decline in wheat prices in the regulated areas from 1995 to 1996, it is estimated that 1996–1997 planted wheat acreage in the regulated areas should have totaled 280,627 acres, a decline in planted acreage of almost 15 percent based solely on producer reaction to lower prices.[2] The past average ratio of planted propagative to nonpropagative wheat acreage in the regulated area suggests that 14,031 acres of this planted acreage would have been devoted to seed production. Thus, the planted acreage totals for grain and seed production that would have been expected in 1997, based entirely on lower expected prices, are 266,595 and 14,031 acres, respectively (Table 2).

TABLE 2.—1995–96 AND 1996–97 ACTUAL PLANTED WHEAT ACREAGE IN THE REGULATED AREA AND 1997 ACREAGE ESTIMATE AS A RESULT OF LOWER PRICES

Scenario	Estimated acreage in:		
	Total Wheat	Grain	Seed
Actual 1995–1996	330,149	313,642	16,507
1996–1997 estimated acreage as a result of lower prices	280,627	266,595	14,031
Actual 1996–1997	101,730	97,865	3,865
	Acreage change as compared with actual 1996 acreage:		
Estimated decrease in 1997 acreage due to lower prices	−49,522 (−15%)	−47,047 (−15%)	−2,476 (−15%)
Actual decrease in 1997 acreage	−228,419 (−70%)	−215,777 (−69%)	−12,642 (−77%)
Difference Between Estimated Lower Price 1997 Acreage and Actual 1997:			
Lower price acreage minus actual 1997 acreage	−178,897	−168,730	−10,166

The actual total planted wheat acreage in the regulated areas for the 1996–1997 crop season is estimated at 101,730 acres, which is a 70 percent decrease from the 330,149 planted acres in the 1995–1996 crop season (a far larger decrease than the 15 percent reduction that, as noted above, would have been expected due solely to lower prices). Planted wheat seed acreage showed a greater decline, falling by 12,642 acres or more than 77 percent. Evidently,

[2] This estimate is produced using a standard planted acreage to price response function for wheat set at 0.6 (a 10 percent decrease in wheat price elicits a 6 percent decline in planted wheat acreage) multiplied by the estimated average 25 percent decrease in wheat prices in the regulated areas.

grain and seed producers cut back production due to reasons other than lower prices, such as the presence of Federal regulations and the threat of Karnal bunt infection.

Because only 49,522 acres (22 percent) of the actual 228,419-acre decline in total 1996–1997 planted wheat acreage in the regulated area can be explained as occurring in response to lower prices, there is the implication that the remaining 178,897 acres of planted wheat acreage were dropped due to factors unrelated to price. Attention is now focused on explaining this non-price-generated 178,897-acre (168,730 acres of grain, 10,166 acres of seed) decrease in planted wheat acreage in the regulated area.[3]

Of the 168,730-acre non-price-generated decline in grain acreage, Federal regulations that prohibit wheat planting in restricted areas can explain acreage reductions of 13,519 acres (see Table 1). Assuming that half of this restricted area acreage would have been rotated out of wheat production in 1996–1997 in any case, it is estimated that Federal planting restrictions reduced grain acreage by about 6,760 acres (Table 3). A certain amount of wheat seed would have been needed to produce wheat on this restricted area acreage; this associated seed acreage is estimated at 125 acres.[4] Deducting the impact of planting restrictions on grain and its associated seed production needs from the total non-price-generated acreage reductions leaves a cutback of 162,095 acres of grain and 10,042 acres of seed left unexplained by lower prices.

TABLE 3.—NON-PRICE-GENERATED ACREAGE SHIFTS IN THE REGULATED AREA, 1996–97 CROP SEASON

Item	Acreage reductions associated with the Interim Rule in 1996–97:		
	Total	Grain	Seed
Total non-price-generated acreage reduction	178,897	168,730	10,166
Reduction due to planting restrictions	−6,760	−6,635	−125
Total	172,137	162,095	10,042

The estimated 1996–97 grain and seed acreage reductions are assumed to have occurred as a result of several non-price factors, including reduced interest from buyers outside the regulated area and possible Karnal bunt-related production and marketing concerns. This planted wheat acreage cutback may have resulted from a combination of producer reaction to lower demand for wheat—both domestically and in foreign markets—and grower reluctance to plant wheat due to the possibility of becoming infected with Karnal bunt. No attempt is made to estimate the relative influence among these non-price factors on the remaining planted grain and seed wheat acreage reductions.

Potential Economic Losses in 1996–97 Due to Reduced Planted Acreage

The potential economic losses resulting from lost sales of wheat grain and seed due to the non-price-generated acreage reductions described in the previous paragraphs are presented below. These potential economic losses are broken down into three categories: (1) Losses associated with the prohibition on planting wheat in restricted areas; (2) losses in gross value of grain and associated seed; and (3) losses resulting from reduced seed sales.

Losses Associated With the Prohibition on Planting Wheat in Restricted Areas

The gross economic losses resulting from the prohibition on planting wheat on the 6,635 acres in the restricted areas is estimated at $3 million for the 1996–1997 crop season.[5] This gross loss implies a net wheat income reduction of $1.5 million.[6] To offset those losses, other crops with historically high returns, such as barley, could be grown as replacement crops in the restricted areas. Assuming the substitution of barley, which yields returns of about 80 percent of that of wheat, gross economic losses to wheat producers are reduced to $0.6 million, and the associated net loss to producers on these barley sales would be even lower, at $0.35 million.

Losses in Gross Value of Grain

The loss in gross value of the remaining non-price-generated wheat grain acreage reduction of 162,095 acres is estimated at $72.9 million. Again, if we assume the substitution of barley for wheat on this acreage, gross grower losses are lowered to $14.6 million and the corresponding net losses to growers would be even lower, estimated at around $7.3 million.

Losses Resulting From Reduced Seed Sales

The entire amount of non-price-generated wheat grain acreage reductions and their associated needed wheat seed production was totally accounted for in the loss calculations above. Some of the additional seed acreage reductions were left unaccounted for because the acreage reductions were proportionately greater for wheat seed than for wheat grain. These remaining wheat seed acreage reductions of 10,042 acres have an associated gross and net grower economic loss of $7.6 and $3.7 million, respectively. This planted seed acreage cutback probably was due primarily to seed producers reacting to lower seed demand in export markets.

Reduced Surveillance Area

The interim rule reduced the acreage in surveillance areas, which reduces the amount of potential economic losses to growers and handlers of grain. That reduction is based on the assumption that 15 percent of production in a surveillance area will be found to be infected with Karnal bunt, and that the value of such Karnal bunt positive wheat is reduced by $0.60 per bushel. Thus, under the October 1996 final rule, which included 207,670 acres of

[3] Comparing the expected amount of planted wheat seed acreage (14,031) that would have been expected as a result of lower prices with the actual 1997 planted wheat seed acreage (3,865) gives a total of 10,166 fewer acres of seed left unexplained by lower prices in 1997. Deducting the 10,166 fewer acres of wheat seed from the total wheat acreage decrease left unexplained by lower prices in 1997 produces a non-price-generated drop of 168,730 acres of grain.

[4] This assumes that 1 acre of wheat seed produces enough clean propagative seed to plant 54 acres.

[5] The calculation of the value of wheat grain is based on the assumption that an acre of wheat yields 100 bushels of grain, and a bushel of grain is valued at $4.50 per bushel.

[6] This net income calculation is made using the same net income to gross income proportion used in the Karnal Bunt Regulatory Flexibility Analysis published in the **Federal Register** on April 3, 1997 (62 FR 15809–15819, Docket No. 96–016–18).

surveillance area, there was a potential economic loss, due to the $0.60 per-bushel decline in market value, of $1.9 million. With the interim rule's reduction of surveillance areas to 9,806 acres, this potential loss is reduced to under $100,000.

Summary of Potential Economic Losses in the Regulated Area in 1996–1997

Planted wheat acreage in the regulated areas in 1997 showed a drop of over 70 percent from 1996. Growers cut back wheat production due to a host of factors, including expected lower prices, the presence of Federal regulations, and the threat of Karnal bunt. Standard economic models correlating acreage changes to price changes explain only about 22 percent of the actual acreage reduction from 1995–96 in the regulated area. It is assumed that the remaining 178,897 acres were dropped from wheat production due to nonprice factors. One of these factors was the prohibition on planting wheat in fields designated as restricted areas for regulated articles other than seed. This drop in grain production and its associated seed acreage produced an estimated net income loss to growers of about $0.35 million in 1996–97.[7] However, much of this loss would have been incurred with or without the interim rule, as the number of fields in which wheat could not be grown was largely unchanged by the interim rule.

Reductions in grain demand ($7.3 million) and its associated seed acreage ($3.7 million) generated net losses to growers of about $11 million, even with the reduction in the size of the regulated area resulting from the interim rule (see table 4). It should be noted that these losses are estimated annual losses in the 1996–1997 crop season. The amount of losses that may be incurred in the future will be affected by changes in the size of the regulated areas and the presence or absence of regulatory restrictions on the planting and movement of Karnal bunt host crops within the regulated areas.

TABLE 4.—POTENTIAL ECONOMIC LOSSES IN THE 1996–1997 CROP SEASON DUE TO REDUCED PLANTED ACREAGE

Loss in value associated with:	Gross value ($ million)	Net value ($ million)
Prohibition on wheat planting in restricted areas for regulated articles other than seed	0.6	0.35
Reduced wheat grain acreage	14.6	7.3
Reduced seed planting and sales	7.6	3.7
Total	22.8	11.35

The area in which the interim rule may have reduced losses is in its reduction in the acreage designated as surveillance areas. As explained previously in this analysis, the reduction in the acreage designated as surveillance areas could be expected to lower potential Karnal bunt-positive wheat value losses from $1.9 million to $0.1 million.[8] The reduction in the acreage designated as surveillance areas may cause some price strengthening in the short run, but most likely this change will be more beneficial in the future. The same is true for the reduction in the acreage designated as restricted areas for seed—little short-run relief was expected, but future production shifts may significantly reduce the effect of regulations. No quantitative estimate for 1997 is made on either of these two possible market adjustments.

Federal Compensation To Mitigate Losses

In order to alleviate some of the economic hardships and to ensure full and effective compliance with the regulatory program, compensation to mitigate certain losses described above was offered to producers and other affected entities in the regulated area. The rationale for the use of compensation was that the emergency actions taken by the Agency to prevent further spread of Karnal bunt disrupted normal production and marketing activities in regulated areas. Producers and other affected individuals had little time or ability to avoid the unexpected costs or pass those costs on to others in the marketing chain. The impact was particularly severe on the wheat industry in the regulated area because much of the crop was grown under contract at specified amounts and prices.

The Agency compensation plan reflected the fact that while significant benefits of regulation (in terms of the avoidance of greater losses in the export market) accrue to producers outside the regulated areas, the regulatory burden fell disproportionately on those within the regulated area. Compensation would therefore be appropriate where a small number of parties necessarily bear a disproportionate share of the burden of providing such benefits.

For comparison purposes, when Karnal bunt was first detected in the 1995–1996 crop season, compensation was paid for the plow-down of fields in New Mexico and Texas that were planted with seed containing bunted wheat kernels, loss in value of wheat testing positive for Karnal bunt to producers and handlers, loss in value of wheat testing negative for Karnal bunt to producers and handlers, cost of millfeed treatment, cleaning and disinfecting of grain storage facilities, and wheat inventories from past crop season (for further details, see docket No. 96–016–20, published in the **Federal Register** on May 6, 1997, 62 FR 24753–24765). Compensation funding of nearly $40 million was made available to the Agency through budget apportionment for losses suffered in the 1995–96 crop year. As of December 31, 1998, about $33 million has been paid in compensation: $18.5 million to producers and handlers who suffered losses from the sale of their 1996 wheat crop, $8.5 million to seed and straw producers and handlers, and $3 million in claims for custom harvesters, millfeed treatment, storage facility decontamination).[9]

For the 1996–97 crop season, the crop year pertinent to the regulatory changes addressed in this final rule, compensation was limited to certain growers and handlers within the regulated area for grain that tested positive for bunted wheat kernels, flour millers who choose to handle positive wheat, and growers and handlers of grain or seed in areas where Karnal bunt was discovered outside the regulated

[7] These losses assume that a large part of the reduced wheat acreage was planted into barley in 1997 so that barley receipts offset gross and net wheat income losses by almost 80 percent.

[8] Compensation in these areas could further reduce the economic effect on producers and handlers.

[9] The remaining $3 million of the $33 million total is accounted for by outstanding claims that have been reviewed and approved by the Farm Service Agency, but that are not reflected in the three subtotals.

area (63 FR 31593–31601, Docket No. 96–016–29, published June 10, 1998). Of the $3.6 million apportioned for compensation for 1997 crop losses, less than $50,000 in compensation has been paid. Due to the small number of positive finds, total losses are not expected to exceed $200,000.

In conclusion, the lifting of certain restrictions as a result of the interim rule was expected to only marginally reduce the 1997 economic effect on production and marketing for most wheat in the regulated areas. Planting for the May/June 1997 harvest was already complete when the interim rule was published, so growers could not react to the change in regulations by making different planting decisions. However, the reduction in the acreage designated as surveillance areas could be expected to lower potential Karnal bunt-positive wheat value losses from $1.9 million to $0.1 million. Thus, benefits of $1.8 million in 1997 could be realized as a result of the interim rule, based on a lower incidence of Karnal bunt-positive grain, which reduces the losses associated with the lower value of Karnal bunt-positive grain. Compensation in these areas could further reduce the economic effect on producers and handlers. Payments for the 1996–1997 crop season are not expected to exceed $200,000 due to the small number of positive finds.

Alternatives Considered

The only significant alternative to the interim rule would have been to retain the classification criteria provided by the Karnal bunt regulations established in the October 1996 final rule. In that final rule, levels of risk were assigned to areas based on their proximity to fields in which Karnal bunt spores were detected during preharvest samples or in which contaminated seed was planted. Under those criteria, it is unlikely that any of the significant reductions in the size of the regulated areas and the number of affected growers achieved by the May 1997 interim rule could have been accomplished. In addition, maintaining those criteria would likely have resulted in the placement of regulatory restrictions in the States of Alabama, Florida, Georgia, and Tennessee, where grain in a number of storage facilities had been found to be contaminated with spores that appeared to be Karnal bunt spores, and in South Carolina, where seed from a seed lot contaminated with those Karnal bunt-like spores had been planted. However, given our conclusion that the detection of spores alone does not allow us to make a conclusive determination that Karnal bunt disease is present in an area or article, that alternative was rejected. By rejecting that alternative, APHIS was able to prevent the enormous cost impacts on producers and eliminate the need for large compensation payments while continuing to assure importing countries that U.S. wheat exports are coming from areas where Karnal bunt is not known to exist.

List of Subjects in 7 CFR Part 301

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

Accordingly, the interim rule amending 7 CFR part 301 that was published at 62 FR 23620–23628 on May 1, 1997, is adopted as a final rule with the following change:

PART 301—DOMESTIC QUARANTINE NOTICES

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

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

§ 301.89–9 [Amended]

2. In § 301.89–9, in paragraph (a), the text of footnote 5 is amended by removing the words ''footnote 3'' and adding the words ''footnote 2'' in their place.

Done in Washington, DC, this 25th day of May 1999.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–13793 Filed 6–1–99; 8:45 am]

BILLING CODE 3410–34–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–41453, International Series Release No. 1198, File No. S7–4–99]

RIN 3235–AH68

Exemption of the Securities of the Kingdom of Sweden Under the Securities Exchange Act of 1934 for Purposes of Trading Futures Contracts on Those Securities

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is adopting an amendment to Rule 3a12–8 that would designate debt obligations issued by the Kingdom of Sweden as ''exempted securities'' for the purpose of marketing and trading futures contracts on those securities in the United States. The amendment is intended to permit futures trading on the sovereign debt of Sweden.

EFFECTIVE DATE: June 2, 1999.

FOR FURTHER INFORMATION CONTACT: Joshua Kans, Attorney, Office of Market Supervision (''OMS''), Division of Market Regulation (''Division''), Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–1001, at 202/942–0079.

SUPPLEMENTARY INFORMATION:

I. Introduction

Under the Commodity Exchange Act (''CEA''), it is unlawful to trade a futures contract on any individual security unless the security in question is an exempted security (other than a municipal security) under the Securities Act of 1933 (''Securities Act'') or the Securities Exchange Act of 1934 (''Exchange Act''). Debt obligations of foreign governments are not exempted securities under either of these statutes. The Securities and Exchange Commission (''SEC'' or ''Commission''), however, has adopted Rule 3a12–8 [1] (''Rule'') under the Exchange Act to designate debt obligations issued by certain foreign governments as exempted securities under the Exchange Act solely for the purpose of marketing and trading futures contracts on those securities in the United States. As amended, the foreign governments currently designated in the Rule are Great Britain, Canada, Japan, Australia, France, New Zealand, Austria, Denmark, Finland, the Netherlands, Switzerland, Germany, the Republic of Ireland, Italy, Spain, Mexico, Brazil, Argentina, Venezuela and Belgium (the ''Designated Foreign Governments''). As a result, futures contracts on the debt obligations of these countries may be sold in the United States, as long as the other terms of the Rule are satisfied.

On February 23, 1999, the Commission issued a release proposing to amend Rule 3a12–8 to designate the debt obligations of the Kingdom of Sweden (''Sweden'') as exempted securities, solely for the purpose of futures trading.[2] No comment letters were received in response to the proposal.

The Commission today is adopting this amendment to the Rule, adding Sweden to the list of countries whose debt obligations are exempted by Rule

[1] 17 CFR 240.3a12–8.

[2] *See* Securities Exchange Act Release No. 41090 (February 23, 1999), 64 FR 9948 (March 1, 1999) (''Proposing Release'').

3a12–8. In order to qualify for the exemption, futures contracts on the debt obligations of Sweden would have to meet all the other existing requirements of the Rule.

II. Background

Rule 3a12–8 was adopted in 1984[3] pursuant to the exemptive authority in section 3(a)(12) of the Exchange Act in order to provide a limited exception from the CEA's prohibition on futures overlying individual securities.[4] As originally adopted, the Rule provided that the debt obligations of Great Britain and Canada would be deemed to be exempted securities, solely for the purpose of permitting the offer, sale, and confirmation of ''qualifying foreign futures contracts'' on such securities. The securities in question were not eligible for the exemption if they were registered under the Securities Act or were the subject of any American depositary receipt so registered. A futures contract on the covered debt obligation under the Rule is deemed to be a ''qualifying foreign futures contract'' if the contract is deliverable outside the United States and is traded on a board of trade.[5]

The conditions imposed by the Rule were intended to facilitate the trading of futures contracts on foreign government securities in the United States while requiring offerings of foreign government securities to comply with the federal securities laws. Accordingly, the conditions set forth in the Rule were designed to ensure that, absent registration, a domestic market in unregistered foreign government securities would not develop, and that markets for futures on these instruments would not be used to avoid the securities law registration requirements. In particular, the Rule was intended to ensure that futures on exempted sovereign debt did not operate as a surrogate means of trading the unregistered debt.

Subsequently, the Commission amended the Rule to include the debt securities issued by Japan, Australia, France, New Zealand, Austria, Denmark, Finland, the Netherlands, Switzerland, Germany, Ireland, Italy, Spain, Mexico, Brazil, Argentina, Venezuela and, most recently, Belgium.[6]

OM Stockholm AB of Sweden (''OM''), and its British affiliate OMLX, The London Securities and Derivatives Exchange Limited (''OMLX''), have proposed that the Commission amend 3a12–8 to include the sovereign debt of Sweden. OM and OMLX (which will be collectively referred to as ''OM'') have stated that they are listing standardized futures contracts on Swedish government securities for trading on their respective markets, beginning with a futures contract on the ten-year Swedish government bond. The applicants wish to make those futures contracts available to U.S. investors.[7]

The Swedish National Debt Office submitted a letter supporting OM's application to amend the Rule.[8] In 1988, the Commission proposed adding Sweden to the list of countries designated under the Rule,[9] but rejected the proposal because of opposition from the Swedish government.[10]

The Commission is amending Rule 3a12–8 to add Sweden to the list of countries whose debt obligations are deemed to be ''exempted securities'' under the terms of the Rule. Under this amendment, the existing conditions set forth in the Rule (*i.e.*, that the underlying securities not be registered in the United States, that futures contracts require delivery outside the United States, and that contracts be traded on a board of trade) would continue to apply.

III. Discussion

For the reasons discussed below, the Commission finds that it is consistent with the public interest and the protection of investors that Rule 3a12–8 be amended to include the sovereign debt obligations of Sweden. The Commission believes that the trading of futures contracts on the sovereign debt of Sweden could provide U.S. investors and dealers with a vehicle for hedging the risks involved in holding debt instruments of Sweden, and that the sovereign debt of Sweden should be subject to the same regulatory treatment under the Rule as that of the Designated Foreign Governments.

When amending the Rule to include Belgium, the Commission stated that it would consider two types of evidence about whether there was an active and liquid secondary trading market for the security—credit rating (as indirect evidence) and trading data.[11] Earlier, when amending the Rule to include Mexico, Brazil, Argentina, and

[3] *See* Securities Exchange Act Release No. 20708 (''Original Adopting Release'') (March 2, 1984), 49 FR 8595 (March 8, 1984); Securities Exchange Act Release No. 19811 (''Original Proposing Release'') (May 25, 1983), 48 FR 24725 (June 2, 1983).

[4] In approving the Futures Trading Act of 1982, Congress expressed its understanding that neither the SEC nor the Commodity Futures Trading Commission (''CFTC'') had intended to bar the sale of futures on debt obligations of the United Kingdom of Great Britain and Northern Ireland to U.S. persons, and its expectation that administrative action would be taken to allow the sale of such futures contracts in the United States. *See* Original Proposing Release, *supra* note 3, 48 FR at 24725 (citing 128 Cong. Rec. H7492 (daily ed. September 23, 1982) (statements of Representatives Daschle and Wirth)).

[5] As originally adopted, the Rule required that the board of trade be located in the country that issued the underlying securities. This requirement was eliminated in 1987. *See* Securities Exchange Act Release No. 24209 (March 12, 1987), 52 FR 8875 (March 20, 1987).

[6] As originally adopted, the Rule applied only to British and Canadian government securities. *See* Original Adopting Release, *supra* note 3. In 1986, the Rule was amended to include Japanese government securities. *See* Securities Exchange Act Release No. 23423 (July 11, 1986), 51 FR 25996 (July 18, 1986). In 1987, the Rule was amended to include debt securities issued by Australia, France and New Zealand. *See* Securities Exchange Act Release No. 25072 (October 29, 1987), 52 FR 42277 (November 4, 1987). In 1988, the Rule was amended to include debt securities issued by Austria, Denmark, Finland, the Netherlands, Switzerland, and West Germany. *See* Securities Exchange Act Release No. 26217 (October 26, 1988), 53 FR 43860 (October 31, 1988). In 1992 the Rule was again amended to (1) include debt securities offered by the Republic of Ireland and Italy, (2) change the country designation of ''West Germany'' to the ''Federal Republic of Germany,'' and (3) replace all references to the informal names of the countries listed in the Rule with references to their official names. *See* Securities Exchange Act Release No. 30166 (January 8, 1992), 57 FR 1375 (January 14, 1992). In 1994, the Rule was amended to include debt securities issued by Spain. *See* Securities Exchange Act Release No. 34908 (October 27, 1994), 59 FR 54812 (November 2, 1994). In 1995, the Rule was amended to include the debt securities of Mexico. *See* Securities Exchange Act Release No. 36530 (November 30, 1995), 60 FR 62323 (December 6, 1995). In 1996, the Rule was amended to include debt securities issued by Brazil, Argentina, and Venezuela. *See* Securities Exchange Act Release No. 36940 (March 7, 1996), 61 FR 10271 (March 13, 1996). Finally, earlier in 1999, the Rule was amended to include debt securities issued by Belgium. *See* Securities Exchange Act Release No. 41116 (February 26, 1999), 64 FR 10564 (March 5, 1999).

[7] *See* Letters from Philip McBride Johnson, counsel for OM and OMLX, to Jonathan Katz, Secretary, Commission, dated June 11, 1998; Memorandum provided by OM and OMLX to the Division of Market Regulation on July 6, 1998; Letter from Philip Johnson to Michael Walinskas, Deputy Associate Director, Division, Commission, dated July 24, 1998; Letters from Philip Johnson to Joshua Kans, Attorney, Division, Commission, dated August 20, September 11 and October 2, 1998; Letter from Philip Johnson to Michael Walinskas, dated December 7, 1998; Letters from Philip Johnson to Joshua Kans, dated March 31 and April 19, 1999 (collectively ''OM petition'').

[8] *See* Letter from Tomas Magnusson, Director and General Counsel, Swedish National Debt Office, to Jonathan Katz, Secretary, Commission, dated June 29, 1998.

[9] *See* Securities Exchange Act Release No. 25998 (August 16, 1988), 53 FR 31709 (August 19, 1988).

[10] The Embassy of Sweden submitted two letters in response to the 1988 proposal, noting that currency controls prohibiting non-residents from holding Swedish kronor-denominated securities would preclude development of a market for physically settled futures on such securities, and stating that in any case it was not in the Swedish government's interest that such a market develop. As a matter of international comity, the Commission chose not to add Sweden to the Rule. *See* Securities Exchange Act Release No. 26217 (October 26, 1988), 53 FR 43860 (October 31, 1988).

[11] *See* Securities Exchange Act Release No. 41116 (February 26, 1999), 64 FR 10564 (March 5, 1999).

Venezuela, the Commission considered primarily whether market evidence indicated that an active and liquid secondary trading market exists for the sovereign debt of those countries.[12] Prior to the addition of those countries to the Rule, the Commission considered principally whether the particular sovereign debt had been rated in one of the two highest rating categories [13] by at least two nationally recognized statistical rating organizations (''NRSROs'').[14]

Sweden meets the credit rating standard. Moody's has assigned Sweden a long-term local currency credit rating of Aa1 and a long-term foreign currency credit rating of Aa2. S&P has assigned Sweden a long-term local currency credit rating of AAA and a long-term foreign currency credit rating of AA+.

Market data also indicates that there exists an active and liquid trading market for Swedish issued debt instruments. As of February 28, 1999, the total Swedish public debt outstanding was equivalent to approximately US$173 billion (1428 billion Swedish kronor (''SEK'')).[15] The largest portion of this debt, Treasury bonds (Statsobligationslån) denominated in Swedish kronor, amounted to approximately US$94 billion (SEK 773 billion).[16] Treasury bills (Statsskuldväxlar) denominated in Swedish kronor amounted to approximately US$27 billion (SEK 227 billion).[17]

OM has submitted data indicating that secondary market trading in Treasury bonds amounted to approximately US$1.2 trillion (SEK 9079 billion) in 1996, approximately US$1.3 trillion (SEK 10,550 billion) in 1997, and approximately US$1.2 trillion (SEK 9098 billion) in 1998.[18] The average daily trading volume during that period ranged from approximately US$2.1 billion (SEK 16.6 billion) for the month of July 1998 to approximately US$8.3 billion (SEK 65.6 billion) for the month of October 1997. OM adds that there were approximately 109,100 transactions in benchmark Treasury bonds in 1997 and 274,000 in 1998; 27,500 transactions in non-benchmark Treasury bonds in 1997 and 7900 in 1998; and 2000 transactions in inflation-linked Treasury bonds in 1997 and 10,800 in 1998.[19]

OM has also submitted data stating that secondary market trading in Treasury bills amounted to approximately US$440 billion (SEK 3452 billion) in 1996, approximately US$488 billion (SEK 3831 billion) in 1997, and approximately US$447 billion (SEK 3511 billion) in 1998. The average daily trading volume during that period ranged from approximately US$1.2 billion (SEK 9.3 billion) for the month of May 1996 to approximately US$2.6 billion (SEK 20.7 billion) for the month of March 1997. OM adds that there were approximately 38,600 transactions in Treasury bills in 1997 and 76,800 in 1998.[20]

The Commission finds that this trading data, coupled with a high debt rating, provides sufficient evidence that there exists an active and liquid market for Swedish sovereign debt.

IV. Costs and Benefits of the Proposed Amendments

The Commission believes that the amendment offers potential benefits for U.S. investors. As stated above, the amendment will allow U.S. and foreign boards of trade to offer in the United States, and U.S. investors to trade, futures contracts on the debt obligations of Sweden. Consistent with Congressional support for futures on foreign sovereign debt securities, the trading of futures on the sovereign debt of Sweden should provide U.S. investors with a vehicle for hedging the risks involved in the trading of the underlying sovereign debt of Sweden. The amendment does not impose any

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[12] *See*, e.g., Securities Exchange Act Release No. 36530 (November 30, 1995), 60 FR 62323 (December 6, 1995) (amending the Rule to add Mexico because the Commission believed that as a whole, the market for Mexican sovereign debt was sufficiently liquid and deep for the purposes of the Rule); Securities Exchange Act Release No. 36940 (March 7, 1996), 61 FR 10271 (March 13, 1996) (amending the Rule to add Brazil, Argentina and Venezuela because the Commission believed that the market for the sovereign debt of those countries was sufficiently liquid and deep for the purposes of the Rule).

[13] The two highest categories used by Moody's Investor Services (''Moody's'') for long-term debt are ''Aaa'' and ''Aa.'' The two highest categories used by Standard and Poor's (''S&P'') for long-term debt are ''AAA'' and ''AA.''

[14] *See, e.g.,* Securities Exchange Act Release No. 30166 (January 6, 1992) 57 FR 1375 (January 14, 1992) (amending the Rule to include debt securities issued by Ireland and Italy—Ireland's long-term sovereign debt was rated Aa3 by Moody's and AA- by S&P, and Italy's long-term sovereign debt was rated Aaa by Moody's and AA+ by S&P); and Securities Exchange Act Release No. 34908 (October 27, 1994), 59 FR 54812 (November 2, 1994) (amending the Rule to include Spain, which had long-term debt ratings of Aa2 from Moody's and AA from S&P); *See also* Securities Exchange Act Release No. 36213 (September 11, 1995), 60 FR 48078 (September 18, 1995) (proposal to add Mexico to list of countries encompassed by the Rule); Securities Exchange Act Release No. 24428 (May 5, 1987), 52 FR 18237 (May 14, 1987) (proposed amendment, which was not implemented, that would have extended the Rule to encompass all countries rated in one of the two highest categories by at least two NRSROs).

[15] Data regarding the amount of outstanding debt was obtained from ''Den Svenska Statsskulden: The Swedish Central Government Debt,'' February 28, 1998, available from the website of the Swedish National Debt Office (http://www.sndo.se). U.S. dollar equivalents for the February 28, 1999 data about outstanding debt is based on the conversion rate of SEK 8.2538 for US$1.00 in effect as of March 1, 1999.

The last country added to the index, Belgium, had an outstanding public debt equal to approximately US$264 billion at the end of 1997. *See* Securities Exchange Act Release No. 41116 (February 26, 1999), 64 FR 10564 (March 5, 1999). The four countries last added to the list prior to Belgium—Mexico, Brazil, Argentina and Venezuela—had lower amounts of public debt. *See* Securities Exchange Act Release No. 36530 (December 6, 1995), 60 FR 62323 (December 6, 1995) (outstanding Mexican government debt amounted to approximately US$87.5 billion face value as of March 31, 1995); Securities Exchange Act Release No. 36940 (March 7, 1996), 61 FR 10271 (March 13, 1996) (public and publicly guaranteed debt of Brazil, Argentina and Venezuela amounted to approximately US$86 billion, US$55 billion and US$74 billion, respectively, as of December 31, 1993).

[16] The outstanding Treasury bonds include approximately US$79 billion (SEK 654 billion) worth of benchmark bonds, approximately US$2.8 billion (SEK 23 billion) worth of non-benchmark bonds, and approximately US$11 billion (SEK 94 billion) worth of inflation linked bonds.

[17] Other types of Swedish currency-denominated debt included approximately US$6.8 billion (SEK 56 billion) worth of lottery bonds. A total of approximately US$132 billion (SEK 1086 billion) in Swedish government debt was denominated in Swedish kronor.

Foreign currency-denominated debt amounted to approximately US$41 billion (SEK 342 billion). Foreign-currency denominated debt includes approximately US$32 billion (SEK 266 billion) worth of public issues, US$6.7 billion (SEK 56 billion) worth of private placements, and US$2.0 billion (SEK 16 billion) worth of commercial paper.

[18] OM petition, *supra* note 7. OM states that the statistics about secondary market trading in Swedish debt were derived from data specially prepared by the Swedish Central Securities Depository. *Id.*

For the historical 1996 to 1998 secondary market trading data discussed in this release, U.S. dollar equivalents are based on the conversion rate of SEK 7.8565 for US$1.00 in effect as of September 30, 1998. The exchange rate varied from 6.5340 to 7.0114 in 1996, from 6.8074 to 8.0780 in 1997, and from 7.5763 to 8.3397 in 1998.

[19] OM states that secondary market trading for Swedish government debt is primarily conducted on a phone-based and screen-based over-the-counter market conducted by a number of dealers, with transactions in Treasury bonds and Treasury bills registered at the PMX Exchange at the end of the trading day. *Id.*

[20] OM states that secondary market trading in lottery bonds was equivalent to approximately US$512 million (SEK 4.03 billion) in 1996, US$449 million (SEK 3.53 billion) in 1997, and US$213 million (SEK 1.67 billion) in the first half of 1998. OM has not provided secondary market trading data for other Swedish debt securities. According to OM, transaction data for Swedish government debt denominated in foreign currencies is extremely difficult to obtain. OM further contends that because a number of Swedish government debt securities denominated in U.S. dollars have been registered under the Securities Act of 1933, and therefore are not eligible for exemption under the Rule, secondary market data for securities denominated in non-kronor currencies is less significant. *See id.*

OM states that it presently does not intend to list any futures on inflation-linked bonds, treasury bonds with repurchase agreements, lottery bonds or commercial papers. *Id.*

direct recordkeeping or compliance costs, and merely would provide a limited purpose exemption under the federal securities laws. The restrictions imposed under the amendment are identical to the restrictions currently imposed under the terms of the Rule and are designed to protect U.S. investors.

V. Effects of the Proposed Amendment on Competition, Efficiency and Capital Formation, and Other Findings

Section 23(a)(2) of the Exchange Act [21] requires the Commission, in adopting rules under the Exchange Act, to consider the competitive effects of such rules, if any, and to refrain from adopting a rule that would impose a burden on competition not necessary or appropriate in furthering the purposes of the Exchange Act. Moreover, section 3 of the Exchange Act [22] as amended by the National Securities Markets Improvement Act of 1996 [23] provides that whenever the Commission is engaged in a rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation.

The Commission has considered the amendment to the Rule in light of the standards cited in sections 3 and 23(a)(2), and the Commission believes that adoption of the amendment will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. As stated above, the amendment is designed to assure the lawful availability in this country of futures contracts on the government debt of Sweden that otherwise would not be permitted to be marketed under the terms of the CEA. The amendment thus serves to expand the range of financial products available in the United States and enhances competition in financial markets. The Commission has considered the amendment's impact on efficiency, competition, and capital formation and concludes that it would promote these three objectives, by making available to U.S. investors an additional product to use to hedge the risks associated with the trading of the underlying sovereign debt of Sweden.[24] Insofar as the Rule contains limitations, they are designed to promote the purposes of the Exchange Act by ensuring that futures trading on government securities of Sweden is consistent with the goals and purposes of the federal securities laws by minimizing the impact of the Rule on securities trading and distribution in the United States.

Because the amendment to the Rule is exemptive in nature, the Commission has determined to make the foregoing action effective immediately upon publication in the **Federal Register**.[25]

VI. Administrative Requirements

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(h), the Chairman of the Commission has certified in connection with the Proposing Release that this amendment, if adopted, would not have a significant economic impact on a substantial number of small entities. The Commission received no comments on this certification.

The Paperwork Reduction Act does not apply because the amendment does not impose recordkeeping or information collection requirements, or other collections of information which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

VII. Statutory Basis

The amendment to Rule 3a12–8 is being adopted pursuant to 15 U.S.C. 78a *et seq.*, particularly sections 3(a)(12) and 23(a), 15 U.S.C. 78c(a)(12) and 78w(a).

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

Text of the Amendment

For the reasons set forth in the preamble, the Commission amends part 240 of Chapter II, Title 17 of the Code of Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. Section 240.3a12–8 is amended by removing the word ''or'' at the end of paragraph (a)(1)(xviii), removing the period at the end of paragraph (a)(1)(xix) and adding ''; or'' in its place, and adding paragraph (a)(1)(xx), to read as follows:

§ 240.3a12–8 Exemption for designated foreign government securities for purposes of futures trading.

(a) * * *

(1) * * *

(xxi) The Kingdom of Sweden.

* * * * *

Dated: May 26, 1999.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–13927 Filed 6–1–99; 8:45 am]

BILLING CODE 8010–01–P

[21] 15 U.S.C. 78w(a)(2).

[22] 15 U.S.C. 78c.

[23] Pub. L. 104–290, 110 Stat. 3416 (1996).

[24] 15 U.S.C. 78f(b).

[25] 5 U.S.C. 553(d).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 175

[Docket No. 98F–0823]

Indirect Food Additives: Adhesives and Components of Coatings

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 1-octene as an optional monomer in the preparation of polymers for use as resins in adhesives for articles used in contact with food. This action responds to a petition filed by The Dow Chemical Co.

DATES: This regulation is effective June 2, 1999. Submit written objections and requests for a hearing by July 2, 1999.

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

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of October 6, 1998 (63 FR 53679), FDA announced that a food additive petition (FAP 8B4628) had been filed by The Dow Chemical Co., 2030 Dow Center, Midland, MI 48674. The petition proposed to amend the food additive regulations in § 175.105 *Adhesives* (21 CFR 175.105) to provide for the safe use of 1-octene as an optional monomer in the preparation of polymers for use as resins in adhesives for articles used in contact with food.

FDA has evaluated data in the petition and other relevant material. Based on this information, the agency concludes that: (1) The proposed use of the additive is safe, (2) the additive will achieve its intended technical effect, and therefore, (3) the regulations in § 175.105 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has previously considered the environmental effects of this rule as announced in the notice of filing for FAP 8B4628. No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Any person who will be adversely affected by this regulation may at any time on or before July 2, 1999, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 175

Adhesives, Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 175 is amended as follows:

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

1. The authority citation for 21 CFR part 175 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

2. Section 175.105 is amended in the table in paragraph (c)(5) by alphabetically adding an entry under the category ''Polymers: Homopolymers and copolymers of the following monomers'' under the heading ''Substances'' to read as follows:

§ 175.105 Adhesives.

* * * * *

(c) * * *

(5) * * *

Substances	Limitations
* * * * * * *	
Polymers: Homopolymers and copolymers of the following monomers:	
* * *	
1–Octene (CAS Reg. No. 111–66–0).	
* * * * * * *	

Dated: May 19, 1999.

L. Robert Lake,

Director, Office of Policy, Planning and Strategic Initiatives, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–13858 Filed 6–1–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 110, 162, and 165

[CGD17–99–002]

RIN 2115–AF81

Anchorage Ground; Safety Zone; Speed Limit; Tongass Narrows and Ketchikan, AK

AGENCY: Coast Guard, DOT.

ACTION: Interim rule; request for comments.

SUMMARY: The Coast Guard has changed the portions of Tongass Narrows that have a seven-know speed limit. The interim rule will extend seven-knot speed limit approximately 1600 yards northward in Tongass Narrows, to Tongass Narrows Buoy 9, to reduce wakes near the airport where floatplanes take off and land. Non-commercial, open skiffs are exempted to allow them to transit crowded areas of Tongass Narrows more quickly, thereby relieving congestion. The speed limit boundaries on the southern end of Tongass Narrows are moved northward, reducing the size of the speed limit zone to the south. This rule also re-designates the safety zone in Ketchikan Harbor as an anchorage ground to reflect its actual use as an anchorage for large passenger vessels and require that transiting vessels proceed through the anchorage directly, without delay or sudden course changes, to make the final approach,

anchoring, and departure of very large passenger vessels, safer for the vessels involved.

DATES: The interim rule becomes effective June 2, 1999. Comments regarding this interim rule must be received by November 30, 1999.

A public hearing will be held on August 27, 1999 at 7 p.m. (AST).

ADDRESSES: You may mail comments to the Commander (mo), Seventeenth Coast Guard District, PO Box 25517, Juneau, Alaska 99802–5517, or deliver them to the Federal Building, 709 West 9th Street, sixth floor, room 661, Juneau, Alaska, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is 907–463–2242. The Seventeenth Coast Guard District, Maritime Operations Division, maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room 661, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

The public hearing will be held at the Ted Ferry Civil Center, 888 Venetia Avenue, Ketchikan, Alaska.

FOR FURTHER INFORMATION CONTACT: For information concerning this document, call Lieutenant P.W. Clark, Supervisor, U.S. Coast Guard Marine Safety Detachment, Ketchikan, Alaska, telephone 907–225–4496.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages you to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD17–99–002) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you want acknowledgement of receipt of your comments, you should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this interim rule in view of the comments.

The Coast Guard has scheduled a public hearing for 7 p.m. (AST), August 26, 1999, at the Ted Ferry Civil Center, 888 Venetia Ave., Ketchikan, Alaska.

Persons may request an additional public hearing by writing to Commander (mo), Seventeenth Coast Guard District at the address under **ADDRESSES**. The request should include the reasons why an additional hearing would be beneficial. If it determines that the opportunity for additional oral presentations will aid this rulemaking, the Coast Guard will hold an additional public hearing at a time and place announced by a later notice in the **Federal Register**.

Regulatory History

On March 25, 1999, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) entitled ''Anchorage ground, safety zone, speed limit, Tongass Narrows and Ketchikan, AK'' in the **Federal Register** (64 FR 14414). The Coast Guard received 8 letters, including two petitions, regarding the proposed rule during a 45-day comment period. A public hearing was held on March 26th at the Ted Ferry Civic Center in Ketchikan, AK.

Background and Purpose

During the last two years the Coast Guard and the Federal Aviation Administration have held a series of public meetings in Ketchikan, Alaska, to assess maritime traffic, congestion, safety, and wake concerns in Tongass Narrows. The individuals and groups represented at these meetings included recreational vessel operators, passenger vessel operators, commercial fishing vessel operators, commercial kayak operators, floatplane operators, charter vessel operators, and local residents.

The Notice of Proposed Rulemaking proposed changes to the seven-knot speed limit on Tongass Narrows. The existing speed limit did not address the needs of floatplane traffic, may have unnecessarily slowed the transits of smaller vessels, and did not apply in the northern portions of Tongass Narrows where traffic congestion and wake from larger vessels had become a concern. The proposed changes extended the speed zone northward to Channel Island, but exempted vessels of 26 feet or less in length.

The Notice of Proposed Rulemaking also proposed to re-designate the safety zone in Ketchikan Harbor as an anchorage ground. Vessels transiting the anchorage ground other than those engaged in anchoring evolutions would be required to proceed through the anchorage by the most direct route without delay or sudden course changes. The redesignation of the area would reflect its actual use as an anchorage for large passenger vessels. The slow or erratic operation of small vessels in the former safety zone has made it very difficult for large vessels to safely maneuver to and from anchor. The requirement that transiting vessels proceed through the anchorage directly, without delay or sudden course changes, would make the final approach, anchoring, and departure of very large passenger vessels, safer for the vessels involved.

Discussion of Comments and Changes

The Coast Guard received comments from 134 persons regarding the proposed rule. The comments included oral comments made at the public meeting, 2 petitions with multiple signatures, 5 letters from small businesses and 1 letter from a private individual. Responses to these comments and changes made in the proposed rule are discussed in the following paragraphs.

The most frequent comments addressed the northward extension of the seven-knot boundary to Channel Island. Of the 134 persons that commented on the proposed rule (several persons commented on multiple aspects of the proposed rule), 129 commented on the northward extension. Three comments favored the proposed extension of the seven-knot boundary to Channel Island. Six comments were opposed to any extension of the seven-knot boundary; and 120 comments favored a slight extension of the zone. One hundred and five persons stated that an extension of Wolf Point would be appropriate. Fifteen persons stated that an extension to Tongass Narrows Buoy 9 was needed but to extend the zone no further than Tongass Narrows Lighted Buoy 10.

These comments also raised the concern of possible financial impact on the charter sport fishing industry. This was due to the proposed extension of the seven-knot zone boundary northward 3 nautical miles to Channel Island, which may have increased charter vessel transit time by as much as 50 minutes during a 5-hour charter. The Coast Guard believes that an extension of the current boundary from Charcoal Point, northward, is necessary to provide a safe operating area for the Ketchikan International Airport Ferry, for floatplanes using the Ketchikan International Airport floatplane facility and for vessels using the facilities at Petro Alaska's fuel pier. The Coast Guard agrees that an extension of the seven-knot zone to Tongass Narrows Buoy 9 would satisfy these safety concerns. Additionally, this northerly extension of the boundary (approximately 1600 yards) results in an increase in transit time of just 13 minutes round trip (for a vessel that would otherwise have traveled at 21

knots). The Coast Guard believes that the economic impact of this small increase in transit time on the charter sport fishing industry or other vessels is minor when considering the enhanced safety benefits provided to floatplanes, ferry traffic and fueling operations.

Two persons commented on the southern boundaries of the seven-knot speed limit. One comment stated that the existing boundary of Idaho Rock was appropriate. One comment recommended modifying the southern boundaries in the east channel, to the Coast Guard Base; and in the west channel, to a line running from East Clump light to Pennock Reef light to the southern most point of Radenbough Cove on Pennock Island. The Coast Guard, after due consideration, agrees that the southern boundaries of the zone can be reduced. The southern boundaries of the speed zone are moved northward approximately 1000 yards in the east channel and 3000 yards in the west channel. The new boundaries will be marked by Tongass Narrows East Channel Regulatory Buoy and Tongass Narrows West Channel Regulatory Buoy, respectively. These buoys are white, cylindrical buoys with an orange line at the top and bottom and an orange circle containing the words ''7 knots''.

The Coast Guard believes that the decrease in transit times for charters in the southern reaches of Tongass Narrows more than offsets the slight increase in transit time for charters in the northern reaches of Tongass Narrows.

Twenty comments were received regarding the size exemption for vessels 26 feet or under. Of these comments, 15 were in the form of a petition and stated that there should be an exemption for planing hull vessels. This suggested exemption would allow planing hull vessels 26 feet or under in length to operate at any speed within the seven-knot zone and would create a speed corridor for planing hull vessels from 26–40 feet in length from Tongass Narrows Buoy 9 to Channel Island. This petition favored keeping the seven-knot speed limit for displacement hull vessels and extending the limit for displacement hull vessels to Channel Island. The petition also stated that the proposed rule would create a financial advantage for those charter operators using vessels of 26 feet in length or less. One comment recommended reducing the size of the exempted vessels to 24 feet and one favored an exemption for only open skiffs. One comment received favored an exemption for planing hull vessels and vessels of 26 feet or less in length; and 2 comments recommended keeping the 26 feet or less length limit for all vessels, regardless of hull type.

Additionally, several comments were received that pointed out that the 26 feet or less exemption split the charter sport fishing industry and provided an unfair advantage to those persons running charters on vessels of 26 feet in length or less.

The Coast Guard agrees that the proposed rule would unintentionally create an unfair advantage for a portion of the charter sport fishing industry. The Coast Guard considered the recommendations to exempt planing hull vessels from the seven-knot speed limit but does not agree. This is because an exemption based on hull type would most likely split the charter or other commercial fishing fleets and cause unfair economic advantages. In addition, an exemption based on hull type would be very difficult to enforce due to the variety of hull types and nomenclature. Therefore, the Coast Guard has changed the exemptions in the interim rule to read ''no vessel, except floatplanes during landings and take-offs and non-commercial, open skiffs of less than 20 feet in length shall exceed a speed of seven-knots * * *''

Two comments were received regarding the re-designation of the safety zone to an anchorage. One comment was in favor of the change and the other questioned if the proposed change would impact the waterfront operation. The Coast Guard intends for this rule to allow free and unrestricted access to waterfront facilities as is the current practice. This portion of the rule remains unchanged.

No comments were received concerning the exemption of floatplans during take-offs and landings. This portion of the rule remains unchanged.

One hundred and five comments were received regarding the degree and focus of enforcement of the existing seven-knot rule. The Coast Guard recognizes the need for fair and equitable enforcement and anticipates the interim rule will help achieve these ends.

One comment was received regarding the removal of 2 underwater obstructions. This comment is outside the scope of this rule making and is therefore not addressed in the interim rule. The comment was forwarded to the U.S. Army Corps of Engineers for review and consideration.

Discussion of Interim Rule

The interim rule changes the existing seven-knot speed zone on Tongass Narrows. The new speed zone is bounded on the north by Tongass Narrows Buoy 9; marked by a green can buoy located at the northwest end of the Ketchikan International Airport. The southern boundaries are reduced in the east channel to a point just northwest of the City of Saxman at approximate position 55°19′ 22.0″ N, 131°36′40.5″ W, and in the west channel at approximate position 55°19′ 28.5″ N, 131°39′09.7″ W. A regulatory buoy, that is white with an orange line at the top and bottom and an orange circle with the words ''7 knots'', will mark these positions.

The interim rule exempts ''non-commercial, open skiffs of less than 20 feet in length'' from the seven-knot speed limit. The existing rule was applicable to all vessels regardless of size or type. Because of the unique nature of Tongass Narrows, many of the local residents must commute between the islands in small open skiffs. These commuters may have to make numerous trips each day regardless of weather. The existing rule caused undue delay and may have caused increased safety risks for this class of vessels. The proposed rule attempted to exempt vessels 26 feet in length or less but had the unintended affect of splitting the charter sport fishing industry; thereby giving a competitive advantage to smaller charter vessels. The Coast Guard agrees that this economic impact is unacceptable and has withdrawn that exemption from the interim rule.

By exempting ''non-commercial, open skiffs of less than 20 feet in length'', the traffic congestion in the affected areas of Tongass Narrows should be eased and the safety of the non-commercial operators in open skiffs enhanced. With the exemption for these entities, they will be able to depart from, or transit through the congested areas more quickly. This in turn should ease congestion and reduce navigational conflicts that have arisen between slow moving small boats and cruise ships and other large waterway users and will allow them to spend less time on the water during periods of inclimate weather. Large wakes would not become a problem because the exemption is limited to smaller vessels and because Tongass Narrows regularly experiences substantial wave action that is equivalent to the wake from these smaller vessels. The speed limit will be retained for all other vessels, except floatplanes.

Due to safety considerations, the Coast Guard has determined there is good cause to make this rule effective immediately upon publication instead of waiting the usual 30-day period required by 5 U.S.C. 553(d). The immediate implementation is needed so that the interim rule may be in place by the beginning of the 1999 summer boating season.

The Coast Guard encourages persons to comment on the effectiveness of the interim rule, especially during the busy summer season. The Coast Guard will review all written comments received and oral comments made at the public hearing and will consider these comments prior to the publishing of the Final Rule in the fall of 1999.

Regulatory Evaluation

This interim rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this interim rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This is because the regulation is designed to reduce the impacts of the speed limit upon waterway users. With regards to the northward extension of the seven-knot zone, the majority of the comments received on the proposed rule recognized the need for a slow speed area in the vicinity of the Ketchikan International Airport Ferry Terminal and the Ketchikan International Airport Floatplane Facility, but objected to the full extension to Channel Island. After reviewing the comments submitted and listening to the oral arguments, the Coast Guard concurred and has revised the northern boundary. The Coast Guard also reduced the boundaries on the southern end of the zone to further reduce the impact of the present regulation to vessel operators. The new requirement to proceed directly, without erratic maneuvering, through the anchorage area, is expected, in combination with the relaxation of the speed limit for non-commercial open skiffs, to result in less congestion and quicker and safer transits for all users over the course of the summer season.

Small Entities

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

The Coast Guard believes there may be some impact to small entities, but that it will be minimal or non-existent, based on the extensive comments received from the charter sport fishing industry. This is because the area bounded by the seven-knot zone is reduced substantially on the southern end and is extended only slightly in the northern portion of Tongass Narrows. This reduction in the overall size of the speed zone will ease the transit times of the charter sport fishing community. Although no comment was received regarding the economic impacts on other users, the Coast Guard believes such impact will generally be beneficial because the combination of regulatory changes should reduce congestion and navigational conflicts throughout the waterway and make transits safer and more efficient for all user groups. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. If however, you think that your business or organization qualifies as a small entity and that this proposed rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it.

Collection of Information

This interim rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

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

Environment

The Coast Guard considered the environmental impact of this interim rule and concluded that under figure 2–1, paragraph (34)(g) of COMDTINST M18475.1C, this interim rule is categorically excluded from further environmental documentation because it establishes a regulated navigation area. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) and E.O. 12875, Enhancing the Intergovernmental Partnership, (58 FR 58093; October 28, 1993) govern the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

List of Subjects

33 CFR Part 110

Anchorage grounds.

33 CFR Part 162

Navigation (water), Waterways.

33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security Measures, Waterways.

Regulation

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 162 as follows:

PART 162—[AMENDED]

1. The authority citation for Part 162 continues to read as follows:

Authority: 33 U.S.C. 1231; 49 CFR 1.46.

2. Revise § 162.240(b) to read as follows:

§ 162.240 Tongass Narrows, Alaska; navigation.

* * * * *

(b) No vessel, except for floatplanes during landings and take-offs and non-commercial, open skiffs of less than 20

feet in length, shall exceed a speed of seven knots in the region of Tongass Narrows East Channel Regulatory Buoy at position 55°19′22.0″ N 131°36′40.5″ W and Tongass Narrows West Channel Regulatory Buoy at position 55°19′28.5″ N 131°39′09.7″ W, respectively.

* * * * *

PART 110—[AMENDED]

PART 165—[AMENDED]

3. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 33 U.S.C. 2071; 33 CFR 1.05–1(g); 49 CFR 1.46. Section 110.1a and each section listed in it are also issued under 33 U.S.C. 1223 and 1231.

4. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; and 33 CFR 1.05–1(g), 6.04–6, and 160.5; 49 CFR 1.46. Section 165.100 is also issued under the authority of sec. 311, Pub. L. 105–383.

§ 165.1705 [Redesignated as § 110.231 and revised]

5. Section 165.1705 is redesignated as § 110.231 and is revised to read as follows:

§ 110.231 Ketchikan Harbor, Alaska, Large Passenger Vessel Anchorage.

(a) *The anchorage grounds. Ketchikan Harbor, Alaska, Large Passenger Vessel Anchorage.* The waters of Ketchikan harbor, Ketchikan, Alaska, enclosed by the following boundary lines: A line from Thomas Basin Entrance Light ''2'' to East Channel Lighted Buoy ''4A'', to Pennock Island Reef Lighted Buoy ''PR'', to Wreck Buoy ''WR6'', then following a line bearing 064 degrees true to shore. This anchorage is effective 24 hours per day from 1 May through 30 September, annually.

(b) *The regulations.* (1) When transiting through the anchorage, all vessels using propulsion machinery shall proceed across the anchorage by the most direct route and without unnecessary delay. Sudden course changes within the anchorage are prohibited.

(2) No vessels, other than a large passenger vessel of over 1600 gross tons, (including ferries), may anchor within the anchorage without the express consent of the Captain of the Port, Southeast Alaska.

Dated: May 14, 1999.

A. Regalbuto,

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

[FR Doc. 99–13935 Filed 6–1–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR PART 117

[CGD08–99–033]

RIN 2115–AE47

Drawbridge Operating Regulation; Massalina Bayou, FL

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; request for comments.

SUMMARY: The Commander, Eighth Coast Guard District is temporarily changing the regulation governing the operation of the Tarpon Dock bascule span drawbridge across Massalina Bayou, mile 0.0, at Panama City, Bay County, Florida. The draw of the bridge may remain closed o navigation from 9 p.m. until 11 p.m. on July 4, 1999. This temporary rule is issued to facilitate movement of vehicular traffic associated with a fireworks display. Presently the draw opens on signal at all times.

DATES: This rule is effective from 9 p.m. to 11 p.m. on July 4, 1999. Comments must be received on or before June 28, 1999

ADDRESSES: The public docket and all documents referred to in its notice are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Hale Boggs Federal Building, room 1313, 501 Magazine Street, New Orleans, Louisiana 70130–34396 between 7 a.m. and 4 p.m. Monday through Friday, except Federal holidays. You may also mail comments to the address given above or deliver them to the same address between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

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

SUPPLEMENTARY INFORMATION:

Requests for Comments

The Coast Guard encourages interested parties to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD08–99–033) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes. The Coast Guard will consider all comments received during the comment period. This temporary rule may be changed in view of the comments.

Background

The City of Panama City, Florida requested a temporary rule, changing the operation of the Tarpon Dock bascule span drawbridge. The rule is needed to accommodate the additional volume of vehicular traffic that the fireworks display is expected to generate.

Discussion of Temporary Rule

The Tarpon Dock bascule span drawbridge across Massalina Bayou has a vertical clearance of 7 feet above mean high water in the closed-to-navigation position and unlimited in the open-to-navigation position. Navigation on the waterway consists primarily of commercial fishing vessels, sailing vessels and other recreational craft.

A comment period is being provided for interested parties to express their views. If comments are received, the Coast Guard may change this rule.

Regulatory Evaluation

This temporary rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential cost and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this temporary rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This is because the number of vessels impaired during the closed-to-navigation period is minimal.

All commercial vessels still have ample opportunity to transit this waterway before and after the two-hour closure on July 4, 1999.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this temporary rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' may include small businesses, not-for-profit organizations that are independently owned and operated and are not

dominant in their fields and governmental jurisdictions with populations of less than 50,000.

Local commercial fishing vessels will only be inconvenienced for two hours on one evening. Thus, the economic impact is expected to be minimal. there is no indication that other waterway users would suffer any type of economic hardship if they are precluded from transiting the waterway during the two hours that the draw is scheduled to remain in the closed-to-navigation position. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this temporary rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This temporary rule does not provide for a collection-of-information requirement under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

Federalism

The Coast Guard has analyzed this temporary rule under the principles and criteria contained in Executive Order 12612 and has determined that this temporary rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment. The authority to regulate the permits of bridges over the navigable waters of the U.S. belongs to the Coast Guard by Federal statutes.

Environmental

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

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard is amending part 117 of title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. Effective 9 p.m. to 11 p.m. on July 4, 1999, § 117.301 is temporarily added to read as follows:

§ 117.301 Massalina Bayou.

The draw of the Tarpon Dock bascule span bridge, Massalina Bayou, mile 0.0 at Panama City, shall open on signal, except that from 9 p.m. until 11 p.m. on July 4, 1999, the draw need not open for vessel traffic and may be maintained in the closed-to-navigation position.

Dated: May 20, 1999.

Paul J. Pluta

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

[FR Doc. 99–13939 Filed 6–1–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–99–029]

Drawbridge Operation Regulation; Gulf Intracostal Waterway, Harvey Canal, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation governing the operation of the Lapalco Boulevard bascule span drawbridge across the Harvey Canal, Intracoastal Waterway, mile 2.8 at New Orleans, Jefferson Parish, Louisiana. This deviation allows the draw of the Lapalco Boulevard bascule span drawbridge to remain closed to navigation continuously from 6 p.m. on July 9, 1999 until 6 a.m. on July 26, 1999 and from 6 a.m. until 6 p.m. on August 7, 1999. This temporary deviation will allow for replacement of worn components in the electrical an mechanical operating mechanisms.

DATES: This deviation is effective from 6 p.m. on July 9, 1999 through 6 p.m. on August 7, 1999.

ADDRESSES: Unless otherwise indicated, documents referred to in this notice are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Hale Boggs Federal Building, room 1313, 501 Magazine Street, New Orleans, Louisiana 70130–3396 between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The Bridge Administration Branch of the Eighth Coast Guard District maintains the public docket for this temporary deviation.

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

SUPPLEMENTARY INFORMATION: The Lapalco Boulevard bascule span drawbridge across the Intracoastal Waterway, Harvey Canal, mile 2.8, in New Orleans, Louisiana has a vertical clearance of 45 feet above mean high water in the closed-to-navigation position and unlimited in the open-to-navigation position. Navigation on the waterway consists of tugs with tows, small ships, fishing vessels, sailing vessels and other recreational craft. The Jefferson Parish Public Works Department requested a temporary deviation for the operation of the drawbridge to accommodate maintenance work, involving removing and replacing numerous components of the electrical and mechanical operating mechanisms. This work is essential for continued efficient operation of the bridge.

The District Commander has, therefore, issued a deviation from the regulations in 33 CFR 117.451(a), authorizing the draw of the Lapalco Boulevard bascule span drawbridge to remain closed to navigation continuously from 6 p.m. on July 9, 1999 until 6 a.m. on July 26, 1999 and from 6 a.m. until 6 p.m. on August 7, 1999.

Presently, the draw opens on signal; except that, from 6:30 a.m. to 8:30 a.m. and from 3:45 p.m. to 5:45 p.m. Monday through Friday except holidays, the draw need not be opened for the passage of vessels. In the event of an approaching tropical storm or hurricane, the draw will return to normal operation within 12 hours notice from the Coast Guard.

Dated: May 20, 1999.

Paul J. Pluta,

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

[FR Doc. 99–13938 Filed 6–1–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33CFR Part 117

[CCGD08–99–020]

RIN 2115–AE47

Drawbridge Operating Regulation; Muskingum River, OH

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; request for comments.

SUMMARY: The Commander, Eighth Coast Guard District is temporarily changing the regulation governing the Lock Street Drawbridge, Mile 49.7, Muskingum River. The drawbridge need not open for vessel traffic and may remain in the closed-to-navigation position from May 15, 1999 to March 17, 2000 while Lock No. 7 is closed for renovation. This temporary rule is issued to allow for the repair of the subject bridge.

DATES: This temporary rule is effective from 12:01 a.m. on May 15, 1999 to 12:01 a.m. on March 17, 2000.

ADDRESSES: The Public docket and all documents referred to in this notice will be available for inspection and copying at room 2.107f in the Robert A. Young Federal Building at Director, Western Rivers Operations (ob), Eighth Coast Guard District, 1222 Spruce Street, St. Louis, MO 63103–2832, between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Roger K. Weibusch, Bridge Administrator, Director, Western Rivers Operations, Eighth Coast Guard District, Bridge Branch, 1222 Spruce Street, St. Louis, MO 63103–2832, telephone 314–539–3900 extension 378.

SUPPLEMENTARY INFORMATION:

Request For Comments

The Coast Guard encourages interested parties to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 08–99–020) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgement of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

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

Discussion of Temporary Rule

The Lock Street Drawbridge navigation span has a vertical clearance of 18 feet above normal pool in the closed-to-navigation position. Navigation on the waterway consists of recreational watercraft. Presently, the draw opens on signal for passage of river traffic. This temporary drawbridge operation amendment has been coordinated with waterway users and no objections were raised.

In order to minimize public inconvenience the Ohio Department of Natural Resources (OHDNR) intends to run the bridge repairs simultaneously with the repairs to Lock No. 7. Accommodating this repair schedule leaves insufficient time to provide for notice and an opportunity to comment or for a delayed effective date for this rule. Therefore, in accordance with 5 U.S.C. 553, good cause exists for issuing this rule without notice and opportunity for comment and for making this rule effective in less than 30 days after publication in the **Federal Register**.

Background and Purpose

On April 14, 1999, the Ohio Department of Natural Resources (OHDNR) submitted plans for repairs on the Lock Street Drawbridge which will be accomplished while the river is closed for renovation of the Lock No. 7, located 2,000 feet downstream of the bridge. The repairs are necessary to meet the navigational needs of the waterway, which depend on both the bridge and lock being operational.

The Lock Street Drawbridge serves as a pedestrian crossing from the riverbank to an island separating the river from the canal. The OHDNR requested permission to undertake bridge repairs at the same time as the lock renovation so that the public would be inconvenienced only once by the lock and canal closure.

Regulatory Evaluation

This temporary rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this temporary rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This is because there are no commercial users of this waterway.

Small Entities

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

Since there are no commercial users of the waterway spanned by the Lock Street Drawbridge, the Coast Guard expects there to be no significant impact on any waterway users as a result of the closure Therefore, the Coast Guard certifies under 5 U.S.C. 605(b), that this action will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This temporary rule does not provide for a collection-of-information requirement under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this temporary rule under the principles and criteria contained in Executive Order 12612, and has determined that this temporary rule does not raise sufficient implications of federalism to warrant the preparation of a Federalism Assessment. The authority to regulate the permits of bridges over the navigable waters of the U.S. belongs to the Coast Guard by Federal statutes.

Enviromental

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

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard is amending part 117 of title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. Effective 12:01 a.m. May 15, 1999 to 12:01 a.m. March 17, 2000, § 117.T 848 is added to read as follows:

§ 117.T848 Muskingum River.

Lock Street Drawbridge Mile 49.7, Muskingum River. From 12:01 a.m. May 15, 1999 to 12:01 a.m. March 17, 2000, the drawspan need not open for vessel traffic and may be maintained in the close-to-navigation position.

Dated: May 7, 1999.

A.L. Gerfin, Jr.,

Captain, Coast Guard, Acting Commander, 8th Coast Guard Dist.

[FR Doc. 99–13937 Filed 6–1–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–99–035]

Drawbridge Operating Regulation; Falgout Canal, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation in 33 CFR 117.444 governing the operation of the SR 315 drawbridge across the Falgout Canal, mile 3.1, in Terrebonne Parish, Louisiana. This deviation allows the Louisiana Department of Transportation and Development to maintain the bridge in the closed-to-navigation position from 7 a.m. until 3 p.m. on Monday through Wednesday, from June 7 through June 30, 1999 and from July 12 through July 21, 1999. During the scheduled closures, the bridge will open for the passage of vessels at 9 a.m. and 12 noon. At all other times outside the closed-to-navigation period, the bridge will open on signal for the passage of vessels. This temporary deviation is issued to allow for the painting of the bridge structure.

DATES: This deviation is effective from 7 a.m. on June 7, 1999, until 3 p.m., July 21, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. David Frank, Bridge Administration Branch, Commander (ob), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana, 70130–3396, telephone number 504–589–2965.

SUPPLEMENTARY INFORMATION: Navigation on the waterway consists of tugs with tows, fishing vessels, and other recreational craft. Louisiana Department of Transportation and Development requested a temporary deviation from the normal operation of the bridge in order to accommodate the contractor in scheduling his work crews to repair the bridge structure.

This deviation allows the draw of the SR 315 drawbridge across the Falgout Canal, miles 3.1, in Terrbonne Parish, Louisiana, to remain in the closed-to-navigation position from 7 a.m. on Monday through Wednesday, from June 7, 1999 through June 30, 1999 and from 7 a.m. until 3 p.m. on Monday through Wednesday, from July 12, 1999 through July 21, 1999. During the scheduled closures, the bridge will open for the passage of vessels at 9 a.m. and 12 noon. At all other times, the bridge will open on signal for the passage of vessels.

Dated: May 20, 1999.

Paul J. Pluta,

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

[FR Doc 99–13940 Filed 6–1–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Los Angeles-Long Beach, CA; 99–003]

RIN 2115–AA97

Safety Zone; San Pedro Bay, CA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule, request for comments.

SUMMARY: The Coast Guard is extending the effective period of an existing temporary safety zone in the navigable waters of San Pedro Bay, California, south of the Middle Breakwater, part of the breakwater system enclosing the Ports of Los Angeles and Long Beach. This safety zone is established as a result of the construction of an artificial habitat and is necessary to protect vessels from the hazards associated with the construction.

All vessels with a draft of 50 feet or more are prohibited from entering this exclusionary area, unless specifically authorized by the Captain of the Port, for the entire time that this regulation is enforced by the Captain of the Port. All other vessels are prohibited from entering the area, unless specifically authorized by the Captain of the Port, only when actual construction activities are in progress. The Captain of the Port will announce, via Broadcast Notice to Mariners and any other means practicable, when the area is closed to vessels less than 50 feet in draft (because construction activities are in progress).

DATES: This safety zone will be in effect from 11:59 p.m. PDT on May 17, 1999 until 11:59 p.m. PST on December 31, 1999. Comments must be received on or before August 2, 1999.

ADDRESSES: Comments should be mailed to Commanding Officer, Coast Guard Marine Safety Office, 165 N. Pico Avenue, Long Beach, CA 90802. Comments received will be available for inspection and copying within the Waterways Management Division at Marine Safety Office Los Angeles–Long Beach. Normal office hours are 8 a.m. to 4 p.m. PDT, Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Rob Coller, Chief, Waterways Management Division, Marine Safety Office Lost Angeles-Long Beach, 165 N. Pico Ave., Long Beach, CA 90802; (562) 980–4425.

SUPPLEMENTARY INFORMATION:

Regulatory Information

In accordance with 5 U.S.C. 553, there is good cause why a notice of proposed rulemaking (NPRM) was not published for this regulation, and good cause exists for making it effective less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying the effective date would be contrary to the public interest since the details concerning the construction of the artificial habitat and the completion date were not known until a date fewer than 30 days prior to the continuation of the construction.

Although this rule is being published as a temporary final rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure the regulation is both reasonable and workable. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed in **ADDRESSES** in this preamble. Those providing comments should identify the docket number for the regulation (COTP Los Angeles-Long Beach, CA; 99–003) and also include their name, address, and reason(s) for each comment presented. Based upon the comments received, the regulation may be changed.

The Coast Guard plans no public meeting. Persons may request a public meeting by writing to Marine Safety Office Los Angeles-Long Beach at the address listed in **ADDRESSES** in this preamble.

Discussion of Regulation

A prior temporary final rule was promulgated imposing an identical safety zone for the period May 17, 1998 through May 17, 1999 (63 FR 31625, June 10, 1998). The Coast Guard has recently been notified that the construction of the habitat artificial habitat south of the San Pedro Bay Federal Breakwater will not be completed as originally scheduled. It is thus necessary to extend the effective period of the safety zone through December 31, 1999. An opportunity for public comment was provided for the original temporary final rule; that comment period closed on August 10, 1998. Due to the significant extension of the effective period of the safety zone, a new public comment period has been established, extending 60 days from the date of publication.

This safety zone is necessary for safeguarding recreational and commercial vessels from the dangers of the construction activities in the project area and to prevent interference with vessels engaged in these operations. All vessels with a draft of 50 feet or more are prohibited from entering this exclusionary area, unless specifically authorized by the Captain of the Port, for the entire time that this regulation is enforced by the Captain of the Port. All other vessels are prohibited from entering the area, unless specifically authorized by the Captain of the Port, only when actual construction activities are in progress. The Captain of the Port will announce, via Broadcast Notice to Mariners and any other means practicable, when the area is closed to vessels less than 50 feet in draft (because construction activities are in progress).

This safety zone consists of all navigable waters within the geographic area bounded by lines connecting the following coordinates:

	Latitude	Longitude
Safety Zone Point #1	33°–41′.16″ N	118°–13′.15″ W; thence to:
Safety Zone Point #2	33°–40′.45″ N	118°–13′.01″ W; thence to:
Safety Zone Point #3	33°–40′.34″ N	118°–13′.37″ W; thence to:
Safety Zone Point #4	33°–41′.04″ N	118°–13′.51″ W; thence returning to the point of beginning.

Regulatory Evaluation

This temporary final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of the Department of Transportation is unnecessary. Only minor delays to mariners are foreseen when vessel traffic is directed around the area of the safety zone.

Small Entities

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

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact Lieutenant Rob Coller, U.S. Coast Guard Marine Safety Office Los Angeles-Long Beach, at (562) 980–4425.

Collection of Information

This regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 35401 *et seq.*).

Federalism

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

Environmental Assessment

The Coast Guard has considered the environmental impact of this temporary regulation and concluded that under Chapter 2.B.2. of Commandant Instruction M16475.1C, Figure 2–1, paragraph (34)(g), it will have no significant environmental impact and it is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and an Environmental Analysis checklist is available for inspection and copying and the docket is to be maintained at the address listed in **ADDRESSES** in the preamble.

Unfunded Mandates

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

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

Other Executive Orders on the Regulatory Process

In addition to the statutes and Executive Orders already addressed in this preamble, the Coast Guard considered the following executive orders in developing this temporary

final rule and reached the following conclusions:

E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. This Rule will not effect a taking of private property or otherwise have taking implications under this Order.

E.O. 12875, Enhancing the Intergovernmental Partnership. This Rule will not impose, on any State, local, or tribal government, a mandate that is not required by statute and that is not funded by the Federal government.

E.O. 12988, Civil Justice Reform. This Rule meets applicable standards in section 3(a) and 3(b)(2) of this Order to minimize litigation, eliminate ambiguity, and reduce burden.

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to safety disproportionately affecting children.

List of Subjects in 33 CFR Part 165

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

Regulation

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

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; and 33 CFR 1.05–1(g), 6.04–6, and 160.5; 49 CFR 1.46. Section 165.100 is also issued under authority of Sec. 311, Pub. L. 105–383.

2. A new § 165.T11–064 is added to read as follows:

§ 165.T11–064 Safety Zone: San Pedro Bay.

(a) *Location.* All navigable waters bounded by lines connecting the following coordinates are established as safety zone:

	Latitude	Longitude
Safety Zone Point #1	33°–41′.16″ N	118°–13′.15″ W; thence to :
Safety Zone Point #2	33°–40′.45″ N	118°–13′.01″ W; thence to :
Safety Zone Point #3	33°–40′.34″ N	118°–13′.37″ W; thence to :
Safety Zone Point #4	33°–41′.04″ N	118°–13′.51″ W; thence returning to the point of beginning.

Datum: NAD 83.

(b) *Effective dates:* This regulation will be in effect from 11:59 p.m. PDT on May 17, 1999 until 11:59 p.m. PST on December 31, 1999. If the need for this safety zone terminates before December 31, 1999, the Captain of the Port will cease enforcement of this safety zone and will announce that fact by broadcast notice to mariners.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within this safety zone in prohibited for all vessels with a draft of 50 feet or more, unless specifically authorized by the Captain of the Port, for the entire time that this regulation is enforced by the Captain of the Port.

(1) All other vessels are prohibited from entering into, transiting through, or anchoring within this safety zone, unless specifically authorized by the Captain of the Port, only when actual construction activities are in progress.

(2) The Captain of the Port will announce, via Broadcast, Notice to Mariners and any other means practicable, when the area is closed to vessels less than 50 feet in draft (because construction activities are in progress).

Dated: May 17, 1999.

G.F. Wright,

Captain, U.S. Coast Guard, Captain of the Port, Los Angeles, Long Beach, California.

[FR Doc. 99–13936 Filed 6–1–99; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[RI–39–6989a; A–1–FRL–6346–5]

Approval and Promulgation of Air Quality Implementation Plans; Rhode Island; Amendments to Air Pollution Control Regulation Number 9

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Rhode Island. This revision makes amendments to 3 portions of Rhode Island's Air Pollution Control Regulation No. 9. The intended effect of this action is to modify the definition of a point source for purposes of new source review pre-construction permitting, to eliminate the requirement for monitoring of total suspended particulates (TSP) and insert requirements for addressing particles with a mean aerodynamic diameter of 10 microns or less (PM10), and to clarify the definition of Best Available Control Technology (BACT). This action is being taken in accordance with the Clean Air Act.

DATES: This direct final rule is effective on August 2, 1999, without further notice, unless EPA receives relevant adverse comments by July 2, 1999. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Susan Studlien, Deputy Director, Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100 (CAA), Boston, MA 02114–2023. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, S.W., (LE–131), Washington, D.C. 20460; and the Division of Air and Hazardous Materials, Department of Environmental Management, 291 Promenade Street, Providence, RI 02908–5767.

FOR FURTHER INFORMATION CONTACT: Ian D. Cohen, (617) 918–1655.

SUPPLEMENTARY INFORMATION: On August 9, 1996, the State of Rhode Island submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of amendments to Rhode Island's Air Pollution Control Regulation No. 9, which governs pre-construction new source review (NSR) permitting for new and modified sources of air pollution. These changes will revise the State Implementation plan to reflect revisions in EPA rules and policy.

I. Background

The proposed SIP Revision will make changes to 3 portions of Rhode Island's Rule: it will remove the ''dual source'' definition for stationary sources, and will replace it with the ''plantwide'' definition; it will make PM10 the standard for particulate matter; and it will include all Federal and State rules in the definition of BACT.

A. Federal Regulatory Framework

Dual Source Definition

On August 7, 1980 (45 FR 52676), EPA promulgated a rule which defined a ''source'' as being a ''building, structure, facility, or installation.'' This has become known as the ''dual source'' definition. Rhode Island has patterned its current definition of a source after this definition. On October 14, 1981 (46 FR 50766), EPA revised its NSR regulations to allow adoption of a ''plantwide'' definition. This allows the entire installation to be considered a single ''source'' under the NSR rules.

Particulates

On July 1, 1987, (52 FR 24634) EPA promulgated revised National Ambient Air Quality Standards (NAAQS) for particulate matter. This changed the standard for particulates from TSP to particulates with a mean aerodynamic diameter of 10 microns or less, PM10. On June 3, 1993, EPA promulgated a further revision (59 FR 31636) which replaced TSP with PM10 in the Prevention of Significant Deterioration (PSD) program, and the NSR program for attainment area pollutants. The effect of these rules was to eliminate the need to measure TSP as a pollutant. With these amendments, Rhode Island removes all remaining references to TSP, and specifies PM10 as the standard for particulate matter.

BACT

Best Available Control Technology (BACT) is defined as an emissions limitation based on the maximum degree of reduction for each air pollutant which would be emitted from a proposed new stationary source or modification to an existing stationary source. BACT is decided on a case-by-case basis. The federal definition of BACT requires that BACT limits be no less stringent than any emission standard promulgated under sections 111 and 112 of the Act. Rhode Island will increase the number of regulations which will be considered to determine the minimum BACT requirement. This change will make BACT more stringent.

Rhode Island's Revision

Rhode Island's Revision makes several changes to Air Pollution Control Regulation Number 9, Air Pollution Control Permits. Revisions to sections 9.1.7, 9.1.18, and 9.5.1 delete the word ''installation'' from the definition of ''stationary source.'' Revisions to sections 9.1.23, 9.5.1, and 9.5.2 delete all reference to TSP and make PM10 emissions the criterion used to evaluate net emissions increases for particulate matter. A revision to section 9.1.6 amends the definition of BACT. A public hearing was held on July 17, 1996. There were no adverse comments.

Dual Source Definition

Rhode Island's SIP revision will allow all pollutant emitting activities at a single facility, under common control, and which belong to the same industrial grouping to be counted together when computing the changes in emissions for purposes of new source review.

This action will give sources flexibility by allowing them to make modifications which may increase pollution from one emission unit at a plant, but result in a decrease in the pollutant on a plantwide basis. Through the process of ''netting,'' in which reductions of emissions at one site within a plant can be credited against increases in emissions at another site, unnecessary new source review actions can be eliminated. This change will free time and resources for those actions which would result in overall increases of a pollutant, and therefore require more careful new source review.

Pursuant to section 193 of the Clean Air Act, the ''general savings clause,'' EPA must determine whether this revision to Rhode Island's NSR Program ensures equivalent or greater reductions of nonattainment area pollutants. In conducting this analysis, EPA examined the impact of all revisions to Rhode Island's SIP since 1990. EPA's analysis found that Rhode Island's SIP revision will ensure equivalent or greater emissions reductions as compared with the existing Rhode Island SIP.

To determine the impact of Rhode Island's change from the dual source definition to the plantwide definition, EPA considered the number of sources effected by the change. Typically, the change in the source definition from dual source to plantwide may allow more sources to ''net out'' of NSR. However, the NSR rules contain numerous applicability provisions that all work together in determining if a new source is subject to NSR or if it can ''net out.'' EPA concludes that, while the revision may allow more sources to net out of NSR, EPA could not determine the number of sources directly effected by the revision.

In addition, EPA found that from 1990 through 1997, no new sources triggered Rhode Island's current NSR applicability requirements for major modifications. Considering the small number of sources effected by Rhode Island's permitting program, EPA concludes that relaxing one element of Rhode Island NSR applicability provisions would result in an insignificant increase in emissions, if any.

To offset the relatively small increase in emissions from the revision, EPA considered other revisions submitted by Rhode Island since 1990 that strengthen its SIP. EPA notes that as part of the plantwide definition revision submittal, Rhode Island is revising its BACT rules. The BACT revision clarifies the minimum control standards that all new major and minor source must implement. Rhode Island's BACT revision will ensure that BACT controls and procedures meet high standards of performance and result in greater emission reductions for all new sources throughout Rhode Island.

EPA concludes that the overall effect of Rhode Island's revised SIP will ensure reductions equivalent to those obtained in the existing SIP. EPA understands that the plantwide definition is a relaxation of the SIP that may cause a slight increase in emissions. However, EPA believes that Rhode Island's revision clarifying the minimum requirements for the State's BACT provisions strengthens the SIP and provides emission decreases that more than offset the emission increases from the new source definition revision. Therefore, EPA finds that approving Rhode Island's nonattainment area NSR revisions is consistent with the Act.

Particulates

Prior to 1987, the NAAQS for particulates was evaluated using TSP. States maintained monitoring networks to track levels of TSP. In 1987, EPA revised the NAAQS for particulates to measure PM10. This was in response to evidence that the smaller particles were responsible for the majority of the health problems which had been linked to particulates. In 1993, EPA made PM10 the standard for PSD. This revision eliminated the need for requirements for TSP monitors. Rhode Island still maintained some TSP monitors, since their state regulations still required TSP measurements for NSR purposes. The changes Rhode Island is making will eliminate those TSP requirements and make PM10 the

sole criterion for particulates. In the future, Rhode Island will have to amend these rules to incorporate EPA's recently promulgated standard for yet finer particles, so-called PM2.5. This change can be accomplished by a future SIP revision.

BACT

Rhode Island's current regulations define BACT so that it must be no less stringent than the emission standards found in 40 CFR parts 60 and 61. 40 CFR part 60 includes performance standards for new stationary sources; 40 CFR part 61 includes requirements from hazardous air pollutants. The revised rule will require that BACT be no less stringent than all applicable State and Federal standards. This change will make BACT more stringent by adding the new post-1990 hazardous air pollution requirements from 40 CFR part 63 and any further State controls to the floor of BACT. By making BACT more stringent, Rhode Island will require sources to consider a wider range of technologies and, when BACT is required, utilize the strongest available technology.

II. Final Action

EPA is approving amendments to Air Pollution Control Regulation Number 9. The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This action will be effective August 2, 1999 without further notice unless the Agency receives relevant adverse comments by July 2, 1999.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. Any parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on August 2, 1999 and no further action will be taken on the proposed rule.

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

III. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 12875

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

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

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

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

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

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

E. 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 a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State

relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

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

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

G. Submission To Congress And The Comptroller General

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

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 2, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).) EPA encourages interested parties to comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal.

List of Subjects in 40 CFR Part 52

Environmental protection, Best available control technology, Air pollution control, Incorporation by reference, Intergovernmental relations, Monitoring requirements, New Source Review, Particulate matter, Prevention of significant deterioration, Reporting and recordkeeping requirements.

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

Dated: May 6, 1999.

John P. DeVillars,

Regional Administrator, Region I.

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

PART 52—[AMENDED]

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

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

Subpart OO—Rhode Island

2. Section 52.2070 is amended by adding paragraph (c)(54) to read as follows:

§ 52.2070 Identification of plan

* * * * * *

(c) * * *

(54) Revisions to the State Implementation Plan submitted by the Rhode Island Department of Environmental Management on.

(i) Incorporation by reference.

(A) Letter from the Rhode Island Department of Environmental Management dated 9 August 1996 submitting a revision to the Rhode Island State Implementation Plan.

(B) Changes to Air Pollution Control Regulation Number 9.

For the State of Rhode Island.

3. In § 52.2081 Table 52.2081 is amended by adding new entries to existing state citations for Air Pollution Control Regulation No 9:

§ 52.2081— EPA—approved Rhode Island state regulations

* * * * *

TABLE 52.2081.—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/subject	Date adopted by State	Date approved by EPA	FR citation	52.2070	Comments/ Unapproved sections
*	*	*	*	*	*	*
No. 9	Air Pollution Control Permits.	7/30/96	6/2/99	[Insert *FR* citation from published date].	(c)(54)	5
*	*	*	*	*	*	*

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MA–67–7202a; A–1–FRL–6346–6]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts and Rhode Island; Nitrogen Oxides Budget and Allowance Trading Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving State Implementation Plan (SIP) revisions submitted by the States of Rhode Island (RI) and Massachusetts (MA). This action consists of approving regulations in RI and MA which are part of a regional nitrogen oxide (NO_X) reduction program designed to reduce stationary source NO_X emissions during the ozone season in the Ozone Transport Region (OTR) of the northeastern United States. (Section 184(a) of the Clean Air Act defines an ozone transport region in the northeastern United States comprised of the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and the Consolidated metropolitan Statistical Area that includes the District of Columbia.) Additionally, this action involves the approval of a source specific order which establishes alternative NO_X reasonably available control technology (RACT) requirements for four boilers at the Rhode Island Economic Development Corporation (RIEDC). These SIP revisions were submitted pursuant to section 110 of the Clean Air Act (CAA).

DATES: This direct final rule is effective on August 2, 1999 without further notice, unless EPA receives adverse comment by July 2, 1999. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Susan Studlien, Deputy Director, Office of Ecosystem Protection (mail code CAA), U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Boston, MA 02114–2023. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA; at the Division of Air and Hazardous Materials, Rhode Island Department of Environmental Management, 291 Promenade Street, Providence, RI 02908–5767, and at the Massachusetts Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Steven A. Rapp, (617) 918–1048 or at Rapp.Steve@EPAMAIL.EPA.GOV.

SUPPLEMENTARY INFORMATION: On December 19, 1997, the Massachusetts (MA) Department of Environmental Protection (DEP) submitted to EPA a request to revise its State Implementation Plan (SIP). The request proposes to add 310 CMR 7.27, ''NO_X Allowance Program'' to the SIP. Similarly, on January 20, 1999, the Rhode Island (RI) Department of Environmental Management (DEM) submitted Regulation No. 38, ''Nitrogen Oxides Allowance Program,'' and Consent Agreement No. 96–04–AP for the Rhode Island Economic Development Corporation (RIEDC) as revisions to the Rhode Island SIP. The two regulations are part of a regional NO_X reduction program designed to reduce stationary source NO_X emissions during the ozone season in the OTR. The consent agreement no. 96–04–AP establishes alternative NO_X reasonably available control technology (RACT) requirements for four boilers at the RIEDC facility in North Kingstown, RI.

I. Summary of SIP Revisions

NO_X RACT Consent Agreement No. 96–04–AP for RIEDC

On September 2, 1997, EPA approved Regulation No. 27, ''Control of Nitrogen Oxides Emissions'' as meeting the NO_X RACT requirements of sections 182(b) and (c) of the Clean Air Act and revised the Rhode Island SIP accordingly (see 62 FR 46202). Section 27.4.8 allows RI DEM to relax the RACT requirements on a case-by-case basis, upon approval by EPA. The NO_X RACT Consent Agreement No. 96–04–AP for RIEDC represents a case-specific alternative RACT determination as provided for under section 27.4.8.

Ozone Transport Region Nitrogen Oxides Allowance Program in Massachusetts and Rhode Island

Sections 182(b)(1)(A) and 182(c)(2)(A) of the CAA require States with areas classified as ''moderate,'' ''serious,'' and ''severe'' ozone nonattainment to submit revisions to their applicable SIPs to provide for specific annual reductions in emissions of volatile organic compounds (VOCs) and oxides of nitrogen (NO_X) as necessary to attain the national primary ambient air quality standard for ozone. Additionally, section 110 of the Act requires that such plans be subject to public notice, comment, and hearing procedures and that the States adopt and submit the plans to EPA.

As part of MA's and RI's efforts to meet these requirements, the States have submitted regulations which impose statewide caps on NO_X emissions from certain industrial sectors (e.g., electric utility boilers, industrial boilers, combustion turbines, etc.). RI's Regulation No. 38 and MA's Regulation 310 CMR 7.27 are based closely on a model rule which was developed using the EPA's economic incentive program rules (67 FR 16690, April 7, 1994) as the general regulatory framework. This model rule was developed by the Northeast States for Coordinated Air Use Management (NESCAUM) and the Mid-Atlantic Regional Air Management Association (MARAMA) and is entitled, ''NESCAUM/MARAMA NO_X Budget Model Rule,'' issued on May 1, 1996. The basis for the model rule was a memorandum of understanding entitled, ''Memorandum of Understanding Among the States of the Ozone Transport Commission on Development of a Regional Strategy Concerning the Control of Stationary Source Nitrogen Oxide Emissions,'' dated September 27, 1994, otherwise known as the OTC MOU.

RI's and MA's NO_X budget regulations set statewide, five month (May 1 through September 30) NO_X ''budgets,'' or mass emission limits in tons, to reduce the aggregate emissions from large fossil fuel fired combustion equipment by as much as 75% from a 1990 baseline. In order to achieve the aggregate NO_X reductions, the regulations proportion NO_X ''allowances'' (in tons) to the facilities with emission units subject to the program. The regulations require each owner or operator of each unit to hold, by December 31 of each year, at least as many NO_X allowances in their compliance account as total tons of NO_X emitted during the previous five month ozone season. Under these regulations, NO_X allowances may be bought or sold and unused allowances may be banked from one year to another in a central registry administered by EPA. The program requires NO_X emissions to be monitored by either a continuous emission monitoring system (CEMS) or equivalent, although the use of alternatives is allowed where approved

by the State and EPA. The program will begin on May 1, 1999. Starting in 2002 and occurring every three years after, an audit of the program will be conducted to ensure that the program is providing the expected reductions.

Additional information concerning EPA's evaluation of the RI and MA NO_X allowance program regulations is detailed in two memoranda: ''Technical Support Document for Massachusetts'' Regulation 310 CMR 7.27, ''NO_X Allowance Program,'' dated December 16, 1998, and ''Technical Support Document for Rhode Island's Regulation No. 38, ''Nitrogen Oxides Allowance Program'' and NO_X RACT Consent Agreement No. 96–04–AP for Rhode Island Economic Development Corporation,'' dated February 2, 1999. Copies of those documents are available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document.

II. Issues

An issue associated with the approval of the Rhode Island and Massachusetts regulations is that the regulations currently contain NO_X emissions budget and allocation schemes only for 1999 through the ozone season of 2002, i.e., ''phase II'' of the OTC NO_X Budget program. However, the OTC MOU obliges Massachusetts and Rhode Island to require its allowance program sources to make specific additional NO_X reductions by May 1, 2003 and continuing thereafter, i.e., ''phase III.'' Additionally, in May 1998, Massachusetts proposed an attainment demonstration for the western MA nonattainment area which relies on the NO_X reductions associated with the OTC program in 2003 and beyond to achieve attainment with the one hour ozone standard.

Section 7.27 (3)(b) of the MA regulation and section 38.2.1(b) of the RI regulation are currently reserved for the purpose of setting the statewide allocation for 2003 and beyond. In their current form, Regulation No. 38 and 310 CMR 7.27 are approvable for 1999, 2000, 2001, and 2002. However, in order to meet the interstate MOU and for MA to have a credible attainment demonstration, both MA and RI will need to amend their regulations to establish the NO_X caps in those States during 2003 and beyond.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This action will be effective August 2, 1999 without further notice unless the Agency receives adverse comments by July 2, 1999.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on August 2, 1999, and no further action will be taken on the proposed rule.

III. Final Action

EPA is approving Massachusetts' regulation 310 CMR 7.27, ''NO_X Allowance Program,'' Rhode Island's Regulation No. 38, ''Nitrogen oxides Allowance Program,'' and Rhode Island's Consent Agreement No. 96–04–AP. Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 12875

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

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

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks and is not economically significant under E.O. 12866.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other

representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

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

E. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

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

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

G. Submission to Congress and the Comptroller General

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

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 2, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).) EPA encourages interested parties to comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of Massachusetts and Rhode Island was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: May 6, 1999.

John P. DeVillars,

Regional Administrator, Region I.

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

PART 52—[AMENDED]

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

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

Subpart W—Massachusetts

2. Section 52.1120 is amended by adding paragraph (c)(118) to read as follows:

§ 52.1120 Identification of plan

* * * * * *

(c) * * *

(118) Revisions to the State Implementation Plan submitted by the Massachusetts Department of Environmental Protection on December 19, 1997.

(i) Incorporation by reference.

(A) Letter from the Massachusetts Department of Environmental Protection dated December 19, 1997 submitting a revision to the Massachusetts State Implementation Plan.

(B) Regulation 310 CMR 7.27, NO_X Allowance Program, effective on June 27,1997.

(ii) Additional materials.

(A) Letter from the Massachusetts Department of Environmental Protection dated March 9, 1998 clarifying the program implementation process.

3. In § 52.1167 Table 52.1167 is amended by adding a new state citation for regulation 310 CMR 7.27, ''NO_X Allowance Program'' to read as follows:

§ 52.1167—EPA-approved Massachusetts State regulations.

* * * * *

Table 52.1167. EPA-Approved Massachusetts Regulations

State citation	Title/Subject	Date submitted by State	Date approved by EPA	Federal Register citation	52.1120(c)	Comments/unapproved sections
*	*	*	*	*	*	*
310 CMR 7.27.	NO_X Allowance Program.	12/19/97	6/2/99	[Insert FR citation from published date].	(c)(118)	Approval of NOx cap and allowance trading regulations
*	*	*	*	*	*	*

Subpart OO—Rhode Island

4. Section 52.2070 is amended by adding paragraph (c)(55) to read as follows:

§ 52.2070 Identification of plan

* * * * *

(c) * * *

(55) Revisions to the State Implementation Plan submitted by the Rhode Island Department of Environmental Management on February 13, 1998 and January 20, 1999 which define alternative NO_X RACT requirements and impose seasonal limitations on the emissions of nitrogen oxides at certain major stationary sources in Rhode Island.

(i) Incorporation by reference.

(A) Letters from the Rhode Island Department of Environmental Management, dated February 13, 1998 and January 20, 1999 submitting revisions to the Rhode Island State Implementation Plan.

(B) Regulation number 38, ''Nitrogen Oxides Allowance Program,'' as adopted on May 21, 1998, submitted on effective on June 10, 1998.

(C) An administrative consent agreement between Rhode Island Department of Environmental Management and Rhode Island Economic Development Corporation, file no. 96–04–AP, adopted and effective on September 2, 1997.

5. In § 52.2081, Table 52.2081 is amended by revising the state citation for Regulation No. 27 and by adding a new state citation for Regulation No. 38, ''Nitrogen Oxides Allowance Program'' to read as follows:

§ 52.2081—EPA—approved Rhode Island state regulations.

* * * * *

TABLE 52.2081.—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/subject	Date adopted by State	Date approved by EPA	FR citation	52.2070	Comments/Unapproved sections
*	*		*	*	*	*
No. 27	Control of Nitrogen Oxides Emissions.	9/2/97	6/2/99	[Insert FR citation from published date].	(c)(55)	Establishes alternative NOx RACT for Rhode Island Economic Development Corporation in North Kingstown, RI
*	*		*	*	*	*
No. 38	Nitrogen Oxides Allowance Program.	5/21/98	6/2/99	[Insert FR citation from published date].	(c)(55)	Adds ozone season NOx emission limitations at certain stationary sources.
*	*		*	*	*	*

[FR Doc. 99–13026 Filed 6–1–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX 107–1–7407; FRL–6349–3]

Finding of Failure To Submit Required State Implementation Plans for Ozone; Texas; Dallas/Fort Worth Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: We, the EPA, are taking final action to find that the State of Texas failed to submit the required State Implementation Plan (SIP) for the Dallas/Fort Worth (DFW) ozone nonattainment area, as required by the Federal Clean Air Act (Act). The required submittal is the serious area plan requirements for attainment of the ozone National Ambient Air Quality Standards (NAAQS). The deadline for the State to make the submittal was

March 20, 1999. The State submitted a SIP for the DFW area on March 18, 1999. The submittal included an attainment demonstration, a Rate-Of-Progress (ROP) Plan, and revisions to the State's rules for Nitrogen Oxides (NO_X) and Volatile Organic Compounds (VOC) Reasonably Available Control Technology (RACT), and NO_X New Source Review, to make them applicable to the DFW area. We find that the attainment demonstration is incomplete because it does not demonstrate, based on photochemical modeling, that the SIP will result in attainment as expeditiously as practicable but no later than November 15, 1999, as required by the Act. We find that the ROP Plan is incomplete because it does not demonstrate a rate of progress in emission reductions of at least three percent-per-year, after accounting for growth, during the 1997 to 1999 period as required by the Act. The finding of an incomplete submittal for the attainment demonstration and the ROP Plan triggers the 18-month time clock for mandatory application of sanctions and a two-year time clock for a Federal Implementation Plan (FIP) under the Act. This action is consistent with the Act's mechanism for assuring timely SIP submissions.

EFFECTIVE DATE: May 13, 1999.

ADDRESSES: Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733.

Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Herbert R. Sherrow, Jr. of the EPA Region 6 Air Planning Section at (214) 665–7237 or at the address above.

SUPPLEMENTARY INFORMATION:

I. Final Action

What Action is EPA Taking?

We find that the State of Texas failed to submit by March 20, 1999, all elements of the SIP revisions necessary for the DFW ozone nonattainment area to meet the Act's serious area plan requirements for the 1-hour ozone NAAQS under section 182(c).

The elements that the State failed to submit are a complete attainment demonstration as required by section 182(c)(2)(A)and a complete post-1996 ROP Plan under section 182(c)(2)(B) and (C).

This finding starts the sanctions clocks in section 179(a) and FIP clock in section 110(c). If Texas has not corrected and resubmitted the complete serious area plan elements by November 13, 2000, the offset sanction in section 179(b)(2) and 40 CFR 52.31 will be imposed on the DFW nonattainment area. If Texas still has not corrected and resubmitted the complete serious area plan elements by May 14, 2001, the highway funding sanction in section 179(b)(1) will also be imposed in accordance with the Act and 40 CFR 52.31. Also, section 110(c) of the Act requires EPA to promulgate a FIP no later than two years after a finding of failure to submit.

What is the Effective Date for This Rule?

The effective date for this rule is May 13, 1999, the date this action was signed.

The EPA is treating this action as a ''rule.'' Under the Administrative Procedures Act (APA), 5 U.S.C. 553(d)(3), agency rule makings may take effect before 30 days after the date of publication in the **Federal Register** if an agency has good cause to mandate an earlier effective date. This action concerns implementation plan submittals that are already overdue and for which the State of Texas has submitted some incomplete elements. We have previously alerted Texas through our public comments and meetings that the SIP submittal, as proposed, would not be complete. Also, on May 3, 1999, we sent a letter to Texas stating that we were planning to take the action we are taking today. Consequently, the State has been on notice that today's action was pending. The State and general public are aware of applicable provisions of the Act that relate to failure to submit a required implementation plan. In addition, this action simply starts a sanctions/FIP clock that will not result in offset sanctions for 18 months and that the State may stop by submitting a serious ozone area implementation plan that is complete under section 110(k) of the Act and approvable under section 110 and part D of the Act. These reasons support an effective date prior to 30 days after the date of publication.

Why is EPA Taking This Action Without Proposing and Taking Comments First?

This action is a final agency action but is not subject to the notice-and-comment requirements of the APA, 5 U.S.C. 553(b). We believe that, because of the limited time provided to make findings of failure to submit regarding SIP submittals, Congress did not intend such findings to be subject to notice-and-comment rulemaking. However, to the extent such findings are subject to notice-and-comment rulemaking, we invoke the good cause exception in the APA, 5 U.S.C. 553(b)(3)(B). Notice and comment are unnecessary because no EPA judgment is involved in making a nonsubstantive finding of failure to submit elements of an implementation plan required by the Act. Furthermore, providing notice and comment would be impracticable because of the limited time provided under the Act for making such determinations.

Finally, notice and comment would be contrary to the public interest because it would divert our resources from the critical substantive review of submitted implementation plans. *See* 58 FR 51270, 51272, note 17 (October 1, 1993); 59 FR 39832, 39853 (August 4, 1994).

II. Background

Why is This SIP Submittal Required?

We reclassified the DFW area from moderate to serious ozone status on February 18, 1998, since the area had not attained the NAAQS by November 15, 1996 (63 FR 8128). As a result, the State was required to submit a serious area SIP by March 20, 1999. The SIP required attainment and rate of progress demonstrations and revised rules for major source thresholds and a more stringent New Source Review program.

The state submitted revisions to its rules for NO_X RACT, NO_X NSR, and VOC RACT with the March 18, 1999, submittal. We have reviewed these rules for administrative completeness and found them complete on the date of completeness finding. We will take action on them in separate **Federal Register** notices.

The State had already submitted the other elements of a serious area plan (e.g.; enhanced Inspection and Maintenance Program and a Clean Fuel Fleet program).

Why is the Attainment Demonstration and the Rate-of-Progress Plan Incomplete?

The attainment demonstration is incomplete because it does not demonstrate, based on photochemical modeling, that the SIP will result in attainment as expeditiously as practicable but no later than November 15, 1999 (section 182(c)(2)(A)). The photochemical modeling submitted is sensitivity modeling which only identifies emission reduction targets

with no specific control strategy or attainment date.

The ROP Plan is incomplete because it does not demonstrate a rate of progress in emission reductions of at least three percent-per-year, after accounting for growth, during the 1997 to 1999 period (section 182(c)(2)(B)). The plan shows a VOC target of 28.68 tons per day and reductions of 22.81 tons per day which leaves the plan 5.87 tons per day short of meeting the target. The plan does not substitute NO_X reductions and meet the target (section 182(c)(2)(C). The Plan's NO_X table, on its face, considers NO_X reductions but those NO_X reductions do not offset growth in NO_X emissions since 1990; therefore, they are not creditable to the shortfall.

What are the Consequences of This Action?

The Act establishes specific consequences if a state fails to submit a required SIP. These consequences include the mandatory sanctions provision in section 179(a)(1) and the federal planning requirement in section 110(c).

Under section 179(a) and 40 CFR 52.31, if Texas has not corrected the incomplete elements and resubmitted a complete SIP within 18 months of the effective date of today's rulemaking, the 2 to 1 offset sanction of section 179(b) will apply in the DFW nonattainment area. This sanction requires a company that is constructing a new or modifying an existing facility over a certain size to reduce emissions in the area by two tons for every new ton the new/modified facility will emit.

If the State has still not corrected the incomplete elements and resubmitted a complete SIP six months after the offset sanction is imposed, then the highway approval and funding sanction will apply in the nonattainment area. This sanction prohibits the U.S. Department of Transportation from approving or funding all but a few specific types of transportation projects.

The order of sanctions, offsets sanctions first then highway sanctions, is documented in our regulations at 40 CFR 52.31.

In addition to these sanctions, section 110(c) requires us to issue a FIP no later than two years after a finding under section 179(a). This FIP would need to address any outstanding serious area ozone requirements for an attainment demonstration and a ROP Plan that we had not yet approved.

The sanctions will not be imposed if, prior to the implementation date of the offset sanction, we determine that the State has submitted a complete plan addressing the two incomplete elements of the serious area ozone requirements for the DFW area. If the state relies on the control measures in the existing approved contingency plan for its ROP Plan and/or attainment demonstration, the State would also need to submit a new contingency plan. In addition, we are not required to promulgate a FIP if the State makes the required SIP submittals and we take final action to approve the submittals within two years of the effective date of today's finding.

This preamble merely summarizes the Act's requirements for serious ozone area plans and the Act's provisions regarding the consequences of the failure to submit a required implementation plan. The specific language of the Act and our regulations and policies interpreting the Act, rather than the language of this document, govern the exact submittals required from the State and the implementation of any sanctions.

III. Administrative Requirements

A. Executive Order (E.O.) 12866

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

B. Executive Order 12875: Enhancing The Intergovernmental Partnership

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the 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, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create a mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on any of these entities. This action implements EPA's requirements to review SIPs for completeness under 40 CFR Part 51, Appendix V. The SIP submission requirements for stopping clocks are not judicially enforceable. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

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 final rule is not subject to E.O. 13045 because it is not an economically significant regulatory action as defined by E.O. 12866, and it does not establish a further health or risk-based standard because it implements a previously promulgated health or safety-based standard.

D. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the 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, E.O. 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 E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. Since this final rule is not subject to notice-and-comment requirements under the APA, or any other statutes, it is not subject to sections 603 or 604 of the RFA. Furthermore, this action will not have a significant impact on a substantial number of small entities because these findings under section 110 and subchapter I, part D of the Act do not, in-and-of-themselves, directly impose any new requirements on small entities. *See Mid-Tex Electric Cooperative, Inc.* v. *FEC*, 773 F.2nd 327 (D.C. Cir. 1985) (agency's certification need only consider the rule's impact on entities subject to the requirements of the rule). Instead, this action makes findings of failure to submit and establishes a schedule for Texas to stop the clocks and does not directly regulate any entities. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

F. Unfunded Mandates

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

Sections 202 and 205 do not apply to this action because the findings that Texas failed to submit the required SIP for the DFW area do not, in-and-of-themselves constitute a Federal mandate, because they do not impose any enforceable duty on any entity. In addition, the Act does not permit EPA to consider the type of analyses described in section 205 in determining whether a State has failed to submit a required SIP. Finally, section 203 does not apply to the action because the SIP submittal schedule to stop the clocks would only affect the State of Texas, which is not a small government.

G. Submission to Congress and the Comptroller General

The Congressional Review Act (CRA), 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary, or contrary to public interest. This determination must be supported by a brief statement, 5 U.S.C. 808(z). As stated previously, EPA has made a good cause finding, including the reasons therefor, and established an effective date of May 13, 1999, the date of signature. The 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 action is not a ''major'' rule as defined by 5 U.S.C. 804(2).

H. Paperwork Reduction Act

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

I. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 2, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon Monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: May 13, 1999.

Gregg A. Cooke,

Regional Administrator, Region 6.

[FR Doc. 99–13806 Filed 6–1–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NV–034–0016; FRL–6350–5]

Approval and Promulgation of Implementation Plans; Nevada State Implementation Plan Revision, Clark County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing the approval of revisions to the Nevada State Implementation Plan (SIP) proposed in the **Federal Register** on December 11, 1998. This action specifically includes approval of revisions to Clark County Health District's wintertime oxygenated fuels program. This approval action will incorporate these revisions into the federally approved SIP. The intended effect of approving these revisions is to regulate emissions of carbon monoxides (CO) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). Thus, EPA is finalizing the approval of these revisions into the Nevada SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

EFFECTIVE DATE: This action is effective on July 2, 1999.

ADDRESSES: Copies of the SIP revision and EPA's evaluation report are available for public inspection at EPA's Region 9 office during normal business hours. Copies of these documents are

also available for inspection at the following locations:

Nevada Division of Environmental Protection, Bureau of Air Quality, 123 W. Nye Lane, Carson City, NV

Clark County Health District, P.O. Box 3902, 625 Shadow Lane, Las Vegas, NV

FOR FURTHER INFORMATION CONTACT:

Roxanne Johnson, Air Planning Office (AIR–2), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 744–1225.

SUPPLEMENTARY INFORMATION:

I. Applicability

The revisions being approved into the Nevada SIP include: Clark County District Board of Health, (Clark County), Air Pollution Control (APC) Section 53, *Oxygenated Gasoline Program* (as amended and approved on September 25, 1997). This SIP revision was submitted by the Nevada Division of Environmental Protection to EPA on August 7, 1998.

II. Background

On December 11, 1998, EPA proposed to approve Clark County's Oxygenated Gasoline Program as a revision to the Nevada SIP. 63 FR 68415. EPA has evaluated the revisions for consistency with the requirements of the CAA and EPA regulations. EPA has found that Clark County's revisions to its wintertime gasoline oxygenated fuels program meet applicable EPA requirements. A detailed discussion of the SIP revisions and evaluation has been provided in the December 11, 1998 **Federal Register** (63 FR 68415), and in the technical support document (TSD) available at EPA's Region IX office.

III. Response to Public Comments

A 30-day public comment period was provided in the notice of proposed rulemaking, 63 FR 68415, December 11, 1998. EPA received only one comment letter, from the Western States Petroleum Association (WSPA). WSPA's comments and EPA's responses are set forth below.

A. Preemption

WSPA commented that Nevada's 3.5% oxygen content requirement is preempted by section 211(c)(4) of the Act because EPA has previously promulgated regulations to prescribe controls or prohibitions on the oxygen content of gasoline and by section 211(m)(2) because this section of the Act requires certain nonattainment areas to implement an oxygenated gasoline program with not less than 2.7% oxygen. WSPA also commented that Clark County's 3.5% gasoline oxygen content requirement is preempted under the doctrines of conflict and field preemption.

EPA does not believe that Clark County's 3.5% gasoline oxygen content requirement is barred by section 211(m) or preempted by the Act, either explicitly under section 211(c)(4)(A) or implicitly based on the judicial doctrines of conflict preemption or field preemption. EPA's response to WSPA's preemption comments begins with a discussion of consistency with section 211(m), followed by a response to the other preemption arguments.

1. Consistency with Section 211(m)

On March 18, 1997, the Clark County Commission adopted a resolution requesting that the Board of Health adopt the proposed regulations specifying that the minimum oxygen content of wintertime gasoline shall be 3.5% oxygen by weight, starting October 1, 1997. Because the Las Vegas Valley was being designated by EPA as a serious nonattainment area for carbon monoxide (CO), the Board of Health moved to propose the minimum 3.5% oxygenate regulation to help reach attainment of the National Ambient Air Quality Standards for CO.

Section 211(m)(1) requires that certain states with areas designated nonattainment for CO implement an oxygenated gasoline program. This applies to states containing CO nonattainment areas with a CO design value [1] of at least 9.5 parts per million based on 1988 and 1989 data.

Section 211(m) requires that various states submit revisions to their SIP, and implement oxygenated gasoline programs. This section also identifies certain elements that the state program must contain. Section 211(m)(2)(A) identifies the geographic area of the state program (it must apply throughout the Consolidated Metropolitan Statistical Area (CMSA) or the Metropolitan Statistical Area (MSA)) and the time period of the program (it must apply during that portion of the year in which the area is prone to high ambient concentrations of CO, as determined by the Administrator, but no less than four months). Section 211(m)(2)(A)(B) requires that gasoline be blended to contain not less than 2.7% oxygen. Under certain circumstances (section 211(m)(7)), gasoline must be blended to contain not less than 3.1% oxygen. Section 211(m)(5) requires that EPA promulgate guidelines for states to implement provisions for marketable oxygen credits. This section also authorizes EPA to waive the above requirements under limited circumstances.

WSPA argues that, under section 211(m), a state must adopt a 2.7% standard and may not adopt any other standard, except as expressly provided in section 211(m)(7). The requirement that gasoline be blended to contain ''not less than 2.7 percent oxygen by weight'' would therefore set both a floor and a ceiling for a minimum oxygen content that a state must establish.[2] Clark County's requirement of a 3.5% minimum oxygen content would violate the requirements of section 211(m) under this interpretation. EPA believes that the better reading of section 211(m)(2) is that, at a minimum, states must require that gasoline contain 2.7% oxygen by weight, and that states could satisfy this by requiring gasoline to contain 2.7% oxygen or by setting any higher requirement such as 3.1% oxygen content, or 3.5% oxygen content.

Neither the text of section 211(m) nor the legislative history indicate a clear Congressional intent to prohibit states from adopting any oxygen content requirement greater than 2.7%. This interpretation would be inconsistent with the general structure of the Act because it would restrict the ability of states to develop programs to meet the federal ambient air quality standards. *See* Title I generally, sections 107, 110, and 116. Oxygenated gasoline is one of the simplest and most cost-effective measures for control of carbon monoxide. This interpretation would limit a state's ability to use this strategy for air quality purposes, as any increase above the 2.7% minimum would only be allowed where a severe nonattainment area had already failed to meet its statutory deadline for attaining the NAAQS. Thus, states would be barred from adopting any oxygen content requirement above 2.7%, even where an area needed a more stringent

[1] The carbon dioxide design value is a surrogate measure of attainment status, a measure of progress, and an indicator of how much concentrations must be reduced to meet the standard.

[2] In support of its claim, WSPA points to the 1996 extension of the CO attainment date for the Las Vegas area. WSPA argues that in the preamble to that action EPA identified the 2.7% oxygen content requirement without expressing that the requirement for the area was a minimum content requirement. EPA believes WSPA has read too much into the preamble's abbreviated listing of requirements for the area. Nothing in that preamble indicated an intent to interpret the confines of section 211(m)(2). In fact, EPA noted that Clark County had revised its regulations ''to meet the minimum 2.7% oxygenate by weight requirement of the CAA.'' 61 FR 41759, 41763 (Aug. 12, 1996).

standard to attain the NAAQS. Instead, such a state with a moderate nonattainment area could not take action needed to meet the air quality standard. The area would likely have to continue to violate the standard until it had been upgraded to a severe nonattainment area and had missed the deadline for severe nonattainment areas to come into compliance with the NAAQS, before it could adopt a more effective control measure designed to help attain the NAAQS. There is no indication that Congress intended a limitation so potentially injurious to public health and so contrary to rational planning. This interpretation is also inconsistent with the principle that a statute should not be read to preempt state authority unless it is clear that Congress intended such a result. *See Medtronic, Inc.* v. *Lohr,* 518 U.S. 470, 485 (1996); *Cipollone* v. *Liggett Group, Inc.,* 505 U.S. 504, 518 (1992).

WSPA asserts that the legislative history of sections 211 (m) and (k) shows that the 2.7% oxygen content level was set to ensure fuel neutrality and opportunity for all oxygenates in the marketplace. They argue that state programs requiring greater than 2.7% oxygen conflict with this goal and Congress therefore intended to prohibit them.[3] However, while much of the legislative history of section 211(m) concerns the appropriate level at which to set the minimum federally mandated oxygenate requirement in the Clean Air Act, there is no indication that Congress intended to bar the states from setting more stringent oxygenate requirements.

The Chafee-Baucus Statement of the Senate Managers (discussing the Conference Committee version of the bill which Congress adopted as the 1990 Amendments to the CAA) states merely that ''[t]he conference agreement requires any gasoline sold in a carbon monoxide nonattainment area to contain at least 2.7 percent oxygen. * * *'' Senate Committee on Environment and Public Works, 103d Cong., 1st Sess., A Legislative History of the Clean Air Act Amendments of 1990 (hereinafter ''Legislative History'') at 896 (1993) (statement from Senate debate on October 27, 1990). Senator Simpson and Congressmen Sharp and Hall all reiterated a statement that has been cited in support of the proposition that section 211(m) bars states from requiring a higher fuel oxygen content. ''The level of 2.7 percent was chosen in part to provide more even opportunities for competition between the two major oxygenates, methyl tertiary butyl ether, or MTBE, and ethyl alcohol, or ethanol. * * * The *Administrator* may not discriminate among these different oxygenates, and should encourage fair competition among them.'' Legislative History at 1171 (statement from Senate debate on October 26, 1990) (emphasis added). *See also id.* at 1216, 1328. Senator Simpson and others added that in exercising its waiver authority under section 211(m)(3), EPA may not approve partial waivers of the oxygenate requirements. ''In particular, new 211 (k) and (m) already create several new kinds of gasoline, and different oxygen concentrations may already exist under the various NO_X cap provisions of these two subsections. Further balkanizing of the gasoline industry—with different oxygenate concentrations in different east coast cities, for example—potentially risks further disruptions and precision from refiners that may not be possible.'' *Id.* at 1169 (statement from Senate debate October 26, 1990). All of these statements address limitations on EPA's, not states', authority to choose between oxygenates or set more or less stringent oxygen content requirements. These statements simply give no indication of whether or not Congress intended to limit states' ability to set more stringent requirements, which might be critical to carry out their responsibility to adopt state implementation plans to protect the health of their citizens.

Other statements in the legislative history suggest that Congress was primarily concerned about establishing a preference for one oxygenate over another as a matter of federal law and intended to give states flexibility in their fuels programs. The Senate version of the bill provided that the wintertime oxygen content requirements would be a direct federal mandate on the fuel producers to sell gasoline with at least 3.1% oxygen content, rather than a directive to states for their state implementation plans. S.1630, 103d Cong. (1990), *reprinted in* Legislative History at 4119, 4388. Commenting on his proposed amendment to substitute 2.7% for 3.1% oxygen content, Senator Lautenberg stated:

> But the question is, should we, *as a Federal initiative,* provide an advantage to one of these fuels over another? I do not think so. * * * [A 2.7% requirement] would allow for open and free competition among the various fuels and *provide State and local officials with the flexibility to decide what fuels they need in their areas.* * * * [The 3.1% requirement] takes away flexibility from State and local officials. * * * [Quoting from State and Territorial Air Pollution Program Administrators (STAPPA) and Association of Local Air Pollution Control Officials (ALAPCO) letter] ''We believe it is critically important that any alternative fuels programs be 'fuel neutral.' This *would provide State and local governments with the ability to select from a variety of fuels*—not just gasohol—to address problems (e.g., carbon monoxide and ozone) unique to their jurisdictions.'' * * * [A]nd most importantly, as STAPPA noted, [my amendment] *would allow localities to use the fuels that best meet their particular needs.* * * * USDA notes that four States have oxygenated fuels program in place: Arizona, Colorado, Nevada, and New Mexico. * * * [The 3.1% requirement] would force the areas that already have oxygenated fuels programs to scrap them and switch to gasohol. * * *

Legislative History at 5429–5430 (statement from Senate debate on March 7, 1990) (emphasis added). Senator Wirth added: ''As I understand it, the amendment offered by the Senator from New Jersey would not set this issue in concrete. It would require that oxygenated fuels sold in these nonattainment areas contain 2.7 percent oxygen. *If, a few years down the road it makes sense for a State,* or a city like Denver, *to set a higher minimum oxygen content, that possibility always exists. All we are saying with this amendment is that we don't want to set a national minimum oxygen content standard* of 3.1 percent.'' *Id.* at 5457 (emphasis added).

While Senator Lautenberg's 2.7% oxygen content amendment did not pass in the Senate, the final CAA set a 2.7% oxygen content requirement. Consequently, the arguments advanced by Senators Lautenberg and Wirth should be considered indicative of some of the reasons underlying Congress' final decision to adopt a 2.7% minimum standard rather than a 3.1% minimum standard. As enunciated by Senators Lautenberg and Wirth, preserving state flexibility to make choices regarding the best fuel requirements for a particular locality was an important motivation for preferring 2.7% over 3.1%. This goal hardly comports with an intent to limit states' ability to adopt oxygen content requirements more stringent than 2.7%. Senator Wirth's statement, in particular, makes it clear that these provisions were not intended to prevent states from adopting more stringent requirements. Nor did Senator Wirth anticipate that states would have to jump any particular hurdle before adopting such requirements. Rather, he stated ''that possibility always exists'' if ''down the road it makes sense.''

In addition, during the debates over the Senate bill several senators referred to the existing oxygenated fuels

[3] This concern arises because ethanol is currently the only oxygenate additive that may lawfully be blended in gasoline at levels greater than 2.7% oxygen by weight.

programs that states were already implementing at that time. At least one of those programs was more stringent than 2.7%. Nowhere was it suggested or noted that the legislation would require the state to remove that program. In contrast, Senator Lautenberg explicitly raised as an objection to the 3.1% requirement that it would negate existing state programs mandating a 2.7% oxygen content.

The most reasonable inference from this legislative history is that Congress did not want to directly mandate that all state programs under section 211(m) require greater than 2.7% oxygen, as this would severely reduce the flexibility of states to develop their own programs and would by act of Congress directly limit open competition in the marketplace between oxygenates.[4] Congress rejected a provision that would require all state oxygenated gasoline programs under section 211(m) to require 3.1% oxygen content. Instead, Congress set the minimum amount acceptable under section 211(m) at 2.7%, and only mandated that states adopt standards setting a higher oxygen content under limited circumstances. Section 211(m)(7)[5]. While Congress rejected a federal requirement for an oxygen content greater than 2.7%, there is no similar indication that Congress intended to prohibit states from adopting such programs where the state considered it appropriate. To the contrary, the statements of individual congressmen indicate an intent to preserve state flexibility. Section 211(m)'s provision on marketable oxygen credits also supports this view. While Congress did not mandate that states adopt such credit programs, they are explicitly authorized to do so. This gives states the flexibility to structure their programs as desired, including the ability to adopt credit programs to promote the use of various oxygenates even where the minimum oxygen content is greater than 2.7%.[6]

Section 211(m) is most reasonably interpreted as requiring adoption of an oxygenated gasoline program with any weight percent oxygen content requirement that will result in gasoline being blended to contain not less than 2.7% oxygen by weight. A content requirement of 2.7% or higher satisfies this requirement and is authorized by section 211(m). This interpretation is consistent with the terms of section 211(m) and the legislative history discussed above. It is also consistent with the Clean Air Act's basic approach of providing flexibility to the states in developing state programs to achieve and maintain the NAAQS. Under the Act, states have the primary responsibility for determining the manner by which to achieve these air quality standards. *See* CAA section 116; *Virginia* v. *EPA*, 108 F.3d 1397 (D.C. Cir. 1997), *reh'g* granted, 116 F.3d 499 (D.C. Cir. 1997) (modifying so as not to vacate Part 85 of EPA's final rule). EPA has relied on this interpretation in approving SIP revisions for state programs. *See* 62 FR 10690 (March 10, 1997) (approval of 3.1% oxygen content requirement for Denver, CO); 62 FR 49442 (September 22, 1997) (approval of 3.5% oxygen content as a contingency measure for Spokane, WA).

2. Preemption under the Clean Air Act

WSPA has raised three separate arguments claiming that state programs under section 211(m) requiring gasoline blending at levels greater than 2.7% are preempted under the Act, except where required under section 211(m)(7). The first argument is that section 211(c)(4)(A) prohibits such programs absent a showing of necessity under section 211(c)(4)(C). The second argument is that the state program is in conflict with the Clean Air Act and is therefore preempted. Finally, it has been argued that the state program is preempted because Congress through the Clean Air Act has occupied the field of gasoline oxygen content controls.

a. *Preemption under section 211(c)(4).* Section 211(c)(4) of the Act is a provision of general applicability that expressly prohibits state fuel controls under specified circumstances. Section 211(c)(1) of the Act authorizes EPA to prescribe a control or prohibition on a fuel or fuel additive upon a finding that emissions products from such fuel or fuel additive may endanger public health or welfare, or impair emission control devices or systems.

Section 211(c)(4)(A) prohibits states from prescribing or attempting to enforce a control or prohibition respecting any characteristic or component of a fuel or fuel additive if EPA has prescribed a control or prohibition applicable to the same characteristic or component under section 211(c)(1).[7] This prohibition does not apply if the state control is identical to EPA's.[8] Section 211(c)(4)(C) provides that a state may prescribe and enforce such a nonidentical fuel control or prohibition if EPA approves the provision in a state implementation plan (SIP). EPA may approve the state control or prohibition in a SIP only if it is necessary to achieve the NAAQS that the plan implements.

For the purpose of determining whether a state gasoline requirement is preempted under section 211(c)(4)(A), EPA believes it is appropriate to look at the federal gasoline requirements applicable in the area where the state requirements would apply. For further discussion see the May 26, 1998 letter from Margo T. Oge, Director, US EPA Office of Mobile Sources in the docket for this action. (See docket file: NV–OXY–98–VI.) Clark County is subject to the conventional gasoline requirements, not the RFG requirements. 40 CFR 80.70; 40 CFR 80.101(b)(3). Thus, any preemption under section 211(c)(4)(A) of Clark County's oxygen content controls would have to be based on federal oxygen content requirements found in the conventional gasoline regulations. The only conventional gasoline provision adopted under section 211(c)(1) that directly references oxygen content is the use of oxygen content as an input into the Complex Model, which is used to measure emissions performance for the exhaust toxics and NO_X performance standards. As discussed below, however, EPA need not address the issue of whether the conventional gasoline provisions arguably preempt state control of oxygen in conventional gasoline areas because EPA believes that section 211(m) authorizes the Clark County requirement and overrides any potential preemption under section 211(c)(4).

[4] Similarly, certain members of Congress indicated that they did not want EPA, the federal agency implementing section 211(m), to use its waiver authority under sections 211(m) and 211(k) in a manner that would limit the marketplace.

[5] WSPA claims that treating the 2.7% oxygen content requirement in section 211(m)(2) as merely a floor would effectively read out of the statute section 211(m)(7), which requires serious nonattainment areas to require gasoline with a minimum oxygen content of 3.1 %. EPA is not persuaded by WSPA's logic. Because both section 211(m)(2) and 211(m)(7) are phrased in terms of minimum requirements, there is no inconsistency created by allowing states to adopt programs that meet or exceed these requirements. Section 211(m)(7) still serves a purpose—it requires an increase in the minimum oxygenate content for certain serious nonattainment areas that have not previously exercised their discretion to require greater oxygen content levels.

[6] For example, if a state sets an oxygen content standard of 3.1% without any provisions for a credit program, refiners could not meet such a requirement by using MTBE. If a state included a credit program, however, refiners could meet a 3.1% oxygen content standard by supplying a combination of some oxygenated gasoline using ethanol (at 3.5% oxygen content) and some oxygenated gasoline using MTBE (at 2.7% oxygen content).

[7] State regulation is also prohibited if EPA publishes a finding in the **Federal Register** that no control or prohibition of the characteristic or component is necessary.

[8] The prohibition also does not apply to California. Section 211(c)(4)(B).

Even assuming a state control on oxygen content would otherwise be preempted under section 211(c)(4)(A), in the absence of section 211(m), a threshold issue is whether the CAA requires the state to satisfy both the necessity requirement of section 211(c)(4)(C) as well as the requirements of section 211(m) for the state oxygenated gasoline program to be approved into a SIP.[9] WSPA asserts, ''[I]f Congress intended to exempt CAA § 211(m) from the preemption provisions of § 211(c)(4)(A) it would certainly have done so expressly within § 211(m).'' EPA disagrees. EPA believes section 211(m) itself is an express statement on the ability of states to control oxygen content. It seems more logical to conclude that, given Congress' intent to provide state flexibility and ensure attainment of the CO NAAQS, if Congress has intended states also to satisfy the conditions of 211(c)(4), it would have expressly referenced that section.

EPA believes the most reasonable interpretation is that those elements of a state oxygenated gasoline program within the range of programs specified by section 211(m) are not subject to the preemption provisions of section 211(c)(4). However, those elements of a state oxygenated gasoline program beyond the range of programs specified by section 211(m) would be subject to section 211(c)(4)(A) and, if preempted, would be required to show necessity under section 211(c)(4)(C).[10]

The interaction of section 211(c)(4) and section 211(m) is not addressed in the text of these provisions, and it is not discussed in the legislative history. The structure of section 211, however, indicates that section 211(m) is the best indication of Congressional intent concerning the criteria for SIP approval of state programs in the designated CO nonattainment areas. While section 211(c)(4) addresses state fuel control programs in general, Congress specifically addressed state oxygenated gasoline programs in section 211(m). Congress required that certain states adopt these programs, and Congress specified several elements that the programs must contain. Yet Congress did not indicate that the section 211(m) requirements for a state oxygenated gasoline program may be subject to preemption under section 211(c)(4) and, if preempted, could not be approved absent a showing of necessity under section 211(c)(4)(C). It is reasonable to interpret section 211 such that the requirement of a necessity showing under section 211(c)(4)(C) does not apply to those elements of a state program that are specified in section 211(m) because the more specific provisions of section 211(m) take precedence over the more general provisions of section 211(c)(4) for those elements. Congress required states to adopt those elements of a program and submit them as a SIP revision, and Congress expected that EPA would be able to approve such a SIP revision without a further showing of necessity under section 211(c)(4)(C).

Consider, for example, a state oxygenated gasoline program that extends beyond the boundaries of the CMSA or MSA. Section 211(m) contains a specific requirement regarding geographic scope—the program must include the entire CMSA or MSA. Requiring oxygenated gasoline within the CMSA/MSA is clearly within the range of program elements specified under section 211(m), and thus such a state requirement would not be subject to the preemption and necessity demonstration provisions of section 211(c)(4). If section 211(m) and 211(c)(4) were not interpreted in this manner, a state program might satisfy this requirement of section 211(m), but if oxygen content requirements were preempted under section 211(c)(4)(A), the state program might still not be approvable into the SIP.[11] This would be contrary to the clear purpose of section 211(m) that certain states would have approved into their SIPs and implement the oxygenated gasoline requirements specified in section 211(m).

That portion of the state program requiring oxygenated gasoline beyond the CMSA or MSA, however, involves a state gasoline control beyond that which Congress required or expected in order to comply with section 211(m). Hence, such a provision should be subject to the requirements of section 211(c)(4)(C) if the state program would otherwise be preempted under section 211(c)(4)(A). The structure of section 211 does not indicate that oxygenated gasoline requirements beyond the geographic area specified in section 211(m) should be approvable without restriction under section 211(c)(4)(C).

The elements of geographic scope and control period are clearly specified in section 211(m) as a single area or time period.[12] However, the oxygen content requirement is not limited to a single specified value. Congress did not specify, for example, that the state program must require exactly 2.7% oxygen content, nor, as discussed above, did Congress prohibit states from establishing a larger weight percent requirement. Instead Congress specified that the SIP revisions must contain provisions requiring that gasoline be blended to contain not less than 2.7% oxygen by weight.

Arguably, the oxygen content requirements of section 211(m) could be read in the same manner as the geographic scope and control period provisions. Under this approach, a state requirement that is set at 2.7% would not be subject to the preemption provisions of section 211(c)(4), including the necessity showing under section 211(c)(4)(C). However, for any requirement above 2.7%, the state would have to show that the requirement is necessary, if the state program would otherwise be preempted under section 211(c)(4)(A).[13]

An alternative interpretation is that the oxygen content requirements of section 211(m)(2) call for any one of a range of minimum concentrations, and not one specific level. Any content requirement that results in gasoline containing not less 2.7% oxygen is within the scope of programs authorized and envisioned by Congress under section 211(m). Under this interpretation, a state requirement of greater than 2.7% oxygen content would not be subject to preemption under section 211(c)(4) and the state would

[9] This issue only arises where a state control would be preempted under section 211(c)(4)(A) (without reference to the requirements of section 211(m)). If the state control would not be preempted under section 211(c)(4)(A), then the criteria for approval of a SIP in section 211(c)(4)(C) are not applicable. The SIP revision would have to be consistent with section 211(m) but not section 211(c)(4)(C).

[10] EPA discussed the relationship between 211(m) and 211(c)(4) in approving a CO SIP revision for New Jersey. *See* 61 FR 5299 (February 12, 1996).

[11] For example, preempted state fuel controls may not be approved for a waiver unless they are necessary for achieving a NAAQS. As a result, waivers for fuel measures can only be justified for areas where emission reductions are necessary for a NAAQS. The 211(m) program, however, requires adoption of the oxygen control throughout the MSA or CMSA, irrespective of need. It is conceivable that the area needing CO reductions to achieve the NAAQS is smaller than the MSA or CMSA. Thus a state might find itself required by 211(m) to adopt a control for the entire MSA or CMSA, and yet unable to justify a waiver under 211(c)(4) for an oxygen control applicable to the entire area.

[12] Section 211(m)(2) provides that the requirements shall apply during the portion of the year in which the area is prone to high ambient concentrations of CO, which shall be as determined by the Administrator. The Administrator may not select a time period of less than four months, except under limited specified circumstances. For any given area, the Administrator would determine a specific time period in which the area is prone to high ambient concentrations of CO.

[13] Section 211(c)(4)(C) would not apply under this interpretation where a state program was required to require at least 3.1% oxygen content under section 211(m).

not need to show necessity under section 211(c)(4)(C).

EPA believes that the latter interpretation better implements Congressional intent. The text of section 211(m)(2) is reasonably read to envision a range of oxygen contents, whereas the geographic scope and control period are specifically identified as a single area or time period. The legislative history indicates that Congress intended to provide flexibility to states regarding oxygen content, and did not want to restrain that flexibility by setting a federal mandate for a specific oxygen level that states must require. While Congress deliberately rejected a federal mandate that would reduce the market opportunities for various oxygenates, it did this with the goal of preserving state flexibility, not limiting it, and the latter interpretation is consistent with this goal. Moreover, the overall structure established by the Act supports this interpretation, as the Act assigns states the primary responsibility to adopt programs to achieve clean air goals and preserves flexibility for the states in developing the programs needed to satisfy this role. This interpretation is also consistent with the general principle of avoiding a statutory interpretation that preempts state action unless Congressional intent to do so is clear. *See Medtronic, Inc.* v. *Lohr,* 518 U.S. 470, 485 (1996); *Cipollone* v. *Liggett Group, Inc.*, 505 U.S. 504, 518 (1992); *Rice* v. *Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947). Thus, EPA believes that a state is not preempted under the provisions of section 211(c)(4) from adopting a weight percent oxygen requirement greater than 2.7% under a section 211(m) state program, within the geographic scope and control period specified in section 211(m), and that EPA may approve a SIP revision to implement such a section 211(m) program without a showing of necessity under section 211(c)(4)(C).

b. Conflict preemption. WSPA commented that Clark County's 3.5% oxygen rule is preempted under the doctrine of conflict preemption because it hinders the accomplishment of a federal objective—namely EPA's ''charge'' under the waiver provisions of section 211(m)(3) to ''ensur(e) that the areas with the greatest need for oxygenated gasoline receive priority in obtaining such gasoline.'' WSPA has not documented any problem with the supply or availability of compliant gasoline or oxygenates. In fact, refiners have been providing gasoline containing a minimum 3.5% oxygen content for at least two winter seasons, and there are no indications of a lack of supply of oxygenates in other areas subject to section 211(m). Thus, there do not appear to be concerns under 211(m)(3). Likewise, WSPA has not supported its conflict preemption assertion.

A federal statute implicitly overrides a state law when the state law is in actual conflict with the federal law. This occurs when it is impossible for a private party to comply with both the state and federal requirements, or where the state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. *Freightliner Corp.* v. *Myrick*, 514 U.S. 280, 287 (1995) (quoting *English* v. *General Electric Co.*, 496 U.S. 72, 78–79 (1990) and *Hines* v. *Davidowitz*, 312 U.S. 52, 67 (1941)). Contrary to WSPA's comments, EPA has not seen any evidence indicating that the Clark County provisions for oxygenated gasoline would lead to either of these results. First, there is no impossibility here; it is practically and legally possible to blend and supply gasoline that meets the federal conventional gasoline requirements and that has an oxygen content of 3.5%. Second, EPA does not believe that the 3.5% oxygen content requirement would be an obstacle to the accomplishment and execution of Congress' purposes. Here, a primary objective of Congress is that gasoline meet all of the applicable requirements specified in section 211, including the oxygenated gasoline provisions of section 211(m), the summertime RVP requirements of section 211(h), and the conventional gasoline requirements of section 211(k)(8). A state program requiring greater than 2.7% oxygen content is not an obstacle to accomplishing this Congressional objective; rather, it is consistent with the requirements of section 211(m) and the goals of Congress embodied in this provision. By providing that states must set an oxygen content at least as stringent as 2.7%, section 211(m) contemplates that states may require higher oxygen contents. In addition, such higher oxygen content requirements do not conflict with the federal summertime RVP or conventional gasoline requirements applicable in Clark County.[14] There is no evidence that the Clark County requirement would conflict with or interfere with the specifications for annual oxygen content limits in the conventional gasoline program, or interfere with refiners' or importers' ability to produce complying conventional gasoline.

c. Field preemption. WSPA further commented that Clark County's 3.5% oxygen requirement is preempted under the doctrine of field preemption. WSPA, however, does not elaborate on this claim.

A state program is preempted under field preemption where Congress has implicitly indicated an intent to occupy a given field to the exclusion of state law. ''Such a purpose properly may be inferred where the pervasiveness of the federal regulation precludes supplementation by the States, where the federal interest in the field is sufficiently dominant, or where the object sought to be obtained by federal law and the character of obligations imposed by it * * * reveal the same purpose.'' *Schneidewind* v. *ANR Pipeline Co.*, 485 U.S. 293, 300 (1987) (quoting *Rice* v. *Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947).

Here, neither section 211(m) nor section 211 as a whole establishes a comprehensive federal presence. Instead, the fuels programs under section 211 provide a number of federal requirements but also explicitly preserve a role for the states in regulating fuels. Section 211(c)(4) explicitly preempts state action, but only under certain circumstances, and provides an exemption from preemption under section 211(c)(4)(C). Section 211(m) requires states, not the federal government, to adopt oxygenated gasoline programs. As discussed above, state programs requiring greater than 2.7% oxygen content are within the range of programs authorized under section 211(m), and Congress did not intend to prohibit them. Thus, federal regulation here is not so pervasive as to preclude supplementation by states, nor is the federal interest in the field sufficiently dominant to preempt state action.

State programs under section 211(m) requiring greater than 2.7% oxygen content are therefore not preempted based on either conflict or field preemption.

d. Preemption under 211(f). WSPA also appears to argue that EPA's authority to grant waivers from the substantially similar prohibition of section 211(f)(1), and its authority to control or ban fuel additives under section 211(c)(1), mean that only EPA can act to allegedly ban the use of a fuel additive such as MTBE, not states. In addition, WSPA claims that EPA must satisfy the requirements of section 211(c)(1) before it could approve Nevada's SIP provision.

[14] Issues concerning conflict with the requirements or goals of the federal reformulated gasoline program need not be addressed to evaluate the Clark County program.

EPA has explained above that the Clark County provision is neither expressly prohibited under section 211(c)(4), nor implicitly prohibited under conflict or field preemption. EPA's authority under sections 211(c)(1) and (f)(4) does not provide an additional basis for preemption of state fuel controls. Congress indicated expressly in section 211(c)(4) what state fuel controls are prohibited, and there is no reason to believe EPA's authority to act under section 211(c)(1) and (f)(4) indicates a Congressional intent to preempt state fuel controls not otherwise preempted under section 211(c)(4). In addition, EPA's authority to act on a state SIP submission is not based on or limited by section 211(c)(1). Nothing in section 211(c) or (m) or section 110 indicates that section 211(c)(1) applies to EPA's action on a state SIP submission involving a state oxygenated gasoline program. Such an interpretation would run counter to the central structure of the Act, by limiting a state's SIP measures to only those provisions that EPA could or would be able to adopt under it's own federal authority.

B. Regulatory Negotiation Agreement

WSPA commented that EPA's approval of Clark County's SIP revision ''violates the spirit, if not the letter * * *'' of an Agreement in Principle entered into in August 1991 between EPA, environmental groups, state and local agencies, and industry. WSPA claims the parties agreed that during the control periods for CO nonattainment areas the required oxygenate level in gasoline would be set at 2.7 percent by weight. WSPA also claims that EPA agreed on how to limit components in conventional gasoline areas and to invoke 211(c) to preempt state regulation of fuel. The 1991 Agreement in Principle was an agreement on the underlying principles to be proposed for implementation of the then-new provisions of sections 211(k) and 211(m). Nothing in the Agreement suggests that states subject to 211(m) are prohibited from requiring oxygen content levels greater than the statutory minimum. The Agreement outlines the minimum oxygen content levels to be proposed for reformulated gasoline (RFG) and describes the ranges of oxygen content that will be deemed to comply with NO_X standards in RFG areas. These provisions both applied to the ''simple model'' for certifying RFG. These provisions are not informative for this rulemaking because: (1) Las Vegas is not an RFG area; (2) nothing in the provisions states that higher oxygen content levels are prohibited; and, (3) the simple model described in these provisions has been replaced by the ''complex model'' throughout the country.[15] *See* 40 CFR 80.42(c)(2).

The Agreement also described the oxygenated gasoline guidelines that EPA would recommend. This section of the Agreement highlighted state flexibility by stating, ''While recognizing state discretion, EPA guidelines shall recommend a credit program. * * *'' The elements of the recommended credit program do not suggest that states be limited to the statutory minimum requirements of 211(m). Likewise nothing in the Agreement suggests that 211(c) preempts state compliance with 211(m) or that 211(c) would be used in any way beyond that provided by the statute.

C. Commerce Clause of the U.S. Constitution

Finally, WSPA commented that Clark County's 3.5% gasoline oxygen content requirement is barred by the Commerce Clause. WSPA argues that the Clark County Board of Health's purpose for enacting the requirement is unclear and that the Board may have enacted the requirement with the ulterior motive of ''protect(ing) economic interests of ethanol providers within the state. * * *'' The record clearly indicates that the Board's purpose in adopting the requirement is to address Clark County's carbon monoxide air quality problem and the attendant health risks which it poses to the local population. WSPA has not submitted any documentation to the contrary and there is no basis for EPA to believe that the Board's motives were other than those stated in the record. WSPA has also failed to submit documentation to support its assertion that the 3.5% oxygen content requirement imposes an unreasonable burden on interstate commerce. Fuel suppliers in Clark County have been complying with the 3.5% oxygen requirement for a number of years—first voluntarily and, since October 1997, pursuant to the Clark County rule.

IV. EPA Action

EPA is finalizing action to approve the above revisions for inclusion into the Nevada SIP. EPA is approving the submittal under section 110(k)(3) as meeting the requirements of section 110(a) and Part D of the CAA. This approval action will incorporate Clark County's revisions into the federally approved SIP. The intended effect of approving these revisions is to regulate emissions of CO in accordance with the requirements of the CAA.

V. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is

[15] The complex model includes ranges of fuel components that the model can accept for predicting the emissions that will result from use of a particular fuel. The range for oxygen content that the model can accept is 0.0 to 4.0 percent by weight. *See* 40 CFR 80.45(f)(1). Clark County's 3.5% requirement fits within the range limits of the model.

preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

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

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

G. Submission to Congress and the Comptroller General

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

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 2, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: May 19, 1999.

Laura Yoshii,

Acting Regional Administrator, Region IX.

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

PART 52—[AMENDED]

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

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

Subpart DD—Nevada

2. Section 52.1470 is amended by adding paragraph (c)(38)to read as follows:

§ 52.1470 Identification of plan.

* * * * *

(c) * * *

(38) On August 7, 1998, regulations for the following Health District were submitted by the Governor's designee.

(i) Incorporation by reference.

(A) Clark County Health District.

(*1*) Section 53 adopted on September 25, 1997.

[FR Doc. 99–13805 Filed 6–1–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

OPP–300863; FRL–6081–5

RIN 2070–AB78

Difenoconazole; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for the fungicide difenoconazole (((2*S*,4*R*)/(2*R*,4*S*)/(2*R*,4*R*)/(2*S*,4*S*)) 1–(2–(4–(4-chlorophenoxy)-2-chlorophenyl)-4-methyl-1,3-dioxolan-2-yl)methyl-1*H*–1,2,4-triazole) in or on the raw agricultural commodities bananas at 0.2 parts per million (ppm); wheat forage at 0.1 ppm; wheat grain at 0.1 ppm; wheat straw at 0.1 ppm; eggs at 0.05 ppm; milk at 0.01 ppm; fat of cattle, goats, hogs, horses, poultry, and sheep at 0.05 ppm; meat of cattle, goats, hogs, horses, poultry, and sheep at 0.05 ppm; and meat byproducts of cattle, goats, hogs, horses, poultry, and sheep at 0.05 ppm. Novartis Crop Protection, Inc. 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 June 2, 1999. Objections and requests for hearings must be received by EPA on or before August 2, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300863], 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–300863], 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 (CM #2), 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may be submitted electronically by sending electronic mail (e-mail) to: opp-docket@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–300863]. 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: Cynthia Giles-Parker, 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. 249, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–7740, giles-parker.cynthia@epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 25, 1997 (62 FR 40075) (FRL–5726–4), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act (FQPA) of 1996 (Pub. L. 104–170) announcing the filing of a pesticide petition (PP 5E4526) to establish an import tolerance on bananas by Novartis Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419–8300. The notice included a summary of the petition prepared by Novartis Crop Protection, Inc., the registrant. There were no comments received in response to the notice of filing. In the **Federal Register** of December 2, 1998 (63 FR 66535) (FRL–6043–2), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a as amended by the FQPA of 1996 (Pub. L. 104–170) announcing the filing of a pesticide petition (PP 2F4107) to establish a tolerance on wheat and related animal commodities by Novartis Crop Protection, Inc. that included a summary of the petition prepared by the same company. There were also no comments received in response to this second notice of filing.

The petitions requested that 40 CFR 180.475 be amended by establishing tolerances for the fungicide, difenoconazole, in or on the raw agricultural commodities bananas at 0.2 ppm; wheat forage at 0.1 ppm; wheat grain at 0.1 ppm; wheat straw at 0.1 ppm; eggs at 0.05 ppm; milk at 0.01 ppm; fat of cattle, goats, hogs, horses, poultry, and sheep at 0.05 ppm; meat of cattle, goats, hogs, horses, poultry, and sheep at 0.05 ppm; and meat byproducts of cattle, goats, hogs, horses, poultry, and sheep at 0.05 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 difenoconazole and to make a determination on aggregate exposure, consistent with section 408(b)(2), for tolerances in/on the raw agricultural commodities wheat forage at 0.1 ppm; wheat grain at 0.1 ppm; wheat straw at 0.1 ppm; eggs at 0.05 ppm; milk at 0.01 ppm; fat of cattle, goats, hogs, horses, poultry, and sheep at 0.05 ppm; meat of cattle, goats, hogs, horses, poultry, and sheep at 0.05 ppm; and meat byproducts of cattle, goats, hogs, horses, poultry, and sheep at 0.05 ppm, and an import tolerance for the fungicide difenoconazole in or on the raw agricultural commodity bananas at 0.2 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 difenoconazole are discussed in this unit.

B. Toxicological Endpoints

1. *Acute toxicity*. Difenoconazole possesses low acute toxicity by the oral, dermal and inhalation routes of exposure. It is considered to be a mild eye and slight skin irritant and is not a dermal sensitizer. The acute oral LD_{50} in rats is 1,453 milligrams per kilogram (mg/kg). The acute dermal LD_{50} is estimated to be greater than 2,010 mg/kg. The acute inhalation LC_{50} in rats is greater than 3,300 mg/m^3. The primary eye irritation category is III and the primary skin irritation category is IV.

2. *Short- and intermediate-term toxicity.* Subchronic studies of the effects of difenoconazole in mice and rats manifested decreased body weights, decreased body weight gains, and effects on the liver at 200 ppm and higher. Microscopic examination of the eyes of dogs at 3,000 ppm revealed unilateral and bilateral lenticular cataracts in both sexes of animals. In a 13–week feeding study in mice, nearly all mice fed 7,500 or 15,000 ppm died during the first week of the study; there was a significantly decreased body weight gain, hepatocellular enlargement and vacuolation in animals receiving 2,500 ppm difenoconazole in the diet; and hepatocyte enlargement in animals receiving 200 ppm. The lowest observable adverse effect level (LOAEL) was considered to be 200 ppm based on decreased body weight gains and liver histopathology and the no observable adverse effect level (NOAEL) was 20 ppm (equivalent to 2.0 mg/kg in males and 4.4 mg/kg in females). In a 13–week feeding study in rats, the LOAEL was 200 ppm (10 mg/kg/day) in females, based on a decrease in body weights (concurrent with a negative trend for food consumption), and 750 ppm (37.5 mg/kg/day) for males, based on increases in absolute liver weights; the NOAEL was 20 ppm (equivalent to 1 mg/kg/day). A 21–day dermal toxicity study using rabbits produced a LOAEL of 100 mg/kg/day based on statistically significant decrements in body weight, body weight gain, and food consumption, and a NOAEL of 10 mg/kg/day. A feeding study in dogs for 26 weeks produced a LOAEL of 3,000 ppm based on unilateral or bilateral cataracts in all three female and one of three male dogs. The NOAEL was concluded to be 1,000 ppm (31.3 to 34.0 mg/kg/day).

3. *Chronic toxicity*. EPA has established the Reference Dose (RfD) for difenoconazole at 0.01 mg/kg/day. This RfD is based on the NOAEL of 0.96 mg/kg/day (20 ppm) for males in a 104–week chronic toxicity/carcinogenicity study in rats and using an uncertainty factor of 100 (10x for interspecies extrapolation and 10x for intraspecies variability. The NOAEL for females (at the 20 ppm dietary exposure) was 1.27 mg/kg/day. The LOAEL in this study was 500 ppm (24.12 mg/kg/day for males and 32.79 mg/kg/day for females), based on cumulative decreases in body weight gains and hepatocellular hypertrophy. In the dog, the LOAEL was 500 ppm, based on decreased body weight gains (and decreased food intake) and the NOAEL was 100 ppm (3.4 to 3.7 mg/kg/day) in a 52–week chronic dietary toxicity study.

The results of the 2–generation reproductive and developmental toxicity studies do not demonstrate increased sensitivity of infants and children to difenoconazole. In a developmental toxicity study in rats, the maternal NOAEL was determined to be 20 mg/kg/day and the maternal LOAEL was 100 mg/kg/day based on decreased body weight gains and decreased food consumption. In the same study, the developmental NOAEL was 100 mg/kg/day and the developmental LOAEL was 200 mg/kg/day based on the incidence of bifid or unilateral ossification of the thoracic vertebrae, which was significantly increased on a fetal basis, and significant increases in the average number of ossified hyoid and decreases in the number of sternal centers of ossification (per fetus per litter). The average number of ribs was also significantly increased with accompanying increases in the number of thoracic vertebrae and decreases in the number of lumbar vertebrae in this group. In a developmental toxicity study in rabbits, the LOAEL is 75 mg/kg/day for maternal toxicity based on decreases in body weight gain and food consumption, and the NOAEL is 25 mg/kg/day for maternal toxicity; for developmental toxicity, the LOAEL is 75 mg/kg/day based on increases in post-implantation loss and resorptions per doe, and decreases in fetal body weight, and the NOAEL is 25 mg/kg/day. In a 2–generation reproduction study in rats, for parental toxicity, the LOAEL of 250 ppm (12.5 mg/kg/day) is based on the decrease in maternal body weight gain and the NOAEL is 25 ppm (1.25 mg/kg/day; for reproductive toxicity the LOAEL of 250 ppm (12.5 mg/kg/day) is based on decreased pup weights at day 21 and the NOAEL is 25 ppm (1.25 mg/kg/day).

Neurotoxicity studies are not applicable because difenoconazole is not a cholinesterase inhibitor and there is no evidence in the available data base that difenoconazole possesses neurotoxic properties. It is not structurally related to known neurotoxic compounds.

Difenoconazole was not mutagenic with or without metabolic activation in two microbial/mammalian microsome plate incorporation assays. In an *in vivo* micronucleus assay, no increases in micronucleated polychromatic erythrocyte counts were seen in the bone marrow cells of mice given difenoconazole. This chemical was negative in an *in vitro* unscheduled DNA synthesis (UDS) assay with primary rat hepatocytes.

4. *Carcinogenicity*. Chronic feeding studies in mice showed decreased body weight gains in male and female mice at termination. Treatment related non-neoplastic lesions were confined to the liver and were supported by the clinical chemistry data at a level of 300 ppm (46.29 and 57.79 mg/kg/day for males and females, respectively). Liver tumors were observed in mice at 300 ppm and higher; however, based on the excessive toxicity observed at the two highest doses of 2,500 and 4,500 ppm (females terminated after 2 weeks due to excessive toxicity resulting in moribundity and death), the absence of tumors at the two lower doses of 10 and 30 ppm, and the absence of genotoxic effects, in 1994 the Agency determined that the appropriate cancer classification for difenoconazole is C (possible human carcinogen) and advocated the use of the margin of exposure (MOE) approach to determining exposure/risk. However, at this time the Agency has not defined the level of concern for cancer using the MOE approach. Therefore, a quantitative risk analysis was conducted using the Q_1* approach. The Q_1* was determined to be 1.57×10^{-1} (mg/kg/day)$^{-1}$. This value incorporates the 3/4 scaling factor and is based on the male mouse liver adenomas and/or carcinomas combined.

Metabolism studies in rats indicated that peak absorption occurred between 24 and 48 hours post-dosing. Elimination in the feces ranged between 78 and 94% and in the urine between 8 and 21%. Difenoconazole did not accumulate to any appreciable extent since tissues contained less than 1.0%

of the radioactivity after 7 days post-exposure. From the proposed metabolic pathway of difenoconazole in rats, the compound undergoes successive oxidation and conjugation reactions. One of the metabolites, CGA–205375, accounts for 6–24% of the applied dose and is found only in the urine and feces of high dose (300 mg/kg) rats. The presence of this intermediate in the excreta of only high dose rats suggests that its rate of further biotransformation has reached saturation at the high dose. Additionally, excretion of radioactivity in the bile, feces, and urine of rats orally dosed with ^{14}C-difenoconazole is consistent with saturation of the gastrointestinal absorption of the chemical at 300 mg/kg. The distribution, metabolism, and excretion of difenoconazole are not sex-dependent.

C. Exposures and Risks

1. *From food and feed uses.* Time-limited tolerances previously existed in (40 CFR 180.475) for the residues of difenoconazole in or on the following raw agricultural commodities: eggs at 0.05 ppm; fat of cattle, goats, hogs, horses, poultry, and sheep at 0.05 ppm; meat of cattle, goats, hogs, horses, poultry, and sheep at 0.05 ppm; meat byproducts of cattle, goats, hogs, horses, poultry, and sheep at 0.05 ppm; milk at 0.01 ppm; wheat forage at 0.1 ppm; wheat grain at 0.1 ppm; and wheat straw at 0.1 ppm. The time limits were conditional on submission by the company of several studies. However, even though Novartis Crop Protection, Inc. submitted the studies before the expiration date of these tolerances, the tolerances expired on December 31, 1998, because the Agency was unable to complete review of the studies by that date. These tolerances are reestablished and made permanent by this rule. In addition to the above tolerances, import tolerances also exist for the residues of difenoconazole on barley grain at 0.1 ppm; eggs at 0.05 ppm; fat of cattle, goats, hogs, horses, poultry, and sheep at 0.05 ppm; meat of cattle, goats, hogs, horses, poultry, and sheep at 0.05 ppm; meat byproducts of cattle, goats, hogs, horses, poultry, and sheep at 0.05 ppm; milk at 0.01 ppm; rye grain at 0.1 ppm; and wheat grain at 0.1 ppm. These import tolerances are unaffected by this rule. Risk assessments were conducted by EPA to assess food exposures from difenoconazole 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. Anticipated residue data used in the current dietary risk analysis were calculated from field trial data. The anticipated residues used were 0.01 for bananas; 0.000019 for eggs; 0.0000043 for egg whites; 0.000046 ppm for egg yolk; 0.000041 ppm for fat of cattle, goats, hogs, horses, and sheep; 0.00012 ppm for kidney of cattle, goats, hogs, horses, and sheep; 0.000014 ppm for meat of cattle, goats, hogs, horses, and sheep; 0.00044 ppm for meat byproducts (except kidney) of cattle, goats, hogs, horses, and sheep; 0.000013 ppm for milk; 0.01 ppm for plantains; 0.0000030 ppm for poultry fat; 0.000034 ppm for poultry kidney; 0.000006 ppm for poultry meat; 0.000023 ppm for poultry meat byproducts (except kidney); 0.005 ppm for sweet corn; and 0.005 ppm for wheat grain.

Section 408(b)(2)(F) states that the Agency may use data on the actual percent of crop 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 PCT as required by the section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows: 3% crop treated for sweet corn, 9% crop treated for wheat, and 10.5% imported for barley. The percent imported data are used in the same way PCT data are used. This refinement is used because difenoconazole is not registered for use in the United States. The percentage means that 10.5% of the barley used (potentially or actually) for human consumption in the United States is imported; it is even more conservative because it also assumes that all such imported barley has difenoconazole residues.

The Agency believes that the three conditions, discussed in section 408 (b)(2)(F) 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 is 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 difenoconazole may be applied in a particular area.

i. *Acute exposure and risk.* Acute 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. An acute risk assessment is required for difenoconazole. The acute NOAEL of 25 mg/kg/day is based on the developmental toxicity study in rabbits, in which the endpoint effects at the LOAELs were post-implantation loss and resorptions per doe and a significant decrease in fetal weight at 75 mg/kg/day during days 7 and 19. The uncertainty factor used was 100, resulting in an acute RfD of 0.25 mg/kg/day. The Agency's detailed acute analysis estimated the distribution of single-day exposures for females older than 13 years. A dose and endpoint were not selected for the general U.S. population and infants and children because there were no effects observed in oral toxicology studies including maternal toxicity in the developmental toxicity studies in rats or rabbits that are attributable to a single exposure. The

Dietary Exposure Evaluation Model (DEEM) analysis evaluated the data in the USDA 1989–91 Continuing Surveys for Food Intake by Individuals (CSFII). The acute analysis used tolerance level residues and 100% crop treated. The FQPA Safety Factor was reduced to 1x. Therefore, the acute Population Adjusted Dose (PAD) and the acute RfD are the same. For acute risk the Agency's level of concern is for estimated exposure greater than 100% of the RfD. Total exposures from the proposed new and preexisting food and feed uses of difenoconazole, at the 95th percentile of exposure are: (a) Females (13+/pregnant/not nursing), 0.000913 mg/kg/day (<1% of the RfD); (b) females (13+/nursing), 0.001079 mg/kg/day (<1% of the RfD); (c) females (13–19 years/not pregnant or nursing), 0.000941 mg/kg/day (<1% of the RfD); (d) females (20+ years/not pregnant or nursing), 0.000804 mg/kg/day (<1% of the RfD); and (e) females (13–50 years), 0.000869 mg/kg/day (<1% of the RfD). The acute risk from food exposure does not exceed the Agency's level of concern.

ii. *Chronic exposure and risk.* A chronic risk assessment was required for difenoconazole. The RfD used for the chronic analysis is 0.01 mg/kg based on the NOAEL of 0.96 mg/kg/day for male rats in the 104–week combined chronic and carcinogenicity study in rats, in which the effects at the LOAEL were reduced body weight gains and hepatocellular hypertrophy. The chronic Dietary Exposure Evaluation Model (DEEM) exposure analysis used mean consumption (3–day average). Anticipated residues and PCT or percent imported data were used for selected commodities. The DEEM analysis evaluated the individual food consumption as reported by respondents in the 1989–91 CSFII and accumulated exposure to the chemical for each commodity. The FQPA Safety Factor was reduced to 1x. Therefore, the chronic PAD and the RfD are the same. The Agency's level of concern for chronic risk is exceeded if the exposure utilizes more than 100% of the RfD. Food exposures for the U.S. population and the most highly exposed subgroups are: (a) U.S. Population (48 states), 0.000005 mg/kg/day; (b) non-Hispanic (other than black or white), 0.000006 mg/kg/day; (c) all infants (<1 year old), 0.000016 mg/kg/day; (d) nursing infants (<1 year old), 0.000007 mg/kg/day; (e) non-nursing infants (<1 year old), 0.000019 mg/kg/day; (f) children (1–6 years old), 0.000011 mg/kg/day; (g) children (7–12 years old), 0.000005 mg/kg/day; (h) females (13+/nursing), 0.000006 mg/kg/day; and (i) seniors (55+), 0.000006 mg/kg/day. The subgroups presented are all children subgroups and the food exposures for the subgroups whose food exposures are higher than that of the U.S. population. The chronic risk from residues in food does not exceed the Agency's level of concern.

iii. *Cancer exposure and risk.* The Agency previously classified difenoconazole as a possible human carcinogen. This chemical would now be classified as a likely human carcinogen in accordance with the Agency's ''Proposed Guidelines for Carcinogenic Risk Assessment'' (April 10, 1996). Initially a non-linear, MOE approach was used for human risk characterization and extrapolation of risk using the 78–week mouse carcinogenicity study, in which the LOAEL effects related to tumor development (non-neoplastic hepatic lesions) were hepatocellular hypertrophy, necrosis, fatty changes, and bile stasis. Using the NOAEL of 4.7 mg/kg/day, the cancer MOE was determined to be 8,400 for the U.S. population. However, at this time the Agency has not defined the acceptable level of concern for cancer risk using the MOE approach. Therefore, the linear Q_1* approach was used for calculating cancer risk. A Q_1* of 0.157 $(mg/kg/day)^{-1}$ was determined, based on the male mouse liver adenoma and/or carcinoma combined tumor rates in the 78–week carcinogenicity study in mice. The exposure analysis estimating potential cancer risks for difenoconazole was performed using anticipated residues and PCT or percent imported refinements for selected commodities to determine Estimated Lifetime Cancer Risk for the general population. The DEEM analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–91 nationwide CSFII and accumulated exposure to the chemical for each commodity. The DEEM analysis used mean consumption values and assumes a 70–year lifetime exposure. The exposure calculated for the U.S. population (48 states) was 0.000005 mg/kg/day, providing a lifetime cancer risk estimate of 8.4×10^{-7} from residues in food. The cancer risk does not exceed the Agency's level of concern.

2. *From drinking water.* A Drinking Water Level of Comparison (DWLOC) is a theoretical upper limit on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, drinking water, and through residential uses. A DWLOC will vary, depending on the toxic endpoint, with drinking water consumption and body weights. Different populations will have different DWLOCs. The Agency uses DWLOCs internally in the risk assessment process as a surrogate measure of potential exposure through 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. DWLOC values are not regulatory standards for drinking water but they do have an indirect regulatory impact through aggregate exposure and risk assessments.

In calculating DWLOCs, the default assumptions for drinking water consumption are 2 liters consumed per day by adults and 1 liter consumed per day by children. The default assumptions for body weights are 70 kg for adult males, 60 kg for adult females, and 10 kg for children. Difenoconazole is used solely as a fungicidal seed treatment and is not expected to pose a major threat to ground and surface waters.

i. *Acute exposure and risk.* Model-derived estimates of the maximum concentrations of difenoconazole for acute exposure in ground and surface water are 0.125 parts per billion (ppb) and 0.00084 ppb, respectively, generated by the Screening Concentration in Ground Water (SCI-GROW) and Generic Expected Environmental Concentration (GENEEC) models, respectively. The SCI-GROW and GENEEC model estimated maximum concentrations were compared directly to the DWLOC for acute exposure. The Agency has calculated the DWLOC for acute exposure to difenoconazole in surface and ground water for females (13+ years old, nursing) to be 7,500 ppb. To calculate the DWLOC for acute exposure relative to an acute toxicity endpoint, the acute food exposure (from the DEEM analysis) was subtracted from the acute RfD to obtain the acceptable acute exposure to difenoconazole in drinking water. The DWLOC was then calculated using the default body weights and drinking water consumption figures. The maximum estimated concentrations of difenoconazole in surface water are less than the Agency's DWLOCs for difenoconazole in drinking water as a contribution to acute aggregate exposure.

ii. *Chronic exposure and risk.* The SCI-GROW model was used to estimate a maximum concentration of difenoconazole in ground water of 0.00084 ppb and the GENEEC model concentration was divided by three and used to estimate an average concentration of difenoconazole in surface water of 0.016 ppb. For chronic

(non-cancer) exposure to difenoconazole in surface and ground water, the DWLOCs are 350 ppb for the U.S. population, 300 ppb for the subgroup females (13+ years old/nursing), and 100 ppb for the subgroup non-nursing infants (<1 year old). To calculate the DWLOC for chronic (non-cancer) exposure relative to a chronic toxicity endpoint, the chronic food exposure (from the DEEM analysis) was subtracted from the RfD to obtain the acceptable chronic (non-cancer) exposure to difenoconazole in drinking water. The maximum estimated concentration of difenoconazole in surface water is less than the Agency's DWLOCs for difenoconazole in drinking water as a contribution to chronic (non-cancer) exposure.

iii. *Cancer exposure and risk*. Estimates generated by models of the maximum concentration of difenoconazole for chronic exposure in ground water is 0.00084 ppb (from the SCI-GROW model) and for the estimated average concentration in surface water is 0.016 ppb (from the GENEEC model). For chronic (cancer) exposure to difenoconazole in surface and ground water, the DWLOC is 0.048 ppb for the U.S. population. To calculate the DWLOC for chronic exposures relative to a carcinogenic toxicity endpoint, the chronic (cancer) food exposure (from the DEEM analysis) was subtracted from the ratio of the negligible cancer risk to the Q_1* to obtain the acceptable chronic (cancer) exposure to difenoconazole in drinking water. DWLOCs were then calculated using the default drinking water consumptions and body weights. The average estimated concentration of difenoconazole in surface water is less than the Agency's DWLOC for difenoconazole in drinking water as a contribution to cancer aggregate exposure.

3. *From non-dietary exposure*. Difenoconazole is not currently registered for use on residential non-food sites.

4. *Cumulative exposure to substances with common mechanism of toxicity*. Difenoconazole is a member of the triazole class of pesticides. Other members of this class include cyproconazole, fenbuconazole, propiconazole, tebuconazole, and uniconazole. Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency considers ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' While the Agency has some information in its files that may be helpful in determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodology to resolve the scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will enable it to develop and apply policies for evaluating the cumulative effects of chemicals having a common mechanism of toxicity. At present, however, the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments. There are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism will be assumed).

EPA does not have, at this time, available data to determine whether difenoconazole 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, difenoconazole 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 difenoconazole has a comon 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

There are no proposed or existing residential uses for difenoconazole and occupational uses of difenoconazole will not result in post-application residential exposure. Therefore, aggregate exposure risk assessment has been limited to food and water only, using the exposure estimates and risk characterizations described above.

1. *Acute risk*. From the acute food risk assessment, a high-end exposure estimate was calculated for the subgroup females 13+ years old. In this subgroup less than 1% of the RfD is occupied by food exposure. The acute food exposure for females 13+ years old is below the Agency's level of concern. An acute RfD is not established for the general population including infants and children because there were no effects observed in oral toxicity studies including maternal toxicity in the developmental toxicity studies in rats and rabbits attributable to a single exposure. The maximum estimated concentrations of difenoconazole in surface and ground water are less than the Agency's DWLOCs for difenoconazole as a contribution to acute aggregate exposure. Therefore, the Agency concludes with reasonable certainty that residues of difenoconazole in drinking water do not contribute significantly to the aggregate acute human health risk at the present time, considering the present uses and the uses proposed in this action. EPA bases this determination on a comparison of estimated concentrations of difenoconazole in surface waters and ground waters to DWLOCs for difenoconazole. The estimated concentrations of difenoconazole in surface and ground waters are derived from water quality models that use conservative assumptions regarding pesticide transport from the point of application to surface and ground water. Because the Agency considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, DWLOC may vary as those uses change. If new uses are added in the future, the Agency will reassess the potential impacts of difenoconazole on drinking water as a part of the aggregate acute risk assessment process.

2. *Chronic risk*. Chronic risk estimates associated with exposure to difenoconazole in food and water do not exceed the Agency's level of concern. The chronic DEEM food exposure analysis used mean consumption (3–day average). Anticipated residues and PCT data for select commodities were used to determine food exposure for the general population and 28 subgroups. The Agency has concluded that the percentage of the RfD that will be utilized by chronic food exposure to residues of difenoconazole is less than 1% of the RfD for all groups and subgroups. The estimated average concentrations of difenoconazole in surface and ground water are less than the Agency's DWLOCs for

difenoconazole as a contribution to chronic dietary aggregate exposure. Therefore, the Agency concludes with reasonable certainty that residues of difenoconazole in drinking water do not contribute significantly to the aggregate chronic human health risk at the present time considering the present uses and the uses proposed in this action. The Agency bases this determination on a comparison of estimated concentrations of difenoconazole in surface and ground waters to DWLOCs for difenoconazole. The estimates of difenoconazole in surface and ground waters are derived from water quality models that use conservative assumptions regarding pesticide transport from the point of application to surface and ground water. Because the Agency 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, OPP will reassess the potential impacts of difenoconazole on drinking water as a part of the aggregate chronic risk assessment process.

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 no registered residential uses or exposure scenarios were identified for short- and intermediate-term exposure scenarios, short- and intermediate-term aggregate risks are deemed to be negligible.

4. *Aggregate cancer risk for U.S. population*. The DEEM cancer food exposure analysis used anticipated residues and PCT information to estimate the lifetime cancer risk for the general population. The food exposure was calculated to be 0.000005 mg/kg/day and the lifetime dietary risk was 8.4 x 10^{-7}, since there are no uses resulting in post-application exposure. The aggregate exposure for cancer includes only food and water. Cancer risk estimates associated with exposure to difenoconazole from food and water do not exceed the Agency's level of concern.

The estimated average concentrations of difenoconazole in surface and ground water are less than the Agency's DWLOCs for difenoconazole as a contribution to cancer aggregate exposure. Therefore, the Agency concludes with reasonable certainty that residues of difenoconazole in drinking water do not contribute significantly to the aggregate chronic human health risk at the present time considering the present use and uses proposed in this action. The Agency bases this determination on a comparison of estimated concentrations of difenoconazole in surface and ground waters to DWLOCs for difenoconazole. The estimates of difenoconazole in surface and ground waters are derived from water quality models that use conservative assumptions regarding pesticide transport from the point of application to surface and ground water. Because the Agency 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, the Agency will reassess the potential impacts of difenoconazole 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 difenoconazole 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 difenoconazole, 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 during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

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

ii. *Pre- and postnatal sensitivity*. The data provided no indication of increased susceptibility of rats or rabbits to in utero or postnatal exposure to difenoconazole.

iii. *Conclusion*. There is a complete toxicity data base for difenoconazole and exposure data is complete or is estimated based on data that reasonably accounts for potential exposures.

The FQPA 10x additional safety factor for infants and children was reduced to 1x because: (a) The toxicology data base is complete, (b) there is no indication of increased susceptibility of rat or rabbit fetuses during in utero and/or postnatal exposure in the developmental and reproductive toxicity data, (c) in the absence of complete environmental fate data for difenoconazole and for protection of infants and children, worst-case fate parameters will be used in the models for ground and surface source drinking water exposure assessments resulting in estimates that are upper-bound concentrations, and (d) there are currently no registered residential uses for difenoconazole and therefore, non-dietary exposure to infants and children is not expected.

2. *Acute risk*. An acute RfD is not established for the general population including infants and children because there were no effects observed in oral toxicity studies including maternal toxicity in the developmental toxicity studies in rats and rabbits attributable to a single exposure. The Agency concludes that acute risks to infants and children are negligible.

3. *Chronic risk*. Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to difenoconazole from food will utilize less than 1% 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. The estimated average concentrations of difenoconazole in surface and ground water are less than the Agency's DWLOC for chronic exposure among nursing infants (<1 year old) to difenoconazole. Despite the potential for exposure to difenoconazole in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

4. *Short- or intermediate-term risk*. Since no registered residential uses or exposure scenarios were identified for

short- and intermediate-term exposure scenarios among the general population, short- and intermediate-term aggregate risk are negligible.

5. *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 difenoconazole residues.

III. Other Considerations

A. Nature of the Residue In Plants and Animals

The nature of the residue in wheat is understood as a result of acceptable metabolism studies being performed in wheat RACs. The major terminal residues in wheat grain were the metabolites triazole and triazole acetic acid, and in wheat straw and forage were triazole alanine, triazole acetic acid, and CGA–205375. Parent difenoconazole was not detected in the grain and comprised <8% of the total recoverable residue (TRR) in forage and <0.4% of the TRR in straw. The nature of the residue is also understood in tomatoes, potatoes, and grapes, with the major terminal residues consisting of parent compound and triazole alanine in tomatoes, triazole alanine and conjugation with a number of naturally occurring substrates in potatoes, and metabolism of parent by hydroxylation of the phenyl ring and/or oxidative cleavage of the dioxolane ring, followed by cleavage of the carbon-carbon bridge between the phenyl and triazole rings. Similar results were observed in the wheat, tomato, and potato metabolism studies. Since the nature of the residue is understood in different crops, no metabolism studies for bananas were required. The Agency concluded that none of the difenoconazole metabolites warrant inclusion in the tolerance regulation or separate regulation or inclusion in the dietary risk assessment or additional metabolism or toxicological studies. The triazole metabolites (triazole, triazole alanine, triazole acetic acid) have previously been determined not to be of toxicological concern. CGA–205375 was determined not to be of concern due to the low potential for residues associated with seed treatment. This conclusion can be expanded to include triazole propanoic acid. Only the parent compound difenoconazole will be used in the tolerance expression.

The nature of the residue in animals is considered understood, for the purposes of the proposed uses, because the triazole metabolites have previously been determined not to be of toxicological concern and because CGA–205375 was determined not to be of concern due to the low potential for residues associated with seed treatment. The additional animal metabolite triazole propanoic acid was also determined not to be of concern because of the low residue potential associated with seed treatment.

B. Analytical Enforcement Methodology

The registrant proposed Method AG–575B as the analytical enforcement method for banana and wheat. Detection is then achieved by gas chromatography (GC) with a nitrogen/phosphorous detector. A confirmatory method, AG–657, differing from the enforcement method in the GC column and detector used, achieved good results in bananas fortified with difenoconazole. The Agency concludes that method AG–575B is adequate for enforcement purposes. The Agency has validated this method.

The registrant proposed method AG–544A as the analytical enforcement method for dairy and poultry tissue, eggs, and milk. The Agency concludes that method AG–544A is adequate for enforcement purposes. The Agency has validated this method.

Adequate enforcement methodology (e.g., gas chromatography) is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 101FF, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5229.

C. Magnitude of Residues

1. *Wheat*. For wheat, 15 field trials were conducted in 13 states. The wheat field trials were conducted at two application rates, 10.9 grams active ingredient (a.i.) per 100 lb. seed (1x) and 21.8 grams a.i. per 100 lb. seed (2x). The residue levels of difenoconazole in wheat grain (<0.01 ppm) and in wheat hay and straw (0.05 ppm) were less than the limit of quantitation (LOQ). The LOQ for wheat grain is 0.01 ppm and 0.05 ppm in wheat straw, hay, and forage. Wheat forage had levels ranging from <0.05 ppm to 0.077 ppm. The submitted data indicate that residues of difenoconazole will not exceed the tolerance for wheat RACs. The Agency has previously reviewed a processing study for spring wheat which was seed-treated (2x) and also foliar treated (10x) 28 days before harvest. No residues (<0.01 ppm) were detected in grain or any processed fraction.

2. *Bananas*. Nine field trials were conducted in Columbia, Honduras, and Ecuador. Field trials in each country were conducted at the single maximum application rate 0.22 lb. a.i. per hectare. Difenoconazole was applied 8 times for a total maximum application rate of 1.76 lb. a.i. per hectare. At each site whole banana fruit were collected zero days after the last application from the unbagged racemes (bunches). The residue levels of difenoconazole in whole bananas ranged from <0.02 to 0.13 ppm. The residue levels in banana pulp were all less than the LOQ (0.02 ppm). The residue levels in banana peel ranged from <0.02 to 0.25 ppm. An additional six field trials had been submitted and reviewed previously. These field trials were conducted in Costa Rica, Ecuador, Mexico, Guatemala, and Belize. Residue levels in these six field trials ranged from 0.03 to 0.16 ppm in whole unbagged bananas and <0.02 to 0.03 ppm in unbagged banana pulp. The submitted data indicate that residues of difenoconazole will not exceed the proposed tolerance level of 0.2 ppm for bananas. There are no processed commodities associated with bananas and therefore no tolerances for processed commodities are required.

3. *Meat, milk, poultry, and eggs*. The registrant requested a waiver for animal feeding studies based on the low potential for residues in feed items and the exaggerated rates used in the animal feeding studies. For now, the Agency is willing to accept the registrant's proposal to allow the animal metabolism studies to also serve as feeding studies. Feeding studies in cattle and poultry, as appropriate, will be needed for any future tolerance requested on potential livestock feed commodities which could lead to higher residues of concern in meat, milk, and eggs.

D. International Residue Limits

There are pending Codex Maximum Residue Levels for this compound in Mexico for oats, wheat, and barley.

E. Rotational Crop Restrictions

The nature of the residue is understood. The data indicate that the phenyl/triazole bridge of difenoconazole is cleaved in the soil and that triazole-specific metabolites are preferentially taken up by the rotational crops. The maximum TRR observed with phenyl-labeled difenoconazole was 0.009 ppm (wheat stalks) and with triazole-labeled difenoconazole was 0.314 ppm in wheat grain. The registrant has submitted the results of two confined crop rotation studies using phenyl-labeled difenoconazole. In the raw agricultural commodities of all rotational crops

planted 30–33 days after application of difenoconazole, the TRR was <0.01 ppm. These results support the proposed 30 –day plantback restrictions for all rotational crops.

IV. Conclusion

Therefore, tolerances are established for the fungicide difenoconazole (((2*S*,4*R*)/(2*R*,4*S*)/(2*R*,4*R*)/(2*S*,4*S*) 1–(2–(4–(4-chlorophenoxy)-2-chlorophenyl)-4-methyl-1,3-dioxolan-2-yl)methyl-1*H*–1,2,4-triazole) in or on the raw agricultural commodities bananas at 0.2 ppm; eggs at 0.05 ppm; fat of cattle, goats, hogs, horses, poultry, and sheep at 0.05 ppm; meat of cattle, goats, hogs, horses, poultry, and sheep at 0.05 ppm; and meat byproducts of cattle, goats, hogs, horses, poultry, and sheep at 0.05 ppm; milk at 0.01 ppm; wheat forage at 0.1 ppm; wheat grain at 0.1 ppm; and wheat straw at 0.1 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 August 2, 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, CM #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–300863 (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, CM #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 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: May 25, 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 180.475 is revised to read as follows:

§ 180.475 Difenoconazole; tolerances for residues.

(a) *General.* Tolerances are established for residues of the fungicide difenoconazole (((2*S*,4*R*)/(2*R*,4*S*)/(2*R*,4*R*)/(2*S*,4*S*)) (1–((2–(2-chloro-4–(4-chlorophenoxy)phenyl)-4-methyl-1,3-dioxolan-2-yl)methyl)-1*H*–1,2,4-triazole) in or on the following raw agricultural commodities:

Commodity	Parts per million
Cattle, fat	0.05
Cattle, meat	0.05
Cattle, meat by-products	0.05
Eggs	0.05
Goats, fat	0.05
Goats, meat	0.05
Goats, meat by-products	0.05
Hogs, fat	0.05
Hogs, meat	0.05
Hogs, meat by-products	0.05
Horses, fat	0.05
Horses, meat	0.05
Horses, meat by-products	0.05
Milk	0.01
Poultry, fat	0.05
Poultry, meat	0.05
Poultry, meat by-products	0.05
Sheep, fat	0.05
Sheep, meat	0.05
Sheep, meat by-products	0.05
Wheat, forage	0.1
Wheat, grain	0.1
Wheat, straw	0.1

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

(c) *Tolerances with regional registrations.*

Commodity	Parts per million
Bananas[1]	0.2

[1]There are no U.S. registrations.

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

[FR Doc. 99–13947 Filed 6–1–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 180, 185 and 186

[OPP–300807; FRL 6064–5]

RIN 2070–AB78

Iprodione; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for combined residues of iprodione, 3-(3,5-dichlorophenyl)-*N*-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide, its isomer, 3-(1-methylethyl)-*N*-(3,5-

dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide and its metabolite, 3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide in or on cottonseed. Rhone-Poulenc Ag 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 June 2, 1999. Objections and requests for hearings must be received by EPA on or before August 2, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300807], 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–300807], 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 or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300807]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Mary L. Waller, Product Manager (21), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 249, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–9354, waller.mary@epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 24, 1997 (62 FR 3696) (FRL 5582–7), 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 Rhone-Poulenc Ag Company, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. This notice included a summary of the petition prepared by Rhone-Poulenc Ag Company, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.399 be amended by establishing a tolerance for combined residues of the fungicide iprodione, 3-(3,5-dichlorophenyl)-*N*-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide, its isomer, 3-(1-methylethyl)-*N*-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide and its metabolite, 3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide], in or on cottonseed at 0.10 part per million (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 iprodione and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for combined residues of iprodione, 3-(3,5-dichlorophenyl)-*N*-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide, its isomer, 3-(1-methylethyl)-*N*-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide and its metabolite, 3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide on cottonseed at 0.10 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 iprodione are discussed in this unit.

1. *Acute studies*. Iprodione is not acutely toxic by oral, dermal, inhalation, or ocular routes of exposure. Acute oral, acute dermal and primary eye irritation studies were in toxicity category III. Acute inhalation and primary skin irritation studies were in toxicity category IV. Iprodione is not a dermal sensitizer.

2. *Subchronic toxicity testing*—a. In a dermal toxicity study, rabbits were administered iprodione on the skin at dose levels of 0, 100, 500, and 1,000 mg/kg/day for 21 days. There were no deaths or clinical signs of toxicity and no adverse effects were observed on body weight, food consumption, the skin, liver or kidneys. The NOAEL was 1,000 mg/kg/day, the highest dose tested.

b. In a 90–day subchronic feeding study, rats were administered iprodione in the diet at doses of 0, 1,000, 2,000, 3,000 and 5,000 ppm (0, 78, 151, 252 and 355 mg/kg/day for males and 0, 89, 189, 266 and 408 mg/kg/day for females). The NOAEL in this study was 1,000 ppm (78 mg/kg/day for males and

89 mg/kg/day for females). The LOAEL was 2,000 ppm (151 mg/kg/day for males and 189 mg/kg/day for females), based on decreased body weight gain, decreased food consumption and food utilization, organ weight effects, and microscopic lesions in the sex organs.

3. *Chronic toxicity studies*—a. In a chronic feeding study, dogs were administered iprodione in the diet at dose levels of 0, 100 ppm (4.1 mg/kg/day for males and 4.3 mg/kg/day for females), 600 ppm (24.9 mg/kg/day for males and 28.3 mg/kg/day for females) and 3,600 ppm (145.3 mg/kg/day for males and 152.5 mg/kg/day for females) for one year. The NOAEL was 100 ppm (4.1 mg/kg/day for males and 4.3 mg/kg/day for females, and the LOAEL was 600 ppm (24.9 mg/kg/day for males and 28.3 mg/kg/day for females) based on decreased prostate weight and an increased incidence of erythrocytes with Heinz bodies.

b. A second chronic feeding study designed to compliment the above study was conducted using dose levels of 0, 200 ppm (7.8 mg/kg/day for males and 9.1 mg/kg/day for females), 300 ppm (12.4 mg/kg/day for males and 13.1 mg/kg/day for females), 400 ppm (17.5 mg/kg/day for males and 18.4 mg/kg/day for females) and 600 ppm (24.6 mg/kg/day for males and 26.4 mg/kg/day for females) for 12 months. The NOAEL for systemic toxicity is 400 ppm (17.5 mg/kg/day for males and 18.4 mg/kg/day for females). The LOAEL is 600 ppm (24.6 mg/kg/day for males and 26.4 mg/kg/day for females) based on decreased red blood cell values. When both chronic dog studies are considered together, the NOAEL is 400 ppm (18 mg/kg/day).

4. *Carcinogenicity*—a. In a combined chronic toxicity/carcinogenicity study in rats, iprodione was administered in the diet of rats at dose levels of 0, 150, 300 and 1,600 ppm (6.1, 12.4, and 69 mg/kg/day for males and 8.4, 16.5, and 95 mg/kg/day for females, respectively) for 24 months. The NOAEL for non-neoplastic changes in this study was 150 ppm (6.1 mg/kg/day for males and 8.4 mg/kg/day for females). The LOAEL was 300 ppm (12.4 mg/kg/day for males and 16.5 mg/kg/day for females) based on increases in generalized enlargement of the cells of the zona glomerulosa in males and females, in fine vacuolation of the zona fasciculata and in generalized fine vacuolation of the zona reticularis in males in the adrenal cortex, an increased incidence of interstitial cell hyperplasia, reduced spermatozoa in the epididymides, reduced secretion of the seminal vesicles, increased hemosiderosis in the spleen in females, and increased liver weight.

b. In a carcinogenicity study, iprodione was administered in the diet to mice for 99 weeks at dose levels of 0, 160, 800, and 4,000 ppm (0, 23, 115, and 604 mg/kg/day for males and 0, 27, 138, and 793 mg/kg/day for females, respectively). The NOAEL for this study was 160 ppm (23 mg/kg/day for males and 27 mg/kg/day for females). The LOAEL was 800 ppm (115 mg/kg/day for males and 138 mg/kg/day for females) based on the increased incidence of centrilobular hepatocyte enlargement in females and the increased incidence of generalized vacuolation/hypertrophy of the interstitial cells in the testes of males.

5. *Developmental toxicity*—a. In a developmental toxicity study, pregnant rats were administered iprodione at dose levels of 0, 40, 90, and 200 mg/kg/day by gavage from day 6 through 15 of gestation. There were no significant differences observed in the mean number of viable fetuses, implantations, corpora lutea, resorptions, and pre- and post-implantation losses were comparable among the groups. There was no evidence of maternal toxicity at any dose level. The developmental NOAEL was 90 mg/kg/day and the developmental toxicity LOAEL was 200 mg/kg/day, based on delayed fetal development (slightly reduced fetal body weight and increased incidences of space between the body wall and organs in the fetuses).

b. In a special prenatal developmental toxicity study, pregnant rats received iprodione by gavage at dose levels of 0, 20, 120 or 250 mg/kg/day during gestation days 6 through 19. For maternal toxicity, the NOAEL was 20 mg/kg/day and the LOAEL was 120 mg/kg/day based on decreased body-weight gain and decreased food efficiency. For developmental toxicity, the NOAEL was 20 mg/kg/day and the LOAEL was 120 mg/kg/day, based on decreased anogenital distance in the male pups.

c. In a prenatal developmental toxicity study on rabbits, dosed by gavage with iprodione at 0, 20, 60 or 200 mg/kg/day during gestation days 6 through 18, the NOAEL for maternal toxicity was 20 mg/kg/day and the LOAEL was 60 mg/kg/day based on decreased body weight gain. For developmental toxicity, the NOAEL was 60 mg/kg/day and the LOAEL was 200 mg/kg/day based upon increased skeletal variations.

6. *Reproductive toxicity*. In a 2-generation reproduction study, male and female rats received diets containing iprodione at 0, 300, 1,000, or 3,000/2,000 ppm (0, 18.5, 61.4, or 154.8 mg/kg/day for males and 22.49, 76.2, or 201.2 mg/kg/day for females). For parental systemic toxicity, the NOAEL was 300 ppm (21 mg/kg/day) and the LOAEL was 1,000 ppm (69 mg/kg/day), based on decreased body weight, body weight gain, and food consumption in both sexes and generations. For offspring toxicity, the NOAEL was 1,000 ppm (69 mg/kg/day) and the LOAEL was 3,000/2,000 ppm (178 mg/kg/day), based on decreased pup viability (as evidenced by an increased number of still born pups and decreased survival during postnatal days 0–4), decreased pup body weight throughout lactation, and an increased incidence in clinical signs (smallness, reduced mobility, unkempt appearance, hunching and or tremors) in pups during the lactation period.

7. *Mutagenicity*. Several mutagenicity studies were conducted. Iprodione was negative for induction of reverse gene mutations at the histidine locus in *Salmonella typhimurium* strains, both in the presence and absence of S9 activation. Iprodione did not induce mutation with or without metabolic activation in the *in vitro* forward gene mutation (CHO/HGPRT) assay at adequate dose levels. Iprodione was negative in an *in vitro* chromosomal aberration assay in Chinese hamster ovary (CHO) cells both in the presence and absence of metabolic activation. In an *in vivo* mouse micronucleus assay, iprodione was administered by oral gavage once at dose levels of 750, 1,500, and 3,000 mg/kg. Bone marrow cells were collected for micronucleated polychromatic erythrocytes (MPEs). One male and eight females died at the high dose. Dose-related cytotoxic effects on the target tissue were also seen at 48 hours post dose. The positive control induced the expected high yield of MPEs in both sexes. There was no evidence of a clastogenic or aneugenic effect at any dose or harvest time. Iprodione was negative in a sister chromatid exchange assay in Chinese hamster ovary cells both with and without metabolic activation. Iprodione was tested against 19 strain of *Bacillus subtilis* both with and without metabolic activation. Iprodione was positive both with and without metabolic activation.

8. *Metabolism*. A general metabolic pathway for iprodione in the rat indicates that biotransformation results in hydroxylation of the aromatic ring, degradation of the isopropylcarbamoyl chain, and rearrangement followed by cleavage of the hydantoin moiety. Additionally, structural isomers of iprodione resulting from molecular rearrangement, as well as intermediates in the pathway, were detected.

9. *Neurotoxicity* Neurotoxicity studies are not required since iprodione is not an organophosphate nor structurally related to compounds that are known to induce neurotoxicity.

10. *Other toxicological considerations*. In a dermal penetration study, rats were exposed dermally to a single dose of iprodione at dose levels of 0.4, 4.0, and 40 mg/rat for 0.5, 1, 2, 4, 10, and 24 hours. Skin residues increased with the duration of exposure to 5–10% of the applied dose, although there was no apparent dose response. The portion of the test material absorbed increased with the duration of exposure to 7.41%, 3.16% and 0.19% of the applied dose at 0.4, 4.0 and 40 mg/rat, respectively. Absorption appears to be saturated at the two highest dose levels. Following a 10–hour exposure period, about 5% iprodione is absorbed.

B. Toxicological Endpoints

1. *Acute toxicity*. The Agency determined that the developmental NOAEL of 20 mg/kg/day based on decreased anogenital distance (AGD) in male fetuses at 120 mg/kg/day (LOAEL) should be used for acute dietary risk assessment). This NOAEL is from a special rat developmental study which was designed to determine the impact of iprodione on sexual differentiation. This endpoint applies only for females 13 years or older because the endpoint (decreased AGD) is an *in utero* effect occurring during prenatal exposure. An appropriate endpoint attributable to a single dose was not identified for the general population including infants and children. The target acute dietary margin of exposure (MOE) for iprodione is 300, based on uncertainty factors of 10x for interspecies variability, 10x for intraspecies variability, and 3x for added protection of infants and children. The acute RfD is 0.06 mg/kg/day based on the 20 mg/kg/day NOAEL and an uncertainty factor of 300.

2. *Short- and intermediate-term toxicity*. The Agency determined that short- and intermediate-term dermal risk assessments are not required since no dermal or systemic toxicity was seen. It was concluded that there is no potential hazard by the dermal route because of lack of systemic toxicity at the limit-dose (1,000 mg/kg/day) and the demonstration of low (5%) absorption by the dermal route. For short-term inhalation exposure, the developmental NOAEL of 20 mg/kg/day from the special rat developmental toxicity study was selected. This NOAEL is based on decreased AGD in male fetuses at 120 mg/kg/day. For intermediate-term inhalation exposure, the NOAEL of 6.1 mg/kg/day from the rat combined chronic toxicity/carcinogenicity study was selected. This NOAEL is based on histopathological lesions in the male reproductive system and effects on the adrenal glands in males at 12.4 mg/kg/day and in females at 16.5 mg/kg/day (LOAEL). The inhalation unit exposures (in ug ai/lb/day) should be converted to an equivalent oral dose (mg/kg/day) using a 100% absorption rate (default value). The converted oral doses should then be compared to the NOAELs identified above.

3. *Chronic toxicity*. EPA has established the RfD for iprodione at 0.02 milligrams/kilogram/day (mg/kg/day). This Reference Dose (RfD) is based on a NOAEL of 6.1 mg/kg/day from the rat combined chronic toxicity/carcinogenicity study in which histopathological lesions occurred in the male reproductive system and there were effects on the adrenal glands in males at 12.4 mg/kg/day and in females at 16.5 mg/kg/day (LOAEL). The NOAEL was adjusted with an uncertainty factor of 300 (10x for interspecies extrapolation, 10x for intraspecies extrapolation and 3x for added protection for infants and children).

4. *Carcinogenicity*. In accordance with the EPA Proposed Guidelines for Carcinogenic Risk Assessment (April 10, 1996), iprodione was classified as a ''likely'' human carcinogen based on the combined hepatocellular adenomas/carcinomas in mice and testicular tumors in male rats with a linear low-dose extrapolation approach and a 3/4s interspecies scaling factor for human risk characterization. For the combined hepatocellular adenomas/carcinomas, the Q_1*s are 8.7 x 10^{-3} mg/kg/day for the male mouse and 5.07 x 10^{-3} mg/kg/day for the female mouse. The Leydig cell tumor Q_1* is 4.3 x 10^{-2} mg/kg/day which was determined to be appropriate for estimating carcinogenic risk.

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.399) for the combined residues of iprodione, 3-(3,5-dichlorophenyl)-*N*-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide, its isomer, 3-(1-methylethyl)-*N*-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide and its metabolite, 3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide, in or on a variety of raw agricultural commodities. Commodities include various vegetable crops, field crops, stone fruits, small fruit and berry crops and commodities of animal origin (meat, milk, poultry and eggs). Risk assessments were conducted by EPA to assess dietary exposures from iprodione as follows:

Dietary exposures for iprodione were reevaluated as part of the reregistration process. The risk assessment in the Reregistration Eligibility Decision (RED) document is being used to establish the tolerance for iprodione on cottonseed. The resulting estimates included refinements using both anticipated residues and percent crop treated for many crops but not for cottonseed. The requirements indicated below regarding anticipated residues and percent crop treated apply to both iprodione and its 3,5- dichloroaniline metabolite.

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 as follows: PCT was used for various crops in reevaluating dietary exposures for iprodione as part of the reregistration process. For cottonseed, it was considered that 100% of the crop would be treated with iprodione.

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 iprodione 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. The acute dietary risk for iprodione was reevaluated as part of the reregistration process. The target margin of exposure (MOE) for dietary risk for iprodione is 300. MOEs above 300 are not considered to be of concern. Prior to the reevaluation, dietary MOEs were 111 for existing tolerances and 66.6 for existing and proposed tolerances. Following reevaluation, which included risk mitigation measures imposed in the Reregistration Eligibility Decision (RED) document, the acute dietary MOE was calculated to be 351 for the population subgroup of concern (females 13 years old or older).

ii. *Chronic exposure and risk.* The total dietary exposure for iprodione, expressed as percent of the RfD for the chronic (non-carcinogenic) risk was calculated based on the theoretical maximum residue contribution (TMRC) and the RfD of 0.02 mg/kg/day to be less than 1% for all populations from the registered uses. The additional use on cotton would not increase the chronic (non-carcinogenic) risk to an unacceptable level. The upper bound carcinogenic risk from food uses of iprodione for the general U.S. population was calculated using the equation: upper bound cancer risk equals dietary exposure (anticipated residue contribution) multiplied by the Q1*. Based on a Q_1* of 0.0439 $(mg/kg/day)^{-1}$ the upper bound cancer risk for all commodities with proposed and established tolerances was calculated to be 3.9×10^{-6}. This risk estimate is above the range the Agency generally considers negligible for excess life-time cancer risk. During the reregistration process, the upper bound cancer risk was reevaluated, taking into consideration the risk mitigation measures imposed in the RED. The reevaluated dietary cancer risk for iprodione with mitigation measures in place is estimated to be approximately 1.8×10^{-6} and is within the range the Agency generally considers negligible for excess life-time cancer risk. The upper bound cancer risk attributed to the use of iprodione on cotton was calculated to be 1.8×10^{-8}.

2. *From drinking water.* In the absence of reliable, available monitoring data, EPA uses models to estimate concentrations of pesticides in ground and surface water. For iprodione, modeling was used to estimate surface water concentrations because of very limited surface water monitoring data. However, EPA does not use these model estimates to quantify risk. Currently, EPA uses drinking water levels of comparison (DWLOCs) as a surrogate to capture risk associated with exposure to pesticides in drinking water. A DWLOC is the concentration of a pesticide in drinking water that would be acceptable as an upper limit in light of total aggregate exposure to that pesticide from food, water, and residential uses (if any). A DWLOC will vary depending on the residue level in foods, the toxicity endpoint and with drinking water consumption patterns and body weights for specific subpopulations. The calculated DWLOC is compared with the model estimate from PRZM 2.3/EXAMS 2.94 model estimates. If the estimates are below the DWLOC, the risks are not considered to be of concern. EPA believes the PRZM 2.3/EXAMS 2.94 model estimates to be overestimations of concentrations of iprodione expected in drinking water. Iprodione is strongly absorbed to sediment and is expected to be removed through treatment. Given low concentrations estimated in surface water (1–3 ppb), expected absorption to sediments, and the likelihood of removal through treatment, the Agency does not believe iprodione will be present in drinking water.

i. *Acute exposure and risk.* The acute DWLOC for iprodione was calculated for the population subgroup females 13 years old or older to be 324 µg/L. Conservative model estimates of maximum concentrations in surface water associated with use of iprodione range from 10–15 ppb (µg/L). The estimated concentrations in surface water are much lower than EPA's DWLOC of 324 µg/L for the population of females 13 years old or older. Therefore, acute drinking water exposures and risks are not of concern.

ii. *Chronic exposure and risk.* The chronic DWLOC was calculated for adult males, adult females and children. The DWLOCs were 693 µg/L for adult males, 594 µg/L for adult females and 197 µg/L for children. Conservative model estimates of a long-term average concentration of iprodione in surface water range up to a few parts per billion (1–3 µg/L) The estimated concentrations in surface water are much lower than EPA's calculated DWLOCs for the above subpopulations for chronic exposure and risk assessments. Therefore, chronic drinking water exposures and risks are not of concern.

iii. *Carcinogenic exposure and risk.* Because cancer risk estimates (without risk mitigation) for exposure to iprodione residues through food and residential uses each exceeded EPA's level of concern individually, combined exposures through these routes resulted in an aggregate risk that further exceeded the level of concern. Any additional exposure through drinking water would result in aggregate risks that further exceed the level of concern. In effect, the drinking water level of comparison (DWLOC) is zero. So, effectively, with risk reduction measures is place, exposures from food, residential uses and through drinking water would be below the level of concern.

3. *From non-dietary exposure.* Iprodione is currently registered for use on the following residential non-food sites: ornamental plants including shade trees, evergreens and shrubs, and turfgrass. As one of the risk mitigation measures included in the RED, the registrant has agreed to cancel all residential uses for iprodione. Therefore, there will be no exposure or risk from residential uses.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the

Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

The Agency believes that ''available information'' in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments.

Although at present the Agency is still considering how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides for which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

Iprodione is structurally related to vinclozolin and procymidone, which belong to the imide class of fungicides. Each of these three pesticides can metabolize to 3,5-dichloroaniline (3,5-DCA). FQPA requires EPA to estimate cumulative risk from consumption of food and water containing 3,5-DCA derived from iprodione, vinclozolin, and procymidone.

The Agency has determined that it is not necessary to include exposure to DCA derived from vinclozolin and procymidone in a cumulative exposure assessment for iprodione *per se*. Based on available metabolism data (discussed below), the contribution of DCA from vinclozolin and procymidone to the total chronic iprodione dietary exposure is less than an order of magnitude. Therefore, inclusion of DCA from vinclozolin and procymidone in the iprodione chronic exposure assessment would not have a significant impact on the risk estimates. A similar negligible contribution is expected for acute dietary exposure. Iprodione residues are measured as DCA by the analytical method, thus, any DCA formed from iprodione is already accounted for in the iprodione exposure assessment.

3,5-DCA is not a registered pesticide; therefore, there are no FIFRA toxicology data for this compound so EPA has used the Q_1* for *p*-chloroaniline (PCA) to assess the carcinogenic risk for other structurally related chloroanilines. The EPA policy on chloroanilines specifies that chloroaniline metabolites should be considered to be toxicologically equivalent to PCA unless there is sufficient evidence that the metabolite is not carcinogenic. No other toxicological endpoints have been identified for DCA. A Q_1* of 6.38 x 10^{-2} $(mg/kg/day)^{-1}$ in human equivalents has been calculated for p-chloroaniline. This is based on the spleen sarcoma rate in male rats from an NTP bioassay, linearized low dose multistage model, and the 3/4s interspecies scaling factor.

i. *3,5-DCA residues in food and wine*—a. For iprodione, metabolism data submitted to fulfill reregistration data requirements indicated that 3,5-DCA represented 1% of the total radioactive residue (TRR) in eggs, smaller proportions in other livestock commodities, and was not detected in primary or rotational crops. The total estimated exposure to iprodione-derived 3,5-DCA in food is 0.00000009219 mg/kg/day.

b. For vinclozolin, metabolism data indicated that DCA represented 9.6% TRR in peaches, smaller proportions in strawberries and was not detected in lettuce or grapes. Therefore, EPA assumed that 10% vinclozolin residues would be appropriate for use in an assessment for 3,5-DCA. Wine was included in the analysis because the metabolism studies for procymidone showed that the 3,5-DCA metabolite is formed in wine even though it is not detected in grapes. The total estimated exposure to vinclozolin-derived 3,5-DCA in food is 0.000143224 mg/kg/day.

c. Procymidone is not registered for use in the U.S. so only imported wine was considered under the procymidone tolerance for wine grapes. The 3,5-DCA metabolite was not detected in grapes, but occurs during fermentation. Residues in wine were 0.3 ppm for parent procymidone and 0.06 ppm for 3,5-DCA. The estimated exposure to procymidone-derived 3,5 DCA in wine is 0.0000058 mg/kg/day using tolerance levels and 100% of crop treated.

ii. *3,5-DCA residues in water*—a. EPA estimated the concentration of iprodione in surface water as a result of an application to peaches for a chronic exposure to be 1.5 parts per billion (ppb). This assessment was refined by assuming that only some of the iprodione will convert to 3,5-DCA. A soil photolysis study indicated that a value of 30% would be reasonable to account for the iprodione that is actually converted. The concentration of 3,5-DCA was estimated to be 0.45 ppb in surface water.

b. A tier 1 estimated environmental concentration (EEC) was calculated for 3,5-DCA from degradation of vinclozolin when applied to peaches. EPA estimated the concentration of vinclozolin in surface water for a chronic exposure to be 2.6 ppb. The maximum of the parent vinclozolin that would be expected to convert to 3,5-DCA based on a field dissipation study is 20%. The concentration of 3,5-DCA in surface water was estimated to be 0.52 ppb.

c. There are no U.S. registrations for procymidone; therefore, an evaluation of exposure to procymidone-derived 3,5-DCA in water is not appropriate.

iii. *Cumulative risk from all sources of 3,5-DCA*. The cumulative carcinogenic risk estimate for consumption of food and wine containing residues of 3,5-DCA as a result of use of iprodione, vinclozolin and procymidone is 9.5 x 10^{-7}. This can be considered to be a conservative estimate. Metabolism studies for iprodione and vinclozolin were used to estimate the amount of 3,5-DCA present in various commodities by using total radioactive residues to convert iprodione or vinclozolin exposures to 3,5-DCA exposures. There is another uncertainty in the risk estimate in that a surrogate Q_1* is being used for 3,5-DCA. However, due to the structural similarities of 3,5-DCA and PCA, EPA believes that for 3,5-DCA, the use of the PCA Q_1* represents an upper-bound estimate. This risk estimate is within the range the Agency generally considers negligible for excess life-time cancer risk. Because drinking water data on DCA residues in water are not available, EPA compared the conservative screening-level model estimates of iprodione concentrations in surface water to drinking water levels of comparison (DWLOCs) for DCA. The estimated concentrations of 3,5-DCA from iprodione applications in water was 0.22 ppb and is less than the DWLOC calculated for the cancer risk assessment. From applications of vinclozolin, the model estimated the concentration of DCA in water at 0.37 ppb. This is above the DWLOC calculated for the cancer risk assessment. However, the Agency recognizes that the model estimates are very conservative (upper bound estimates with a high degree of uncertainty) and are not likely to be representative of what might be expected in drinking water. When model estimates for water exceed DWLOCs, EPA makes an attempt to gather monitoring data (required for surface water). These data are used to confirm or deny the model estimate. The RED for iprodione requires that registrants develop and submit surface water monitoring data to confirm or deny the model estimates. The risks indicated for 3,5-DCA are not added to

those for the parent compounds since the risk estimates for the parent already include the 3,5-DCA component.

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

1. *Acute risk.* The aggregate acute dietary risk estimate includes exposure to iprodione residues in foods and water. Iprodione uses are not expected to impact ground water. Upper bound estimates of iprodione in surface waters from conservative screening models indicate concentrations of a few parts per billion. For the acute dietary exposure and risk assessment, the toxic endpoint selected for risk assessment was the NOAEL of 20 mg/kg/day based on decreased anogenital distance (AGD) in male offspring observed in the developmental study in rats, in which the LOAEL was 120 mg/kg/day. The FQPA safety factor is applied for acute dietary risk assessment for only females 13+ because the endpoint (decreased AGD) is an in utero effect occurring during prenatal exposures. The MOE for this subgroup was calculated to be 351.

2. *Chronic risk.* The chronic aggregate risk assessment for iprodione includes risk estimates associated with exposure through food, water, and registered residential uses. Using anticipated residues and percent crop-treated data for commodities with published tolerances results in an exposure to iprodione through food that will utilize 1% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is non-nursing infants less than 1 year old, (discussed below) which represents up to 1.6% of the chronic FQPA RfD. Exposure to all other groups is less than or equal to 1% of the chronic FQPA RfD. 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 beings. Chronic aggregate risk from iprodione in food and drinking water associated with registered uses of iprodione is not of concern. Estimated average concentrations of iprodione in ground water were not available for comparison against DWLOC values; however, based on iprodione's physical/chemical characteristics and available, but limited monitoring data, iprodione is not expected to impact ground water. No chronic exposure scenarios for residential uses of iprodione were identified; therefore, no chronic exposure from residential uses was included in the aggregate risk estimate.

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.

4. *Short-term aggregate risk.* Aggregate risk estimates associated with short-term risk include exposures to average residues of iprodione in the diet (food and water) and inhalation exposure (1 to 7 days in duration) through the residential application of iprodione. The resulting risk, calculated without any risk mitigation, represented 3.6% of the acute FQPA RfD for the U.S. population representing the most exposed population of adult males and females. It was assumed that children and infants do not apply pesticides. The Agency believes that iprodione's impact on drinking water will not affect the aggregate short-term risk significantly. Therefore, the Agency concluded with reasonable certainty that residues of iprodione in drinking water (when considered along with exposure from food and residential uses) would not result in an unacceptable short-term aggregate human health risk estimate. Since residential uses will be canceled, short-term risk would be even lower.

5. *Intermediate-term aggregate risk.* Aggregate risk estimates associated with intermediate-term risk include exposures to average residues of iprodione in the diet (food and water) and inhalation exposure (7 days to several months in duration) through the residential application of iprodione. The resulting risk, calculated without mitigation measures, was 9.5% of the chronic FQPA RfD for the U.S. population representing the most exposed population of adult males and females. It was assumed that children and infants do not apply pesticides. The Agency believes that iprodione's impact on drinking water will not affect the aggregate intermediate-term risk significantly. Therefore, The Agency concluded with reasonable certainty that residues of iprodione in drinking water (when considered along with exposure from food and residential uses) would not result in an unacceptable intermediate-term aggregate human health risk estimate. Since residential uses of iprodione will be canceled, intermediate-term risk would be even lower. Assuming that the conditions imposed by the RED are met by the registrant, the Agency concludes that aggregate risks for the general population resulting from iprodione uses are not of concern.

6. *Aggregate cancer risk for U.S. population.* Without risk mitigation measures in place, combined exposure and the risk estimates for each of the residential exposure scenarios plus dietary exposure to iprodione residues results in cancer risk estimates that are all greater than 10^{-6}. The first step in reducing the cancer aggregate risk is to make ineligible for reregistration all those residential uses which are greater than 10^{-6}. Therefore, the Agency has decided, based on the current risk assessment, that residential use of iprodione on vegetable/small fruit gardens is ineligible for reregistration; use of iprodione on residential turf and lawns will be reclassified as restricted-use (professional application only); and, residential use of iprodione on ornamentals using a garden hose end-sprayer is ineligible for reregistration. The registrant has agreed to cancel these uses. With these mitigation measures in place cancer risks from residential uses of iprodione are expected to be negligible.

For dietary cancer risk, with no risk mitigation measures in place, the upper bound dietary cancer risk estimate (3.9×10^{-6}) exceeds EPA's level of concern. With risk mitigation measures in place, the upper bound dietary cancer risk estimate is approximately 1.8×10^{-6} and is within the range the Agency generally considers negligible for excess life-time cancer risk. This risk estimate is based the new use patterns which include the risk mitigation measures in the RED, which is based on a refined estimate of dietary exposure using the most recent percent crop-treated data (1995) and anticipated residue data from monitoring programs (USDA's PDP) and field trials. Residues of iprodione, including its metabolites, are not expected to exceed the Agency's drinking water level of comparison as indicated above.

7. *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 iprodione 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 iprodione, 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.

ii. *Conclusion*. Based on developmental and reproductive data for iprodione, EPA determined that an additional 10x safety factor for the protection of infants and children (as required by FQPA) should be reduced to 3x. The rationale for reducing the 10x factor to 3x is as follows: No enhanced susceptibility was seen in rat and rabbit developmental and 2–generation reproduction study in rats.

a. The critical endpoint for acute dietary risk assessment (decreased AGD) was seen at a high dose (120 mg/kg/day) and there were only marginal differences in the degree of decreased AGD between the doses 20 mg/kg/day, 120 mg/kg/day and 250 mg/kg/day , thus indicating the ''true'' NOAEL could be higher than the one established at 20 mg/kg/day.

b. The proposed mode of action of iprodione is disruption of testosterone biosynthesis with a corresponding increase in plasma luteinizing hormone to dose levels which induce benign Leydig cell tumors. The dose response for this type of hormonally-mediated effect would be expected to be non-linear.

c. The use of realistic dietary exposure data (refined using monitoring data and percent crop treated).

d. The endpoints selected for both the acute (AGD) and the chronic (histopathology of the male reproductive system) risk assessments are based on developmental/ reproductive effects and therefore, these effects are already adequately considered in the risk evaluation. These factors favor removal of the safety factor but, although the data base for iprodione is complete, the Agency still has questions about any effects that iprodione may have on the developing reproductive system. The Agency is requiring an additional pre/post exposure study to assess the effects of iprodione on the male reproductive system. A safety factor of 3x is being retained pending completion of this additional study. There is a complete toxicity database for [iprodione] and exposure data is complete or is estimated based on data that reasonably accounts for potential exposures.

2. *Acute risk*. The acute dietary risk for iprodione was calculated and the MOE was determined to be 351. Using the 3x safety factor for protection of infants and children, MOEs above 300 are not considered to be of concern. For drinking water, the estimated concentrations in surface water are much lower than the DWLOC of 324 μg/L for the population subgroup females 13 years old or older, so no acute risk concerns are posed by drinking water. There will be no residential exposure.

3. *Chronic risk*. Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to iprodione from food will utilize 1.6% of the RfD for non-nursing infants less than 1 year old and less than 1% for all other population subgroups. 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. Since the potential for exposure to iprodione in drinking water is low and there will be no risk from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

4. *Short- or intermediate-term risk*. EPA has concluded that there are no short- or intermediate-term risk factors associated with infants and children. Residential handler exposure scenarios for short- and intermediate-term inhalation exposures are not applicable to children.

5. *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 iprodione residues.

III. Other Considerations

A. Metabolism In Plants and Animals

1. *Plants*. The metabolism of iprodione in plants is well understood. EPA concluded that the residues of concern in plants are the parent, its isomer 3-(1-methylethyl)-*N*-(3,5-dichlorophenyl)-2,4--dioxo-1-imidazolidinecarboxamide, and its metabolite 3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide.

2. *Animals*. In rats, radio-labeled iprodione was absorbed readily from the gastrointestinal tract, metabolized and excreted by rats of both sexes. Peak blood levels were observed at 4 and 2 hours, respectively, in the low-dose males and females and at 6 hours in the high dose rats of both sexes. The elimination from the blood was slower in males than in females. Although radioactivity was found in most tissues monitored, the levels were <0.05% of the total amount administered. The primary route of elimination following single and repeat low-dose exposure was the urine, and the feces was the primary route following high-dose exposure. Dealkylation and cleavage of the hydantoin ring were the two primary steps in the metabolism of iprodione. Hydroxylation of the phenyl ring and oxidation of the alkyl chain also occurred. The nature of residues in animals is adequately understood for the use on cotton since the dietary contribution for animals from cottonseed as a result of the use on cotton will be small and the secondary residues in animal commodities would be expected to be nondetectable. The residues of concern in animal commodities are the parent, its isomer 3-(1-methylethyl)-*N*-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide and its metabolites 3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide and *N*-(3,5-dichloro-4-hydroxyphenyl)-ureidocarboxamide.

B. Analytical Enforcement Methodology

An adequate analytical method, gas-liquid chromatography using an electron-capture detector, is available in the Pesticide Analytical Manual, Vol. II, for enforcement purposes.

C. Magnitude of Residues

The combined residues of iprodione, its isomer and its metabolite resulting from the use of iprodione on cotton will not exceed the tolerance level of 0.10 ppm.

D. International Residue Limits

There are no Codex, Canadian, or Mexican tolerances for iprodione on cottonseed. Therefore, no compatibility questions exist for cottonseed with respect to Codex.

E. Rotational Crop Restrictions

The following crops may be rotated after harvest: beans, broccoli, carrots, Chinese mustard, cotton, dry bulb onions, garlic, lettuce, peanuts, potatoes and rice.

IV. Conclusion

Therefore, the tolerance is established for combined residues of iprodione, 3-(3,5-dichlorophenyl)-*N*-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide, its isomer, 3-(1-methylethyl)-*N*-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide and its metabolite, 3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide, in cottonseed at 0.10 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 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 August 2, 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–300807] (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 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 [tolerance] in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (R.A.) (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 Parts 180, 185 and 186

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

Dated: April 16, 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 180.399 is amended as follows:

a. By revising the phrase ''raw agricultural commodities'' or ''raw agricultural commodity'' to read ''food commodities'' or ''food commodity'', respectively, wherever it appears.

b. By adding a paragraph heading to paragraph (a), and redesignating the text following the heading as paragraph (a)(1).

c. By adding alphabetically to the table in paragraph (a)(1) the entries: Cottonseed at 0.10 ppm; Ginseng, dried 4.0 ppm; Raisins 300 ppm; Rice bran 30.0 ppm and Rice hulls 50.0 ppm.

d. By redesignating paragraph (b) as paragraph (a)(2).

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

f. By adding and reserving with a paragraph heading, new paragraph (b), and by removing and reserving paragraph (d) with a paragraph heading to read as follows:

The additions read as follows:

§ 180.399 Iprodione; tolerances for residues.

(a) *General.* (1) * * *

* * * * *

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

(c) *Tolerances with regional registrations.* * * *

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

PART 185 — [AMENDED]

2. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 348.

§185.3750 [Removed]

b. Section 185.3750 is removed.

PART 186 — [AMENDED]

3. In part 186:

a. The authority citiation for part 186 continues to read as follows:

Authority 21 U.S.C. 342, 348, and 371.

§186.3750 [Removed]

b. Section 186.3750 is removed.

[FR Doc. 99–13948 Filed 6–1–99; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 51

[CC Docket No. 98–147; FCC 99–48]

Deployment of Wireline Services Offering Advanced Telecommunications Capability

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: The Commission amended its rules relating to local competition. The

First Report and Order adopted several measures designed to promote competition in the advanced services markets. The intended effect was to remove barriers to competition so that competing providers are able to compete effectively with incumbent local exchange carriers (LECs) and their affiliates in the provision of advanced services. An additional effect of the First Report and Order was to ensure that incumbent LECs are able to make their decisions to invest in, and deploy, advanced telecommunications services based on market demand and their own strategic business plans, rather than on regulatory requirements.

EFFECTIVE DATE: The amendments to 47 CFR 51.321(f) and (h) and 51.323(b) and (i)(3) published at 64 FR 23229 (April 30, 1999) are effective on May 13, 1999.

FOR FURTHER INFORMATION CONTACT: Staci Pies, Attorney, Common Carrier Bureau, Policy and Program Planning Division, (202) 418–1580 or via the Internet at spies@fcc.gov. Further information may also be obtained by calling the Common Carrier Bureau's TTY number: 202–418–0484. For additional information concerning the information collections contained in this Order contact Judy Boley at (202) 418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: On March 18, 1999, the Commission adopted a report and order revising its local competition rules in order to promote competition in the advanced services markets, a summary of which was published in the **Federal Register**. *See* 63 FR 23229, April 30, 1999. Sections 51.321(f) and (h) and 51.323(b) and (i)(3) of these rules contain new and modified information collection requirements. We stated that ''the information collection requirements adopted in this Report and Order will become effective following Office of Management and Budget (OMB) approval. The Commission will publish a document at a later date establishing the effective date.'' The information collections were approved by OMB on May 13, 1999. *See* OMB 3060–0848. This publication satisfies our statement that the Commission would publish a document announcing the effective date of the rules.

List of Subjects in 47 CFR Part 51

Communications common carriers, Telecommunications.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–13912 Filed 6–1–99; 8:45 am]

BILLING CODE 8010–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 97–80; FCC 99–95]

Commercial Availability of Navigation Devices

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document implements rules to achieve commercial availability of set top boxes and other consumer equipment used to receive video signals and other services. Section 629 of the Communications Act directed the FCC to create rules that allow consumers to obtain set top boxes from commercial sources other than their multichannel video programming distributor.

DATES: Effective July 2, 1999.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Thomas Horan, Cable Services Bureau, (202) 418–7200.

SUPPLEMENTARY INFORMATION:

1. The *Order on Reconsideration* addresses the petitions seeking reconsideration of decisions in the *Report and Order* in CS Docket No. 97–80, 63 FR 38089 (July 15, 1999). The *Report and Order* adopted rules to implement Section 629 of the Communications Act of 1934, as amended, 47 U.S.C. 549.

2. Section 629 instructs the FCC to promote the commercial availability to consumers of navigation devices, that is, equipment used to access multichannel video programming and other services offered over multichannel video programming systems. In the *Report and Order*, the FCC adopted rules to implement Section 629. Five petitions requesting reconsideration or clarification of the rules were filed.

3. Application of Rules to Analog Equipment. On reconsideration, the Commission will defer application of the requirement that multichannel video programming distributors (MVPDs) provide a separation of security from equipment that performs other functions for devices that (1) employ only an analog conditional access mechanism; (2) are capable only of providing access to analog video programming offered over an MVPD system and (3) do not provide access to any digital transmission of MVPD programming or any other digital service through any receiving, decoding, conditional access, or other function, including any conversion of digital programming or services to an analog format.

4. Integrated Boxes. The Commission will maintain the prohibition on MVPDs providing new integrated equipment combining both security and non-security functions after January 1, 2005. In the year 2000, once non-integrated equipment is available, the Commission will assess the state of the market to determine whether the designated time frame is appropriate.

5. Application of Rules to Various MVPDs. The Commission reiterates its view that there is justification for not applying the rule requiring separation of security functions to MVPDs that support navigation devices that are portable throughout the continental United States, and are available from retail outlets and other vendors. Similarly, operators of open video systems are exempt from the requirements of Section 629.

6. CableLabs Standards Process. The Commission expects that the standards developed by CableLabs through the OpenCable process will be sufficient for manufacturers and designers unaffiliated with MVPDs to build devices that can be sold through national retail distribution. The Commission will continue to monitor the OpenCable project to ensure that the standards are specific enough and that a wide range of interests continue to have an opportunity to participate in OpenCable.

7. Wireless Cable Antennas and Downconverters. The Commission finds that equipment used to access wireless cable service cannot be excluded from the definition of navigation devices in all circumstances, nor is a separate demarcation point for attachment of navigation devices required.

8. Permitted Functions of Separated Conditional Access Equipment. The *Order on Reconsideration* clarifies that the components of the security module should closely be related to the security functions of the navigation device, and enhance, rather than assume, a function of the host device.

9. Interface Information. The *Order on Reconsideration* clarifies that 47 CFR 76.1205 requires the release of information sufficient to allow for interaction between the multichannel video programming system and the navigation device through the separated security device. This information must allow manufacturers and retailers the ability to provide compatible equipment. Problems regarding development of interface specifications brought to the Commission attention will be addressed in the review in 2000.

Final Regulatory Flexibility Analysis

10. As required by the Regulatory Flexibility Act (RFA), the Commission included a Final Regulatory Flexibility Analysis (FRFA) in the *Report and Order*. While no petitioners seeking reconsideration of the *Report and Order* raised issues directly related to the FRFA, the Commission is amending the rules in a manner that may affect small entities. Accordingly, this Supplemental Regulatory Flexibility Analysis (''Supplemental FRFA'') addresses those amendments and conforms to the RFA.

11. Need for Action and Objectives of the Rules. The 1996 Act added a new Section 629 to the Communications Act of 1934, as amended, that requires the Commission to develop rules to assure competitive availability of navigation devices used in conjunction with MVPD. The statutory objective of Section 629 is assure that navigation devices used by consumers to access a particular MVPD's programming are available to consumers from manufactures, retailers and other vendors not affiliated with that MVPD.

12. Summary of Significant Issues Regarding FRFA Raised in Petitions for Reconsideration. No parties address the FRFA in their petitions for reconsideration, or any subsequent filings.

13. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that might be affected by the rules here adopted. The RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. Under the Small Business Act, a small business concern is one which: (a) is independently owned and operated; (b) is not dominant in its field of operation; and (c) satisfies any additional criteria established by the SA.

14. As noted, a FRFA was incorporated into the *Report and Order*. In that analysis, the Commission described in detail the various small business entities that may be affected by these rules. Those entities consist of cable systems, multipoint multichannel distribution systems, direct broadcast satellites, home satellite dish, satellite master antenna television, local multipoint distribution systems, small manufacturers, electronic equipment manufacturers, computer manufacturers, and small retailers. In this present *Order on Reconsideration*, the Commission addresses petitions for reconsideration filed in response to the *Report and Order*. In this Supplemental FRFA, the Commission incorporates by reference the description and estimate of the number of small entities from the FRFA in this proceeding.

15. Description of Reporting, Recordkeeping and Other Compliance Requirements. The rules adopted in the *Report and Order* require MVPDs to make available upon request technical information concerning interface parameters. The Commission believes, however, that this requirement would not necessitate any additional professional, engineering, or customer service skills beyond those already utilized in the ordinary course of business by MVPDs. The rules adopted on reconsideration do not affect this requirement.

16. Steps Taken to Minimize Significant Economic Impact On Small Entities and Significant Alternatives Considered. In the *Report and Order*, the Commission stated the belief that its rules, implemented to assure commercial availability of navigation devices, would have the result of opening up to small retailers the market to sell or lease navigation devices to MVPD subscribers. The rules also consider situations and offer relief where the commercial availability of navigation devices performing conditional access functions could adversely impact an MVPD. An MVPD is not subject to the rules requiring the commercial availability of navigation devices if: (1) it is not reasonably feasible to separate conditional access functions from other functions; or (2) it is not reasonably feasible to prevent the unauthorized reception of service by subscribers using navigation devices obtained from other sources. In the *Order on Reconsideration*, an additional subpart of a rule is adopted to defer the requirement that an MVPD offer equipment that incorporates only the conditional access functions of device if a navigation device (1) employs conditional access mechanisms only to access analog video programming; (2) is capable only of providing access to analog video programming offered over a multichannel video programming distribution system; and (3) does not provide access to any digital transmission of multichannel video programming or any other digital service through any receiving, decoding, conditional access, or other function, including any conversion of digital programming or service to an analog format. The deferral of analog boxes at this time is to allow the market participants to focus on digital devices.

17. It is ordered that the Petitions for Reconsideration filed by the Consumer Electronics Manufacturers Association, the National Cable Television Association, the Telecommunication Industry Association, Time Warner Entertainment Company L.P., and the Wireless Cable Association International, Inc. are granted to the extent discussed herein, and are otherwise denied.

18. It is ordered that, pursuant to authority found in sections 4(i), 303(r) and 629 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 549, the Commission's rules are hereby amended as set forth below.

19. It is further ordered that the rules as amended shall become effective upon July 2, 1999.

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

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 76 as follows:

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

1. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

2. Section 76.1204 is amended by adding paragraph (f) to read as follows:

§ 76.1204 Availability of equipment performing conditional access or security functions.

* * * * *

(f) Paragraphs (a)(1), (b), and (c) of this section shall not apply to the provision of any navigation device that:

(1) Employs conditional access mechanisms only to access analog video programming;

(2) Is capable only of providing access to analog video programming offered over a multichannel video programming distribution system; and

(3) Does not provide access to any digital transmission of multichannel video programming or any other digital service through any receiving, decoding, conditional access, or other function, including any conversion of digital programming or service to an analog format.

[FR Doc. 99–13915 Filed 6–1–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 1–299]

Organization and Delegation of Powers and Duties; Delegation to the Commandant, United States Coast Guard

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Secretary of Transportation is delegating to the Commandant, United States Coast Guard, authority to implement and enforce measures to reduce the likelihood of collisions between ships and right whales.

EFFECTIVE DATE: June 2, 1999.

FOR FURTHER INFORMATION CONTACT: Blane Workie, Office of the General Counsel, C–50, (202) 366–4723, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: The Coast Guard Authorization Act of 1998, (Pub. L. 105–383) Section 313 amends the Ports and Waterways Act (codified at 33 U.S.C. 1230) to authorize the Secretary, as Secretary of the Department in which the Coast Guard is operating, in cooperation with the International Maritime Organization (IMO), to implement and enforce two mandatory ship reporting systems in designated areas. The Secretary is delegating this authority to the Commandant of the Coast Guard. These reporting systems will be implemented internationally, in cooperation with the IMO, to reduce the likelihood of collisions between ships and right whales by dissemination of information to mariners through a variety of means. Right whales are the most endangered of the big whales. With the dwindling number of right whale spottings in U.S. waters, scientists are worried about the future of the endangered species. We publish this rule as a final rule effective on the date of publication. Since this amendment relates to the departmental organization, procedure, and practice, notice and comment are unnecessary under 5 U.S.C. 533(b). Furthermore, since this amendment expedites the Coast Guard's ability to meet the needs of its conservation and enforcement obligations, the Secretary finds good cause, under 5 U.S.C. 553(b) and 5 U.S.C. 553(d) (3), that notice and public comment on the rule are unnecessary and that this rule should be made effective on the date of publication.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies).

In consideration of the foregoing, part 1 of title 49, Code of Federal Regulations, is amended to read as follows:

PART 1—[AMENDED]

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

Authority: 49 U.S.C. 322; Pub. L. 101–552, 28 U.S.C. 2672, 31 U.S.C. 3711 (a)(2).

2. In § 1.46, paragraph (rrr) is added to read as follows:

§ 1.46 Delegations to Commandant of the Coast Guard.

* * * * *

(rrr) Implement and enforce two mandatory ship reporting systems, in cooperation with the International Maritime Organization, pursuant to the Coast Guard Authorization Act of 1998, (Pub. L. 105–383), section 313, codified at 33 U.S.C. 1230(d).

Issued in Washington, DC this 24th day of May, 1999.

Rodney E. Slater,

Department of Transportation.

[FR Doc. 99–13897 Filed 6–1–99; 8:45 am]

BILLING CODE 4910–KE–P

Proposed Rules

Federal Register

Wednesday, June 2, 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

Food Safety and Inspection Service

9 CFR Parts 317, 318, and 381

[Docket No. 97–076N]

RIN 0583–AC50

Irradiation of Meat and Meat Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice; reopening of comment period.

SUMMARY: The Food Safety and Inspection Service (FSIS) is reopening the comment period for the proposed rulemaking, ''Irradiation of Meat and Meat Products,'' which closed on April 26, 1999, in response to the great interest in this proposal. (64 FR 9089, February 24, 1999). The comment period will be reopened to include comments received from April 27, 1999, until 15 days after the date of publication of this notice.

DATES: Comments must be received on or before June 17, 1999.

ADDRESSES: Send one original and two copies of written comments to: FSIS Docket #97–076P, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, 300 12th Street, SW., Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: Daniel L. Engeljohn, Ph.D., Director, Regulation Development and Analysis Division, Office of Policy, Program Development, and Evaluation, Food Safety and Inspection Service, U.S. Department of Agriculture (202) 720–5627.

Done in Washington, DC on: May 26, 1999.

Thomas J. Billy,

Administrator.

[FR Doc. 99–13933 Filed 6–1–99; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–150–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Boeing Model 737–100, –200, –300, –400, and –500 series airplanes, that would have required repetitive testing of certain main tank fuel boost pumps to identify those with degraded performance, and replacement of degraded pumps with new or serviceable pumps. That originally proposed AD also would have required eventual replacement of the existing low pressure switches for boost pumps located in the main fuel tanks with higher threshold low pressure switches, which, when accomplished, would terminate the repetitive testing. That proposal was prompted by reports of engine power loss caused by unsatisfactory performance of the fuel boost pumps. This new action revises the proposed rule by reducing the compliance time for certain airplanes. The actions specified by this new proposed AD are intended to prevent fuel suction feed operation on both engines without flight crew indication, and possible consequent multiple engine power loss.

DATES: Comments must be received by June 28, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–150–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dorr Anderson, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2684; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–150–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–150–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Boeing Model 737–100, –200, –300, –400, and –500 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on August 10, 1998 (63 FR 42596). That NPRM would have required repetitive testing of certain main tank fuel boost pumps to identify those with degraded performance, and replacement of degraded pumps with new or serviceable pumps. That NPRM also would have required eventual replacement of the existing low pressure switches for boost pumps located in the main fuel tanks with higher threshold low pressure switches, which, when accomplished, would terminate the repetitive testing. That NPRM was prompted by reports of engine power loss caused by unsatisfactory performance of the fuel boost pumps. That condition, if not corrected, could result in fuel suction feed operation on both engines without flight crew indication, and possible consequent multiple engine power loss.

Clarification of this Supplemental NPRM

The FAA clarifies in this supplemental NPRM that any description of the relationship between the low pressure switches and the fuel pump assembly does not imply that those switches are part of the fuel pump assembly.

Comments

Due consideration has been given to the comments received in response to the NPRM.

Request to Address All Fuel Pumps

One commenter questions whether the proposed AD applies to fuel boost pumps other than those of the three manufacturers [i.e., Thompson Ramo Wooldridge (TRW), Argo-Tech, and General Electric Company (GEC)] identified in the proposed AD. The FAA infers that the commenter requests that the final rule be revised to include additional boost pumps to ensure that all possible pump configurations are addressed.

The FAA concurs. The FAA agrees that all pump configurations on affected Boeing Model 737 series airplanes may be subject to the identified unsafe condition. In the originally proposed rule, the FAA addressed only currently certified pumps [GEC (formerly Plessey), TRW, and Argo-Tech]. However, in order to also consider additional pump types that may become certified in the future, the FAA has revised the groups affected by this AD to distinguish only ''GEC fuel pumps'' [paragraph (a)] and ''non-GEC fuel pumps'' [paragraph (b)].

Request to Revise Actions and Compliance Time for Certain Airplanes

One commenter, a manufacturer of fuel boost pumps, requests that the actions and compliance times specified in the originally proposed rule apply to TRW and Argo-Tech pumps equally, based on the pumps' similarity and use of many common parts. The commenter reports that it builds TRW pumps with Argo-Tech nameplates.

The FAA concurs with this request and rationale. As stated previously, new paragraph (b) of this supplemental NPRM would apply to all non-GEC fuel pumps, which includes both TRW and Argo-Tech fuel pumps. Fuel pumps manufactured by TRW or Argo-Tech are identified as ''Argo-Tech/TRW'' pumps in this supplemental NPRM. This supplemental NPRM proposes a uniform compliance time of 2 years for all fuel pumps.

Conclusion

Since these changes expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Additional Comments Received

The following are additional comments to the originally proposed rule, with the FAA's responses to those comments.

Support for the Proposal

One commenter has no objection to the originally proposed rule. Another commenter states its intention to comply with the requirements of the originally proposed rule.

Request for Name Correction

One commenter requests that the final rule identify ''Thompson Ramo Wooldridge,'' rather than ''Thompson Rand Wooldridge,'' as the correct name of the pump manufacturer. The FAA acknowledges this correction and has included the correct name in this supplemental NPRM.

Requests to Revise Compliance Time

Several commenters discussed the compliance periods in the proposed rule.

1. One commenter, a foreign civil airworthiness authority, indicates that a 2-year compliance period should be applied to all pumps regardless of the manufacturer, because the primary concern of the proposed AD is not the pump type but undetected low fuel delivery pressure.

The FAA concurs with this request. As stated previously, this supplemental NPRM has been revised to apply the same compliance times for all pump types. In the originally proposed rule, the FAA proposed a compliance time of 3 years for airplanes equipped with TRW pumps to accommodate the fleetwide demand for parts (approximately 12,000 pressure switches will be required), recognizing that the degraded mode of operation has not been observed to date on boost pumps other than those manufactured by GEC. However, in light of the amount of time that has elapsed since the originally proposed rule was issued, the FAA finds it likely that all parts will be available within the 2-year compliance time.

2. Another commenter, an association of airline pilots, recommends a 1-year compliance time for airplanes equipped with boost pumps manufactured by GEC and a 2-year compliance time for all other affected airplanes. The commenter provides no justification for its request.

As explained previously, the FAA has revised the compliance times for all airplanes to 2 years. The FAA does not concur with the request to reduce the compliance time to 1 year. Sufficient parts will not be available to support a 1-year incorporation period for the GEC pumps. In addition, the unsafe condition does not warrant the excessive amount of industry disruption that would result from a 1-year compliance time. In developing an appropriate compliance time, the FAA considered the safety implications, parts availability, and normal maintenance schedules for timely replacement of the low pressure switches. In consideration of all of these factors, the FAA determined that the compliance time, as proposed, represents an appropriate interval in which replacement of the switches can be accomplished in a timely manner within the fleet, while still maintaining an adequate level of safety. Operators are permitted to accomplish the requirements of an AD at a time earlier than that specified as the compliance time; therefore, if an operator elects to accomplish the switch replacement prior to the end of the compliance period (2 years after the effective date of this AD), it is that operator's prerogative to do so. If additional data are presented that would justify a shorter compliance time, the FAA may consider further rulemaking on this issue.

3. Another commenter, the airplane manufacturer, recommends that compliance times be based on airplane model (i.e., 2 years for Model 737–300, –400, and –500 series airplanes; 3 years for Model 737–100 and –200 series airplanes), rather than boost pump type. The commenter provides no justification for its request.

The FAA does not concur. No certification tests have been conducted confirming that Boeing Model 737–100 and –200 series airplanes are less susceptible to power loss on suction feed operation than Boeing Model 737–300, –400, and –500 series airplanes. No change to the originally proposed rule in this regard is necessary.

Requests to Revise Applicability

One commenter, the airplane manufacturer, requests that Boeing Model 737–100 and –200 series airplanes equipped with Argo-Tech/TRW pumps be excluded from the applicability statement of the originally proposed rule. In support of its request, the commenter states that there is no known history of problems with pressure degradation with Argo-Tech/TRW pumps, and no fleet experience of engine power loss events on Model 737–100 and –200 series airplanes due to the low threshold pressure switches. The manufacturer concludes that the data do not indicate that modification of airplanes equipped with Argo-Tech/TRW pumps would improve safety.

The FAA does not concur with the commenter's request to revise the applicability of this AD. The FAA recognizes that Argo-Tech/TRW fuel boost pumps have not exhibited pressure degradation to the extent that pump performance is affected. However, the unsafe condition addressed by this final rule is not limited to the causes of degraded pump output pressure. The FAA's determination of the unsafe condition is based on the fact that airplanes may transition to suction feed operation without an indication to the flight crew. With the currently installed low pressure switches, this transition may occur on any Boeing Model 737–100, –200, –300, –400, or –500 series airplane. In addition, the FAA notes that no testing of in-service Boeing Model 737 series airplanes operating on suction feed fuel has been conducted to ensure proper operation during all phases of flight. In fact, the limited information available to the FAA and the airplane manufacturer regarding suction feed operation on Boeing Model 737 series airplanes indicates that the engines will experience power loss during particular phases of flight. This is true for both types of engines—on new as well as older airplanes. The FAA considers dual engine power loss to be an unsafe condition. No change to the applicability of this supplemental NPRM is necessary.

Request to Revise Repetitive Interval

One commenter recommends that the boost pump pressure tests be repeated at intervals of 90 days rather than 6 months. This commenter provides no justification for its request.

The FAA does not concur with the request to reduce the repetitive test interval. Based on the apparent gradual nature of pump degradation, the FAA has determined that the 6-month interval for the repetitive pressure tests is sufficient to verify acceptable pump performance and detect gradual pump degradation. Therefore, no change to the originally proposed rule in this regard is required.

Request to Remove Minimum Equipment List (MEL) Restriction

One commenter, the airplane manufacturer, requests that the FAA remove the restriction on dispatch with the main tank boost pumps inoperative. The commenter indicates that the restriction would unnecessarily ground airplanes that are operating under the MEL. Alternatively, the commenter recommends a minimum amount of time (after the effective date of the AD) before the restriction becomes active. The commenter states that a 90-day compliance time for the initial test is sufficient to ensure that tests are completed in a timely manner. The commenter explains that such a grace period would ensure that no airplanes are grounded.

The FAA does not concur with the commenter's request to remove the MEL restriction. The FAA cannot allow dispatch with inoperative boost pumps unless the assumed operative pump can be shown to be operating in a nondegraded mode. This restriction will prevent possible dispatch on suction feed operation. In addition, the FAA does not concur with the commenter's request for a grace period before restricting dispatch. In its efforts to prevent grounding airplanes, the FAA has considered several issues. The alert service bulletin informing operators of this potential condition (Boeing Alert Service Bulletin 737–28A1114) was issued October 30, 1997, and the FAA has determined that this initial testing has been completed on almost all U.S.-registered airplanes. In addition, any remaining airplanes on which initial testing has not been completed may be tested during overnight stops. Further, operators have had sufficient time to position spares to prevent grounding airplanes. Therefore, no change to the originally proposed NPRM in this regard is necessary.

Request to Apply Life Limits to Boost Pumps

One commenter, an association of airline pilots, requests that the FAA impose appropriate life limiting measures to GEC-manufactured fuel boost pumps to minimize the possibility of significant degradation of pump performance. The commenter further requests that the FAA add a requirement to modify GEC pumps to eliminate the corrosion problem.

The FAA does not concur with the requests. The FAA finds that this degraded mode condition is expected to affect less than 10% of GEC-manufactured pumps. The FAA anticipates that the overwhelming majority of GEC boost pumps will not require replacement. Therefore, the FAA does not consider that imposing life limits on the pumps is an appropriate action at this time. In addition, the FAA finds that replacement of the low pressure switches with improved higher threshold pressure switches will ensure that low pump output pressure will be indicated properly and addressed to prevent engine operation on suction feed. Despite these findings, it should be noted that GEC has indicated its full intent to provide improved boost pumps to replace pumps that exhibit degraded mode operation, and in fact is implementing a retrofit plan to replace degraded pumps with improved pumps. The FAA's method to ensure that all pumps are performing to specification is to require periodic pressure tests and eventual replacement of the low pressure switches with higher threshold pressure switches. No change to this proposed AD in this regard is necessary.

Request for Revision of Parts Cost

One commenter, the airplane manufacturer, requests that the cost impact information of the originally proposed rule be revised to clarify parts cost and responsibility. The commenter requests deletion of the incorrect claim that parts would be provided by the manufacturer at no cost to operators. The manufacturer also provides cost estimates for replacement switches.

The FAA concurs with the commenter's request and acknowledges that the originally proposed rule implies that replacement parts will be provided at no cost by the manufacturer. The FAA's intent was that the originally proposed rule indicate that no parts cost would be associated with testing of the fuel boost pumps. The cost impact

information of this proposed AD has been revised to include the cost estimates for replacement switches provided by the manufacturer.

Request to Revise Compliance Time to Credit Work Accomplished

One commenter, the airplane manufacturer, requests clarification of the compliance time specified as ''within 90 days after the effective date of the AD'' for the proposed requirement to perform initial testing of the boost pump. The commenter recommends that the compliance language be revised to ''Prior to 90 days after the effective date of this AD. * * *'' The commenter questions whether operators would be considered to be in compliance if they performed the initial tests prior to the effective date of the AD, or whether they would be required to repeat those tests.

The FAA does not consider that a change to this supplemental NPRM is necessary in this regard. The FAA recognizes the commenter's concern regarding the 90-day compliance time for the initial test. Operators are given credit for work previously performed by means of the phrase in the Compliance section of the AD that states, ''Required as indicated, unless accomplished previously.'' Therefore, in the case of this supplemental NPRM, if the initial inspection has been accomplished previously (i.e., prior to the effective date of the AD), this supplemental NPRM would not require that the inspection be repeated. However, this supplemental NPRM does propose to require that repetitive tests be performed thereafter at intervals not to exceed 6 months, for airplanes equipped with GEC fuel pumps, and that the other follow-on actions be accomplished as necessary.

Request for Clarification of Power Loss Events

One commenter, the airplane manufacturer, requests that the FAA clarify the description of the engine power loss events to indicate that they occurred only on airplanes equipped with GEC pumps and that total power loss occurred on only one engine of an affected airplane.

The FAA agrees that the Discussion section of the proposed rule may have been unclear regarding whether both engines on affected airplanes experienced power losses.

The FAA acknowledges that power loss events have been reported on only one engine per airplane, that these events occurred only on airplanes equipped with GEC fuel boost pumps, and that no cases of dual engine power loss have been reported.

Request for Clarification of the Unsafe Condition

One commenter requests that the proposed AD be revised to clarify whether ''products'' refers to airplanes or to fuel boost pumps in the statement ''. . . an unsafe condition is likely to exist or develop on other products of the same type design.''

The FAA recognizes that the cited statement may have been unclear in the context of the originally proposed rule. By this statement, the FAA is addressing airplanes of the same type design as the Boeing Model 737 series airplanes on which the engine power loss events occurred.

Request to Require Improved Pumps

One commenter recommends that airplanes ''equipped with one or more of the subject GEC fuel pumps should be required to be equipped with at least one Argo-Tech, TRW, or new-design (if/when available) GEC fuel pump at the most critical position (if applicable) in each main tank within 2 years.'' The FAA infers that the commenter requests that GEC pumps be replaced with improved pumps within 2 years. The commenter provides no justification for its recommendation.

The FAA does not concur with the commenter's request. The FAA has determined that the vast majority of GEC boost pumps will not experience such pump degradation. Therefore, a requirement to replace those boost pumps is considered an unjustifiable burden to operators. No change to this supplemental NPRM in this regard is necessary.

Request for Clarification of Requirements

One commenter requests that the originally proposed rule be revised to clarify certain requirements. The commenter suggests that additional text be included under the heading ''Differences Between Proposed Rule and Service Bulletin'' to further specify those Argo-Tech/TRW fuel pumps that are affected by paragraphs (b) and (c) of the originally proposed rule.

The FAA concurs partially. The FAA agrees that further specification of the parts numbers of the affected fuel pumps might have clarified certain proposed requirements; however, as stated previously, paragraphs (b) and (c) of the originally proposed rule have been revised to remove any distinction between Argo-Tech and TRW fuel pumps and to group them with ''non-GEC fuel pumps.''

Request for Clarification of Design Responsibility

One commenter, the pump manufacturer, requests that the FAA clarify in the Discussion section that the low pressure switches are not part of the fuel pump assembly or within the pump manufacturer's control.

The FAA concurs with the commenter's request. Although there was no intent in the originally proposed rule to imply such a relationship, the FAA acknowledges that low pressure switches are not part of the fuel pump assembly and has revised the Discussion section of this supplemental NPRM accordingly.

Request for a Review of Other Airplane Models

One commenter, an association of airline pilots, recommends that the FAA conduct a review to determine whether similar incompatibilities between fuel system low pressure switches and check valves exist elsewhere in the transport airplane fleet. The commenter expressed concern that additional airplane models may be susceptible to the unsafe condition identified in the proposed rule.

The FAA concurs with the commenter's request. The FAA has completed a review of large transport airplanes manufactured by Airbus, Boeing, and Lockheed. A deficiency in the low fuel pressure indication has not been identified on any of those other airplane models.

Additional Change to this Supplemental NPRM

The FAA notes that it may be necessary to clarify the proposed criteria for allowing dispatch with a main tank fuel boost pump inoperative. As a result, paragraph (a)(1) of this supplemental NPRM has been revised to specify that, prior to dispatch, the operative pump must be tested and any necessary follow-on corrective actions performed.

Cost Impact

There are approximately 2,772 airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,140 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 2–8 work hours per airplane to accomplish the proposed testing for airplanes equipped with GEC pumps, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the testing proposed by this AD on U.S. operators is estimated to be $120–$480 per airplane, per testing cycle.

It would take approximately 4–6 work hours per airplane to accomplish the proposed modification, at an average labor rate of $60 per work hour. Required parts would cost $1,900 [for airplanes equipped with part number (P/N) 60B92400–3 low pressure switches] or $2,700 (for airplanes equipped with P/N 10–3067–3 low pressure switches). Based on these figures, the cost impact of the modification proposed by this AD on U.S. operators is estimated to be $273,600–$410,400, or $2,140–$3,060 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 98–NM–150–AD.

Applicability: Model 737–100, –200, –300, –400, and –500 series airplanes; line numbers 1 through 3002 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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 fuel suction feed operation on both engines without flight crew indication, and possible consequent multiple engine power loss, accomplish the following:

Requirements for Airplanes Equipped with GEC Boost Pumps:

(a) For airplanes equipped with one or more main tank fuel boost pumps manufactured by the General Electric Company (GEC), of the United Kingdom: Accomplish paragraphs (a)(1), (a)(2), (a)(3), and (a)(4) of this AD.

(1) As of the effective date of this AD, no airplane shall be dispatched with any main tank fuel boost pump inoperative unless the initial testing and any follow-on corrective actions required by paragraph (a)(2) of this AD have been accomplished on the operative pump in that main tank.

(2) Test each GEC-manufactured main tank fuel boost pump to determine the output pressure, in accordance with Boeing Alert Service Bulletin 737–28A1114, Revision 1, dated April 2, 1998; at the later of the times specified in paragraphs (a)(2)(i) and (a)(2)(ii) of this AD. If the fuel boost pump output pressure measured during the testing required by this paragraph is less than 23 pounds per square inch gauge (psig), as measured at the input to the engine fuel pump; or less than 36 psig, as measured at the fuel boost pump low pressure switch; prior to further flight, replace the fuel boost pump with a new or serviceable fuel pump, in accordance with the alert service bulletin.

(i) Prior to the accumulation of 3,000 total flight hours, or within 1 year since date of manufacture of the airplane, whichever occurs first; or

(ii) Within 90 days after the effective date of this AD.

(3) Repeat the testing required by paragraph (a)(2) of this AD thereafter at intervals not to exceed 6 months, until accomplishment of the requirements of paragraph (a)(4) of this AD.

(4) Within 2 years after the effective date of this AD, replace all four low pressure switches installed downstream of the main tank fuel boost pumps with higher threshold low pressure switches, in accordance with Boeing Alert Service Bulletin 737–28A1114, Revision 1, dated April 2, 1998. Accomplishment of this replacement constitutes terminating action for the requirements of paragraph (a) of this AD.

Requirements for Airplanes Equipped with non-GEC boost pumps:

(b) For airplanes other than those identified in paragraph (a) of this AD: Within 2 years after the effective date of this AD, replace all four low pressure switches installed downstream of the main tank fuel boost pumps with higher threshold low pressure switches, in accordance with Boeing Alert Service Bulletin 737–28A1114, Revision 1, dated April 2, 1998.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Issued in Renton, Washington, on May 21, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–13877 Filed 6–1–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–270–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A319, A320, and A321 series airplanes. This proposal would require modification of the 90VU electronics rack umbrellas, the 91VU upper shelf assembly, the cockpit drain circuit, and the electrical wire routing above the 90VU electronics rack. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent damage to computer electrical connectors due to ingress of water into the avionics bay, which could result in malfunctioning of the avionics computers.

DATES: Comments must be received by July 2, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–270–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

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

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

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–270–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–270–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, has notified the FAA that an unsafe condition may exist on certain Airbus Model A319, A320, and A321 series airplanes. The DGAC advises that it has received reports of water dripping into the avionics bay. Analysis by the manufacturer has shown that the computers in the avionics bay may not be adequately protected from ingress of water. This condition, if not corrected, could result in damage to computer electrical connectors due to ingress of water into the avionics bay, and consequent malfunctioning of the avionics computers.

Related AD's

The FAA has issued AD 98–20–04, amendment 39–10770 (63 FR 50129, September 21, 1998), which requires replacing certain toilet rinse valves with modified rinse valves.

The FAA also has issued AD 99–02–03, amendment 39–10992 (64 FR 2552, January 15, 1999), which requires installation of a rubber strip and replacement of connection sheets and the seal retainer on the avionics compartment access door with new parts; and installation of drip pans and additional drain gutters on the avionics racks.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A320–25–1186, Revision 01, dated September 23, 1998, which describes procedures for modification of the 90VU electronics rack umbrellas, the 91VU upper shelf assembly, the cockpit drain circuit, and the electrical wire routing above the 90VU electronics rack. Accomplishment of modifications specified in the service bulletin is intended to adequately address the identified unsafe condition. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 98–178–115(B), dated May 6, 1998, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

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

Cost Impact

The FAA estimates that 140 Airbus Model A319, A320, and A321 series airplanes of U.S. registry would be affected by this proposed AD, that it

would take approximately 19 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $159,600, or $1,140 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Industrie: Docket 98–NM–270–AD.

Applicability: Models A319, A320, and A321 series airplanes on which Airbus Modification 25995 has not been accomplished, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent damage to computer electrical connectors due to ingress of water into the avionics bay, which could result in malfunctioning of the avionics computers, accomplish the following:

Modification

(a) Within 2 years after the effective date of this AD, modify the 90VU electronics rack umbrellas, the 91VU upper shelf assembly, the cockpit drain circuit, and the electrical wire routing above the 90VU electronics rack; in accordance with Airbus Service Bulletin A320–25–1186, Revision 01, dated September 23, 1998.

Note 2: Accomplishment of the modification required by paragraph (a) of this AD in accordance with Airbus Service Bulletin A320–25–1186, dated December 1, 1997, prior to the effective date of this AD, is considered acceptable for compliance with the requirements of this AD.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Note 4: The subject of this AD is addressed in French airworthiness directive 98–178–115(B), dated May 6, 1998.

Issued in Renton, Washington, on May 21, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–13876 Filed 6–1–99; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–41442; File No. S7–17–99]

RIN 3235–AH74

Recordkeeping Requirements for Transfer Agents

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission (Commission) is publishing for comment a proposal to allow registered transfer agents to use electronic storage media to produce and preserve the records that they are required to retain. In addition, the Commission is proposing to expressly allow registered transfer agents to use microfiche in addition to microfilm for record retention purposes. The proposed amendments are designed to increase the flexibility and efficiency of transfer agent recordkeeping.

DATES: Comments should be received on or before July 2, 1999.

ADDRESSES: Interested persons should submit three copies of their written data, views, and opinions to Jonathan G. Katz, Secretary, Mail Stop 0609, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–17–99; this file number should be used on the subject line if E-mail is used. Comment letters will be available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. Electronically submitted comment letters will be posted on the Commission's Internet site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Jerry W. Carpenter, Assistant Director, or Theodore R. Lazo, Attorney, at 202/942–4187, Office of Risk Management and

Control, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW, Mail Stop 1001, Washington, DC 20549–1001.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

Section 17(a)(1) of the Securities Exchange Act of 1934 (Exchange Act) requires registered transfer agents to make, keep, and disseminate reports prescribed by the Commission as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act.[1] Rules 17Ad–6 and 17Ad–7 under the Exchange Act specify the records that registered transfer agents must make and keep and the amount of time that the records must be preserved.[2] Depending on the type of record, the records covered by these rules generally must be maintained for two years,[3] six years,[4] or until one year after the termination of a transfer agency relationship.[5]

Rule 17Ad–7(f) permits registered transfer agents to preserve the records listed in Rule 17Ad–6 on microfilm, subject to certain conditions.[6] However, Rule 17Ad–7 provides no other alternative to maintaining records in hard copy. In light of advances in electronic recordkeeping technology, we believe that Rule 17Ad–7 should be amended to accommodate a wider range of storage media.

The Securities Transfer Association has requested the Commission to allow transfer agents to use optical disk storage systems to fulfill their recordkeeping requirements under Rule 17Ad–7.[7] We believe that this request has merit, and so we are proposing to amend Rule 17Ad–7 under the Exchange Act to permit registered transfer agents to preserve records using electronic storage media. We also are proposing to amend Rule 17Ad–7 to permit the preservation of records on micrographic media.[8] These proposals incorporate the essential provisions of our rule that permits broker-dealers to use alternative recordkeeping methods.[9]

B. Alternative Recordkeeping Methods

1. Electronic Storage Media

There are different types of electronic storage media available for recordkeeping purposes. The principal focus of the proposed amendments is on optical storage technology, which allows for digital data recording in a non-rewriteable, non-erasable format that provides a permanent and unalterable record.[10] Optical storage systems record digital information by using a laser to burn a pattern on a metallic film on a disk surface (known as an optical disk) that can hold billions of bytes of data. Optical disks are removable from the hardware that records the information onto the disk. Using optical disk storage, any record, whether it is computer generated (such as a computer report) or electronically digitized from another medium (such as paper or micrographics), can be recorded and then accessed and managed using computers.

2. Micrographic Media

Microfilm and microfiche are types of micrographic media that photographically reduce the size of document images. However, microfiche images are stored on a sheet of film while microfilm images are stored on spooled film.

II. Proposed Amendments and Discussion

The Commission believes that the use of optical disks and other electronic storage media for the preservation of records must be conditioned with safeguards against erasability, provisions for the immediate verification of the stored information, and mandatory backup facilities. The proposed amendments to Rule 17Ad–7 would contain additional conditions to ensure that the documents stored on the disk are indexed and may be accessed by Commission examiners or by examiners from another appropriate regulatory agency.[11]

Exchange Act Rule 17a–4 contains conditions on broker-dealers' use of electronic storage media that are similar to the ones we are proposing for transfer agents. However, we anticipate that transfer agents (unlike broker-dealers) would use electronic storage media to store canceled securities certificates. The storage and destruction of canceled securities certificates present issues unique to transfer agents' use of electronic storage media. As a result, we believe that these conditions are particularly necessary for transfer agents. In addition, we believe that these conditions are necessary because optical disk storage technology is relatively new and there does not appear to be an industry standard for its development and for compatibility among different optical disk storage systems.

The proposed amendments to Rule 17Ad–7 would contain additional conditions to ensure that the documents stored on the disk are indexed and may be downloaded by Commission examiners or by examiners from another appropriate regulatory agency.[12]

The proposed amendments would require transfer agents that use electronic storage media to store the records in a non-rewriteable, non-erasable format. This requirement should ensure that the information stored on electronic storage media cannot be modified or removed without detection. As an additional protection, the proposed amendments would require that electronic storage media label the storage units used (*e.g.*, the optical disks) in sequential order and record the date and time that information is electronically stored. In addition, transfer agents would be required to keep a duplicate of any records that are stored using electronic storage media. The duplicates may be kept on any type of medium that is acceptable under Rule 17Ad–7.[13]

In order to ensure efficient and complete access to records during examinations, transfer agents using electronic storage media would be required to create an index of the records that are electronically stored and store the index with those records. In addition, the proposed amendments would require transfer agents to maintain a duplicate index along with the duplicates of the indexed records separately from the originals. Transfer

[1] 15 U.S.C. 78q(a)(1).

[2] 17 CFR 240.17Ad–6 and 240.17Ad–7.

[3] 17 CFR 240.17Ad–7 (a) and (b).

[4] 17 CFR 240.17Ad–7(d).

[5] 17 CFR 240.17Ad–7(c).

[6] 17 CFR 240.17Ad–7(f).

[7] Letter from Charles Rossi, President, Securities Transfer Association, to Arthur Levitt, Chairman, Commission (July 2, 1996). The letter is available for inspection and copying in the Commission's Public Reference Room in File No. S7–17–99.

[8] Under the proposed amendments, the term ''micrographic media'' would be defined to mean microfilm or microfiche, or any similar medium.

[9] *See* Securities Exchange Act Release No. 38245 (February 5, 1997), 62 FR 6469 (Broker-Dealer Release) (adopting amendments to Rule 17a–4(f) to allow broker-dealers to use electronic storage media and micrographic media).

[10] This format is sometimes referred to as ''write once, read many'' or ''WORM.''

[11] The term ''appropriate regulatory agency'' is defined in section 3(a)(34) of the Exchange Act, 15 U.S.C. 78c(a)(34), and includes the Commission, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency.

[12] The term ''appropriate regulatory agency'' is defined in section 3(a)(34) of the Exchange Act, 15 U.S.C. 78c(a)(34), and includes the Commission, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency.

[13] The Commission does not intend that the proposed amendments to Rule 17Ad–7 would override any state laws or regulations regarding destruction of canceled securities certificates.

agents would also be required to have the capacity to download records stored on electronic storage media so that the records could be promptly transferred to an alternate medium such as paper, microfilm or microfiche.

In addition, the proposed amendments contain conditions on the use of electronic storage media that are designed to provide access to information stored on electronic storage media if a transfer agent is no longer operating, refuses to cooperate with the Commission or another appropriate regulatory agency, or has not properly or fully indexed electronically stored records. Accordingly, the proposed amendments to Rule 17Ad–7 would require transfer agents to preserve, keep current, and surrender upon request the information necessary to download records stored on electronic storage media. As an alternative, transfer agents that use another party to maintain their records (such as an outside service bureau) would be permitted to place in escrow and keep current a copy of the information necessary to access the format of the electronic storage media and to download records that are electronically stored. Moreover, before a transfer agent uses electronic storage media, the proposed amendments would require that at least one party other than the transfer agent (*e.g.*, the transfer agent's electronic storage media vendor) file representations with the Commission that it has the ability to download information from the transfer agent's electronic storage system and that it would do so at the request of either the Commission or its appropriate regulatory authority.

We understand that some broker-dealers now use electronic storage media and micrographic media to fulfill their recordkeeping requirements. We believe that the proposed amendments to Rule 17Ad–7 will similarly increase the flexibility and efficiency of transfer agent recordkeeping.

III. General Request for Comments

Any interested person wishing to submit comments on the proposed amendments to Rule 17Ad-7, as well as on other matters that might have an impact on the proposal, is requested to do so. We seek comment on whether the proposed requirements regarding the use of electronic storage media will create an undue burden on transfer agents or others. We seek comment on whether additional or fewer safeguards may be required in the context of transfer agents' use of electronic storage media. We also request comments on whether other new technologies are available for use in retaining records, and whether the rule should allow use of these technologies. If so, under what conditions?

We specifically solicit comments as to whether the proposed amendments to Rule 17Ad-7 present any issues that are unique to transfer agents that did not arise with respect to the amendments to Rule 17a-4. In particular, we request commenters to address any issues that may arise from the use of electronic storage media to store canceled securities certificates. Are there legal issues associated with transfer agents destroying canceled securities certificates that have been electronically stored? For example, could the inability to produce an original certificate during a legal proceeding create evidentiary problems even if a facsimile of the certificate could be downloaded from the electronic storage media? Should transfer agents that use electronic storage media to store canceled securities certificates be permitted to destroy canceled securities certificates as soon as they are electronically stored, or should transfer agents be required to maintain the original certificates for some period of time after storing them electronically?

Should Rule 17Ad-7 contain specific standards regarding image quality for electronic storage media used by transfer agents? Should Rule 17Ad-7 require that any electronic storage media used by transfer agents automatically verify the resolution quality of the electronically stored records? Should transfer agents using electronic storage media be required to periodically audit the resolution quality?

IV. Cost and Benefits of the Proposed Amendments

The Commission is considering the costs and the benefits of the proposed amendments to Rule 17Ad-7. The Commission has identified certain costs and benefits relating to the proposed amendments, which are discussed below, and encourages commenters to discuss any additional costs or benefits. In particular, the Commission requests comment on the potential costs for any necessary modifications to information gathering, management, and recordkeeping systems or procedures as well as any potential benefits resulting from the proposals for issuers, transfer agents, regulators, or others. Commenters should provide analysis and empirical data to support their views on the costs and benefits associated with the proposed amendments.

A. Benefits

The proposed amendments to Rule 17Ad-7 should provide specific benefits to U.S. investors, issuers, transfer agents, and other financial intermediaries. These benefits are not readily quantifiable in terms of dollar value. Allowing registered transfer agents to maintain their records using micrographic media and electronic storage media should increase the efficiency of their recordkeeping operations by reducing the need to maintain records in hard copy format. In addition, the use of micrographic media and electronic storage media should reduce storage burdens (*e.g.*, the need for storage space) that transfer agents currently face in keeping paper records.

B. Costs

The proposed amendments to Rule 17Ad-7 should not result in significant costs to any particular person or entity. We have identified costs associated with the proposed amendments. Transfer agents that use micrographic media or electronic storage media may incur some costs in transferring hard copy records to micrographic or electronic storage media. In addition, there could be some cost to registered transfer agents to fulfill the conditions that would be imposed on the use of electronic storage media. Specifically, the requirements that transfer agents using electronic storage media create a duplicate of the records electronically stored, that they create an index of the electronically stored records, and that they establish an audit system to account for inputting of and changes to electronically stored records all could result in costs to those transfer agents. However, any costs related to the use of micrographic media or electronic storage media should be at least partly offset by the resulting elimination of the need to maintain and store records in hard copy format. In addition, we note that transfer agents' use of micrographic media or electronic storage media would be voluntary.

We request comment on these costs and invite commenters to submit their own estimates of the costs and benefits that would result from the proposed amendments to Rule 17Ad-7. In order to fully evaluate the costs and benefits associated with the proposed amendments, we request that commenters' estimates of the costs and benefits of the proposed amendments be accompanied by specific empirical data supporting the estimates.

V. Effect of the Proposed Amendments on Competition, Efficiency, and Capital Formation

Section 23(a)(2) of the Exchange Act [14] requires the Commission, in adopting rules under the Exchange Act, to consider the impact any such rule would have on competition, and to not adopt any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. In addition, section 3 of the Exchange Act [15] as amended by the National Securities Markets Improvement Act of 1996 [16] provides that whenever the Commission is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

We are considering the proposed amendments to Rule 17Ad-7 in light of the standards cited in sections 3 and 23(a)(2) of the Exchange Act. For the reasons stated herein, the proposed amendments (i) should promote efficiency by allowing registered transfer agents to benefit from advances in recordkeeping technology, (ii) should not adversely affect capital formation because they relate solely to post-issuance activity, and (iii) should not impose any burden on competition because they will apply equally to all registered transfer agents.

We do not anticipate that the proposed amendments would have a significant effect on competition or impose any burden on competition that is not necessary or appropriate in furtherance of the Exchange Act. Under the proposed amendments, all registered transfer agents would be permitted to use micrographic media and electronic storage media to fulfill their recordkeeping obligations. In addition, the proposed conditions with respect to using electronic storage media would apply equally to all registered transfer agents. However, in order to fully evaluate fully the effects on competition of the proposed amendments, the Commission requests commenters to provide their views and specific empirical data as to any effects on competition that might result from the Commission's proposed amendments to Rule 17Ad-7.

[14] 15 U.S.C. 78w(a)(2).

[15] 15 U.S.C. 78c.

[16] Pub. L. 104–290, 110 Stat. 3416 (1996).

VI. Summary of Regulatory Flexibility Analysis

The Commission has prepared an initial regulatory flexibility analysis (''IRFA'') in accordance with 5 U.S.C. 603(a) regarding the proposed amendments to Rule 17Ad-7. The IRFA states that the proposed amendments are intended to allow registered transfer agents to take advantage of advances in electronic recordkeeping technology. The IRFA sets forth the statutory basis for the proposed amendments.

The IRFA states that, for purposes of Commission rulemaking, paragraph (h) of Rule 0–10 under the Exchange Act defines the term ''small business'' or ''small organization'' to include any transfer agent that: (1) Received less than 500 items for transfer and less than 500 items for processing during the preceding six months (or in the time that it has been in business, if shorter); (2) transferred items only of issuers that would be deemed ''small businesses'' or ''small organizations'' as defined in Rule 0–10 under the Exchange Act; (3) maintained master shareholder files that in the aggregate contained less than 1,000 shareholder accounts or was the named transfer agent for less than 1,000 shareholder accounts at all times during the preceding fiscal year (or in the time that it has been in business, if shorter); and (4) is not affiliated with any person (other than a natural person) that is not a small business or small organization under Rule 0–10.[17] The IRFA states that we estimates that 180 registered transfer agents qualify as small entities and would be subject to the proposed amendments to Rule 17Ad-7.

The IRFA states that the proposed amendments would impose certain reporting, recordkeeping, and compliance requirements. The proposed amendments also would require each registered transfer agent that uses electronic storage media to set up a system to record the inputting of records to electronic storage media and the inputting of any changes to that are electronically stored.

The proposed amendments would require transfer agents that use electronic storage media to store the records in a non-rewriteable, non-erasable format. In addition, the proposed amendments would require that electronic storage media label the storage units used in sequential order and record the date and time that the information is electronically stored. Transfer agents would be required to keep a duplicate of any records that are stored using electronic storage media which could be kept on any type of medium that is acceptable under Rule 17Ad-7.

[17] 17 CFR 240.0–10(h).

Transfer agents using electronic storage media would be required to create an index of the records that are electronically stored and store the index with those records. In addition, transfer agents would be required to maintain a duplicate index along with the duplicate records separately from the originals. Transfer agents would also be required to have the capacity to download records stored on electronic storage media so that the records could be promptly transferred to an alternate medium such as paper, microfilm or microfiche.

The proposed amendments would require transfer agents to preserve, keep current, and surrender upon request the information necessary to download records stored on electronic storage media. Moreover, before a transfer agent uses electronic storage media, the proposed amendments would require that at least one party other than the transfer agent (*e.g.*, the transfer agent's electronic storage media vendor) file representations with the Commission that the third party has the ability to download information from the transfer agent's electronic storage system and that it would do so at the Commission's request.

The IRFA notes that the reporting, recordkeeping, and compliance requirements contained in the proposed amendments to Rule 17Ad-7 would apply only to registered transfer agents that specifically choose to use electronic storage media. The IRFA notes further that some small transfer agents will not be able to afford the costs involved with storing records electronically and therefore will not choose to use electronic storage media. The IRFA states that the proposed amendments to Rule 17Ad-7 should not have a significant economic impact on a substantial number of small entities.

The IRFA states that as an alternative to the proposed amendments we considered proposing different compliance and reporting requirements and timetables with respect to transfer agents' use of electronic storage media. However, the IRFA states that the Commission believes that the compliance and reporting requirements and timetables as proposed are necessary to ensure the accuracy and integrity of transfer agent records that are electronically stored and to ensure the access to such records by the Commission or another appropriate regulatory agency. The IRFA also states that the timetables contained in the proposed amendments are consistent

with the timetables that are already contained in Rule 17Ad-7.

The IRFA states that we believe that it is not feasible to further clarify, consolidate, or simplify the proposed amendments for small entities. The IRFA also states that the Commission believes that the use of performance standards rather than design standards is not applicable to the proposed amendments.

The IRFA states that we believe that creating an exemption from the requirements of the proposed amendments would not reduce the impact of the proposed amendments on small entities. The IRFA notes that Rule 17Ad-4(b) under the Exchange Act [18] already exempts small transfer agents from many of the recordkeeping requirements of Rules 17Ad-6 and 17Ad-7. In addition, the IRFA notes that any burden imposed by the proposed amendments would apply only to those transfer agents that choose to use electronic storage media. The IRFA states that we believe that there are no rules that duplicate, overlap, or conflict with the proposed alternative versions of the rule.

The IRFA contains information concerning the solicitation of comments with respect to the IRFA. In particular, the IRFA requests comment on whether the proposed amendments to Rule 17Ad-7 would have a significant economic impact on a substantial number of small entities and requests that any such comments be accompanied by specific empirical data. Cost-benefit information reflected in the ''Cost/Benefit Analysis'' section of this Release also is reflected in the IRFA. A copy of the IRFA may be obtained by contacting Theodore R. Lazo, Securities and Exchange Commission, 450 Fifth Street, NW, Mail Stop 1001, Washington, DC 20549–1001.

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, the Commission is also requesting information regarding the potential impact of the proposed amendments on the economy on an annual basis. Commenters should provide empirical data to support their views.

VII. Paperwork Reduction Act

Certain provisions of the proposed amendments to Rule 17Ad-7 contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995,[19] and the Commission has submitted them to the Office of Management and Budget for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for the collection of information is: ''Record Retention Requirements for Registered Transfer Agents.'' The OMB control number for the collection of information is 3235-0136. The collection of information requirements are necessary both to ensure the integrity of transfer agents' records that are maintained on electronic storage media and to ensure the Commission's ability to access such records.

Proposed Rules 17Ad-7(f)(1)(iii) and 17Ad-7(f)(1)(iv) contain a collection of information requirements that are intended to ensure that the Commission would have full and complete access to transfer agents' records during examinations. Proposed Rule 17Ad-7(f)(1)(iii) and 17Ad-7(f)(1)(iv) would require transfer agents that use electronic storage media to create an index of all electronically stored records and to maintain a duplicate of each index. We do not propose to specify the format of the index that would be required to be maintained. However, the original and duplicate indexes would be required to be kept in separate locations in order to protect against loss or damage. The indexes would be required to be maintained for as long as the transfer agent was using electronic storage media.

Proposed Rule 17Ad-7(f)(3) contains a collection of information requirement that is intended to ensure the integrity of transfer agents' records that are stored on electronic storage media. Proposed Rule 17Ad-7(f)(3) would require each registered transfer agent that uses electronic storage media to set up a system to record the inputting of records to electronic storage media and to record the inputting of any changes to records that are electronically stored. We do not propose to specify the contents of each audit system, but any data stored regarding inputting of records and changes to existing records would be part of that system. We anticipate that the names of the individuals that input and make changes to records and the identities of documents inputted and changed are the kinds of information that automatically should be collected pursuant to the audit system requirement. The results of the audit system would be required to be preserved for the time required for the audited records.

Proposed Rules 17Ad-7(f)(4) and 17Ad-7(f)(5) contain collection of information requirements that would ensure the Commission's access to records of a transfer agent that was no longer operating, refused to cooperate with the investigative efforts of the Commission or another appropriate regulatory agency, or had not properly or fully indexed electronically stored records. Proposed Rule 17Ad-7(f)(4) would require each transfer agent that uses electronic storage media to maintain and provide upon request or to keep in escrow all information necessary to access records and indexes that are electronically stored. We do not propose to specify the types of information that the transfer agent would be required to maintain if such information is maintained on the transfer agent's premises. However, if the transfer agent chose to place such information in escrow, it would have to keep in escrow a copy of the physical and logical format of the electronic storage media, the field format of all different information types written on the electronic storage media and the source code, together with appropriate documentation and information necessary to access records and indexes. The information required by Proposed Rule 17Ad-7(f)(4) would be required to be maintained for as long as the transfer agent was using electronic storage media.

Proposed Rule 17Ad-7(f)(5) would require that for each transfer agent using electronic storage media at least one party other than the transfer agent would have to file with the Commission written undertakings that it has the ability to download the transfer agent's electronically stored records and that it would do so at the request of either the Commission or its appropriate regulatory authority. This requirement is intended to assure that examining authorities would be able to access a transfer agent's electronically stored records if the transfer agent could not or would not download the records. We anticipate that this requirement could be fulfilled in the form of a letter to the Commission staff. This collection of information requirement does not contain any new recordkeeping requirements.

The collection of information required by the proposed amendments to Rule 17Ad-7 should not result in any new significant burden to transfer agents. All information required as a condition of transfer agents' use of electronic storage media is specifically tied to a transfer agent's decision to use electronic storage media to satisfy its already existing recordkeeping obligations.

The likely respondents to the collection of information are large registered transfer agents. At this time, we estimate that there are 40 likely respondents to the collection of information requirements contained in the proposed amendments to Rule

[18] 17 CFR 240.17Ad-4(b).

[19] 44 U.S.C. 3501 *et seq.*

17Ad-7. The proposed frequency of response to the collection of information requirements varies depending on the specific requirement. The collection of information requirements contained in Proposed Rules 17Ad-7(f)(3)(vi) and 17Ad-7(f)(3)(vii) would require a one time response. The collection of information requirements contained in Proposed Rules 17Ad-7(f)(3)(iv) and 17Ad-7(f)(3)(v) would require continuing responses.

The Commission estimates that the average amount of time needed to comply with the collection of information requirements of the proposed amendments to Rule 17Ad-7 would be 125 hours per year. However, this time burden would apply only to registered transfer agents that choose to use electronic storage media. Based on the Commission's estimate of 40 likely respondents, we estimate that the proposed collection of information requirements would result in 5000 additional burden hours (40 x 125) and would increase the total number of burden hours for Rule 17Ad-17 from 142,272 to 147,272.[20]

If a transfer agent chooses to use electronic storage media, then providing the information will be mandatory. Responses to the collection of information requirements will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget control number.

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits 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 shall have practical utility;

(ii) Evaluate the accuracy of the Commission'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 collection of information on those who are to respond, including through the use of automated collection techniques or other forms for information technology.

Persons desiring to submit comments on the collection of information requirements should direct them to the following persons: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503; and Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Mail Stop 0609, Washington, DC 20549–0609, and refer to File No. S7–17–99. The Office of Management and Budget (OMB) is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release in the **Federal Register**, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of this publication.

[20] Based on an estimated average administrative labor cost of $50.00 per hour, the Commission's staff estimates that the total labor cost to the transfer agent industry for complying with the collection of information requirements contained in the proposed amendments would be $250,000 annually ($50.00 x 5000). The Commission's staff developed these estimates in consultation with representatives of the transfer agent industry.

VIII. Statutory Bases

The amendments to Rule 17Ad-7 are being proposed pursuant to sections 17A(a)(2) and 17A(d) of the Exchange Act (15 U.S.C. 78q-1(a)(2) and 78q-1(d)).

Text of the Amendments

List of Subjects in 17 CFR part 240

Reports and recordkeeping requirements, Securities, Transfer agents.

In accordance with the foregoing, the Commission proposes to amend part 240 of Chapter II of Title 17 of the Code of Federal Regulation as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u-5, 78w, 78x, 78ll(d), 78mm, 79q, 79t, 80a-20, 80–23, 80a-29, 80a-37, 80b-3, 80b-4, and 80b-11, unless otherwise noted.

* * * * *

2. Section 240.17Ad-7 is amended by revising paragraph (f) to read as follows:

§ 240.17Ad-7 Record retention.

* * * * *

(f) *Record retention using micrographic media or electronic storage media.* Registered transfer agents may use micrographic media or electronic storage media that complies with the conditions in this paragraph to store the records that they are required to keep under §§ 240.17Ad-6 and 240.17Ad-7.

(1) If you as a registered transfer agent use either micrographic media or electronic storage media to store your records you must:

(i) Have available at all times for examination by the staffs of the Commission and of your appropriate regulatory agency (if the Commission is not your appropriate regulatory agency) facilities for immediate projection or production of easily readable images of the records that you store on electronic storage media;

(ii) Be ready at all times to immediately provide any facsimile enlargement of the records that you store on electronic storage media that the staffs of the Commission and of your appropriate regulatory agency (if the Commission is not your appropriate regulatory agency) or their representatives may request;

(iii) Create an accurate index of the records that you store on electronic storage media, store the index with those records, and have the index available at all times for examination by the staffs of the Commission and of your appropriate regulatory agency (if the Commission is not your appropriate regulatory agency); and

(iv) Maintain a duplicate of the index of the records that you store on electronic storage along with duplicates of the indexed records separately from the originals. You may store the duplicates of the indexed records on any medium permitted by this section. You must preserve the duplicate index and the duplicates of the indexed records for the same time that is required by this section for the indexed records, and you must have them available at all times for examination by the staffs of the Commission and of your appropriate regulatory agency (if the Commission is not your appropriate regulatory agency).

(2) Any electronic storage media that you use to store your records must:

(i) Preserve the records in a format that is not rewriteable and not erasable;

(ii) Automatically verify the quality and accuracy of its recording process;

(iii) Label all units of storage media used in sequential order and record the date and time that information is stored on the electronic storage media; and

(iv) Have the capacity to readily download indexes and records preserved on the electronic storage media to any medium acceptable under this paragraph as required by the staffs of the Commission and of your appropriate regulatory agency (if the Commission is not your appropriate regulatory agency).

(3) If you use electronic storage media to store your records, you must set up an audit system that accounts for the inputting of and any changes to every record that is stored on electronic storage media:

(i) You must be able to have the results of the audit system available at all times for examination by the staffs of the Commission and of your appropriate regulatory agency (if the Commission is not your appropriate regulatory agency); and

(ii) The audit results must be preserved for the time required for the audited records.

(4) If you use electronic storage media to store your records you must either:

(i) Maintain, keep current, and provide promptly upon request by the staffs of the Commission and of your appropriate regulatory agency (if the Commission is not your appropriate regulatory agency) all information necessary to access records and indexes stored on electronic storage media; or

(ii) If you use another party to maintain your records, place in escrow and keep current a copy of the physical and logical format of the electronic storage media, the field format of all different information types written on the electronic storage media and source code, and the appropriate documentation and information necessary to access records and indexes.

(5) Before you begin to use electronic storage media to preserve some or all of your records under this section, there must be at least one party other than you who has access to your electronic storage media system and has the ability to download information from your system and that party must file with the Commission and with your appropriate regulatory agency (if the Commission is not your appropriate regulatory agency) the following undertakings with respect to such records:

The undersigned hereby undertakes to furnish promptly to the U.S. Securities and Exchange Commission (''Commission''), the transfer agent's appropriate regulatory agency (''ARA'') (if its ARA is not the Commission), and their designees or representatives, upon reasonable request, such information as is deemed necessary by the Commission's, ARA's, or designee's staff to download information kept on the registered transfer agent's electronic storage media to any medium acceptable pursuant to Rule 17Ad-7 under the Securities Exchange Act of 1934.

Furthermore, the undersigned hereby undertakes to take reasonable steps to provide access to information contained on the registered transfer agent's electronic storage media, including, as appropriate, arrangements for the downloading of any record required to be maintained and preserved by the registered transfer agent pursuant to Rules 17Ad-6 and 17Ad-7 under the Securities Exchange Act of 1934 in a format acceptable to the Commission's staff and the ARA's staff or their designees. Such arrangements will provide specifically that in the event of the registered transfer agent's failure to download the record into a readable format and, after reasonable notice to the registered transfer agent, upon being provided with the appropriate electronic storage medium, the undersigned will undertake to download the record into a readable format as the Commission's staff and the ARA's staff or their designees may request.

(6) For purposes of this section, the following definitions apply:

(i) The term *micrographic media* means microfilm or microfiche or any similar medium; and

(ii) The term *electronic storage media* means any digital storage medium or system that meets the conditions in this paragraph.

* * * * *

By the Commission.

Dated: May 25, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–13865 Filed 6–1–99; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 385

[Docket No. PL98–1–001]

Public Access to Information and Electronic Filing; Technical Conference

May 26, 1999.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of technical conference on electronic filing.

SUMMARY: The Federal Energy Regulatory Commission (Commission) notifies interested persons that the Commission Staff will conduct a technical conference for the purpose of discussing: the phasing plan and schedule for implementing electronic filings; the proposed policies and procedures for electronic filings; the changes to the Commission's regulations that will be required to accommodate electronic filing; a prototype for submitting certain electronic filings to the Commission; the profile of capabilities that the Commission plans to pilot by October 1, 1999; and other electronic filing-related issues of concern to those in attendance.

DATES: The conference will be held on Thursday, June 24, 1999, beginning at 9:30 a.m.

ADDRESSES: The technical conference will be held in the Commission Meeting Room at the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT:

Brooks Carter, Office of the Chief Information Officer, Federal Energy Regulatory Commission, 888 First Street, N.E., Room 42–29, Washington, D.C. 20426, (202) 501–8145, FAX: (202) 208–2425, E-Mail: brooks.carter@ferc.fed.us

Wilbur Miller, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, N.E., Room 91–17, Washington, D.C. 20426, (202) 208–0953

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, N.E., Room 2A, Washington, DC 20426.

The Commission Issuance Posting System (CIPS) provides access to the texts of formal documents issued by the Commission. CIPS can be accessed via Internet through FERC's Home Page (http://www.fed.us) using the CIPS link or the Energy Information Online icon. The full text of this document will be available on CIPS in ASCII and WordPerfect 6.1 format. User assistance is available at 202–208–2474 or by E-mail to CipsMaster@ferc.fed.us.

This document is also available through the Commission's Records and Information Management System (RIMS), an electronic storage and retrieval system of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed. RIMS is available in the Public Reference Room or remotely via Internet through FERC's Homepage using the RIMS link or the Energy Information Online icon. User assistance is available at 202–208–2222, or by E-mail to RimsMaster@ferc.fed.us.

Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, RVJ International, Inc. RVJ International, Inc., is located in the Public Reference Room at 888 First Street, N.E., Washington, DC 20436.

Technical Conference

Take notice that the Commission Staff (Staff) will convene a technical conference to discuss issues related to the Commission's Electronic Filing Initiative (EFI). The conference will be held on Thursday, June 24, 1999, and will commence at 9:30 a.m. in the

Commission Meeting Room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. The conference is open to all interested persons.

Staff is convening the conference to discuss: the phasing plan and schedule for implementing electronic filings; the proposed policies and procedures for electronic filing; the changes to the Commission's regulations that will be required to accommodate electronic filing; a prototype for submitting certain electronic filings to the Commission; the profile of capabilities that the Commission plans to pilot by October 1, 1999; and other electronic filing-related issues of concern to those in attendance.

The main conference discussion topics are attached to this notice. To facilitate discussion, Staff will post proposed electronic filing policies and procedures, and information on the other topics to be discussed, on the Commission's website (*www.ferc.fed.us*) in advance of the conference. Staff will publish a subsequent notice when the information is available. These proposals are based in part on comments received in response to a request for comments issued in Docket No. PL98–1–000 on May 13, 1998.[1]

We urge persons planning to attend the conference to review the materials in advance and be prepared to discuss them at the conference.

In order that we can develop a mailing list and contact persons interested in prototype testing, please contact Brooks Carter via e-mail (brooks.carter@ferc.fed.us), FAX (202–208–2425) or telephone (202–501–8145) and provide: your name, title, company, mailing address, the industry or industries you work with (natural gas, oil, electric, or hydropower), voice and FAX numbers, and your Internet e-mail address if you have one.

Although this is an informal technical conference, a court reporter will transcribe the proceedings and make a transcript available for interested parties.

The Capitol Connection offers all Open and special FERC meetings *live* over the Internet as well as via telephone and satellite. For a reasonable fee, you can receive these meetings in your office, at home or anywhere in the world. To find out more about The Capitol Connection's live Internet, phone bridge or satellite coverage, contact David Reininger or Julia Morelli at (703) 993–3100 or visit Capitol Connection's website at (*www.capitolconnection.gmu.edu*). The Capitol Connection also offers FERC Open Meetings through its Washington, D.C. area television service.

In addition, National Narrowcast Network's Hearing-On-The-Line service covers all FERC meetings live by telephone so that interested persons can listen at their desks, from their homes, or from any phone, without special equipment. Billing is based on time on-line. Call 202–966–2211.

Anyone interested in purchasing videotapes of the meeting should call VISCOM at (703–715–7999).

Linwood A. Watson, Jr.,

Acting Secretary.

Topics for Discussions at Electronic Filing Technical Conference June 24, 1999

Current Process for Electronic Filing Rulemaking Comments via e-mail

- Filing and processing issues
- Posting of comments

Description of ''FERC Doorway'': Discussion

- Conceptual Diagram
- Proposed Phases for Electronic Filing Implementation
- Profile of Interventions, Comments, and Protests to be Included in the October, 1999 pilot (Phase1)
- Y2K Docket Number format

Proposed Policies and Procedures (by Function)

Submit Function:
1. Filing Formats
2. Use of Interactive Forms for simple motions
3. Signature, User ID/Password, Certificate of Service
4. Citation rules to ensure consistent citation to submitted documents
5. Joint and Several Motions to Intervene
6. File retraction or correction

Receive Function:
1. Date/Time of Receipt and Filing Date
2. Session and File Control numbers
3. Docketing and Docket No. Validation
4. Acknowledgment of Receipt
5. System availability/delays

Inspect Function:
1. Virus scan
2. Check for completeness and file integrity

Return Function (if filng is not accepted):
1. Notification with reason (*e.g.*, virus, corruption)
2. Resubmission procedures /Impact on Filing Date

Document Management Function:
1. File Conversion Issues
2. Load Databases (Service List, Docket Sheet, RIMS Index, Daily Filings List, CIPS)

Prototype: Screens for Phase 1 Filings

(Motions to Intervene, Comments, and Protests)

[FR Doc. 99–13898 Filed 6–1–99; 8:45 am]

BILLING CODE 6717–01–M

[1] The comments are available on the Commission's website through the Records and Information Management System (RIMS) link. A summary of the comments and additional materials from conference on electronic filing held on October 22, 1998, are also available on the Commission's website via the ''Rulemaking Comments'' link on the main page.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[RI–39–6989b; A–1–FRL–6346–4]

Approval and Promulgation of Air Quality Implementation Plans; Rhode Island; Amendments to Air Pollution Control Regulation Number 9

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Rhode Island. This revision amends Rhode Island's Air Pollution Control Regulation No. 9, ''Air Pollution Control Permits'' which govern pre-construction permitting for new and modified sources of air pollution. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this proposal. Any parties interested in commenting on this proposal should do so at this time.

DATES: Comments must be received on or before July 2, 1999.

ADDRESSES: Comments may be mailed to Susan Studlien, Deputy Director, Office of Ecosystem Protection, U.S. Environmental Protection Agency,

Region I, One Congress Street, Suite 1100 (CAA), Boston, MA 02114–2023. Region 1's technical support documents are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA and Division of Air and Hazardous Materials, Department of Environmental Management, 291 Promenade Street, Providence, RI 02908–5767.

FOR FURTHER INFORMATION CONTACT: Ian D. Cohen, (617) 918–1655.

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

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

Dated: May 6, 1999.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 99–13029 Filed 6–1–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MA–67–7202b; A–1–FRL–6346–7]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts and Rhode Island; Nitrogen Oxides Budget and Allowance Trading Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the States of Rhode Island (RI) and Massachusetts (MA). The revisions consists of adding a regulation entitled, ''Nitrogen Oxides Allowance Program,'' and a consent agreement to the RI SIP and a regulation entitled, ''NO_X Allowance Program,'' to the MA SIP. The consent agreement in Rhode Island establishes alternative NO_X reasonably available control technology (RACT) requirements for four boilers. The RI and MA regulations are part of a regional nitrogen oxides (NO_X) emissions cap and allowance trading program designed to reduce stationary source NO_X emissions during the ozone season in the Ozone Transport Region (OTR) of the northeastern United States. These SIP revisions were submitted pursuant to section 110 of the Clean Air Act (CAA).

In the Final Rules section of this **Federal Register**, EPA is approving the States' SIP submittals as direct final rules without prior proposal because the Agency views these as noncontroversial revisions and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to these actions, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before July 2, 1999.

ADDRESSES: Comments may be mailed to Susan Studlien, Deputy Director, Office of Ecosystem Protection (mail code CAA), U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Boston, MA 02114–2023. Copies of the State submittals and EPA's technical support documents are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA, at the Division of Air and Hazardous Materials, Rhode Island Department of Environmental Management, 291 Promenade Street, Providence, RI 02908–5767, and at the Massachusetts Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Steven Rapp, (617) 918–1048 or at Rapp.Steve@EPAMAIL.EPA.GOV.

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

Dated: May 6, 1999.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 99–13027 Filed 6–1–99; 8:45 am]

BILLING CODE 6560–50–U

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–99–5737]

Federal Motor Vehicle Safety Standards

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petition for rulemaking.

SUMMARY: In this document, we deny a petition for rulemaking submitted by Marie E. Birnbaum, a private individual. The petitioner asked us to initiate rulemaking to require passenger cars and light trucks to be equipped with ''black boxes'' (data recorders) analogous to those found on commercial airliners. We agree with the petitioner that the recording of crash data can provide information that is very valuable in understanding crashes, and which can be used in a variety of ways to improve motor vehicle safety. However, we are denying the petition because the motor vehicle industry is already voluntarily moving in the direction recommended by the petitioner. Further, we believe this area presents some issues that are, at least for the present time, best addressed in a non-regulatory context.

FOR FURTHER INFORMATION CONTACT:

For non-legal issues: Mr. Clarke Harper, Chief, Light Duty Vehicle Division, NPS–11, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. Telephone: (202) 366–2264. Fax: (202) 366–4329.

For legal issues: J. Edward Glancy, Office of Chief Counsel, NCC–20, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. Telephone: (202) 366–2992. Fax: (202) 366–3820.

SUPPLEMENTARY INFORMATION: We received a petition for rulemaking from Marie E. Birnbaum, a private individual, asking us to initiate rulemaking to require passenger cars and light trucks to be equipped with ''black boxes'' (data recorders) analogous to those found on commercial airliners. The petitioner stated that the purpose of the devices would be to record speed and possibly other data in order to (1) improve public safety by encouraging responsible driving, and (2) provide records of pre-crash speed and possibly other information. Ms. Birnbaum stated that this pre-crash information would work to improve driver accountability

through better crash investigation, enforcement and adjudication.

We note that we received Ms. Birnbaum's petition just after we had denied another petition making essentially the same request. Price T. Bingham, a private individual, had asked us to initiate rulemaking to require air bag sensors to be designed so that similar information is recorded during a crash and can be read by crash investigators.

In responding to Mr. Bingham's petition, we noted that the safety community in recent years has shown considerable interest in the concept of crash event recorders. Such recorders can, in conjunction with air bag and other sensors already provided on many vehicles, collect and record a variety of relevant crash data. These data include such things as vehicle speed, belt use, and crash pulse.

While we agreed with Mr. Bingham that the recording of crash data can provide information that is very valuable in understanding crashes, and which can be used in a variety of ways to improve motor vehicle safety, we nonethless denied the petition. One reason for denying the petition was the fact that the motor vehicle industry is already voluntarily moving in the direction recommended by the petitioner. Another was our belief that this area presents some issues that are, at least for the present time, best addressed in a non-regulatory context.

We issued our denial of Mr. Bingham's petition on November 3, 1998, and published it in the November 9, 1998 edition of the **Federal Register** (63 FR 60270). Ms. Birnbaum's petition was dated November 7, 1998.

After reviewing Ms. Birnbaum's petition, we conclude that our reasons for denying Mr. Bingham's petition are also applicable to her petition. A full explanation of those reasons is provided in our November 9, 1998 **Federal Register** notice, which we incorporate by reference.

The November 1998 notice included a discussion of ongoing work in this area by NHTSA's Motor Vehicle Safety Research Advisory Committee (MVSRAC). The agency noted that MVSRAC had set up a working group on event data recorders under the Crashworthiness Subcommittee and that the first meeting of the working group had taken place in October 1998. Since publication of the November 1998 notice, another working group meeting has been held, and a third meeting is planned for this summer. The Event Data Recorder Working Group is considering a wide variety of subjects related to crash event recording devices and anticipates producing a report by the end of calendar year 2000.

Minutes of the Event Data Recorder Working Group meetings are being placed in the public docket. The public may access these materials via the Web. The Docket Management Web site is at ''*http://dms.dot.gov*''. You should search for Docket number 5218.

For the reasons discussed above, we are denying Ms. Birnbaum's petition for rulemaking.

Authority: 49 U.S.C. 30162; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: May 27, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99–13895 Filed 6–1–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–98–4422]

RIN 2127–AE22

Federal Motor Vehicle Safety Standards; Seat Belt Assembly Anchorages

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Withdrawal of proposed rulemaking.

SUMMARY: This notice withdraws a proposed rulemaking action to amend Federal motor vehicle safety standard No. 210 Seat Belt Assembly Anchorages. The proposed amendment would require that the lap belt angle for rear adjustable seats be measured in the rearmost adjustment position. However, the agency has determined that the proposed amendment may reduce vehicle safety and affect some front adjustable anchorage locations.

FOR FURTHER INFORMATION CONTACT: For technical information: Mr. John Lee, Office of Crashworthiness, NPS–11, Telephone (202) 366–2264. FAX number (202) 493–2739, Mr. Lee's e-mail address is: jlee@nhtsa.dot.gov.

For legal information: Mr. Otto Matheke, Office of Chief Counsel, NHTSA, (202) 366-5263 Fax number (202) 366–3820.

Both may be reached at: National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Federal motor vehicle safety standard (Standard) No. 210 Seat Belt Assembly Anchorages specifies performance requirements for safety belt anchorages to ensure their proper location for effective occupant protection and to reduce the likelihood of the anchorages' failure in a crash. The requirements of the standard apply to passenger cars, trucks, buses and multipurpose passenger vehicles (MPVs). The standard sets zones within the vehicle where the anchorage must be located. The anchorage for a lap belt or the lap portion of a lap/shoulder belt is required to meet a minimum and maximum mounting angle. The standard also sets minimum strength requirements.

On December 4, 1991, NHTSA published a notice of proposed rulemaking (NPRM) to amend the lap belt angle measurement procedure for adjustable rear seats of Standard No. 210. The current procedure measures the angle from the seat aligned with the seating reference point. The proposed procedure measured the lap belt angle with the seat in the rearmost adjustable position. The intent of the amendment was to establish a more easily identified seat position for measuring the lap belt angle of the moveable rearward seats. The agency believed the seating reference point may not have been an adequate reference point for these rearward moveable seats.

The agency received five comments to the NPRM. All were opposed to the proposal as written. One commenter, Ford Motor Company (Ford), stated, ''* * * the proposal may reduce vehicle safety, by requiring that anchorages be located in positions that produce a flatter lap belt angle than is ideal when the seat is adjusted to a forward adjustment position. Ford suggest that anchorages for rear adjustable seats be located from the hip point of the template when the seat is in the middle of its adjustment range.'' Ford also stated, ''* * * an 18 month leadtime would be insufficient if anchorages were to be relocated as proposed.''

Ford, Chrysler, Toyota and GM were concerned about the proposed wording of S4.3.1.1(b) in which ''* * * a line 2.5 inches forward of and 0.375 inches above the seating reference point * * *'' is replaced by ''* * * a line from the seating reference point to the contact point of the belt with the anchorage * * *'' would be a substantial rulemaking. The change could affect the dummy kinematics during Standard No. 208 testing as well as the anchorage location at front adjustable seats, not just the rear adjustable seats. Chrysler stated, ''As

written, the amendment would substantially change the anchorage location requirements for lap belts or the lap portion of the lap/shoulder belts at front adjustable seats, not just those at rear adjustable seats. Since the agency did not present an argument to support changing the location requirements for anchorages at front center seating positions, we conclude that the modification to the existing language to that end was inadvertent. In any event, we would not support such a change if it were proposed.'' GM stated, ''GM supports the agency's intent to clarify any ambiguity in the standard regarding adjustable rear seat positions, but can not support the actual proposal because of its effect on the front seating position requirements.''

Volkswagen of America, Inc. (Volkswagen) recommends that the proposed amendment be revised to change the words ''rearmost position'' to ''rearmost normal design driving or riding position as designated by the manufacturer.'' The reference to ''rearmost position'' could create difficulties with regard to special seats such as those in the rear seat of passenger cars or MPVs where a storage compartment or battery might be located under the seat and in which case the seat track is provided with special extended travel to permit access to such a compartment. Such a change would also make the wording of Standard No. 210 consistent with the definition of the seating reference point in § 571.3. VW stated that a lead time of 18 months after publication of the final rule is acceptable.

After reviewing the public comments, the agency has decided to withdraw this rulemaking. The intent of the proposed rulemaking was to clarify the lap belt angle measurement test procedure for rear adjustable seats by measuring the lap belt angle in the rearmost position. The agency did not intend to decrease vehicle safety. As pointed out by Ford, the NPRM could cause lower or flatter lap belt angles and could increase the likelihood of occupant submarining. The proposed amendment could also affect the front anchorage locations and the dummy kinematics during Standard No. 208 full barrier testing.

In conclusion, the proposed rulemaking could decrease vehicle safety and affect the front anchorage locations without providing any significant benefit. This was not the intent of this rulemaking and the agency is withdrawing this rulemaking action.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

Issued on: May 27, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99–13957 Filed 6–1–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 990525143–9143–01; I.D. 120197A]

RIN 0648–AM41

Designated Critical Habitat; Proposed Revision of Critical Habitat for Snake River Spring/Summer Chinook Salmon

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to revise critical habitat for Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*), pursuant to the Endangered Species Act (ESA) of 1973. After a review of the best available scientific information, NMFS concludes that Napias Creek Falls constitutes a naturally impassable migrational barrier for Snake River spring/summer chinook salmon. Therefore, NMFS proposes to exclude areas above Napias Creek Falls from designated critical habitat because such areas are outside the species' current and historic range.

DATES: Comments must be received by August 2, 1999. Requests for additional public hearings must be received by July 19, 1999.

ADDRESSES: Requests for information concerning this action should be submitted to Chief, Protected Resources Division, NMFS, 525 NE Oregon Street, Suite 500, Portland, OR 97232.

FOR FURTHER INFORMATION CONTACT: Garth Griffin, Protected Resources Division, Northwest Region, (503) 231–2005 or Chris Mobley, Office of Protected Resources, (301) 713–1401.

SUPPLEMENTARY INFORMATION:

Background

On June 27, 1991, NMFS proposed the listing of Snake River spring/summer chinook salmon as a threatened species under the ESA (56 FR 29542). The final determination listing Snake River spring/summer chinook salmon as a threatened species was published on April 22, 1992 (57 FR 14653), and corrected on June 3, 1992 (57 FR 23458). Critical habitat was designated on December 28, 1993 (58 FR 68543). In that document, NMFS designated all river reaches presently or historically accessible to listed spring/summer chinook salmon (except river reaches above impassable natural falls, and Dworshak and Hells Canyon Dams) in various hydrologic units as critical habitat (58 FR 68543). Napias Creek, the area in question, occurs within one of these designated hydrologic units (Middle Salmon-Panther, USGS Hydrologic Unit 17060203).

On January 6, 1997, the Secretary of Commerce (Secretary) received a petition from Meridian Gold Company (Meridian) to revise critical habitat for Snake River spring/summer chinook salmon in Napias Creek, a tributary to Panther Creek which flows into the Salmon River in central Idaho. In accordance with section 4(b)(3)(D) of the ESA, NMFS issued a determination on April 28, 1997, that the petition presented substantial scientific information indicating that a revision may be warranted (62 FR 22903). In that document, NMFS solicited information and comments from interested parties concerning the petitioned action.

On September 16, 1997, Meridian submitted additional information in support of its petition. Specifically, Meridian submitted three new reports entitled: (1) ''Ability of Salmon and Steelhead to Pass Napias Creek Falls''; (2) ''Investigation of Physical Conditions at Napias Creek Falls''; and (3) ''Historical and Ethnographic Analysis of Salmon Presence in the Leesburg Basin, Lemhi County, Idaho.'' This new information was added to the administrative record and was considered by NMFS in its 12-month determination published on January 30, 1998 (63 FR 4615).

On January 30, 1998, NMFS determined the petitioned action was not warranted since available information indicated the falls was likely passable to chinook salmon at some flows and that the presence of relict indicator species indicated historical usage by anadromous species (63 FR 4615). NMFS also concluded that habitat above Napias Creek Falls contained unique features that may aid in the conservation and recovery of listed salmonid species (63 FR 4615). However, NMFS did not address the question of whether or not habitat above the falls was essential for recovery of the species since it concluded that the area was within the species' current range (63 FR 4615; see also 50 CFR 424.12(e) which states that areas outside of the

species' current range shall be designated only when the species' current range is inadequate for conservation purposes).

Subsequent to NMFS' January 30, 1998, determination, Meridian submitted a ''petition for reconsideration,'' providing additional data and analyses concerning the likelihood that Napias Creek Falls constitutes a naturally impassable barrier to anadromous salmonid migration (Meridian 1998a, 1998b; Chapman 1998). While NMFS' ESA implementing regulations do not provide a process for reconsidering findings on petitions, NMFS nonetheless agreed in a letter dated July 31, 1998, to consider Meridian's new information and provide Meridian with a written determination regarding its findings (NMFS, 1998a; Meridian, 1998d). On October 30, 1998, NMFS staff met with Meridian representatives to discuss the new technical information and its interpretations (NMFS, 1998b).

On December 29, 1998, Meridian expressed its desire to withdraw its ''petition for reconsideration'' stating that it interpreted NMFS' continuing treatment of the area as critical habitat as a denial of its petition (Meridian, 1998c). However, at the time of that letter, NMFS had not yet reached a conclusion regarding the additional information submitted by Meridian, nor had NMFS provided Meridian with a written determination on the matter as it had committed to do in its July 31, 1998, letter (NMFS, 1998a).

While Meridian now seeks to withdraw its additional information concerning Napias Creek Falls, NMFS concludes this information is part of the best scientific information available regarding whether this area constitutes critical habitat for the species. Therefore, in accordance with section 4(b)(1)(A) of the ESA, NMFS bases the conclusions in this proposal on Meridian's new information. NMFS likewise considered this information in its recent proposed rule to designate critical habitat for Snake River steelhead (64 FR 5740, February 5, 1999).

Definition of Critical Habitat

Critical habitat is defined in section 3(5)(A) of the ESA as ''(i) the specific areas within the geographical area occupied by the species * * * on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species * * * upon a determination by the Secretary of Commerce (Secretary) that such areas are essential for the conservation of the species'' (see 16 U.S.C. 1532(5)(A)). The term ''conservation,'' as defined in section 3(3) of the ESA, means '' * * * to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary'' (see 16 U.S.C. 1532(3)).

Defining specific river reaches that constitute critical habitat for chinook salmon, and anadromous fish species in general, is difficult to do because of NMFS' imperfect understanding of the species' freshwater distribution, both current and historical, and the lack of comprehensive sampling efforts dedicated to monitoring these species. Given this scientific uncertainty, NMFS' approach to designating critical habitat for chinook salmon is to designate all areas currently and historically accessible to the species within the range of the ESU. NMFS believes this inclusive approach to designating critical habitat is appropriate because it: (1) recognizes the species' extensive use of diverse habitats and underscores the need to account for all of the habitat types supporting the species' juvenile and adult freshwater and estuarine life stages; and (2) takes into account the natural variability in the species' habitat use; and (3) recognizes data limitations and scientific uncertainty that exist concerning the distribution and habitat usage of the listed species.

Process for Defining Critical Habitat

Developing a proposed critical habitat designation involves three main considerations. First, the biological needs of the species are evaluated, and essential habitat areas and features are identified. Second, the need for special management considerations or protection of the area(s) or features identified are evaluated. Finally, the probable economic and other impacts of designating these essential areas as ''critical habitat'' are evaluated. After considering the requirements of the species, the need for special management, and the impacts of the designation, a notification of the proposed critical habitat is published in the **Federal Register** for comment. The final critical habitat designation, considering comments on the proposal and impacts assessment, is typically published within 1 year of the proposed rule. Final critical habitat designations may be revised as new information becomes available.

At this time, new information exists that indicates a revision in NMFS' final critical habitat designation is warranted. A discussion of this information follows.

Analysis of Available Information

Two lines of evidence indicate that areas above Napias Creek Falls do not constitute critical habitat for the listed species. This evidence includes: (1) current passage conditions at the falls; and (2) surveys of current and historic salmonid presence above the falls.

Current Passage Conditions at Napias Creek Falls

On September 16, 1997, Meridian submitted the results of several studies conducted to determine the ability of chinook salmon to migrate above Napias Creek Falls. One study evaluated the geomorphology of the falls, while another study assessed the potential for fish passage using the methods of Powers and Orsborn as described in ''Analysis of Barriers to Upstream Fish Migration'' (Bonneville Power Administration, 1984). A third study entitled ''Ability of Salmon and Steelhead to Pass Napias Creek Falls'' analyzed information and conclusions of the preceding two studies and concluded that ''Napias Creek Falls is an absolute barrier to upstream migration of salmon and steelhead in Napias Creek'' (Meridian, 1997). NMFS analyzed Meridian's studies which indicated that the falls was a historic barrier to chinook salmon passage in the January 30, 1998, determination (63 FR 4615, 4617). NMFS also conducted its own passage assessment of Napias Creek Falls.

On May 29, 1998, and dates thereafter, Meridian commented on NMFS' passage assessment and provided additional explanation of its own prior analyses (Meridian 1998a, 1998b; Chapman 1998). NMFS analyzed these comments in a memo entitled ''Analysis of Meridian Gold Company's May 29, 1998, Submittal Concerning Chinook Salmon Passage Conditions at Napias Creek Falls'' (NMFS 1998c). In this memo, NMFS concluded that while Meridian's May 29, 1998, submittal provides additional information regarding the passage issue at Napias Creek Falls, such information does not change NMFS' original conclusion reached in its November 21, 1997, analysis (NMFS, 1997). Specifically, NMFS concluded that Napias Creek Falls is likely passable to listed chinook salmon under certain flow conditions (NMFS, 1998c).

However, NMFS recognizes that it is difficult to determine whether the falls

constitutes an ''effective'' migrational barrier to the species, thus, precluding the species from colonizing areas above the falls (see NMFS, 1999). NMFS believes that current and historic usage information is informative on the question of whether or not the falls constitutes an effective migrational barrier for the species. From such information, one can infer whether Napias Creek Falls effectively constitutes a migrational barrier for the species and, therefore, is outside the species' current and historic range.

Surveys of Current and Historic Salmonid Presence

Meridian conducted two studies to determine if, historically, chinook salmon were observed above Napias Creek Falls. The first study reviewed historical accounts of chinook salmon occurring above Napias Creek Falls (Meridian, 1997a). Meridian states that reviews of historical and independent ethnographic research document that salmon or steelhead were not observed or caught above Napias Creek Falls and, therefore, the fish were not historically present in this area. A second study reviews the genesis of Napias Creek Falls and concludes that the falls are a natural feature and not the result of development activities near the area (Meridian, 1997b).

Meridian's studies and the opinions of Federal and state resource agencies (i.e., U.S. Forest Service (USFS), and Idaho Department of Fish and Game (IDFG)) indicate that areas above Napias Creek Falls are outside the range of listed chinook salmon and do not constitute critical habitat for the species (USFS, 1996; IDFG undated); however, this conclusion is in conflict with comments from a USFS fishery biologist. In a report dated February 8, 1996, Bruce Smith, Salmon and Challis National Forest Fisheries Biologist, concludes that Napias Creek historically contained chinook salmon (Smith, 1996a). Smith also states that areas above Napias Creek Falls currently contain relict indicator species (Smith, 1996a), indicating pre-historic accessibility of this area to anadromous salmonid species (Smith, 1996b).

In its January 30, 1998, determination, NMFS found Smith's analysis persuasive on the question of the historical presence of chinook salmon above Napias Creek Falls primarily based on Smith's identification of relict indicator species above the falls (63 FR 4615; 4617). However, Meridian points out in their recently submitted study that while relict indicator species such as rainbow trout and bull trout occur above the falls, other native species (e.g., mountain whitefish, westslope cutthroat trout, scuplins, and dace) do not presently occur above the falls, indicating that salmonids in the area may have been the result of hatchery plantings or other introductions (Chapman, 1998). This explanation is supported by the presence of other nonnative fish species above the falls (i.e., brook trout), and the history of stocking activities in Napias Creek (Smith, 1996a).

Interpretation of Available Scientific Data

While NMFS concludes that Napias Creek Falls is most likely passable to chinook salmon at certain flows, it is difficult to predict the likelihood that this species would colonize areas above the falls if present in sufficient numbers in Napias Creek. The presence of relict indicator species (e.g., rainbow trout) above the falls suggests historic usage by anadromous species; however, the origin of these indicator species is uncertain. The presence of nonnative species and the absence of other common native species suggest that such indicator species may be the result of hatchery plantings or other introductions. Historical records of hatchery plantings by IDFG support this conclusion. Furthermore, historical surveys indicate that in recent history (since the 1930s), chinook salmon have not occurred above the falls, supporting the conclusion that the falls effectively constitutes a migrational barrier for the species.

After reconsidering its prior analysis in light of new information provided by Meridian, NMFS concludes that the best available scientific information indicates that habitat above Napias Creek Falls is outside the current range of listed spring/summer chinook salmon and, therefore, does not constitute critical habitat for the species. This conclusion is supported by NMFS' assessment of available scientific data and the independent opinions of other Federal and state resource agencies (USFS, 1996; IDFG, undated). The apparent lack of historic usage of this area by chinook salmon also indicates that this area is not essential for conservation of the species. This conclusion is consistent with NMFS' previous spring/summer chinook salmon critical habitat finding that the species' current range is likely adequate for conservation purposes (See 58 FR 68543, Final Designation of Critical Habitat for Snake River Spring/Summer Chinook Salmon).

NMFS recognizes that scientific uncertainty remains regarding its conclusion that areas above Napias Creek Falls do not constitute critical habitat for listed spring/summer chinook salmon. Specifically, uncertainty remains regarding whether chinook salmon could establish a naturally reproducing population above the falls if they were present in sufficient numbers in Napias Creek, or if chinook salmon historically inhabited areas above Napias Creek Falls. To resolve remaining uncertainties, NMFS requests comments and information regarding its proposed determination (See Public Comments Solicited).

Even though scientific uncertainty remains regarding NMFS' conclusion, chinook salmon do not now occur in Napias Creek and, therefore, habitat above the falls would not likely be used by the species in the near-term even if it were accessible. Therefore, if this proposal is finalized, the long-term risk of harm to the species is lessened by the fact that NMFS may revise its determination in the future if additional information indicates that areas above Napias Creek Falls constitute critical habitat for the species.

While NMFS concludes that areas above Napias Creek Falls do not constitute critical habitat for chinook salmon, NMFS believes that Napias Creek constitutes an important source of dilution water within the Panther Creek system (63 FR 4615 and 4618, January 30, 1998). Any degradation of dilution flows from Napias Creek would likely hinder efforts to reestablish anadromous species in Panther Creek (63 FR 4615 and 4618, January 30, 1998). Consequently, NMFS intends to carefully evaluate any proposed impacts on Napias Creek water quality to ensure that the survival and recovery of listed species are not jeopardized.

Expected Economic Impacts

Section 4(b)(2) of the ESA requires NMFS to consider the economic impact of specifying any particular areas as critical habitat. However, section 4(b)(1)(A) of the ESA prohibits NMFS from considering economic impacts associated with species listings. Consequently, when designating critical habitat, NMFS considers only the incremental economic impacts associated with the designation above the economic impacts attributable to the listing of the species or authorities other than the ESA. Incremental impacts result from special management activities in those areas, if any, outside the present distribution of the listed species that NMFS has determined to be essential for the conservation of the species.

For this Evolutionarily Significant Unit (ESU), NMFS determines that the

present geographic extent of the species' freshwater and estuarine range is likely sufficient to provide for conservation of the species. Since NMFS believes that virtually all ''adverse modification'' determinations pertaining to critical habitat would also result in ''jeopardy'' conclusions under section 7 consultations of the ESA (i.e., as a result of the species being listed), the designation of critical habitat is not expected to result in significant incremental restrictions on Federal agency activities. Critical habitat designation will, therefore, result in few, if any, additional economic effects beyond those that may be attributable to the listing and other statutes.

The USFS and U.S. Army Corp of Engineers (COE) manage areas of critical habitat for this ESU, both as it is now designated and as proposed for revision. COE and other Federal agencies that may be involved with funding or permits for projects in critical habitat areas may also be affected by this designation. Since the proposed revision will result in eliminating areas above Napias Creek Falls from designated critical habitat, the impact of this action on these Federal agencies should be minimal.

Proposed Determination

After reconsidering its prior analysis and analyzing new information and analyses submitted by Meridian, NMFS concludes that Napias Creek Falls constitutes a naturally impassable migrational barrier for Snake River spring/summer chinook salmon and, therefore, is outside the species' range. While the falls may be passable to chinook salmon at certain flows, available historical evidence suggests that this species has not navigated this falls in the recent past, nor is it likely do so in the future. NMFS specifically requests data and analyses to address remaining scientific uncertainty associated with this conclusion (See Public Comments Solicited).

Public Comments Solicited

To ensure that NMFS' final determination is based on the best available scientific data as required by the ESA, NMFS solicits comments from the public, other governmental agencies, the scientific community, industry, and any other interested parties on the following issues: (1) The sufficiency of the evidence supporting NMFS' determination that Napias Creek Falls constitutes a naturally impassable migrational barrier for chinook salmon; (2) the existence of any evidence that may address the potential for fish passage above the falls, such as historic accounts indicating chinook salmon or other anadromous salmonids occurred above Napias Creek Falls, data or reports analyzing the likelihood that chinook salmon or other anadromous salmonids would migrate above Napias Creek Falls if present in Napias Creek, or information pertaining to the origin of rainbow trout or other residualized anadromous species above Napias Creek Falls (e.g., hatchery stocking records); and (3) other information indicating whether areas above Napias Creek Falls do or do not constitute critical habitat for the species. NMFS will analyze all comments and information received prior to issuing a final determination.

Public Hearings

Joint Department of Commerce and Interior ESA implementing regulations state that the Secretary shall promptly hold at least one public hearing if any person so requests within 45 days of publication of a proposed regulation to list species or to designate critical habitat (50 CFR 424.16(c)(3)). Requests for public hearings must be received by July 19, 1999.

References

A complete list of all references cited herein and maps describing the range of proposed Snake River spring/summer chinook salmon are available upon request (see **ADDRESSES**).

Classification

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS proposes to designate only the current range of this ESU as critical habitat. This current range encompasses a wide range of habitat, including tributary streams, as well as mainstem, off-channel and estuarine areas. Areas not included in this proposed redesignation include marine habitats in the Pacific Ocean and areas above impassable natural barriers (e.g., long-standing, natural waterfalls). NMFS concludes that the currently accessible areas within the species' range are the minimum habitat necessary to ensure the species' conservation and recovery. The proposed action would revise critical habitat for the listed ESU to realign critical habitat with the current range of the ESU. Having determined that Napias Creek Falls constitutes a naturally impassable barrier for Snake River spring/summer chinook, NMFS proposes to remove the habitat above the Falls from designated critical habitat.

Since NMFS is designating the current range of the listed species as critical habitat, this designation will not impose any additional requirements or economic effects upon small entities beyond those which may accrue from section 7 of the ESA. Section 7 requires Federal agencies to insure that any action they carry out, authorize, or fund is not likely to jeopardize the continued existence of any listed species or to result in the destruction or adverse modification of critical habitat (ESA section 7(a)(2)). The consultation requirements of section 7 are nondiscretionary and are effective at the time of species' listing. Therefore, Federal agencies must consult with NMFS and ensure their actions do not jeopardize a listed species, regardless of whether critical habitat is designated.

In the future, should NMFS determine that designation of habitat areas outside the species' current range is necessary for conservation and recovery, NMFS will analyze the incremental costs of that action and assess its potential impacts on small entities, as required by the Regulatory Flexibility Act. Until that time, a more detailed analysis would be premature and would not reflect the true economic impacts of the proposed action on small businesses, organizations, and governments.

Meridian owns and operates Beartrack Mine, which is adjacent to Upper Napias Creek (Napias Creek above the Falls), within the Salmon National Forest. NMFS is not aware of any other business operating in Upper Napias Creek whose operations might adversely modify potential salmon habitat. The proposed action would reduce the ESU's critical habitat, by eliminating Upper Napias Creek from critical habitat. To the extent that Meridian may be impacted by the current designation of Upper Napias Creek as critical habitat, the proposed reduction of critical habitat would lessen Meridian's economic burden, if any, from that impact.

Accordingly, the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed critical habitat designation, if adopted, would not have a significant economic impact on a substantial number of small entities, as described in the Regulatory Flexibility Act.

This proposed rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

NMFS has determined that Environmental Assessments or an Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared for this

critical habitat designation. See *Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied, 116 S. Ct. 698 (1996).

List of Subjects in 50 CFR Part 226

Endangered and threatened species, Incorporation by reference.

Dated: May 26, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 226 is proposed to be amended as follows:

PART 226—DESIGNATED CRITICAL HABITAT

1. The authority citation for part 226 continues to read as follows:

Authority: 16 U.S.C. 1533.

2. In § 226.205, paragraph (b) is revised to read as follows:

§ 226.205 Critical habitat for Snake River sockeye salmon, Snake River fall chinook salmon and Snake River spring/summer chinook salmon.

* * * * *

(b) *Snake River Spring/Summer Chinook Salmon (Oncorhynchus tshawytscha).* Geographic boundaries. Critical habitat is designated to include the Columbia River from a straight line connecting the west end of the Clatsop jetty (south jetty, Oregon side) and the west end of the Peacock jetty (north jetty, Washington side) and including all Columbia River estuarine areas and river reaches proceeding upstream to the confluence of the Columbia and Snake Rivers; all Snake River reaches from the confluence of the Columbia River upstream to Hells Canyon Dam. Critical habitat also includes river reaches presently or historically accessible (except reaches above impassable natural falls (including Napias Creek Falls), and Dworshak and Hells Canyon Dams) to Snake River spring/summer chinook salmon in the following hydrologic units: Hells Canyon, Imnaha, Lemhi, Little Salmon, Lower Grande Ronde, Lower Middle Fork Salmon, Lower Salmon, Lower Snake-Asotin, Lower Snake-Tucannon, Middle Salmon-Chamberlain, Middle Salmon-Panther, Pahsimeroi, South Fork Salmon, Upper Middle Fork Salmon, Upper Grande Ronde, Upper Salmon, Wallowa. Critical habitat borders on or passes through the following counties in Oregon: Baker, Clatsop, Columbia, Gillium, Hood River, Morrow, Multnomah, Sherman, Umatilla, Union, Wallowa, Wasco; the following counties in Washington: Asotin, Benton, Clark, Columbia, Cowlitz, Franklin, Garfield, Klickitat, Pacific, Skamania, Wahkiakum, Walla, Whitman; and the following counties in Idaho: Adams, Blaine, Custer, Idaho, Lemhi, Lewis, Nez Perce, Valley.

* * * * *

[FR Doc. 99–13958 Filed 6–1–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 990506120–9120–01; I.D. 020399A]

RIN 0648–AL80

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Catch Specifications

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

ACTION: Proposed rule, request for comments.

SUMMARY: In accordance with the framework procedure for adjusting management measures of the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP), NMFS proposes to increase the total allowable catch (TAC) for Atlantic group king mackerel; decrease TAC for Atlantic group Spanish mackerel; revise the commercial trip limits for Atlantic group king mackerel off North Carolina and the Mid-Atlantic states, and for Gulf group king mackerel off the Florida east coast; establish a trip limit for Gulf group king mackerel in the western zone; establish a bag limit of zero Gulf group king mackerel for captain and crew on for-hire vessels; increase the minimum size limit for Atlantic and Gulf group king mackerel; and, for Atlantic group Spanish mackerel, revise the allocation of TAC between the commercial and recreational sectors and establish an incidental catch allowance for vessels using gillnets with a mesh size less than 3.5 inches (8.9 cm). The intended effects of this rule are to protect king and Spanish mackerel from overfishing and maintain healthy stocks while still allowing catches by important commercial and recreational fisheries.

DATES: Written comments must be received on or before June 17, 1999.

ADDRESSES: Comments on the proposed rule must be sent to Mark Godcharles, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Requests for copies of the environmental assessment, social impact assessment/fishery impact statement, and regulatory impact review (RIR) supporting aspects of this action relating to Atlantic migratory groups of king and Spanish mackerel should be sent to the South Atlantic Fishery Management Council, Southpark Building, One Southpark Circle, Suite 306, Charleston, SC 29407–4699, PHONE: 843–571–4366, FAX: 843–769–4520. Requests for comparable documents relating to Gulf group king mackerel should be sent to the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway North, Suite 1000, Tampa, FL, 33619–2266, PHONE: 813–228–2815, FAX: 813-225-7015.

FOR FURTHER INFORMATION CONTACT: Mark Godcharles, 727–570–5305.

SUPPLEMENTARY INFORMATION: The fisheries for coastal migratory pelagic resources are regulated under the FMP. The FMP was prepared jointly by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented by regulations at 50 CFR part 622.

In accordance with the framework procedures of the FMP, the Councils made recommendations in separate regulatory amendments to the Regional Administrator, Southeast Region, NMFS (RA). The recommended changes are within the scope of the management measures that may be adjusted under the framework procedure, as specified in 50 CFR 622.48.

Proposed TACs, Allocations, and Quotas

The South Atlantic Council recommended that TACs be effective immediately for the fishing year in which they are implemented for the Atlantic groups of king and Spanish mackerel. The South Atlantic Council recommended an increase in the annual TAC for Atlantic group king mackerel from 6.80 million lb (3.08 million kg) to 8.40 million lb (3.81 million kg).

For Atlantic group Spanish mackerel, the South Atlantic Council recommended a decrease in the annual TAC from 8.00 million lb (3.63 million kg) to 6.60 million lb (2.99 million kg) and recommended that the current 50/50 allocation of TAC between commercial and recreational sectors be changed to 55 percent commercial and 45 percent recreational. The recreational fishery has consistently failed to reach

its allocation, and the increased allocation of TAC to the commercial sector would allow harvest near levels landed last season.

Consistent with the FMP's framework procedure, these recommended TAC changes are within the range of the acceptable biological catch established by the Councils and represent a conservative approach supported by their Scientific and Statistical Committees and Mackerel Advisory Panels. These TACs are consistent with current stock rebuilding programs and with the attainment of optimum yield (OY) for Atlantic group king and Spanish mackerel as provided by the FMP. The resulting quotas and allocations would be higher than recent harvest levels; consequently, no early or unexpected fishery closures or quota/allocation overruns would be likely.

Under the provisions of the FMP, the recreational and commercial fisheries are allocated a fixed percentage of the TAC. Under the established percentages for Atlantic group king mackerel and the revised percentages specified for Atlantic group Spanish mackerel in this proposed rule, the TACs for the Atlantic groups of king and Spanish mackerel would be allocated as follows:

Species/Migratory Group	m. lb.	m. kg
Atlantic Group King Mackerel - TAC	8.40	3.81
Recreational allocation (62.9%)	5.28	2.40
Commercial quota (37.1%)	3.12	1.42
Atlantic Group Spanish Mackerel - TAC	6.60	2.99
Recreational allocation (45%)	2.97	1.35
Commercial quota (55%)	3.63	1.65

Atlantic Group Spanish Mackerel: Commercial Vessel Trip Limits and Incidental Catch Allowance

The commercial sector of the Atlantic group Spanish mackerel fishery is managed under trip limits. In the southern zone (i.e., south of a line extending directly east from the Georgia/Florida boundary), the trip limits vary depending on the percentage of the adjusted quota landed. The adjusted quota is the commercial quota reduced by an amount calculated to allow continued harvest of Atlantic group Spanish mackerel at the rate of 500 lb (227 kg) per vessel per day for the remainder of the fishing year after the adjusted quota is reached. Along with the reduced commercial quota, the South Atlantic Council recommended that the adjusted quota be decreased from 3.75 million lb (1.70 million kg) to 3.38 million lb (1.53 million kg).

The South Atlantic Council also recommended an allowance for vessels operating in the South Atlantic or Mid-Atlantic exclusive economic zone (EEZ) to possess on board, and land in a day, up to 500 lb (227 kg) of Spanish mackerel incidentally caught in a gillnet having a mesh size less than 3.5 inches (8.9 cm), stretched mesh. The South Atlantic Council determined that such an adjustment of the regulations would be necessary to preclude discard and waste of Spanish mackerel incidentally taken in prohibited gear, maintain the multi-species nature of the South and Mid-Atlantic gillnet fisheries, and minimize the negative socioeconomic impacts on fishermen involved in these fisheries. The proposed incidental catch allowance would continue the long-time practice of possessing and landing Spanish mackerel incidentally captured in inshore and nearshore gillnet fisheries.

Gulf Group King Mackerel: Commercial Vessel Trip Limits and Recreational Bag Limits

The Gulf Council proposed a 3,000–lb (1,361–kg) commercial trip limit for Gulf group king mackerel in the western zone off Texas, Louisiana, Mississippi, and Alabama. The Council believes that the trip limit would increase the socioeconomic benefits of the available quota, reduce the intensity of derby fishing, increase vessel safety, and reduce the risks of overfishing king mackerel and other stocks that might be targeted after closure of the king mackerel fishery. The Council believes that the trip limit would prevent market gluts and would stabilize the exvessel value of king mackerel at a higher level throughout a longer harvest season. Limiting landings per trip, and shortening trip length should result in a higher quality, more valuable product.

The South Atlantic Council proposed to increase the commercial trip limit for Gulf group king mackerel in the eastern zone, Florida east coast subzone, from 50 to 75 fish per day to optimize the opportunity for fishermen to achieve the quota while preventing early season closure. The Councils concluded that the 50–fish trip limit was too low and would lead to underutilization of the quota.

The Gulf Council recommended that the daily bag limit for Gulf group king mackerel be reduced to zero fish for the captain and crew on for-hire vessels. The Gulf Council determined that the zero-fish bag limit for captain and crew on for-hire vessels would be necessary to reduce harvest and prevent overrun of the recreational allocation and TAC. Representatives of the for-hire industry have indicated that the sale of king mackerel taken under the recreational bag limit represents important income to their businesses.

Atlantic Group King Mackerel: Commercial Vessel Trip Limits

The South Atlantic Council proposed to reduce the commercial trip limit for Atlantic group king mackerel off North Carolina and the Mid-Atlantic states from 3,500 lb (1,588 kg) to 2,000 lb (907 kg) per day. Further, the trip limit would reduce to 1,000 lb (454 kg) per day if 80 percent of the quota is taken before February 1. In response to fishermen's requests, the South Atlantic Council has proposed this revision to prevent early closure of the fishery and preserve a portion of the quota for the Lenten market that usually provides premium market value, an important source of annual income.

Atlantic Group and Gulf Group King Mackerel: Minimum Size Limits

The Gulf and South Atlantic Councils proposed to increase the minimum size limit for Gulf group and Atlantic group king mackerel from 20 to 24 inches (50.8 to 60.1 cm). Besides reducing harvest of immature fish, the increased minimum size limit would decrease recreational harvest and prevent overrun of the recreational allocation and TAC.

The RA initially concurs that the Council's recommendations are necessary to protect the king and Spanish mackerel stocks and prevent overfishing and that they are consistent with the FMP, the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable law. Accordingly, the Councils' recommended changes are published for comment.

Classification

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

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. The determination based on the RIR - Threshold Analyses, is summarized below. Copies of these analyses are available (see **ADDRESSES**).

There are 3,819 commercial fishing and for-hire small business entities that have permits to harvest coastal migratory species

and more than 20 percent of these are expected to be impacted to some degree, but not to a significant degree. A Gulf Council proposal for a zero bag limit of Gulf group king mackerel for the captain and crew of for-hire businesses will have an effect in the Florida Keys because some for-hire entities sell fish caught under the bag limit, but will have very minor effects in other areas. The maximum effect would be to decrease annual gross revenues by 2.6 to 4.3 percent and that would occur only if all the sales of fish were attributed to king mackerel. Both Councils propose to increase the minimum size limit for king mackerel from 20 to 24 inches (51 to 61 cm) fork length (FL). The RIR findings were that most commercial catches are composed of fish that exceed 24 inches FL and the effects are expected to be negligible. The effect on for-hire operations would be a reduction of 10 percent in the recreational catch of king mackerel by their clients, but there are a number of substitute species, and the overall effect is expected to be small. A Gulf Council proposal for a trip limit of 3,000 lb (1361 kg) of king mackerel for fishermen in the Gulf western zone would not create a revenue impact because the commercial quota would be taken with or without the trip limit.

A South Atlantic Council proposal to increase TAC for Atlantic group king mackerel from 6.8 to 8.4 million lb (3.1 to 3.8 million kg) may have no effect because the current quota may not be met, but could provide for an annual revenue gain of $496,000 if all the increased quota is taken. The proposal to change the king mackerel trip limit for the North Carolina/Mid-Atlantic area from 3,500 to 2,000 lb (1,586 to 907 kg) per day, however, has a maximum estimated decrease in annual revenue of $57,000 for the fishermen in that area.

The South Atlantic Council proposal to decrease TAC for Atlantic group Spanish mackerel from 8.0 to 6.6 million lb (3.6 to 3.0 million kg) and to change the allocation of TAC to 55 percent commercial and 45 percent recreational is expected to result in an annual revenue loss of $174,000, if fishing and market conditions and implementation of the proposed 3.63 million-lb (1.65 million-kg) quota would restrain commercial harvest below the existing 4.0 million-lb (1.8 million-kg) quota level. Offsetting this potential loss in sales is a gain in revenues that would result from the proposal to allow a 500–lb (227–kg) take of Atlantic group Spanish mackerel incidentally captured in gillnets constructed of webbing less than the required minimum stretched mesh size of 3.5 inches (8.9 cm).

None of the proposals described here would result in increased compliance costs of reporting or record keeping, and there would be no differential large business versus small business impacts because the entire population is composed of small businesses. Additionally, the proposals would not create new capital costs, and no businesses would be expected to cease operations if the proposals are implemented.

None of the proposals are expected to affect changes in revenue that would result in a negative effect of greater than 5 percent on gross revenues for the identified small businesses. Accordingly, the results of the threshold analyses lead to a determination that the criteria for a significant impact on a substantial number of firms are not met, and an IRFA was not prepared.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: May 26, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

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

2. In § 622.37, paragraph (c)(2) is revised to read as follows:

§ 622.37 Minimum sizes.

* * * * *

(c) * * *

(2) King mackerel in the Gulf, South Atlantic, or Mid-Atlantic—24 inches (61.0 cm), fork length, except that a vessel fishing under a quota for king mackerel specified in § 622.42(c)(1) may possess undersized king mackerel in quantities not exceeding 5 percent, by weight, of the king mackerel on board.

* * * * *

3. In § 622.39, paragraph (c)(1)(ii) is revised to read as follows:

§ 622.39 Bag and possession limits.

* * * * *

(c) * * *

(1) * * *

(ii) Gulf migratory group king mackerel—2, except that for an operator or crew member of a charter vessel or headboat, the bag limit is 0.

* * * * *

4. In § 622.41, paragraph (c)(3)(ii)(A) is revised to read as follows:

§ 622.41 Species specific limitations.

* * * * *

(c) * * *

(3) * * *

(ii) * * * (A) The minimum allowable mesh size for a gillnet used to fish for Spanish mackerel in the Gulf, Mid-Atlantic, or South Atlantic EEZ is 3.5 inches (8.9 cm), stretched mesh.

(*1*) A vessel in the Gulf EEZ, or having fished on a trip in the Gulf EEZ, with a gillnet on board that has a mesh size less than 3.5 inches (8.9 cm), stretched mesh, may not possess on that trip any Spanish mackerel.

(*2*) A vessel in the South Atlantic or Mid-Atlantic EEZ, or having fished on a trip in such EEZ, with a gillnet on board that has a mesh size less than 3.5 inches (8.9 cm), stretched mesh, may possess or land on the day of that trip no more than 500 lb (227 kg) of incidentally caught Spanish mackerel.

* * * * *

5. In § 622.42, paragraphs (c)(1)(ii) and (c)(2)(ii) are revised to read as follows:

§ 622.42 Quotas.

* * * * *

(c) * * *

(1) * * *

(ii) *Atlantic migratory group*. The quota for the Atlantic migratory group of king mackerel is 3.12 million lb (1.42 million kg). No more than 0.40 million lb (0.18 million kg) may be harvested by purse seines.

* * * * *

(2) * * *

(ii) *Atlantic migratory group*. The quota for the Atlantic migratory group of Spanish mackerel is 3.63 million lb (1.65 million kg).

* * * * *

6. In § 622.44, paragraphs (a)(1)(i) through (a)(1)(iv) are redesignated as paragraphs (a)(1)(ii) through (a)(1)(v), respectively; a new paragraph (a)(1)(i) and paragraph (a)(2)(iv) are added; and newly redesignated paragraph (a)(1)(ii), paragraph (a)(2) introductory text, paragraph (a)(2)(i), paragraph (a)(2)(ii) heading, and the first sentence of paragraph (b)(2) are revised to read as follows:

§ 622.44 Commercial trip limits.

* * * * *

(a) * * *

(1) * * *

(i) North of a line extending in a direction of 135°34’55’’ from true north from the North Carolina/South Carolina boundary, as marked by the border station on Bird Island at 33°51’07.9’’ N. lat., 78°32’32.6’’ W. long., king mackerel in or from the EEZ may not be possessed on board or landed from a vessel in a day:

(A) From April 1, each fishing year, until 80 percent of the quota has been harvested—in amounts exceeding 2,000 lb (907 kg) per day.

(B) From the date that 80 percent of the quota has been harvested, until a closure of the fishery has been effected under § 622.43(a)—in amounts exceeding 1,000 lb (454 kg) per day.

(ii) In the area between 29°25’ N. lat. (which is a line directly east from the

Flagler/Volusia County, FL, boundary) and a line extending in a direction of 135°34'55'' from true north from the North Carolina/South Carolina boundary, as marked by the border station on Bird Island at 33°51'07.9'' N. lat., 78°32'32.6'' W. long., king mackerel in or from the EEZ may not be possessed on board or landed from a vessel in a day in amounts exceeding 3,500 lb (1,588 kg).

* * * * *

(2) Gulf Group. Commercial trip limits are established in the eastern and western zones as follows. (See § 622.42(c)(1)(i) for specification of the eastern and western zones and § 622.42(c)(1)(i)(A)(*3*) for specifications of the subzones in the eastern zone.)

(i) *Eastern zone—Florida east coast subzone*. In the Florida east coast subzone, king mackerel in or from the EEZ may be possessed on board or landed from a vessel for which a commercial permit for king mackerel has been issued, as required under § 622.4(a)(2)(iii), from November 1 each fishing year until the subzone's fishing year quota of king mackerel has been harvested or until March 31, whichever occurs first, in amounts not exceeding 75 fish per day.

(ii) *Eastern zone—Florida west coast subzone*–* * *

* * * * *

(iv) *Western zone*. In the western zone, king mackerel in or from the EEZ may be possessed on board or landed from a vessel for which a commercial permit for king mackerel has been issued, as required under § 622.4(a)(2)(ii), from July 1, each fishing year, until a closure of the western zone's fishery has been effected under § 622.43(a)—in amounts not exceeding 3,000 lb (1,361 kg) per day.

(b) * * *

(2) For the purpose of paragraph (b)(1)(ii) of this section, the adjusted quota is 3.38 million lb (1.53 million kg). * * *

* * * * *

[FR Doc. 99–13960 Filed 6–1–99; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 64, No. 105
Wednesday, June 2, 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

Commodity Credit Corporation

Cotton Storage Agreement Fees

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of fees.

SUMMARY: The purpose of this notice is to publish a schedule of fees to be paid to Commodity Credit Corporation (CCC) by cotton warehouse operators entering into an agreement to store CCC cotton or cotton pledged as collateral for CCC loans; increasing the amount of storage covered by an existing storage agreement for storage of such cotton; or renewing an existing agreement for the storage of such cotton.

EFFECTIVE DATE: July 1, 1999.

FOR FURTHER INFORMATION CONTACT: Howard Froehlich, Chief, Storage Contract Branch, Warehouse and Inventory Division, Farm Service Agency, United States Department of Agriculture, 1400 Independence Avenue, S.W., STOP 0553, Washington, D.C. 20250–0553, telephone (202) 720–7398, or FAX (202) 690–3123.

Determination

In accordance with the provisions of the Commodity Credit Corporation Charter Act (15 U.S.C. 714 *et seq.*), CCC enters into storage agreements with cotton warehouse operators to provide for the storage of cotton owned by CCC or pledged as security to CCC for marketing assistance loans.

Specifically, 7 CFR 1427.1088 provides that all cotton warehouse operators who do not have an existing agreement with CCC for storage and handling of CCC-owned commodities or commodities pledged to CCC as loan collateral, but who desire such an agreement, must pay an application and examination fee for each warehouse for which CCC approval is sought prior to CCC conducting the original warehouse examination.

A review of the revenue collected for application and examination fees indicates that the fees collected are insufficient to meet costs incurred by CCC for warehouse examinations and contract origination administrative functions. Accordingly, beginning with the start of the 1999–2000 contract year, the fees applicable to the 1999–2000 contract year are increased by 7.5 percent.

The fee will be computed at the rate of $80 for each 1,000 bales of storage capacity or fraction thereof, but the fee will be not less than $160 nor more than $1,600.

Signed at Washington, DC, on May 25, 1999.

Keith Kelly,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 99–13932 Filed 6–1–99; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Salvage Harvest Due to 1998 Storm Damage, Daniel Boone National Forest, McCreary and Pulaski Counties, KY; Correction

AGENCY: Forest Service, USDA.

ACTION: Notice; correction.

SUMMARY: The Forest Service published a Notice of Intent to prepare an environmental impact statement in the **Federal Register** of July 31, 1998, concerning request for comments on removing trees damaged by severe snow and two wind storms in February, April, and May 1998, respectively. The Draft Environmental Impact Statement (DEIS) was planned to be available for review in November 1998, but is not yet available. The delay in preparing the DEIS is unfortunate, but necessary, in order to adequately assess and disclose the impacts of the proposal including alternatives to the proposal. This correction, changes when the DEIS is expected to be available for review.

CORRECTION: In the **Federal Register** of July 31, 1998, FR Doc. 98–45, on page 40875, correct section F—Estimated Date for the DEIS and FEIS, first sentence of first paragraph to read: The DEIS is expected to be filed with the Environmental Protection Agency and to be available for public comment by August 1999, and the FEIS is expected to be released by January 2000.

FOR FURTHER INFORMATION CONTACT: Myra Williamson, 606–376–5323.

Dated: May 17, 1999.

Charles Eury,

Acting Forest Supervisor, Daniel Boone National Forest.

[FR Doc. 99–13872 Filed 6–1–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052199C]

Marine Mammals; Photography Permit (File No. 955–1518–00)

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

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Dr. Julian Hector, The Natural History Unit, BBC, Whiteladies Road, Bristol, BS8 2LU UK, has applied in due form for a permit to take northern fur seals (*Callorhinus ursinus*) for purposes of commercial photography.

DATES: Written comments must be received on or before July 2, 1999.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Alaska Region, NMFS, 709 W 9th Street, Federal Building, Room 461, P.O. Box 21668, Juneau, AK 99802 (907–586–7235).

Written data or views, or requests for a public hearing on this request, should be submitted to the Director, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of § 104(c)(6) of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216). Section 104(c)(6) provides for photography for educational or commercial purposes involving non-endangered and non-threatened marine mammals in the wild. NMFS is currently working on proposed regulations to implement this provision. However, in the meantime, NMFS has received and is processing this request as a ''pilot'' application for Level B Harassment of non-listed and non-depleted marine mammals for photographic purposes. The applicant seeks authorization to harass up to 35,500 northern fur seals (*Callorhinus ursinus*) during the course of filming activities on St. Paul Island, Alaska, from July 7, 1999 through August 7, 1999. Filming will take place under the direct supervision of National Marine Fisheries Service biologists.

Dated: May 25, 1999.

Jeannie K. Drevenak,

Acting Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–13959 Filed 6–1–99; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of an Export Visa Arrangement for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Fiji; Correction

May 27, 1999.

In the letter to the Commissioner of Customs published in the **Federal Register** on May 18, 1999 (64 FR 26945), insert Annex A on page 26946, 3rd column, 7th line, right under ''Textile Agreements.''

Annex A

Part Categories (Descriptions below are for general reference only.)

338–S	Men's and boys' cotton knit shirts, other than tee shirts and tank tops: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.8010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.9068, 6112.11.0030 and 6114.20.0005.
338–O	Other men's and boys' cotton knit shirts: all HTS numbers except those in Category 338–S.
339–S	Women's and girls' cotton knit shirts and blouses, other than tee shirts and tank tops: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020.
339–O	Other women's and girls' cotton knit shirts and blouses: all HTS numbers except those in Category 339–S.
638–S	Men's and boys' man-made fiber knit shirts, other than tee shirts and tank tops: all HTS numbers in Category 638 except 6109.90.1007, 6109.90.1009, 6109.90.1013 and 6109.90.1025 .
638–O	Other men's and boys' man-made fiber knit shirts: only HTS numbers 6109.90.1007, 6109.90.1009, 6109.90.1013 and 6109.90.1025.
639–S	Women's and girls' man-made fiber knit shirts and blouses, other than tee shirts and tank tops: all HTS numbers in Category 639 except: 6109.90.1050, 6109.90.1060, 6109.90.1065 and 6109.90.1070.

Annex A—Continued

639–O	Other women's and girls' man-made fiber knit shirts and blouses: only HTS numbers 6109.90.1050, 6109.90.1060, 6109.90.1065 and 6109.90.1070.

Merged Categories
338–S/339–S/638–S/639–S
338–O/339–O/638–O/639–O

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–14040 Filed 6–1–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Wool Textile Products Produced or Manufactured in the Former Yugoslav Republic of Macedonia

May 27, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: June 3, 1999.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing, carryforward and recrediting of unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also

see 63 FR 53879, published on October 7, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 27, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on September 30, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain wool textile products, produced or manufactured in the Former Yugoslav Republic of Macedonia and exported during the twelve-month period beginning on January 1, 1999 and extending through December 31, 1999.

Effective on June 3, 1999, you are directed to adjust the limits for the following categories, as provided for under the terms of the current bilateral textile agreement between the Governments of the United States and the Former Yugoslav Republic of Macedonia:

Category	Adjusted twelve-month limit [1]
434	9,545 dozen.
435	26,349 dozen.
443	182,168 numbers.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[Doc.99–13955 Filed 6–1–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Singapore

May 27, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: June 3, 1999.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for swing, carryover and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 69056, published on December 15, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 27, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 8, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Singapore and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on June 3, 1999, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
331	621,345 dozen pairs.
338/339	1,598,361 dozen of which not more than 981,854 dozen shall be in Category 338 and not more than 1,053,654 dozen shall be in Category 339.
347/348	1,298,573 dozen of which not more than 811,607 dozen shall be in Category 347 and not more than 601,141 dozen shall be in Category 348.
604	1,078,706 kilograms.
639	4,009,717 dozen.
642	322,663 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.99–13954 Filed 6–1–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Republic of Turkey

May 26, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: June 2, 1999.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for carryover, carryforward, recrediting unused carryforward and swing.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 59948, published on November 6, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 26, 1999.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 3, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Republic of Turkey and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on June 2, 1999, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted limit [1]
Fabric Group	
219, 313–O [2], 314–O [3], 315–O [4], 317–O [5], 326–O [6], 617, 625/626/627/628/629, as a group.	172,433,311 square meters of which not more than 43,680,621 square meters shall be in Category 219; not more than 53,387,425 square meters shall be in Category 313–O; not more than 31,061,775 square meters shall be in Category 314–O; not more than 41,739,262 square meters shall be in Category 315–O; not more than 43,680,621 square meters shall be in Category 317–O; not more than 4,853,401 square meters shall be in Category 326–O; and not more than 29,120,416 square meters shall be in Category 617.
Sublevel in Fabric Group	
625/626/627/628/629	19,663,562 square meters of which not more than 8,908,799 shall be in Category 625; not more than 7,865,424 square meters shall be in Category 626; not more than 7,865,424 square meters shall be in Category 627; not more than 7,865,424 square meters shall be in Category 628; and not more than 7,865,424 square meters shall be in Category 629.
Limits not in a group	
338/339/638/639	6,107,779 dozen of which not more than 5,710,961 dozen shall be in Categories 338–S/339–S/638–S/639–S [7].
347/348	6,522,707 dozen of which not more than 2,268,881 dozen shall be in Categories 347–T/348–T [8].
350	651,136 dozen.
351/651	1,028,962 dozen.
352/652	3,584,853 dozen.
361	2,121,363 numbers.
369–S [9]	2,263,146 kilograms.
410/624	1,119,683 square meters of which not more than 885,669 square meters shall be in Category 410.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

[2] Category 313–O: all HTS numbers except 5208.52.3035, 5208.52.4035 and 5209.51.6032.

[3] Category 314–O: all HTS numbers except 5209.51.6015.

[4] Category 315–O: all HTS numbers except 5208.52.4055.

[5] Category 317–O: all HTS numbers except 5208.59.2085.

[6] Category 326–O: all HTS numbers except 5208.59.2015, 5209.59.0015 and 5211.59.0015.

[7] Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.8010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.9068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020; Category 638–S: all HTS numbers except 6109.90.1007, 6109.90.1009, 6109.90.1013 and 6109.90.1025; Category 639–S: all HTS numbers except 6109.90.1050, 6109.90.1060, 6109.90.1065 and 6109.90.1070.

[8] Category 347–T: only HTS numbers 6103.19.2015, 6103.19.9020, 6103.22.0030, 6103.42.1020, 6103.42.1040, 6103.49.8010, 6112.11.0050, 6113.00.9038, 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–T: only HTS numbers 6104.12.0030, 6104.19.8030, 6104.22.0040, 6104.29.2034, 6104.62.2006, 6104.62.2011, 6104.62.2026, 6104.62.2028, 6104.69.8022, 6112.11.0060, 6113.00.9042, 6117.90.9060, 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.69.6010, 6204.69.9010. 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

[9] Category 369–S: only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–13873 Filed 6–1–99; 8:45 am]

BILLING CODE 3510–DR–F

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Meeting Notice

AGENCY: Consumer Product Safety Commission, Washington, DC 20207.

TIME AND DATE: Wednesday, June 9, 1999, 10:00 am.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

Children's Sleepwear Amendment Revocation

The staff will brief the Commission on options related to the proposed revocation of the amendments to the children's sleepwear flammability standards issued in 1996 and 1999.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4430 East West Highway., Bethesda, MD 20207, (301) 504–0800.

Dated: May 28, 1999.

Sadye E. Dunn,

Secretary.

[FR Doc. 99–14058 Filed 5–28–99; 2:51 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare a Supplement to the Final Environmental Impact Statement (SEIS) on Modified Water Deliveries to Everglades National Park, Florida

AGENCY: U.S. Army corps of Engineers, Department of Defense.

ACTION: Notice of intent.

SUMMARY: The congressionally authorized Modified Water Deliveries to Everglades National Park (Mod Waters) project consists of structural modifications and additions to the existing Central and Southern Florida project required to improve water deliveries for ecosystem restoration of the Park. The June 1992 Final Environmental Impact Statement on the Mod Waters project-induced an evaluation of a plan element consisting of structural features to mitigate project-induced flooding in a residential area in the East Everglades called the 8.5 Square Mile Area (SMA). In 1998, the local sponsor of the project, the South Florida Water Management District (SFWMD), responded to a Florida Governor's Commission recommendation to evaluate other alternatives and requested that the U.S. Army Corps of Engineers (Corps) modify the authorized project to provide for a total buy-out of the area in lieu of the authorized flood mitigation plan. Additionally, the National Park Service recently stated that the 1992 authorized flood mitigation plan is not consistent with long term restoration of Everglades National Park. The proposed total buy-out of the 8.5 SMA will be addressed as a locally preferred option (LPO) in a Supplement to the Mod Waters Final Environmental Impact Statement (SEIS).

FOR FURTHER INFORMATION CONTACT: U.S. Army Corps of Engineers, P.O. Box 4970, Jacksonville, Florida 32232; Attn: Mr. Elmar Kutzbach, 904/232–2325.

SUPPLEMENTARY INFORMATION: 1. The action proposed by the SFWMD is for a plan of total purchase of all private property within the 8.5 SMA to be substituted for the 1992 Federally authorized plan of constructing structural features to prevent the additional flooding in the 8.5 SMA that is expected when the Mod Waters project is fully operational (the flood mitigation plan).

2. Alternatives to be discussed include the LPO, the Federally authorized plan, and various water management structural configurations for the 8.5 SMA.

3. A Scoping letter and public Scoping Meeting will be used to invite comments on alternatives and issues from Federal, State, and local agencies, affected Indian tribes, and other interested private organizations and individuals.

4. The Draft SEIS will analyze issues related to loss of unique farm lands, water quality degradation endangered species protection, urban development impacts, agricultural flood protection, Everglades National Park ecosystem restoration, implementation time, potential impacts on other project features, and direct and secondary costs for construction, operation and maintenance, land management, and acquisition for each alternative plan.

5. The National Park Service and the U.S. Fish and Wildlife Service have been identified as Cooperating Agencies under the lead of the Corps for preparation of the SEIS.

6. The alternative plans will be reviewed under provisions of appropriate laws and regulations, including the Endangered Species Act, Fish and Wildlife Coordination Act, Clean Water Act, and Farmland Protection Policy Act.

7. A Scoping meeting will be held in Homestead, Florida at the Miami-Dade County Extension Office. The date and time will be announced in the Scoping letter.

8. The Draft SEIS is expected to be available for public review in the 4th quarter CY 1999.

Mary V. Yonts,

Alternate U.S. Army Federal Register Liaison Officer.

[FR Doc. 99–13888 Filed 6–1–99; 8:45 am]

BILLING CODE 3710–AJ–M

DEPARTMENT OF DEFENSE

Army Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for Construction of a Containerized Cargo and Cruise Ship Terminal, Along Port Road, East of Old Highway 146, in the Extra-territorial Jurisdiction of the City of Pasadena and the City of Seabrook, Harris County, TX

AGENCY: U.S. Army Corps of Engineers, Galveston District, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers, Galveston District intends to prepare a DEIS to access the social, economic and environmental effects of the proposed multi-year phased construction of a container terminal and cruise ship facility. The DEIS will access potential impacts on a range of alternatives, including the preferred alternative.

FOR FURTHER INFORMATION CONTACT: For further information and/or questions about the proposed action and DEIS, please contact Mr. Mark King, Project Manager, by letter at U.S. Army Corps of Engineers, P.O. Box 1229, Galveston, Texas 77550, by telephone at (409) 766–3991, or by electronic mail at *john.m.king@swg02.usace.army.mil.*

SUPPLEMENTARY INFORMATION: The Galveston District intends to prepare a DEIS on the proposed container cargo and cruise ship terminal which would be located along Port Road, east of Old Highway 146, in the Extra-territorial Jurisdiction of the City of Pasadena and the City of Seabrook, Harris County, Texas. The Port of Houston Authority (PHA) proposes this project.

1. Description of the Proposed Project

The PHA proposes to construct containerized cargo loading areas, roadways, rail lines, an intermodal transit yard, and associated warehouses, administration, and operations buildings. It is the PHA's projection that initial construction would use approximately 1,600 feet of waterfront and 54 acres of land for a container yard. Construction beyond this initial phase would occur in increments (50–100 acre yard expansions and associated waterfront construction). These additional phases of construction would occur based upon cargo demand. It is currently estimated that the ultimate build-out of the container terminal to seven berths and over 608 acres of container yard and a 90 acre intermodal transit facility (rail yard) could take 15 to 20 years. Cruise ship facilities beyond the initial single berth would be construction based upon passenger demand.

2. Alternatives

The following alternatives will be examined to identify the reasonable alternatives to be fully evaluated in the DEIS: No Action; the modification of existing PHA facilities to meet the purpose and need of and for the proposed project; alternative locations within the jurisdictional authority of the PHA where the proposed facilities might be developed; off-site alternatives such as Spillman Island, Shoal Point (Texas City), and Galveston Harbor; modified on-site alternatives. The applicant's preferred alternative is the PHA owned property on the Bayport

Ship Channel (95°00′ longitude and 29°36.7′ latitude).

3. Scoping and Public Involvement Process

A workshop and scoping meeting to gather information on the subjects to be studied in detail in the DEIS will be conducted on July 8, 1999, at the Texas Chiropractic College, Russell Building, 5912 Spencer Highway, Pasadena, Texas.

4. Significant Issues

Issues associated with the proposed facilities to be given significant analysis in the DEIS are likely to include, but may not be limited to, the potential impacts of the proposed dredging, the beneficial uses of dredged material, placement of fill, construction and operation of the proposed facility and surface transportation facilities, and of induced developments on: Wetland resources; upland and aquatic biotic communities; water quality; fish and wildlife values including threatened and endangered species; noise and light levels in areas adjoining the proposed facilities; air quality; land forms and geologic resources; community cohesion; environmental justice; roadway traffic, socioeconomic environment; archaeological and cultural resources; recreation and recreational resources; public infrastructure and services; energy supply and natural resources; hazardous waste and materials; land use; aesthetics; public health and safety; navigation; flood plain values; shoreline erosion and accretion; and the needs and welfare of the people.

5. Cooperating Agencies

Those agencies having permitting, certifying, or other approved authorities will be asked to be cooperating agencies and to assist in the preparation of this DEIS. Cooperating agencies may include the Federal Highway Administration, the Environmental Protection Agency and Texas Natural Resources Conservation Commission.

6. Additional Review and Consultation

Additional review and consultation which will be incorporated into the preparation of this DEIS will include: Compliance with the Texas Coastal Management Program; protection of cultural resources under section 106 of the Historic Preservation Act; protection of navigation under the Rivers and Harbors Act of 1899; protection of water quality under section 401 of the Clean Water Act; and protection of endangered and threatened species under section 7 of the Endangered Species Act.

7. Availability of the DEIS

The Draft Environmental Impact Statement is projected to be available in February 2000. A Public Hearing will be conducted following the release of the DEIS.

Dated: May 24, 1999.

Nicholas J. Buechler,

COL, EN, Commanding.

[FR Doc. 99–13883 Filed 6–1–99; 8:45 am]

BILLING CODE 3710–52–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–1–160–000]

Discovery Gas Transmission LLC; Notice of Proposed Changes in FERC Gas Tariff

May 26, 1999.

Take notice that on May 18, 1999, Discovery Gas Transmission LLC (Discovery) filed to comply with the terms of its FERC Gas Tariff, Sheet Nos. 34, 44, and 53 relating to lost and unaccounted for gas for the calendar year 1998.

Discovery states that it has reviewed its 1998 actual losses from lost and unaccounted for gas experienced during the calendar year 1998. Discovery proposes to retain the current rate of recovery for lost and unaccounted for gas as currently stated in its tariff of .50% effective July 1, 1999.

Discovery states that copies of this filing are being mailed to its customers, state commissions and other interested parties. In accordance with the provisions of Section 154.2(d) of the Commission's Regulations, copies of this filing are available for public inspection, during regular business hours, in a convenient form and place at Discovery's offices at 1111 Bagby Street in Houston, Texas and 120 Mallard Street, St. Rose, Louisiana.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–13910 Filed 6–1–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG99–127–000]

Foote Creek III, LLC; Amended Application for Commission Determination of Exempt Wholesale Generator Status

May 26, 1999.

Take notice that on May 20, 1999, Foote Creek III, LLC tendered for filing with the Federal Energy Regulatory Commission an amendment to its original request for Commission Determination of Exempt Wholesale Generator Status. In its amendment, Foote Creek III, LLC states, among other things, that it will be both the owner and the operator of the Foote Creek III, LLC facility described in its application.

Any person desiring to be heard concerning the amended application for exempt wholesale generator status should file a motion to intervene or comments 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). The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the amended application. All such motions and comments should be filed on or before June 16, 1999, and must be served on the applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection or on the Internet at http://www.ferc.fed.us./online/rims.htm (please call (202) 208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–13868 Filed 6–1–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–251–001]

Northern Natural Gas Company; Compliance Filing

May 26, 1999.

Take notice that Northern Natural Gas Company (Northern) on May 21, 1999, tendered for filing to become part of Northern's F.E.R.C. Gas Tariffs, the following tariff sheets proposed to be effective on June 21, 1999:

Fifth Revised Volume No. 1

Second Revised Sheet No. 7

Original Volume No. 2

Eighth Revised Sheet No. 1A.2
33 Revised Sheet No. 1C.a
First Revised Sheet No. 2494

Northern asserts that the purpose of this filing is to comply with the Commission's Order issued May 6, 1999, in Docket No. CP99–251–000, and the requirements of 18 CFR Section 154.602 of the Commission's Regulations. The above tariff sheets represent cancellation of Rate Schedule T–59 from Northern's Original Volume No. 2 F.E.R.C. Gas Tariff, and its associated deletion from the Table of Contents in Northern's Volume Nos. 1 and 2 Tariffs.

Copies of the filing were served upon the company's customers and interested state Commission's.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–13900 Filed 6–1–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–532–000]

Northern Natural Gas Company; Application

May 26, 1999.

Take notice that on May 21, 1999, Northern Natural Gas Company (Northern) 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP98–532–000 an application pursuant to Section 7(c) of the Natural Gas Act for authorization to upgrade and operate Unit #6 at the Farmington Compressor Station in Dakota County, Minnesota, in order to increase the mainline capacity so that Northern can provide incremental/firm transportation service to Reliant Energy Minnegasco (Minnegasco), all as more fully set forth in the application on file with the Commission and open to public inspection. This filing may also be viewed on the web at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance).

Specifically, Northern states that the upgrade would involve the modification of the unit controls of the electric motor driven reciprocating compressor without any ground disturbance. Northern estimates the cost for the proposed construction to be approximately $50,000 that would be financed with internally generated funds.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 16, 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 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 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 Northern to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–13901 Filed 6–1–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–3–59–001]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

May 26, 1999.

Take notice that Northern Natural Gas Company (Northern), on May 20, 1999 tendered for filing to become part of Northern's FERC Gas Tariff the following tariff sheets proposed to become effective on June 1, 1999:

Fifth Revised Volume No. 1

Substitute Tenth Revised Sheet No. 61
Substitute Tenth Revised Sheet No. 62
Substitute Tenth Revised Sheet No. 63
Substitute Tenth Revised Sheet No. 64

The revised tariff sheets are being filed to reflect reductions to certain fuel rates contained in Northern's April 30, 1999 annual PRA Filing.

Copies of the filing were served upon Northern's customers and interested State Commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–13911 Filed 6–1–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP95–737–005 and CP98–771–002]

Texas Eastern Transmission Corporation; Compliance Filing

May 26, 1999.

Take notice that on May 21, 1999, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1 and Original Volume No. 2, the following revised tariff sheets to become effective June 21, 1999:

Sixth Revised Volume No. 1

Seventh Revised Sheet No. 6
Fourth Revised Sheet No. 10

Original Volume No. 2

Thirteenth Revised Sheet No. 1D
Seventh Revised Sheet No. 1I
First Revised Sheet No. 499
First Revised Sheet No. 1247

Texas Eastern asserts that the purpose of this filing is to comply with the Commission's order issued February 21, 1996 in Docket No. CP95–737–000 which approved abandonment of Rate Schedule X–132 and order dated October 29, 1998 in Docket No. CP98–771–000 which approved the abandonment of Rate Schedule X–72.

Texas Eastern states that the tariff sheets listed above remove Rate Schedule X–72 and X–132 from Volume No. 2 of Texas Eastern's tariff and update the Table of Contents of both Volume No. 1 and Volume No. 2 of the tariff to reflect such abandonments.

Copies of the filing were mailed to all affected parties.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–13899 Filed 6–1–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP97–71–016 and RP97–312–007]

Transcontinental Gas Pipe Line Corporation; Notice of PBS Revenue Sharing Refund Report

May 26, 1999.

Take notice that on May 20, 1999, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing a refund report showing that on April 29, 1999, Transco submitted PBS revenue sharing refunds (total principal and interest amount of $405,331.34) to all affected shippers in Docket Nos. RP97–71 and RP97–312.

Section 3.4 of Transco's Rate Schedule PBS provides that, during the effectiveness of the Docket No. RP97–71 rate period, which began on May 1, 1997, Transco shall refund annually 75% of the fixed cost component of all revenues collected under Rate Schedule PBS to maximum rate firm transportation, maximum rate interruptible transportation and maximum rate firm storage Buyers (collectively, Eligible Shippers). Transco has calculated that the refund amount for the period July 1, 1997 (the date Rate Schedule PBS became effective) through April 30, 1998 (the end of the first annual period) equals $405,331.34. Pursuant to Section 3.4 of Rate Schedule PBS, Transco refunded that amount to Eligible Shippers based on each Eligible Shipper's actual fixed cost contribution as a percentage of the total fixed cost contribution of all such Eligible Shippers (exclusive of the fixed cost contribution pertaining to service purchased by Seller from third parties).

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–13908 Filed 6–1–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP87–15–036, Docket No. RP92–122–008]

Trunkline Gas Company & Trunkline LNG Company; Notice of Compliance Filing

May 26, 1999.

Take notice that Trunkline Gas Company (Trunkline) and Trunkline LNG Company (TLNG) on May 19, 1999, tendered for filing revised tariff sheets, listed on Appendix A attached to the filing, to TLNG's FERC Gas Tariff, Original Volume No. 1. TLNG requests an effective date of April 1, 1999.

Trunkline and TLNG state that this filing is being made in accordance with Section 154.203 of the Federal Energy Regulatory Commission's (Commission) Regulations and Article VIII of the provisions of the Stipulation and Agreement dated July 15, 1992, as approved by Commission Order dated August 28, 1992 in Docket Nos. RP87–15–000, *et al.*

Trunkline and TLNG further state that on March 29, 1999, Panhandle Eastern Pipe Line Company (Panhandle) and its principal consolidated subsidiaries, Trunkline and Pan Gas Storage Company, as well as Panhandle's affiliates, TLNG and Panhandle Storage Company, were acquired by CMS Panhandle Holding Company, which is an indirect wholly-owned subsidiary of CMS Energy Corporation. The acquisition by CMS Energy Corporation of TLNG requires the implementation of Article VIII of the referenced Settlement. Specifically, Article VIII requires TLNG, and Trunkline in turn, to make refunds to customers, who were parties to the proceedings, if the ownership of all or a portion of the LNG terminal is transferred to an unaffiliated entity.

This filing implements the provisions of Article VIII of the Settlement as the triggering event described therein has transpired. The total refund due customers is $17,111,508. The refunds will be paid within 30 days of final Commission approval of this compliance filing.

Trunkline and TLNG request waiver, to the extent necessary, of any Commission Regulation, especially Section 154.207, to make this compliance filing and the enclosed tariff sheets effective April 1, 1999. Trunkline and TLNG request an effective date of April 1, 1999 in order to implement the Settlement on the first day of the month after the acquisition of Panhandle and its subsidiaries and affiliates.

Trunkline and TLNG state that copies of this filing have been served on all participants in the proceedings, jurisdictional customers and applicable state regulatory agencies.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–13907 Filed 6–1–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1354]

Pacific Gas & Electric Company California; Pacific Gas & Electric Company's Request To Use Alternative Procedures in Filing an Amendment to a Hydroelectric License Application

May 26, 1999.

By letter dated May 11, 1999, Pacific Gas & Electric Company (PG&E) asked for Commission approval to use an alternative procedure in filing an amended application for the 26.7-megawatt Crane Valley Project. PG&E has demonstrated that it made a reasonable effort to contact the resource agencies, Indian tribes, non-governmental organizations (NGOs), and others who may be affected by their proposal, and has submitted a communication protocol governing how participants in the proposed process communicate with each other. PG&E believes there is a consensus on using the alternative process. PG&E's request to use an alternative process says the United States Forest Service, the California Department of Fish and Game, Madera County, and the Madera County Irrigation District have indicated their agreement.

The purpose of this notice is to invite comments on PG&E's request to use the alternative procedure, as required by section 4.34(i)(5) of the Commission's regulations. Additional notices seeking comments on specific project proposals, interventions and protests, and recommended terms and conditions will be issued at a later date.

The alternative procedure combines the prefiling consultation process with the environmental review process and allows the applicant to file an Applicant-Prepared Environmental Assessment (APEA) in lieu of Exhibit E of the amended license application. This differs from the traditional process, in which the applicant consults with agencies, Indian tribes, and NGOs during preparation of the application for the license and before filing it, but the Commission staff performs the environmental review after the application is filed. The alternative procedure is intended to simplify and expedite the licensing process by combining the prefiling consultation and environmental review processes into a single process, to facilitate greater participation, and to improve communication and cooperation among the participants. The alternative procedure can be tailored to the project under consideration.

Alternative Process and the Crane Valley Project Schedule

In 1996 PG&E began a process of amending its application for a new license for the Crane Valley Project. Because the changes PG&E proposes are material changes, the Commission required PG&E to meet the consultation requirements of section 16.8 of the Commission's regulations. Since then, PG&E has been working collaboratively with the various interested entities to identify issues and environmental enhancement measures needed at the project. PG&E held public meetings on May 17, 1999 to receive public input and identify what, if any, additional studies are needed. The Commission may schedule additional public scoping meetings and issue scoping documents to fulfill its National Environmental Policy Act (NEPA) responsibilities. Notice of any such scoping meetings would be published at least 30 days prior to the meetings.

Based on completing any required studies during the Summer of 1999, a draft amended license application with preliminary APEA would be distributed by PG&E for comment in April, 2000. The final amended license application and APEA would be filed with the Commission by June 30, 2000.

Comments

Interested parties have 30 days from the date of this notice to file with the Commission, any comments on PG&E's proposal to use the alternative procedures to file an amended application for the Crane Valley Project.

Filing Requirements

Any comments must be filed by providing an original and 8 copies as required by the Commission's regulations to: Federal Energy Regulatory Commission, Dockets—Room 1A, 888 First Street, NE, Washington, DC 20426.

All comment filings must bear the heading ''Comments on the Alternative Procedure,'' and include the project name and number (Crane Valley Hydroelectric Project, No. 1354–000). For further information, please contact Charles Hall at (202) 219–2853 or e-mail at charles.hall@ferc.fed.us.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–13902 Filed 6–1–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Declaration of Intention and Soliciting Comments, Motions To Intervene, and Protests

May 26, 1999.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Declaration of Intention.

b. *Docket No:* DI99–5–000.

c. *Date Filed:* May 4, 1999.

d. *Applicant:* Leonard Murphy.

e. *Name of Project:* Lovejoy Mill Project.

f. *Location:* On Schoodic Stream, near Medford, Maine, in Piscataquis County,

Maine. The project does not utilize federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Application Contact:* Mr. Leonard Murphy, Energy Lane, HC 65, Box 5440, Lincoln, ME 04457–9423, (207) 746–9212.

i. *FERC Contact:* Any questions on this notice should be addressed to Henry Ecton at (202) 219–2678, or e-mail address: henry.ectone@ferc.fed.us.

j. *Deadline for filing comments and or motions:* July 5, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington D.C. 20426.

Please include the docket number (DI99–5–000) on any comments or motions filed.

k. *Description of Project:* The proposed run-of-river project will consist of a one-half-acre reservoir; an 8-foot-high, 110-foot-wide timber crib dam; a powerhouse containing a 12-kw generator; and appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

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, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. This filing may be viewed on 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. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

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 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.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''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, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

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. 99–13903 Filed 6–1–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Declaration of Intention and Soliciting Comments Motions to Intervene, and Protests

May 26, 1999.

Take notice that the following application has been filed with the Commission and is available for public inspection

a. *Application Type:* Declaration of Intention.

b *Docket No:* DI99–6–000.

c. *Date Filed:* April 20, 1999.

d. *Applicant:* Deseret Generation & Transmission Cooperative.

e. *Name of Project:* Bonanza Power Project.

f. *Location:* At the Cooperative's Raw Water Terminal Building, 12500 East 25500 South, Vernal, UT (T. 8 S., R. 23 E., sec. 25, Salt Lake Meridian). The project does not utilize federal or tribal lands.

g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Michael D. Goddard, 12500 East 2550 South, Vernal UT 84078–8525, (435) 781–5704 or E-mail address: mgoddard@desgt.com.

i. *FERC Contact:* Any questions on this notice should be addressed to Diane M. Murray at (202) 219–2682, or E-mail address: diane.mrray@ferc.fed.us.

j. *Deadline for filing comments and/or motions:* July 5, 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.

Please include the docket number (DI99–6–000) on any comments or motions filed.

k. *Description of Project:* The site consists of the Raw Water Terminal Building. The building currently houses a 440 MW fossil-fired plant. Three Ranney-style wells, located approximately 12 miles southeast of Vernal, Utah, draw water from the Green River. The water is then conveyed through a 22-mile-long concrete-lined pipeline to the Raw Water Terminal Building.

The hydro generator will be installed in the Raw Water Terminal Building between the existing inlet and outlet headers taking advantage of the pressure and flow through the Raw Water system.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

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, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on 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. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

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.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''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 Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

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. 99–13904 Filed 6–1–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

May 26, 1999.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of Applications:* Transfer of License.

b. *Project No.:* Transfer #1: 2538–029 Transfer #2: 2538–028.

c. *Date Filed:* Both applications filed May 11, 1999.

d. *Applicants:* Transfer #: Beebee Island Corporation (Beebee Island) and Niagara Mohawk Power Corporation (NIMO); Transfer #2: NIMO and Erie Boulevard Hydropower, L.P. (Erie).

e. *Name of Project:* Beebee Island Water Power (Beebee).

f. *Location:* On the Black River, within the City of Watertown, in Jefferson County, New York.

g. *Filed pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:* For Beebee Island: Robert E. Pohl @ D–1, Treasurer, Beebee Island Corporation, c/o Niagara Mohawk Power Corporation, 300 Erie Boulevard West, Syracuse, New York 13202, (315) 428–6094, and Michael W. Murphy @ A–3, Secretary, Beebee Island Corporation, c/o Niagara Mohawk Power Corporation, 300 Erie Boulevard West, Syracuse, New York 13202, (315) 428–6941; For NIMO: Stephen C. Palmer, Esq., Swidler Berlin Shereff Friedman, LLP, 3000 K Street, N.W., Suite 300, Washington, D.C. 20007–5116, (202) 424–7576, and M. Margaret Fabic, Esq., Niagara Mohawk Power Corporation, 300 Erie Boulevard West, Syracuse, New York 13202, (315) 428–6187. For Erie: W. Thaddeus Miller, Erie Boulevard Hydropower, L.P., c/o Orion Power Holdings, Inc., 111 Market Place, Suite 520, Baltimore, MD 21202, (410) 468–3692, and Mitchell F. Hertz, Kirkland & Ellis, 655 15th Street, N.W., Suite 1200, Washington, D.C. 20005 (202) 879–5270.

i. *FERC Contact:* Regina Saizan, (202) 219–2673, or e-mail address: regina.saizan@ferc.fed.us.

j. Deadline for filing comments and or motions for the respective applications (This single notice for the two applications is for informational purposes.): JUNE 25, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

k. NIMO and Beebee Island (a wholly-owned subsidiary of NIMO) are the co-licensees for the Beebee Island Project. The subject transfers are being sought in connection with NIMO's asset sales agreement with Erie for the sale of NIMO's non-nuclear generating assets pursuant to the electric industry restructuring policies of New York State. *See* NIMO and Erie's ''Amended Joint Application for Approval of Transfer of Licenses and Exemptions, Partial Transfer of Licenses, and Substitution of Applicants'' for Project Nos. 0013, *et al.*, filed April 14, 1999, which reflects the divestiture sale and which is the subject of separate public notice. Transfer #1 would eliminate Beebee Island as a co-licensee for the Beebee Island Project, which is a prerequisite to Transfer #2 conveying the project properties and license from NIMO to Erie, which in turn is a necessary element in NIMO's divestiture sale to Erie.

l. Location of the Applications: A copy of each application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE, Room 2A, Washington, DC, 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc. fed.us/online/rims.htm (call (202) 208–2222 for assistance). Copies of the applications are also available for inspection and reproduction at the applicable addresses in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

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.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'' ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''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, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

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. 99–13905 Filed 6–1–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Protests

May 26, 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–11703–000.

c. *Date Filed:* March 15, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Alvin R. Bush Dam Hydroelectric Project.

f. *Location:* At the existing U.S. Army Corps of Engineers' Alvin R. Bush Dam on Kettle Creek, near the city of Westport in Clinton County, Pennsylvania.

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 Corporation, 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. *FERC Contact:* Susan Tseng (202) 219–2798 or E-mail address at susan.tseng@ferc.fed.us.

j. *Deadline for filing comments, motions to intervene, and protests:* 60 days from the issuance date of this notice.

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. *Description of the Project:* The project would utilize the existing U.S. Army Corps of Engineers Alvin R. Bush Dam and consist of: (1) a new powerhouse on the downstream side of the dam with a total installed capacity of 1,300 kW; (2) a new 14.7 kV transmission line; and (3) other appurtenances.

Applicant estimates that the average annual generation would be 8,000 MWh and the cost of the studies under the permit would be $650,000.

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, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring a 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 4.32(a) and (b)(1).

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 (see 18 CFR 4.36). 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 4.32(a), (b), and (c).

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.

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 applicant to construct and operate the project.

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 and .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.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE of INTENT TO FILE 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 and an additional copy must be sent to Director, Division of Project Review, 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.

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. 99–13906 Filed 6–1–99; 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, and Comments

May 26, 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–11657–000.

c. *Date filed:* January 11, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Loyalhanna Dam.

f. *Location:* At the existing U.S. Corps of Engineers' Loyalhanna Dam located on Loyalhanna Creek, near the Town of Saltsburg, Westmoreland County, Pennsylvania. The proposal would utilized federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791 (a)–825(r).

h. *Application Contact:* Mr. Ronald S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. *FERC Contact:* William H. Diehl, William.Diehl@FERC.fed.us, (202) 219–2813.

j. *Deadline Date:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington D.C. 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. The proposed project would utilize the existing U.S. Army Corps of Engineers' Loyalhanna Dam and would consist of: (1) Two new 50-foot-long, 36-inch-diameter steel penstocks; (2) a new 50-foot-long, 40-foot-wide, 25-foot-high powerhouse containing two 300–kW generating units for a total installed capacity of 600–kW; (3) new exhaust aprons; (4) a new 500-foot-long, 14.7–KW; transmission line; and (5) appurtenant facilities.

Applicant estimates that the average annual generation would be 4 GWh and that the cost of the studies to be performed under the terms of the permit would be $500,000. Project energy would be sold to utility companies, corporations, municipalities, aggregators, or similar entities.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, N.E., 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.

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 4.32 (a) and (b)(1).

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 (see 18 CFR 4.36). 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 4.32(a), (b), and (c).

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.

Proposed scope of Studies under Permit—A preliminary permit, it 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.

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 and .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.

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, and an additional copy must be sent to Director, Division of Project Review, 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.

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. 99–13909 Filed 6–1–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6353–5]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Children's Total Exposure to Persistent Pesticides and Other Persistent Organic Pollutants (CTEPP)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Children's Total Exposure to Persistent Pesticides and Other Persistent Organic Pollutants, EPA ICR Number 1892.01. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 2, 1999.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epamail.epa.gov, or download a copy of the ICR off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1892.01.

SUPPLEMENTARY INFORMATION:

Title: Children's Total Exposure to Persistent Pesticides and Other Persistent Organic Pollutants, EPA ICR Number 1892.01. This is a new collection.

Abstract: The National Exposure Research Laboratory of the Office of Research and Development (ORD) at EPA plans to conduct a research study investigating preschool children's exposure to persistent pesticides and other persistent organic pollutants. This study is necessary to respond to the Food Quality Protection Act (FQPA) of 1996 which requires that EPA evaluate non-occupational sources (e.g., food, water, air, dust, soil, etc.) of exposures to pesticides when constructing risk assessments, consider the cumulative health impact of pesticides, and provide particular attention to young children such that ''there is reasonable certainty that no harm will result to infants and children from aggregate exposure to pesticide chemical residue.''

Study respondents will be children between the ages of 2–5 and their adult caregivers in approximately 260 households. Participation will be entirely voluntary. The participants' exposures will be estimated by collection and analysis of samples of food, beverages, air, house dust, soil, hand wipes, and urine in conjunction with information from questionnaires including activity diaries. Young children, especially those of the preschool ages, are believed to have greater exposures than do older children or adults to persistent organic pesticides, including some compounds that may have endocrine-disrupting effects or developmental toxicity. These greater exposures may result from what children eat and drink, where they spend their time, and what they do there. The impact of the exposures may be greater on young children because of their smaller body masses, immature body systems, and rapid physical development.

The data will be used by scientists within ORD and external to the Agency to refine and validate exposure models which, in turn, will be used to reduce the uncertainty in the health risk estimates of young children to these toxic pollutants. The information will also be used by the EPA Office of Children's Health Protection and the EPA Office of Prevention, Pesticides, and Toxic Substances in their consideration of children's risk assessment and risk management options. The information will appear in the form of final EPA reports, journal articles, and will also be made publicly available in an electronic data base.

The total cost of the study is estimated to be $4.5M over a three year period. Approximately 308 respondents will be included. An incentive payment will be offered to defray the burden to the respondent.

Responses to the collection of information are voluntary. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 2/1/1999 (64 FR 4868); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 6.2 hours per respondent. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Parents/households, day care or pre-school operators.

Estimated Number of Respondents: 308.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 670 hours.

Estimated Total Annualized Cost Burden (non-labor costs only): $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1892.01 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Policy, Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: May 27, 1999.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 99–13946 Filed 6–1–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34187; FRL–6083–5]

Bensulide and Profenofos, Revised Organophosphate Pesticide Risk Assessments; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA will hold a public meeting to present the revised risk assessments for two organophosphate pesticides, bensulide and profenofos, to interested stakeholders. This public meeting, called a ''Technical Briefing,'' will provide an opportunity for stakeholders to learn about the data, information, and methodologies that the Agency used in revising its risk assessments for bensulide and profenofos. In addition, representatives of the U.S. Department of Agriculture (USDA) will provide ideas on possible risk management for bensulide and profenofos.

DATES: The technical briefings will be held on Wednesday, June 16, 1999. The bensulide technical briefing is scheduled from 9 a.m. to noon, and the profenofos technical briefing is scheduled from 1 p.m. to 4 p.m.

ADDRESSES: The technical briefings will be held at the Holiday Inn-Old Town, 625 First St., Alexander, VA 703–548–6300.

FOR FURTHER INFORMATION CONTACT: Karen Angulo, Special Review and Registration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 308–8004; e-mail address: angulo.karen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply To Me?

This action applies to the public in general. As such, the Agency has not attempted to specifically describe all the entities potentially affected by this action. The Agency believes that a wide range of stakeholders will be interested in technical briefings on organophosphates, including environmental, human health, and agricultural advocates, the chemical industry, pesticide users, and members of the public interested in the use of pesticides on food. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the ''FOR FURTHER INFORMATION CONTACT'' section.

B. How Can I Get Additional Information, Including Copies of This Document or Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document and certain other available documents from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the '' **Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

To access information about the revised risk assessments for bensulide and profenofos organophosphate pesticides, go directly to the Home Page for the Office of Pesticide Programs at http://www.epa.gov/pesticides/op/. In addition, brief summaries of the bensulide and profenofos revised risk assessments are now available at: http://www.epa.gov/pesticides/op/status.htm/, as well as in paper as part of the public version of the official record as described in Unit I.B.2. of this document.

2. *In person*. The Agency has established an official record for these actions under docket control numbers: Bensulide, OPP–34132A and profenofos, OPP–34138A. The official record consists of the documents specifically referenced in this action, any public comments received during the applicable comment period, and other information related to this action, including information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during the applicable comment period, is available for inspection in Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Public Information and Records Integrity Branch telephone number is (703) 305–5805.

II. What Action Is EPA Taken?

This document announces the Agency's intention to hold technical briefings for the organophosphate pesticides, bensulide and profenofos. The Agency is presenting the revised risk assessments for bensulide and profenofos to interested stakeholders. The technical briefings are designed to provide stakeholders with an opportunity to become even more informed about an organophosphate's risk assessment. EPA will describe in detail the revised risk assessments, including: The major points (e.g., contributors to risk estimates); how public comment on the preliminary risk assessments affected the revised risk assessments; and the pesticide use information/data that was used in developing the revised risk assessments. Stakeholders will have an opportunity to ask clarifying questions. In addition, representatives of the USDA will provide ideas on possible risk management for bensulide and profenofos.

Technical briefings are part of the pilot public participation process that EPA and USDA are now using for involving the public in the reassessment of pesticide tolerances under the Food Quality Protection Act (FQPA), and the reregistration of individual organophosphate pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The pilot public participation process was developed as part of the EPA-USDA Tolerance Reassessment Advisory Committee (TRAC), which was established in April 1998 as a subcommittee under the auspices of EPA's National Advisory Council for Environmental Policy and Technology. A goal of the pilot public participation process is to find a more effective way for the public to participate at critical junctures in the Agency's development of organophosphate risk assessment and risk management decisions. EPA and USDA began implementing this pilot process in August 1998 in response to Vice President Gore's directive to increase transparency and opportunities for stakeholder consultation.

On the day of the technical briefings, in addition to making copies available at the meeting site, the Agency will also release for public viewing the bensulide and profenofos revised risk assessments and related documents to the Public Information and Records Integrity Branch and the OPP Internet web site that are described in Unit I.B.1. of this document. In addition, the Agency will issue a **Federal Register** notice to provide an opportunity for a 60-day

public participation period during which the public may submit risk management and mitigation ideas, and recommendations and proposals for transition.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: May 25, 1999.

Lois Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 99–14043 Filed 6–1–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00599; FRL–6079–4]

Pesticides; Draft Guidance on Mandatory/Advisory Labeling Statements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The Agency seeks public comment on a draft Pesticide Registration (PR) Notice entitled ''Guidance for Mandatory and Advisory Labeling Statements.'' This draft notice provides guidance to the registrant for improving the clarity of labeling statements in order to avoid confusing directions and precautions and to prevent the misuse of pesticides.

DATES: Written comments, identified by docket control number OPP–00599, should be submitted by August 2, 1999.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the ''SUPPLEMENTARY INFORMATION'' section of this document. To ensure proper receipt by EPA, your comments must identify docket control number OPP–00599 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Jeff Kempter, Environmental Protection Agency (7509C), 401 M St., SW., Washington, DC 20460, telephone number: (703) 305–5448; fax: (703) 305–6920; e-mail address: kempter.carlton@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Notice Apply to Me?

You may be potentially affected by this notice if you manufacture or formulate pesticides. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of potentially affected entities
Pesticide Producers	32532	Pesticide manufacturers Pesticide formulators

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed could also be affected. If available, the North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this notice affects certain entities. If you have any questions regarding the applicability of this announcement to you, consult the person listed in the ''FOR FURTHER INFORMATION CONTACT'' at the beginnng of this document.

B. How Can I Get Additional Information or Copies of This Document or Other Documents?

1. *Electronically*. You may obtain electronic copies of this document and the draft PR Notice from the EPA Home Page at http://www.epa.gov/. On the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the **Federal Register** — Environmental Documents.'' You can also go directly to the ''**Federal Register**'' listings at http://www.epa.gov/fedrgstr/.

2. *Fax on Demand*. You may request to receive a faxed copy of this document, as well as supporting information, by using a faxphone to call (202) 401–0527 and selecting item 6120. You may also follow the automated menu.

3. *In person or by phone*. If you have any questions or need additional information about this action, you may contact the appropriate technical person identified in the ''FOR FURTHER INFORMATION CONTACT'' at the beginning of this document. In addition, the official record for this document and the draft paper listed in the ''SUMMARY'' at the beginning of this document, including the public versions, has been established under docket control number OPP–00599 (including comments and data submitted electronically as described below). This record not only includes the documents that are physically located in the docket, but also includes all the documents that are referenced in those documents. A public version of this record, including printed, paper versions of any electronic comments, which do not include any information claimed as Confidential Business Information (CBI), is available for inspection in Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Public Information and Records Integrity Branch telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, you must identify docket control number OPP–00599 in the subject line on the first page of your response.

1. *By mail*. Submit written comments 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.

2. *In person or by courier*. Deliver written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

3. *Electronically*. Submit your comments and/or data electronically by e-mail to: opp-docket@epa.gov. Do not submit any information electronically that you consider to be CBI. Submit electronic comments as an ASCII file, avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number. Electronic comments on this notice may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI Information That I Want to Submit to the Agency?

You may claim information that you submit in response to this document as CBI 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. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please call the Public Information and Records Integrity Branch telephone number is (703) 305–5805.

E. What Should I Consider As I Prepare My Comments for EPA?

EPA invites you to provide your views on the draft PR Notice. You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide solid technical information and/or data to support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate.
5. Indicate what you support, as well as what you disagree with.
6. Provide specific examples to illustrate your concerns.
7. Make sure to submit your comments by the deadline in this notice.
8. At the beginning of your comments (e.g., as part of the ''Subject'' heading), be sure to properly identify the document you are commenting on. You can do this by providing docket control number OPP–00599, along with the name, date and **Federal Register** citation.

II. Background

The Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) section 2(ee) defines ''to use any registered pesticide in a manner inconsistent with its labeling'' (misuse) as use of ''* * * any registered pesticide in a manner not permitted by the labeling * * *,'' and goes on to list a number of exceptions to the term. Use includes storage, transportation, handling, pre-application activities, mixing and loading, worker notification and worker protection, application, post-application activities and disposal.

Statements on the pesticide labeling may be interpreted by users different from what the registrant or EPA intended when the labeling was accepted. If EPA believes that misuse has occurred, a court may have to decide whether a product's labeling statements are clear enough for the user to understand how to lawfully use the product. Pesticide labeling needs to clearly identify what is required of the user to handle and apply a pesticide safely. The Agency is engaged in numerous efforts to improve labels in general (e.g., the Consumer Labeling Initiative), as well as specific areas of the labeling of pesticide products (e.g., bee precautionary labeling and pesticide drift labeling).

III. Summary of Draft PR Notice

Following is an excerpt from draft PR Notice which summarizes its key points:

> *Mandatory statements*, which commonly use imperative verbs such as ''must'' or ''shall,'' either require action or prohibit the user from taking certain action. *Advisory statements* simply provide information, either in support of the mandatory statements or about the product in general. *To ensure that the intent of each labeling statement is clear, mandatory statements need to be clearly distinguishable from advisory statements.*

Currently, labeling provisions are enforced by taking into consideration all the information presented on the label and reading advisory statements in the context of the entire label. Problems can arise when advisory statements are either vague or ambiguous in meaning, or are inconsistent with other labeling. In the past, advisory statements have commonly used suggestive verbs such as ''should,'' ''may,'' or ''recommend'' to help the user achieve the directed behavior, but sometimes these statements can be unclear as to whether they are mandatory or advisory. In a recent misuse enforcement action, for example, the person charged with the violation argued that advisory statements misled him into taking action which was inconsistent with the mandatory statements.

The Agency seeks to improve mandatory and advisory labeling statements by providing guidance (see Appendix to the PR Notice) on how they can best be written. This guidance consists of two steps. First, mandatory statements are generally written in imperative or directive terms (such as ''shall,'' ''must,'' ''do this,'' ''do not'') so that a typical user will understand that these statements direct the user to take or avoid certain actions. Second, advisory statements are best written in descriptive or nondirective terms to support the mandatory statements or provide information. Suggestive terms such as ''should,'' ''may,'' or ''recommend'' may be confusing or ambiguous, or potentially conflict with mandatory labeling statements; thus, they are to be avoided whenever possible. EPA realizes that the use of descriptive terms for advisory statements is not appropriate for every situation and that there are times where it may be necessary to use ''should,'' ''may,'' ''recommend,'' or similar words. However, in most cases it is best to state advisory labeling statements in straightforward, descriptive language.

IV. Questions/Issues for Comment

While comments are invited on any aspect of the draft PR Notice, EPA is particularly interested in comments on the following questions:

1. Are the descriptions of mandatory and advisory labeling statements clear and complete? If not, how should they be changed?
2. Is the basic policy that mandatory and advisory statements should be distinguishable from each other clear and adequate? If not, how can this policy be better expressed?

V. Policies Not Rules

The draft PR Notice discussed in this notice is intended to provide guidance to EPA personnel and decision-makers, and to the public. As a guidance document and not a rule, this policy is not binding on either EPA or any outside parties. Although this guidance document provides a starting point for EPA decisions, EPA will depart from this policy where the facts or circumstances warrant. In such cases, EPA will explain why a different course was taken. Similarly, outside parties remain free to assert that this policy is not appropriate for a specific pesticide or that the specific circumstances demonstrate that this policy should be abandoned.

EPA has stated in this notice that it will make available revised guidance after consideration of public comment. Public comment is not being solicited for the purpose of converting this guidance document into a binding rule. EPA will not be codifying this policy in the Code of Federal Regulations. EPA is soliciting public comment so that it can make fully informed decisions regarding the content of this guidance.

The ''revised'' guidance will not be an unalterable document. Once a ''revised'' guidance document is issued, EPA will continue to treat it as guidance, not a rule. Accordingly, on a case-by-case basis EPA will decide whether it is appropriate to depart from the guidance or to modify the overall approach in the guidance. In the course of commenting on this guidance document, EPA would welcome comments that specifically address how the guidance document can be structured so that it provides meaningful guidance without imposing binding requirements.

VI. Contents of Docket

Documents that are referenced in this notice will be inserted in the docket under the docket control number OPP–00599.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, pesticides and pests.

Dated: May 21, 1999.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

[FR Doc. 99–13795 Filed 6–1–99; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

May 24, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, 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 August 2, 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, S.W., 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: 3060–0641.

Title: Notification to File Progress Report.

Form Number: FCC 218–I.

Type of Review: Revision to a currently approved collection.

Respondents: Business or other for-profit entities; and individuals or households.

Number of Respondents: 500.

Estimated Time per Response: 1 hour.

Frequency of Response: 3 years and 5 years.

Total Annual Burden: 500 hours.

Total Annual Cost: None.

Needs and Uses: The data collected are used by FCC staff to determine whether the 218–219 MHz licensee (previously IVDS) is entitled to their authorization to operate. From this data, the Commission is able to confirm that service has been made available to at least 30 percent of the population or land area within three years of license grant and 50 percent of the population or land area within five years of license grant. The data collected ensures licensees are making proper use of the frequency spectrum.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–13914 Filed 6–1–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

Technological Advisory Council Federal Advisory Committee Websites

AGENCY: Federal Communications Commission.

ACTION: Notice

SUMMARY: This announcement advises interested persons that publicly accessible websites have been established for members of the Technological Advisory Council (''Council'') of the Federal Communications Commission. Members of the Council will provide their views on a continuing basis at the Internet websites listed below.

Focus Groups

Spectrum Management—*http://www.jacksons.net/tac*

Network Access—*http://www.fcc.ini.cmu.edu/FCC/index.html*

Accessibility for Disabled Persons—*http://trace.wisc.edu/docs/fccadv/disability.htm*

FOR ADDITIONAL INFORMATION CONTACT: Kent Nilsson, 445 12th St. S.W., Washington, D.C. 20554; telephone (202) 418–2478.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–13961 Filed 6–1–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Eighth Meeting of the Advisory Committee for the 2000 World Radiocommunication Conference (WRC–2000 Advisory Committee)

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the next meeting of the WRC–2000 Advisory Committee will be held on June 24, 1999, at the Federal Communications Commission. The purpose of the meeting is to continue preparations for the 2000 World Radiocommunication Conference. The Advisory Committee will consider final consensus views and/or proposals introduced by the Advisory Committee's Informal Working Groups.

DATES: June 24, 1999; 10:00 am–12:00 noon.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW–C305, Washington D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Damon C. Ladson, FCC International Bureau, Planning and Negotiations Division, at (202) 418–0420.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission (FCC) established the WRC–2000 Advisory Committee to provide advice, technical support and recommendations relating to the preparation of United States proposals and positions for the 2000 World Radiocommunication Conference (WRC–2000). In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of

the eighth meeting of the WRC–2000 Advisory Committee. The WRC–2000 Advisory Committee has an open membership. All interested parties are invited to participate in the Advisory Committee and to attend its meetings. The proposed agenda for the eighth meeting is as follows:

Agenda

Eighth Meeting of the WRC–2000 Advisory Committee, Federal Communications Commission, 445 12th Street, S.W., Room TW–C305, Washington, D.C. 20554

June 24, 1999; 10:00 am—12:00 noon

1. Opening Remarks
2. Approval of Agenda
3. Approval of the Minutes of the Seventh Meeting
4. Final IWG Reports and Documents relating to:
   a. Consensus Views and Issue Papers
   b. Draft Proposals
5. Future Meetings
6. Other Business

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–13913 Filed 6–1–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

May 24, 1999.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0817.

Expiration Date: 11/30/99.

Title: Computer III Further Remand Proceedings: BOC Provision of Enhanced Services (ONA Requirements), CC Docket No. 95–20.

Form No.: N/A.

Respondents: Business or other for-profit.

Estimated Annual Burden: 500 respondents; 72.5 hours per response (avg.); 36,250 total annual burden hours for all collections.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion; third party disclosures.

Description: In the Report and Order issued in CC Docket No. 95–20, released March 10, 1998, the Commission eliminates outdated, unnecessary regulations, while continuing to protect against potential anticompetitive behavior by the Bell Operating Companies (BOCs) in the provision of information services. The Commission has established the following collections of information: (a) The Commission no longer requires BOCs to file their Comparably Efficient Interconnection (CEI) plans with the Commission and to obtain pre-approval of CEI plans and amendments before initiating or altering an intraLATA information service. Instead, we require BOCs to post their CEI plans and plan amendments on their publicly accessible Internet sites linked to and searchable from the BOC's main Internet page, and to notify the Common Carrier Bureau at the time of the posting. The substance of the notification may be limited to the Internet address and path to the relevant CEI plan or amended plan; the form may consist of a letter to the Secretary with a copy to the Bureau. The requirement extends to CEI plans for new or modified telemessaging or alarm monitoring services, and for new or amended payphone services. In addition, if the BOC receives a good faith request for a plan from someone who does not have internet access, the BOC must notify that person where a paper copy of the plan is available for public inspection. (No. of respondents: 5; hours per respondent: 50 hours; total annual burden: 250 hours). (b) The Commission removes the Computer II network disclosure rules for BOCs providing information through a Computer II separate subsidiary, the Computer II all-carrier rule, and the Computer III network disclosure rules. The Commission extends the disclosure requirements in section 51.325(a) of its rules to require incumbent LECs to provide public notice of any network changes that will affect the manner in which Customer Premises Equipment (CPE) is attached to the network. (No. of respondents: 500; hours per response: 72 hours; total annual burden: 36,000 hours. See also OMB control number 3060–0741. Note that burden estimate for 47 CFR Section 51.35(a) is approved under OMB control number 3060–0741). The collections of information relating to CEI plans will be used to ensure that BOCs comply with Commission policies and regulations safeguarding against potential anticompetitive behavior by the BOCs in the provision of information services. The disclosure of CPE is necessary to encourage competition in the telecommunications services market by lifting operations barriers to entry. Obligation to comply: Mandatory.

OMB Control No.: 3060–0687.

Expiration Date: 05/31/2002.

Title: Access to Telecommunications Equipment and Services by Persons with Disabilities—CC Docket No. 87–124.

Form No.: N/A.

Respondents: Business or other for-profit.

Estimated Annual Burden: 806,100 respondents; 1.2 hours per response (avg.); 991,000 total annual burden hours for all collections.

Estimated Annual Reporting and Recordkeeping Cost Burden: $638,000.

Frequency of Response: On occasion; third party disclosures.

Description: Title II of the Communications Act of 1934, as amended, 47 U.S.C. section 201 *et al.*, provides the statutory authority for the Commission to promulgate the rules and regulations contained in part 68 of FCC Rules, 47 CFR Part 68. Requirements in part 68 are necessary to prevent degradation of the telephone network. The following collections are necessary to inform consumers who purchase and/or use telephone equipment to determine whether the telephone is hearing aid compatible. a. section 68.300(c) Equipment Labeling Requirements. Pursuant to Section 68.300(c), all registered telephone manufactured in the U.S. or imported for use in the U.S. that are hearing aid compatible must be stamped with the letters HAC. The provision applies to all telephones manufactured or imported as of March 1, 1997 for use in the United States. The provision excludes telephones used with public mobile services or private radio services, and secure telephones. (No. of respondents: 1100; hours per response: 11.36; total annual burden: 12,500). b. Section 68.112(b)(3)(E) to designate emergency telephones. Section 68.112(b)(3)(E) requires that employers 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. The ''designation'' might be a sign or a written notice to employees, or some other means of designation. The type of designation is left up to the employer. (No. of respondents: 805,000; hours per response 1.2; total annual burden:

966,000). c. Section 68.224 Equipment packaging. 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 contained therein is not hearing aid compatible, as defined in Sections 68.4(a)(3) and 68.316, or if offered for sale without a surrounding package, shall be fixed with a written statement that the telephone is not hearing aid-compatible, as defined by sections 68.4(a)(3) and 68.316. Section 68.224(b) also requires that the telephone equipment be accompanied by instructions in accordance with § 68.218(b)(5) of the rules. (No. of respondents: 1100; hours per respondent: 11.36; total annual burden: 12,500 hours). The collections are third party disclosure requirements. They are useful primarily to consumers who purchase and or use telephone equipment to determine whether the telephone is hearing aid compatible. Obligation to respond: Mandatory.

OMB Control No.: 3060–0859.

Expiration Date: 8/31/99.

Title: Suggested Guidelines for Petitions for Ruling Under Section 253 of the Communications Act.

Form No.: N/A.

Respondents: Business or other for-profit.

Estimated Annual Burden: 80 respondents; 78.5 hours per response (avg.); 6280 total annual burden hours for all collections.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion.

Description: Section 253 of the Communications Act of 1934, as amended requires the Commission, with certain important exceptions, to preempt the enforcement of any state or local statute or regulation, or other state or local legal requirement (to the extent necessary) that prohibits or has the effect prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service. The Commission's consideration of preemption begins with the filing of a petition by an aggrieved party. The petition is placed on public notice and commented on by others. The Commission issued a Public Notice that establishes guidelines relating to its consideration of preemption petitions. The Commission expects petitioners and commenters to provide it with relevant information sufficient to describe the legal regime involved in the controversy and to establish the factual basis necessary for decision. Factual assertions should be supported by credible evidence, including affidavits, and, where appropriate, studies or other descriptions of the economic effects flowing from the legal requirement that is the subject of the petition. The Commission identifies specific issues that petitioners are expected to include when addressing whether a legal requirement materially inhibits or limits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment in a particular market. The Commission will use the information to discharge its statutory mandate relating to the preemption of state or local statutes or other state or local legal requirements. Obligation to comply: Voluntary. Public reporting burden for the collections of information is as noted above. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, D.C. 20554.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–13962 Filed 6–1–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting; Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 9:00 a.m. on Thursday, June 3, 1999, to consider the following matters:

Summary Agenda: No substantive discussions of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' meetings.

Summary reports, status reports, and reports of actions taken pursuant to authority delegated by the Board of Directors.

Memorandum and resolution re: Revisions to Interagency Branch Closing Policy Statement.

Discussion Agenda:

Memorandum re: Interim Rule—Asset and Liability Backup Program.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street, N.W., Washington, D.C.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416–2449 (Voice); (202) 416–2004 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: May 27, 1999.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 99–14046 Filed 5–28–99; 2:56 pm]

BILLING CODE 6714–01–M

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 June 25, 1999.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Merchants and Manufacturers Bancorporation, Inc., New Berlin, Wisconsin; to merge with Pyramid Bancorp, Inc., Grafton, Wisconsin, and thereby indirectly acquire Grafton State Bank, Grafton, Wisconsin.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Jamesmark Bancshares, Inc., Springfield, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Old Missouri National Bank, Springfield, Missouri (in organization).

2. Town and Country Financial, Inc., Dundee, Kentucky; to acquire 81 percent of the voting shares of Main Street Bancshares, Inc., Vine Grove, Kentucky (in organization). Main Street Bancshares, Inc., Vine Grove, Kentucky (in organization), also has applied to become a bank holding company by acquiring 60.66 percent of the voting shares of Farmers Bank of Vine Grove, Vine Grove, Kentucky.

C. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Pembina County Bankshares, Ltd., Cavalier, North Dakota; to merge with Stephen Bancshares, Inc., Stephen, Minnesota, and thereby indirectly acquire Farmers State Bank, Stephen, Minnesota.

Board of Governors of the Federal Reserve System, May 26, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–13856 Filed 6–1–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 15, 1999.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. BankFirst Corporation, Knoxville, Tennessee; to retain BankFirst Trust Company, Knoxville, Tennessee, and thereby engage in trust company activities, pursuant to § 225.28(b)(5) of Regulation Y.

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. The Sumitomo Bank, Limited, Osaka, Japan; to retain an existing indirect interest in Daiwa SB Investments (USA) Ltd., New York, New York, and thereby engage in financial and investment advisory activities, pursuant to § 225.28(b)(6) of Regulation Y.

Board of Governors of the Federal Reserve System, May 26, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–13855 Filed 6–1–99; 8:45 am]

BILLING CODE 6210–01–F

GENERAL ACCOUNTING OFFICE

Advisory Council on Government Auditing Standards; Notice of Meeting

The Advisory Council on Government Auditing Standards will meet Monday, June 14, 1999, from 8:30 a.m. to 5:00 p.m., and Tuesday, June 15, 1999, from 8:30 a.m. to 11:00 a.m., in room 7C13 of the General Accounting Office building 441 G Street, NW., Washington, DC.

The Advisory Council on Government Auditing Standards will hold a meeting to discuss issues that may impact government auditing standards. Any interested person may attend the meeting as an observer. Council discussions and reviews are open to the public.

For further information contact: Marcia Buchanan, Assistant Director, Government Auditing Standards, AIMD, 202–512–9321.

Marcia B. Buchanan,

Assistant Director.

[FR Doc. 99–13859 Filed 6–1–99; 8:45 am]

BILLING CODE 1610–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 99095]

Cooperative Agreements for Capacity-Building Assistance (CBA) to Community-Based Organizations Serving African American Populations Heavily Affected by the Human-Immunodeficiency Virus (HIV); Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of Fiscal Year (FY) 1999 funds for cooperative agreements with non-governmental minority organizations to develop and implement regionally structured and focused capacity-building assistance for CDC-funded community-based organizations (CBOs) providing HIV prevention services to African-Americans and for African-American community stakeholders. For the purpose of this program announcement, community stakeholders are individuals who have an interest in preventing HIV in a community and are potential or actual agents of change. The purpose of this program announcement is to provide capacity-building assistance that will sustain, improve, and expand HIV prevention services for African-American individuals whose behavior places them at risk for HIV and other sexually transmitted diseases (STDs).

This program addresses the ''Healthy People 2000'' priority areas of Educational and Community-Based Programs, Human Immunodeficiency Virus (HIV) Infection, and Sexually Transmitted Diseases (STDs).

The purpose of this program is to serve four regional groups as follows:

Northeast Region: CT, MA, ME, NH, NJ, NY, PA, RI, VT, PR, U.S. Virgin Islands

Midwest Region: IL, IN, IA, KS, MI, MN, MO, NE, ND, OH, SD, WI

South Region: AL, AR, D.C., DE, FL, GA, KY, LA, MD, MS, NC, OK, SC, TN, TX, VA, WV

West Region: AK, AZ, CA, CO, HI, ID, NV, NM, OR, MT, UT, WA, WY

The goals for this program are as follows:

1. Improve the capacity of CBOs serving African-Americans to develop and sustain organizational infrastructures to support their program services and interventions.

2. Improve the capacity of CBOs serving African-Americans to design, develop, implement, and evaluate effective HIV prevention interventions.

3. Improve the capacity of CBOs serving African-Americans to mobilize African-American communities to increase their awareness, leadership, participation and support for HIV prevention.

4. Enhance the capacity of CBOs serving African-Americans to effectively participate in, and improve the responsiveness of the HIV prevention community planning process to the HIV prevention needs of African-Americans.

5. Enhance the capacity of African-American community stakeholders to provide leadership and support for HIV prevention.

Capacity-Building Assistance will be provided in two categories (A and B). Category A includes capacity-building assistance in (1) Organizational Infrastructure Development and Assessment, and (2) Intervention Design, Development, Implementation, and Evaluation. Category B includes capacity-building assistance in (1) Community Capacity-Building for HIV Prevention, and (2) HIV Prevention Community Planning Effectiveness and Participation. For additional information, refer to the Addendum to this program announcement.

B. Eligible Applicants

Eligible applicants for Category A are: (1) A national minority organization serving all four regions either independently or as the lead agency within a coalition; or (2) a lead regional minority organization within a coalition of regional minority organizations representing and serving all four regions.

Eligible applicants for Category B are (1) A national minority organization serving up to four regions either independently or as the lead agency within a coalition; or (2) a regional minority organization serving one region either independently or as the lead agency within a coalition; or (3) a local minority organization as the lead agency within a coalition serving one region.

Note: Applicants that meet the eligibility requirements for Categories A and B may apply for both under separate applications.

The lead agency must be the legal applicant and all applicants must meet the following criteria:

1. Have a copy of a currently valid IRS Tax Determination letter stating that the organization is a 501(c)3.

2. If applying for Category A, have a documented and established 3-year record of service to community-based organizations serving African-Americans. If applying for Category B, applicants must meet the criteria for Category A and must also have a documented and established 3-year record of service to African-American communities or an African-American sub-population heavily affected by HIV. Acceptable documentation for both Category A and B includes letters of support, agency annual reports, client satisfaction survey summaries, and memoranda of agreement.

3. Have a governing body composed of greater than 50 percent African-American members.

4. Have 50 percent of key positions in the applicant organization, including management, supervisory, administrative, and service positions filled by African-American persons (for example, executive director, program director, fiscal director, trainer, technical assistance provider, curricula development specialist, or group facilitator).

Note: Pub. L. 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

In Category A, approximately $1.55 million is expected to be available in FY 1999 to fund one program. In Category B, approximately $1 million is expected to be available in FY 1999 to fund up to four programs with an average award of $225,000, and a range from $100,000 to $1 million. It is expected that the awards will begin about September 1999 and will be made for a 12-month budget period within a project period of up to five years.

Funding estimates may change based on the availability of funds, scope and quality of the applications received, appropriateness and reasonableness of the budget justifications, and proposed use of project funds.

Continuation awards for a new 12 month budget period within an approved project period may be made on the basis of the availability of funds and satisfactory progress towards accomplishing stated objectives as evidenced by required reports. Satisfactory progress will also be determined through site visits by CDC representatives and the quality of future program plans. Proof of continued eligibility will be required with the noncompeting continuation application.

Use of Funds

These federal funds may not supplant or duplicate existing funding.

The applicant must perform a substantial portion of the program activities and can not serve as merely a fiduciary agent. Applications requesting funds to support only managerial and administrative functions will not be accepted.

Funds available under this announcement must support assistance that increases the capacity of CBOs to expand and sustain effective HIV prevention for African-American individuals whose behavior places them at high risk for HIV and other STDs.

No funds will be provided for direct patient care, including substance abuse treatment, and medical treatment or medications.

Note: Before using funds awarded through this cooperative agreement to develop HIV prevention materials, recipients must check with the CDC National Prevention Information Network (NPIN) to determine if suitable materials are already available. Also, materials developed by recipients must be made available for dissemination through the CDC NPIN.

CDC's National Prevention Information Network (NPIN) maintains a collection of HIV, STD and TB resources for use by organizations and the public. Successful applicants will be contacted by NPIN to obtain information on program resources for use in referrals and resource directories. Also, grantees should send three copies of all educational materials and resources developed under this grant for inclusion in NPIN's databases.

NPIN also makes available information and technical assistance services for use in program planning and evaluation. For further information on NPIN services and resources, contact NPIN at 1–800–458–5231; visit their web site: www.cdcnpin.org or send requests by fax to 1–888–282-7681. (TTY users: 1–800–243–7012).

Funding Priorities

In making awards, CDC's priorities for funding will be given to:

(1) Ensuring capacity-building assistance in both Categories A and B for all four regions identified in the introduction of this announcement; and

(2) Ensuring that funding for capacity-building assistance is distributed in proportion to the disease burden for

African American populations in each region.

Interested persons are invited to comment on the proposed funding priority. All comments received within 30 days after publication in the **Federal Register** will be considered before the final funding priority is established. If the funding priority changes because of comments received, a revised announcement will be published in the **Federal Register**, and revised applications will be accepted before the final selections are made. Address comments to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities for Category A) or 2. (Recipient Activities for Category B). CDC will be responsible for activities specified under 3. (CDC Activities).

1. Recipient Activities for Category A

a. Create a regionally-based resource network that includes the applicant's current and proposed staff, a consultant retainer system or pool, and may include a coalition, and collaborative relationships.

b. Ensure the effective and efficient provision of capacity-building assistance in the following areas: Organizational Infrastructure Development and Assessment, and Intervention Design, Development, Implementation, and Evaluation. These services are to be provided through the use of the following mechanisms: Information Transfer, Skills Building, Technical Consultation, Technical Services, and Technology Transfer. See Addendum for additional information.

c. Ensure that capacity-building assistance is allocated according to priority needs of CBOs serving highly affected sub-populations, such as men who have sex with men (MSM); gay, lesbian, bisexual, and transgender youth (GLBT Youth); high risk heterosexuals (HRH) including youth, men, and women; injection drug users and other substance abusers (IDU/SA); and incarcerated, soon-to-be-released and released persons.

d. Develop and implement a plan for targeting, engaging, and maintaining long term capacity-building relationships with CDC-funded community based organizations serving African-American populations. The plan should include strategies for conducting ongoing needs assessments and developing tailored capacity building packages to be delivered over the course of the project period.

e. Develop and implement a system that responds to capacity-building assistance requests. This system must include mechanisms for conducting needs assessments, prioritizing capacity-building assistance requests, linking requests to other capacity-building resources (including those funded under Category B), assigning and evaluating consultants and agency personnel, delivering services, reporting on service delivery, and conducting quality assurance.

f. Develop a standardized system for tracking, assessing and documenting all capacity-building assistance requests and delivery with CDC assistance as needed.

g. Incorporate cultural competency and linguistic and educational appropriateness into all capacity-building activities.

h. Develop and implement an effective strategy for marketing capacity-building assistance.

i. Participate in a CDC-coordinated capacity-building network.

j. Coordinate program activities with appropriate national, regional, state, and local HIV prevention programs and community planning groups to prevent duplication of efforts and optimize use of resources.

k. Monitor and evaluate the accomplishment of program objectives, and the process of capacity-building assistance.

l. Facilitate the dissemination of information about successful capacity-building assistance strategies and ''lessons learned'' through peer-to-peer interactions, meetings, workshops, conferences, and communications with CDC project officers.

m. Participate in CDC coordinated train-the-trainer opportunities.

n. Adhere to CDC policies for securing approval for CDC sponsorship of conferences.

o. Develop a strategy for obtaining additional resources from non-CDC sources to supplement the program conducted through this cooperative agreement and to enhance the likelihood of its continuation after the end of the project period.

2. Recipient Activities for Category B

a. Conduct regional community needs and resource assessments around issues related to HIV prevention, leadership development, and community mobilization.

b. Develop a regional plan of action to mobilize community and agency resources to meet priority needs related to Community Capacity-Building for HIV prevention.

c. Develop a regional plan of action to provide capacity-building assistance in HIV Prevention Community Planning Effectiveness and Participation.

d. Provide capacity-building assistance to CBOs serving African-Americans and to African-American community stakeholders in the following areas: Community Capacity-Building for HIV Prevention, and HIV Prevention Community Planning Effectiveness and Participation. These services are to be provided through the use of the following mechanisms: Information Transfer, Skills Building, Technical Consultation, Technical Services and Technology Transfer. See Addendum for additional information.

e. Develop and implement a plan for targeting, engaging, and maintaining long term capacity-building relationships with CBOs serving African-American populations and African-American community stakeholders. The plan should include strategies for conducting ongoing CBO and HIV prevention stakeholder needs assessments related to areas listed in section d above. The plan should also include the strategy for developing tailored capacity building packages to be delivered over the course of the project period.

f. Develop a strategy that includes forming a regional community advisory board which includes CDC-funded CBOs, members of the target population(s), and community representatives and other HIV prevention stakeholders. This community advisory board should be involved with providing input into the overall direction of the proposed program and in assessing the proposed program's communication, linkages, performance, and services to the target population.

g. Ensure that capacity-building assistance is allocated according to priority capacity-building assistance needs of CBOs and highly affected African-American communities and sub-populations, such as men who have sex with men (MSM); gay, lesbian, bisexual and transgender youth (GLBT Youth); high risk heterosexuals (HRH) including youth, men, and women; injection drug users and other substance abusers (IDU/SA); and incarcerated, soon-to-be-released and released persons.

h. Develop and implement a system that responds to requests for assistance in Community Capacity-Building; HIV Prevention Community Planning Participation and Effectiveness; and other types of capacity-building

assistance from CBOs and African-American community stakeholders. This process must include mechanisms for conducting needs assessments, prioritizing requests, assigning staff or consultants, linking requests (where appropriate) to the retainer consultant system funded under Category A, delivering services, reporting on service delivery, and conducting quality assurance.

i. Develop a standardized system for tracking, assessing and documenting all capacity-building assistance requests and delivery with CDC assistance as needed.

j. Incorporate cultural competency and linguistic and educational appropriateness into all capacity-building activities.

k. Develop and implement an effective strategy for marketing capacity-building assistance and services.

l. Participate in a CDC-coordinated capacity-building network.

m. Coordinate program activities with appropriate national, regional, state, and local HIV prevention programs and community planning groups to prevent duplication of efforts and optimize use of resources.

n. Monitor and evaluate the accomplishment of program objectives, and the process of capacity-building assistance.

o. Facilitate the dissemination of information about successful capacity-building assistance strategies and ''lessons learned'' through peer-to-peer interactions, meetings, workshops, conferences, and communications with CDC project officers.

p. Participate in CDC coordinated train-the-trainer opportunities.

q. Adhere to CDC policies for securing approval for CDC sponsorship of conferences.

r. Develop a strategy for obtaining additional resources from non-CDC sources to supplement the program conducted through this cooperative agreement and to enhance the likelihood of its continuation after the end of the project period.

3. CDC Activities:

a. Serve as the coordinator for CDC's capacity-building programs, which will include organizations providing capacity-building assistance under this program announcement.

b. Provide recipients with consultation in planning, developing, managing, and evaluating capacity-building services. CDC will provide consultation and assistance both directly through CDC and indirectly through contractors; national, regional and local organizations; and peer-to-peer assistance from CDC-funded partners.

c. Provide up-to-date scientific information on the risk factors for HIV infection, prevention measures, and program strategies for prevention of HIV infection.

d. Facilitate and promote collaboration through the exchange of program information, coalition maintenance strategies, and technical assistance among CBOs; State and local health departments; HIV prevention community planning groups; national, regional, and local organizations; and other HIV prevention partners.

e Support train-the-trainer opportunities that enhance capacity-building assistance delivery systems.

f. Facilitate and collaborate in the dissemination of successful capacity-building strategies and ''lessons learned'' through meetings of grantees, workshops, conferences, and communications.

g. Work with recipients to standardize a system for tracking and reporting all capacity-building assistance requests and delivery.

h. Monitor the recipient's performance of program activities, protection of client confidentiality, and compliance with federally mandated requirements.

i. Coordinate an evaluation of the overall capacity-building assistance program.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan.

The narrative should be no more than 48 pages. Number each page clearly, and provide a complete index to the application and its appendices. Please begin each separate section of the application on a new page. The original and each copy of the application set must be submitted unstapled and unbound. All material must be typewritten, single spaced, with a font of 10 pitch or 12 point on 8½'' by 11'' paper, with at least 1'' margins, headings and footers, and printed on one side only. Materials which should be part of the basic plan will not be accepted if placed in the appendices.

In developing the application, you must follow the format and instructions below:

1A. Format for Category A

a. Abstract

b. Long-term Goals

c. Organizational History and Capacity

(1) Organizational Structure

(2) History Providing Capacity-Building Assistance to CBOs serving African-American Populations and African-American Communities

(3) Capacity for Cultural Competence

(4) Current Capability in Providing Capacity-Building Assistance

(5) Experience Creating and Maintaining Consultant Retainer Systems or Pools and Working with Coalitions

(6) Current Collaborations

d. Assessing the Need for Capacity-Building Assistance

(1) Characteristics of African-American Population(s)

(2) Capacity-Building Priority Needs

(3) Use of HIV Comprehensive Plans

e. Program Plan

(1) Involvement of Local CBOs

(2) Objectives

(3) Plan of Operation

(4) Coordination and Collaboration

(5) Timeline

f. Program Evaluation Plan

g. Communication and Dissemination Plan

h. Plan for Acquiring Additional Resources

i. Budget and Staffing Breakdown and Justification

(1) Detailed Budget

(2) Mechanisms for Use of Funds

(3) Staffing Plan

j. Training and Technical Assistance Plan

k. Attachments

1B. Instructions for Category A

a. Abstract (not to exceed 3 pages) Briefly summarize the following:

(1) The type of organization (national or regional) and, if national, whether applying independently or with a coalition

(2) Organizational structure, philosophy, mission, history

(3) Long term goals of the proposed project

(4) Overview of plan of operation

(5) Overview of plan for collaboration and coordination with other capacity-building service providers, state and local health departments, and community planning groups

(6) Composition of proposed coalition (where appropriate)

(7) Future year activities.

b. Long-term Goals (not to exceed 1 page) Describe the broad capacity-building goals that your proposed program aims to achieve over the course of the project period.

c. Organizational History and Capacity (not to exceed 10 pages)

(1) Describe your existing organizational structure, including the role, responsibilities, and racial/ethnic composition of board of directors; board committee structure (including advisory board); board recruitment and training process; organizational management, administrative, and program components; constituent or affiliate organizations or networks; and how the organizational structure offers the ability to provide capacity-building assistance.

(2) Describe your organization's history providing capacity-building assistance to CBOs and other types of organizations serving the HIV prevention needs of African-American populations.

(3) Describe your organization's capability in providing services that respond effectively to the cultural, gender, environmental, social, and multilingual characteristics of CBOs serving African-American populations. Include a description of the types of services provided and a list summarizing culturally, linguistically, and developmentally appropriate curricula and materials.

(4) Describe your organization's capability in developing and implementing capacity-building assistance programs, strategies, or activities (refer to recipient activities section), and in developing and implementing programs similar to the one proposed in this program announcement.

(5) Describe your organization's experience or capability in creating a consultant retainer system or pools and, if appropriate, experience working with a coalition(s).

(6) Describe your experience in collaborating and coordinating with governmental and non-governmental organizations, including national or regional agencies or organizations, State and local health departments, community planning groups, State and local non-governmental organizations that provide HIV prevention services, and State and local criminal justice systems (prisons, jails, detention centers, halfway houses, etc.), and national African-American correctional health organizations (e.g., African American Correctional Officers Association).

d. Assessing the Need for Capacity-Building Assistance (not to exceed 5 pages)

(1) Describe the demographics of the African-American populations across the four regions. Describe the impact of the AIDS epidemic on these populations and any specific environmental, social, cultural, or linguistic characteristics which will be considered in your capacity-building strategy.

(2) Describe the capacity-building priority needs of CBOs serving the African-American populations described above. Describe the process for determining these needs by addressing areas such as: the use of epidemiologic and other data, resource inventories, regional needs assessments, and the use of gap analyses.

(3) Describe how your proposed program complements the HIV comprehensive plans in these regions.

e. Program Plan (not to exceed 20 pages)

Describe your proposed program, including:

(1) Involvement of CDC-funded CBOs: Describe how CDC-funded CBOs within the four regions will be involved in evaluating and providing input into activities and services provided by the proposed program throughout the project period.

(2) Objectives: Provide specific, realistic, time-phased, and measurable objectives to be accomplished during the first budget period. Describe how these objectives relate to the goals described in this announcement. Describe possible barriers to or facilitators for reaching these objectives.

(3) Plan of Operation: Describe the following: (a) The strategies (in detail) that will be used and activities that will be conducted to meet the proposed goals and objectives and to complete all the required recipient activities (including the provision of services through the use of the ''capacity-building assistance delivery mechanisms''); (b) the process for responding to capacity-building assistance requests, include in your description how you will: (i) Conduct needs assessments, (ii) prioritize requests to place major emphasis on assistance to CBOs serving African-American sub-populations most heavily affected by HIV, (iii) make referrals to other capacity-building providers (when appropriate), (iv) assign consultants, (v) deliver services, (vi) report on service delivery, and (vii) conduct quality assurance; (c) how your organization will ensure that assistance provided will be culturally competent, sensitive to issues of sexual and gender identity, developmentally appropriate, linguistically-specific, educationally appropriate and targeted to the needs of CBOs serving African-Americans; (d) how your organization will market program services; (e) how your organization will develop the retainer consultant pool; (f) how the proposed program will be managed and staffed, including the fiscal, administrative, managerial, and personnel infrastructure and resources that will be used to support the proposed capacity-building program; (g) the placement of the program within your organizational structure and the space that will be used to house the proposed program staff; (h) the equipment and information management systems that could be used to maintain information related to this announcement; and (i) the respective roles and responsibilities of your organization and those of each coalition member performing any of the proposed activities or functions.

(4) Coordination and Collaboration: Describe how you will coordinate and collaborate with other national, regional, state, and local governmental and nongovernmental organizations and HIV prevention providers (see Addendum for examples of collaborating agencies).

(5) Timeline: Provide a timeline that identifies major implementation phases and assigns approximate dates for inception and completion.

f. Program Evaluation Plan (not to exceed 5 pages).

Describe your plan for monitoring progress to determine if the objectives are being achieved and demonstrating that the methods used to deliver the proposed capacity-building services are effective and efficient. At a minimum, the plan should (1) outline strategies for implementing process evaluation of capacity building activities to determine if the process objectives are being achieved, (2) outline strategies for outcome monitoring to determine if the services and methods used to deliver the services are effective and efficient, (3) describe what data will be collected and how this data will be collected, analyzed, and used to evaluate and improve the program, and (4) specify the persons responsible for designing and implementing evaluation activities, collecting and analyzing data, and reporting findings.

g. Communication and Dissemination Plan (not to exceed 2 pages).

Describe how you will share successful approaches and ''lessons learned'' with other organizations.

h. Plan for Acquiring Additional Resources (not to exceed 2 pages).

Describe your plan for obtaining additional resources from other (non-CDC) sources to supplement the program conducted through this cooperative agreement and to increase the likelihood of its continuation after the end of the project period.

i. Budget and Staffing Breakdown and Justification.

(1) Provide a detailed budget for each proposed activity. Justify all operating

expenses in relation to the stated objectives and planned activities. CDC may not approve or fund all proposed activities. Be precise about the program purpose of each budget item and itemize calculations wherever appropriate.

(2) For contracts contained within the application budget, identify the contractor, if known; describe the services to be performed; justify the use of a third party; and provide a breakdown of and justification for the estimated costs of the contracts; the kinds of organizations or parties to be selected; the period of performance; and the method of selection.

(3) Describe in detail each existing or proposed position by job title, function, general duties, and activities. Include the level of effort and allocation of time for each project activity by staff positions, job title, function, general duties and activities, annual salary/rate of pay, and percentage of time spent on this program.

Note: If indirect costs are requested, you must provide a copy of your organization's current negotiated Federal indirect cost rate agreement. In the absence of an indirect cost rate agreement, the recipient may request, with detailed justification, a maximum of 10 percent for the executive director. This limitation also applies to contracts and coalitions. If the organization has an indirect rate that includes the executive director's salary, no additional funds will be provided. Funds will not be provided for the salary of an executive director that is also a member of the organization's Board of Directors.

j. Training and Technical Assistance Plan (not scored).

Describe areas in which you anticipate a need for technical assistance in designing, implementing, and evaluating your proposed program and how you will obtain this technical assistance. Describe anticipated staff training needs related to the proposed program and how these needs will be met.

k. Attachments

(1) Proof of Eligibility.

Applicants should provide a separate section within the Attachments section that is entitled Proof of Eligibility to include the documents listed below. Failure to provide the required documentation will result in disqualification.

i. IRS determination letter of your organization's 501(c)(3) tax—exempt status.

ii. Evidence of a 3-year record of service to African-American community-based organizations.

iii. Section of Bylaws or Agency Charter that indicates organization's national or regional scope of work.

iv. A list and organizational chart of the members of your governing body along with their positions on the board, their expertise in working with or providing services to the proposed target population, and their racial/ethnic backgrounds. Submission of information regarding the HIV status or other confidential information regarding individuals is optional, but must not be linked to a specific individual.

v. A list and an organizational chart of existing and proposed staff for this program, their race/ethnicity, their area of expertise, and relevant experience. Include resumes (not to exceed 2 pages per person).

(2) Other Attachments.

i. A list of all collaborating or coordinating entities and memoranda of agreement as evidence of these established or agreed-upon collaborative or coordinating relationships. Memoranda of agreement should specifically describe the proposed collaborative activities. Evidence of continuing collaboration must be submitted each year to ensure that the collaborative relationships are still in place.

ii. Description of coalition organizations and original signed letters from the chief executive officers of each organization assuring their understanding of the intent of this program announcement, the proposed program, their role in the proposed program, and the responsibilities of recipients.

iii. A list summarizing services currently delivered and culturally, linguistically, and developmentally appropriate curricula and materials.

iv. A description of any funding being received from CDC or other sources to conduct similar activities which includes:

(a) A summary of funds and income received to conduct capacity-building assistance programs. This summary must include the name of the sponsoring organization/source of income, level of funding, a description of how the funds have been used, and the budget period. In addition, identify proposed personnel devoted to this project who are supported by other funding sources and the activities they are supporting.

(b) A summary of the objectives and activities of the funded programs described above.

(c) A description of how funds requested in this application will be used differently or in ways that will expand upon the funds already received, applied for, or being received.

(d) An assurance that the funds being requested will not duplicate or supplant funds received from any other Federal or non-Federal source. CDC awarded funds can be used to expand or enhance services supported with other Federal or non-Federal funds.

v. Independent audit statements from a certified public accountant for the previous 2 years.

vi. A copy of your organization's current negotiated Federal indirect cost rate agreement, if applicable.

2A. Format for Category B

a. Abstract.

b. Long-term Goals.

c. Organizational History and Capacity.

(1) Organizational Structure

(2) History Providing Community Capacity-Building and Other Capacity-Building Assistance to CBOs Serving African-American Populations and African-American community stakeholders.

(3) Capacity for Cultural Competence.

(4) Current Capability in Providing Capacity-Building Assistance.

(5) Experience Working with Coalitions (where appropriate) and Current Collaborations.

d. Assessing the Need for Community Capacity-Building and HIV Prevention Community Planning Effectiveness and Participation

(1) Characteristics of African-American Population(s) and Communities

(2) Capacity-building Needs

e. Program Plan

(1) Involvement of CDC-Funded CBOs and African-American community stakeholders

(2) Objectives

(3) Plan of Operation

(4) Coordination/Collaboration

(5) Timeline

f. Program Evaluation Plan

g. Communications/Dissemination Plan

h. Plan for Acquiring Additional Resources

i. Budget and Staffing Breakdown and Justification

(1) Detailed Budget

(2) Mechanisms for Use of Funds

(3) Staffing Plan

j. Training and Technical Assistance Plan.

k. Attachments.

2B. Instructions for Category B

a. Abstract (not to exceed 3 pages).

Briefly summarize the following:

(1) Region(s) applying for and the type of organization (national, regional, or local) and, if national or regional, whether applying independently or with a coalition.

(2) Organizational structure, philosophy, mission, history.

(3) Long term goals of the proposed project.

(4) Overview of plan of operation.

(5) Overview of plan for collaboration and coordination with other capacity-building service providers, state and local health departments, and community planning groups.

(6) Composition of proposed coalition (where appropriate).

(7) Future year activities.

b. Long-term Goals (not to exceed 1 page).

Describe the broad capacity-building goals that your proposed program aims to achieve over the course of the project period.

c. Organizational History and Capacity (not to exceed 10 pages).

(1) Describe your existing organizational structure, including the role, responsibilities, and racial/ethnic composition of board of directors; board committee structure (including advisory board); board recruitment and training process; organizational management, administrative, and program components; constituent or affiliate organizations or networks; and how the organizational structure offers the ability to provide capacity-building assistance.

(2) Describe your organization's history with providing assistance in Community Capacity-Building; HIV Prevention Community Planning Effectiveness and Participation; and other capacity-building assistance to CBOs serving African-American populations and to African-American community stakeholders (especially African-American sub-populations heavily affected by HIV and other STDs). Describe specific assistance or services provided.

(3) Describe your organization's capability to provide services that respond effectively to the cultural, gender, environmental, social, and multilingual characteristics of CBOs and African-American community stakeholders. Include a description of the types of services provided and a list summarizing culturally, linguistically, and developmentally appropriate curricula and materials.

(4) Describe your organization's capability in developing and implementing capacity-building programs, strategies, or activities (refer to recipient activities section), and in developing and implementing programs similar to the one proposed in this program announcement.

(5) Describe your organization's experience, if appropriate, working with a coalition(s) and in collaborating with governmental and non-governmental organizations, including national or regional agencies or organizations, State and local health departments, community planning groups, and State and local non-governmental organizations that provide HIV prevention services.

d. Assessing the Need for Community Capacity-Building, and HIV Prevention Community Planning Effectiveness and Participation (not to exceed 5 pages).

(1) Describe the demographics and structure of the HIV prevention stakeholders you intend to serve. Describe the impact of the HIV and AIDS epidemic on these stakeholders and any specific environmental, social, cultural, or linguistic characteristics which will be considered in your capacity-building strategy.

(2) Describe the priority needs related to Community Capacity-Building and HIV Prevention Community Planning Effectiveness and Participation for CBOs and the HIV prevention stakeholders you intend to serve. Describe the process for determining these needs, including where appropriate: The use of epidemiologic and other data, resource inventories, regional needs assessments, and the use of gap analyses.

(3) Describe how your proposed program complements the HIV comprehensive plans in the region(s) you plan to serve.

e. Program Plan (not to exceed 20 pages).

Describe your proposed program, including:

(1) Involvement of CDC-funded CBOs and HIV Prevention Stakeholders. Describe how CDC-funded CBOs and HIV prevention stakeholders within a region will be involved in providing input into the direction of the proposed program and in assessing the proposed program's communication, linkages, performance and services provided throughout the project period.

(2) Objectives: Provide specific, realistic, time-phased, and measurable objectives to be accomplished during the first budget period. Describe how these objectives relate to the goals described in this announcement. Describe possible barriers to or facilitators for reaching these objectives.

(3) Plan of Operation: Describe the following: (a) The strategies (in detail) that will be used, the activities that will be conducted, and the services that will be provided to meet the proposed goals and objectives and to complete all the required recipient activities (including the provision of services through the use of the (''capacity-building assistance delivery mechanisms''); (b) the process for responding to requests for assistance in community Capacity-Building; HIV Prevention Community Planning Participation and Effectiveness; and other types of capacity-building assistance from CBOs and HIV prevention stakeholders in African-American communities. Include in your description how you will: (i) Conduct needs assessments, (ii) prioritize requests to place major emphasis on assistance to CBOs and other prevention stakeholders serving African-American sub-populations most heavily affected by HIV, (iii) make referrals to the retainer consultant system funded under Category A, (iv) assign staff and consultants, (v) deliver services, (vi) report on service delivery, and (vii) conduct quality assurance; (c) how your organization will ensure that assistance provided will be culturally competent, sensitive to issues of sexual and gender identity, developmentally appropriate, linguistically-specific, educationally appropriate, and targeted to the needs of CBOs and African-American community stakeholders (d) how your organization will market program services; (e) how the proposed program will be managed and staffed, including the fiscal, administrative, managerial, and personnel infrastructure and resources that will be used to support the proposed capacity-building program; (f) the placement of the program within your organizational structure and the space that will be used to house the proposed program staff; (g) the equipment and information management systems that could be used to maintain information related to this announcement; and (h) the respective roles and responsibilities of your organization and those of each coalition member performing any of the proposed activities or functions.

(4) Coordination and Collaboration: Describe how you will coordinate and collaborate with other national, regional, state, and local governmental and nongovernmental organizations and HIV prevention providers (see Addendum for examples of collaborating agencies).

(5) Timeline: Provide a timeline that identifies major implementation phases and assigns approximate dates for inception and completion.

f. Program Evaluation Plan (not to exceed 5 pages).

Describe your plan for monitoring progress to determine if the objectives are being achieved and demonstrating that the methods used to deliver the proposed capacity-building services are effective and efficient. At a minimum, the plan should (1) outline strategies for implementing process evaluation of capacity building activities to determine if the process objectives are being achieved, (2) outline strategies for outcome monitoring to determine if the services and methods used to deliver

the services are effective and efficient, (3) describe what data will be collected and how this data will be collected, analyzed, and used to evaluate and improve the program, and (4) specify the persons responsible for designing and implementing evaluation activities, collecting and analyzing data, and reporting findings.

g. Communication and Dissemination Plan (not to exceed 2 pages).

Describe how you will share successful approaches and ''lessons learned'' with other organizations.

h. Plan for Acquiring Additional Resources (not to exceed 2 pages).

Describe your plan for obtaining additional resources from other (non-CDC) sources to supplement the program conducted through this cooperative agreement and to increase the likelihood of its continuation after the end of the project period.

i. Budget and Staffing Breakdown and Justification (not scored).

(1) Provide a detailed budget for each proposed activity. Justify all operating expenses in relation to the stated objectives and planned activities. CDC may not approve or fund all proposed activities. Be precise about the program purpose of each budget item and itemize calculations wherever appropriate.

(2) For contracts contained within the application budget, identify the contractor, if known; describe the services to be performed; justify the use of a third party; and provide a breakdown of and justification for the estimated costs of the contracts, the kinds of organizations or parties to be selected, the period of performance, and the method of selection.

(3) Describe in detail each existing or proposed position by job title, function, general duties, and activities. Include the level of effort and allocation of time for each project activity by staff positions, job title, function, general duties and activities, annual salary/rate of pay, and percentage of time spent on this program.

Note: If indirect costs are requested, you must provide a copy of your organization's current negotiated Federal indirect cost rate agreement. In the absence of an indirect cost rate agreement, the recipient may request, with detailed justification, a maximum of 10 percent for the executive director. If the organization has an indirect rate that includes the executive director's salary, no additional funds will be provided. Funds will not be provided for the salary of an executive director that is also a member of the organization's Board of Directors.

j. Training and Technical Assistance Plan (not scored).

Describe areas in which you anticipate a need for technical assistance in designing, implementing, and evaluating your proposed program and how you will obtain this technical assistance. Describe anticipated staff training needs related to the proposed program and how these needs will be met.

k. Attachments.

(1) Proof of Eligibility.

Applicants should provide a separate section within this Attachments section that is entitled Proof of Eligibility to include the documents listed below. Failure to provide the required documentation will result in disqualification.

i. IRS determination letter of your organization's 501(C)(3) tax—exempt status.

ii. Evidence of a 3-year record of service to CBOs serving African-Americans, and to African-American communities or an African-American sub-population heavily affected by HIV.

iii. Section of Bylaws or Agency Charter that indicates organization's national or regional scope of work.

iv. A list and organizational chart of the members of your governing body along with their positions on the board, their expertise in working with or providing services to the proposed target population, and their racial/ethnic backgrounds. Submission of information regarding the HIV status or other confidential information regarding individuals is optional, but must not be linked to a specific individual.

v. A list and an organizational chart of existing and proposed staff for this program, their race/ethnicity, their area of expertise, and relevant experience. Include resumes (not to exceed 2 pages per person).

(2) Other Attachments.

i. A list of all collaborating or coordinating entities and memoranda of understanding or agreement as evidence of these established or agreed-upon collaborative or coordinating relationships. Memoranda of agreement should specifically describe the proposed collaborative activities. Evidence of continuing collaboration must be submitted each year to ensure that the collaborative relationships are still in place.

ii. Description of coalition organizations and original signed letters from the chief executive officers of each organization assuring their understanding of the intent of this program announcement, the proposed program, their role in the proposed program, and the responsibilities of recipients.

iii. A list summarizing services currently delivered and culturally, linguistically, and developmentally appropriate curricula and materials.

iv. A description of any funding being received from CDC or other sources to conduct similar activities which includes:

(a) A summary of funds and income received to conduct capacity-building assistance programs. This summary must include the name of the sponsoring organization/source of income, level of funding, a description of how the funds have been used, and the budget period. In addition, identify proposed personnel devoted to this project who are supported by other funding sources and the activities they are supporting.

(b) A summary of the objectives and activities of the funded programs described above.

(c) A description of how funds requested in this application will be used differently or in ways that will expand upon the funds already received, applied for, or being received.

(d) An assurance that the funds being requested will not duplicate or supplant funds received from any other Federal or non-Federal source. CDC awarded funds can be used to expand or enhance services supported with other Federal or non-Federal funds.

v. Independent audit statements from a certified public accountant for the previous 2 years.

vi. A copy of your organization's current negotiated Federal indirect cost rate agreement, if applicable.

F. Submission and Deadline

Submit the original and two copies of PHS 5161 (OMB Number 0937–0189). Forms are available at the following Internet address: www.cdc.gov/od/pgo/funding/grantmain.htm, or in the application kit. On or before July 26, 1999, submit the application to the Grants Management specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the Independent Review Group. (Applicants must request a legibly dated U.S. Postal service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing).

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late

applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC:

1. Evaluation Criteria for Category A

a. Long-term Goals. (Total 5 points)

The quality of the applicant's stated long-term goals and the extent to which the goals are consistent with the purpose of this program announcement.

b. Organizational History and Capacity. (Total 35 points)

The extent to which the applicant has demonstrated history and capacity to provide capacity-building assistance and to implement the proposed program. These criteria include:

(1) The extent to which the applicant's organizational structure (including planned collaborations or coalition) will support the proposed program activities. (5 points)

(2) The extent to which the applicant demonstrates a history in providing capacity-building assistance to CBOs and other types of organizations serving the HIV prevention needs of African-American populations, and to African-American communities heavily affected by HIV and other STDs. (7 points)

(3) The extent to which the applicant demonstrates capacity to provide services that respond effectively to the cultural, gender, environmental, social, and multilingual characteristics of CBOs serving African American populations. (7 points)

(4) The extent to which the applicant demonstrates capability in developing and implementing capacity-building assistance programs, strategies or activities, and in developing and implementing programs similar to those proposed in this application. (7 points)

(5) The extent to which the applicant demonstrates experience in creating consultant retainer pool(s) and, if appropriate, experience working with a coalition(s). (5 points)

(6) The extent to which the applicant demonstrates experience and ability in collaborating with governmental and non-governmental organizations, including other national agencies or organizations, State and local health departments, community planning groups, and State and local non-governmental organizations that provide HIV prevention services. (4 points)

c. Assessing the Need for Capacity-Building Assistance. (Total 10 Points)

The extent to which the applicant demonstrates an understanding of the need for capacity-building assistance. These criteria include:

(1) The extent to which the applicant describes the demographics of the African-American populations across the four regions, the impact of the HIV and AIDS epidemic on these populations, and any specific environmental, social, cultural, or linguistic characteristics which will be considered in the capacity-building strategy.

(2) The extent to which the applicant describes the capacity-building priority needs of CBOs serving the African-American populations and the process for determining these needs.

(3) The extent to which the applicant describes how the proposed program complements the HIV comprehensive plans across the four regions.

d. Program Plan. (Total 35 points)

(1) Involvement of CBOs. (5 points)

The extent to which CBOs serving African-American populations will be involved in planning, implementing, and evaluating activities and services provided by the proposed program throughout the project period.

(2) Objectives. (5 points)

(a) The extent to which the proposed first-year objectives are specific, realistic, time-phased, measurable, and consistent with the program's long-term goals and proposed services; and

(b) The extent to which the applicant identifies possible barriers to or facilitators for reaching these objectives.

(3) Plan of Operation. (15 points)

(a) The overall quality of the applicant's plan for conducting capacity-building assistance and the likelihood that the proposed methods will be successful in achieving proposed goals and objectives.

(b) The extent to which the applicant's plans address all the activities listed under Required Recipient Activities.

(c) The extent to which the roles and responsibilities of the primary applicant and each collaborating institution, organization, or subcontractor are consistent with the proposed activities.

(4) Coordination/Collaboration. (5 points)

(a) The extent to which the applicant describes and documents, as applicable, intended coordination with other national, regional, State, and local governmental and nongovernmental organizations and HIV prevention providers, such as other national agencies or organizations, State and local health departments.

(b) The extent to which the applicant provides memoranda of agreement or understanding as evidence of agreed-upon collaborative relationships.

(5) Timeline. (5 points)

The extent to which the applicant's proposed timeline is specific and realistic.

e. Program Evaluation Plan. (Total 5 points)

The quality of the applicant's evaluation plan for monitoring and evaluating the implementation of proposed services and measuring the achievement of program goals and objectives.

f. Communication and Dissemination Plan. (Total 5 points)

The quality of the applicant's plan for sharing successful approaches and ''lessons learned'' with other organizations.

g. Plan for Acquiring Additional Resources. (Total 5 points)

The quality of the applicant's plan for obtaining additional resources from other non-CDC sources to supplement the program conducted through this cooperative agreement and ensure its continuation after the end of the project period.

h. Budget and Staffing Breakdown and Justification. (not scored)

Extent to which the budget is reasonable, itemized, clearly justified, and consistent with intended use of funds.

i. Training and Technical Assistance Plan. (not scored)

The quality of the applicant's plan for obtaining needed technical assistance and staff training to support the proposed program.

j. Pre-decisional Site Visits.

Site visits by CDC staff will be conducted before final funding decisions are made by CDC. Only organizations with high ranking applications will be visited. During the visit, CDC staff will meet with project staff, representatives of the board of directors, and outside consultants to assess the applicant's organizational and financial capability to implement the proposed program, review the application and program plans for current or planned activities, and determine the special programmatic conditions and technical assistance requirements of the applicant. As part of these visits, CDC and its consultants may visit state/local health departments and CBOs serving the geographic area in which the program will be implemented. A fiscal Recipient Capability Assessment (RCA) may be required of some applicants before funds are awarded.

2. Evaluation Criteria for Category B

a. Long-term Goals. (Total 5 points)

The quality of the applicant's stated long-term goals and the extent to which

the goals are consistent with the purpose of this program announcement.

b. Organizational History and Capacity (Total 35 points).

The extent to which the applicant has demonstrated history and capacity to provide capacity-building assistance and to implement the proposed program. These criteria include:

(1) The extent to which the applicant's organizational structure (including planned collaborations or coalition) will support the proposed program activities. (5 points)

(2) The extent to which the applicant demonstrates a history in providing assistance in Community Capacity-Building; HIV Prevention Community Planning Effectiveness and Participation; and other capacity-building assistance to CBOs serving African-American populations and to African-American community stakeholders (especially African-American sub-populations heavily affected by HIV and other STDs). (7 points)

(3) The extent to which the applicant demonstrates capacity to provide services that respond effectively to the cultural, gender, environmental, social, and multilingual characteristics of CBOs and HIV prevention stakeholders in African-American communities (especially African-American sub-populations at risk for HIV). (7 points)

(4) The extent to which the applicant demonstrates capability in developing and implementing capacity-building programs, strategies or activities, and in developing and implementing programs similar to those proposed in this application. (10 points)

(5) The extent to which the applicant demonstrates experience and ability in working with coalitions (where appropriate) and in collaborating with governmental and non-governmental organizations, including other national agencies or organizations, State and local health departments, community planning groups, and State and local non-governmental organizations that provide HIV prevention services. (6 points)

c. Assessing the Need for Community Capacity-Building and HIV Prevention Community Planning Effectiveness and Participation (Total 10 Points) The extent to which the applicant demonstrates an understanding of the need for Community Capacity-Building and HIV Prevention Community Planning Effectiveness and Participation. These criteria include:

(1) The extent to which the applicant describes the demographics and structure of the HIV prevention stakeholders it intends to serve, the impact of the HIV and AIDS epidemic on these stakeholders, and any specific environmental, social, cultural, or linguistic characteristics which will be considered in the capacity-building strategy.

(2) The extent to which the applicant describes the priority needs related to Community Capacity-Building and HIV Prevention Community Planning Effectiveness and Participation for CBOs serving African-Americans and for African-American community stakeholders in the region(s) to be served, and the process for determining these needs.

(3) The extent to which the applicant describes how the proposed program complements the HIV comprehensive plans in the region(s) to be served.

d. Program Plan. (Total 35 points)

1. Involvement of CDC-Funded CBOs (5 Points).

The extent to which CDC-funded CBOs and African-American community stakeholders will be involved in providing input into the direction of the program and the program's communication, linkages, performance and services provided throughout the project period.

2. Objectives (5 Points)

(a) The extent to which the proposed first-year objectives are specific, realistic, time-phased, measurable, and consistent with the program's long-term goals and proposed services; and

(b) The extent to which the applicant identifies possible barriers to or facilitators for reaching these objectives.

3. Plan of Operation (15 Points)

(a) The overall quality of the applicant's plan for providing capacity-building assistance in Community Capacity-Building, and HIV Prevention Community Planning Effectiveness and Participation to CBOs serving African-American populations and to African-American community stakeholders and the likelihood that the proposed methods will be successful in achieving proposed goals and objectives.

(b) The extent to which the applicant's plans address all the activities listed under Required Recipient Activities.

(c) The extent to which the roles and responsibilities of the primary applicant and each coalition member (where appropriate), collaborating organization, or subcontractor are consistent with the proposed activities.

4. Coordination and Collaboration (5 Points)

(a) The extent to which the applicant describes and documents, as applicable, intended coordination with national, regional, State, and local governmental and nongovernmental organizations and HIV prevention providers, such as other national agencies or organizations, State and local health departments.

(b) The extent to which the applicant provides memoranda of agreement or understanding as evidence of agreed-upon collaborative relationships.

5. Timeline (5 Points)

The extent to which the applicant's proposed timeline is specific and realistic.

e. Program Evaluation Plan. (Total 5 points)

The quality of the applicant's evaluation plan for monitoring and evaluating the implementation of proposed services and measuring the achievement of program goals and objectives.

f. Communication and Dissemination Plan. (Total 5 points)

The quality of the applicant's plan for sharing successful approaches and ''lessons learned'' with other organizations.

g. Plan for Acquiring Additional Resources. (Total 5 points)

The quality of the applicant's plan for obtaining additional resources from other, non-CDC sources to supplement the program conducted through this cooperative agreement and ensure its continuation after the end of the project period.

h. Budget and Staffing Breakdown and Justification (not scored)

Extent to which the budget is reasonable, itemized, clearly justified, and consistent with intended use of funds.

i. Training and Technical Assistance Plan (not scored)

The quality of the applicant's plan for obtaining needed technical assistance and staff training to support the proposed program.

j. Pre-decisional Site Visits

Site visits by CDC staff will be conducted before final funding decisions are made by CDC. Only organizations with high ranking applications will be visited. During the visit, CDC staff will meet with project staff, representatives of the board of directors, and outside consultants to assess the applicant's organizational and fiscal capability to implement the proposed program, review the application and program plans for current or planned activities, and determine the special programmatic conditions and technical assistance requirements of the applicant. As part of these visits, CDC and its consultants may visit state/local health departments and CBOs serving the geographic area in which the program will be implemented. A fiscal Recipient

Capability Assessment (RCA) may be required of some applicants before funds are awarded.

H. Other Requirements

1. Technical Reporting Requirements

Provide CDC with the original plus two copies of:

a. Quarterly progress reports;

b. Financial status report, no more than 90 days after the end of the budget period; and

c. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application kit.

AR98–4 HIV/AIDS Confidentiality Provisions
AR98–5 HIV Program Review Panel Requirements
AR98–7 Executive Order 12372 Review
AR98–8 Public Health System Reporting Requirements
AR98–9 Paperwork Reduction Act Requirements
AR98–10 Smoke-Free Workplace Requirements
AR98–11 Healthy People 2000
AR98–12 Lobbying Restrictions
AR98–14 Accounting System Requirements

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under the Public Health Service Act, section 301(a)(42 U.S.C. 241(a)), 317(k)(2) (42 U.S.C. 247b(k)(2)), as amended. The Catalog of Federal Domestic Assistance Number is 93.939.

J. Where To Obtain Additional Information

To receive additional written information and to request an application and tool kit, call NPIN at 1–800–458–5231 (TTY users: 1–800–243–7012); visit their Web site: www.cdcnpin.org/program; send requests by fax to 1–888–282–7681 or send requests by e-mail: application-CBA@cdcnpin.org. This information is also posted on the Division of HIV/AIDS Prevention (DHAP) Web site at http://www.cdc.gov/nchstp/hiv__aids/funding/toolkit/.

CDC maintains a Listserv (HIV–PREV) related to this program announcement. By subscribing to the HIV–PREV Listserv, members can submit questions and will receive information via e-mail with the latest news regarding the program announcement. Frequently asked questions on the Listserv will be posted to the Web site. You can subscribe to the Listserv on-line or via e-mail by sending a message to: listserv@listserv.cdc.gov and writing the following in the body of the message: subscribe hiv-prev first name last name.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Maggie S. Warren, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office Announcement (99095), Centers for Disease Control and Prevention, 2920 Brandywine Road, Room. 3000, Atlanta, GA 30341–4146, Telephone (770) 488–2736, E-mail: mcs9@cdc.gov

For program technical assistance, contact: Samuel Taveras, Community Assistance, Planning, and National Partnerships Branch National Center for HIV, STD, and TB Prevention, Centers for Disease Control and Prevention (CDC), 1600 Clifton Rd. Mailstop E–58, Atlanta, GA 30333, Telephone (404) 639–5241, E-mail address: syta@cdc.gov

See also the CDC home page on the Internet: http://www.cdc.gov

Dated: May 26, 1999.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–13884 Filed 6–1–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: ACF–IV–E–1 Foster Care and Adoption Assistance Financial Reporting Form.

OMB No.: New.

Description: The form provides specific data regarding claims and provides a mechanisms for States to request grant awards and certify the availability of State matching funds. Failure to collect this data would seriously compromise ACF's ability to monitor expenditures. This information is also used to estimate outlays and may be used to prepare ACF budget submissions to Congress.

Respondents: State, local or tribal government.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–IV–E–1	51	4	8	1,632

Estimated Total Annual Burden Hours: 1,632.

Additional Information: Copies of the proposed collection may be writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW, Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 to 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW, Washington, DC 20503, Attn: Ms. Lori Schack.

Dated: May 26, 1999.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 99–13860 Filed 6–1–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–1454]

Draft Guidance for Industry on Nasal Spray and Inhalation Solution, Suspension, and Spray Drug Products; Chemistry, Manufacturing, and Controls Documentation; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Nasal Spray and Inhalation Solution, Suspension, and Spray Drug Products; Chemistry, Manufacturing, and Controls Documentation.'' This draft document is intended to provide guidance for industry on the chemistry, manufacturing, and controls (CMC) documentation to be submitted in new drug applications (NDA's) and abbreviated new drug applications (ANDA's) for nasal spray and inhalation solution, suspension, and spray drug products. This draft guidance also covers CMC information recommended for inclusion in the NDA's and ANDA's regarding the components, manufacturing process, and associated controls with each of these areas.

DATES: Written comments on the draft guidance may be submitted by August 31, 1999. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Copies of this draft guidance are available on the Internet at ''http://www.fda.gov/cder/guidance/index.htm''. Submit written requests for single copies of the draft guidance for industry to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments are to be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Guiragos K. Poochikian, Center for Drug Evaluation and Research (HFD–570), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1050.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a draft guidance for industry entitled ''Nasal Spray and Inhalation Solution, Suspension, and Spray Drug Products; Chemistry, Manufacturing, and Controls Documentation.'' This draft guidance sets forth information that should be provided to ensure continuing quality and performance characteristics for these drug products.

This draft level 1 guidance is being issued consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). The draft guidance represents the agency's current thinking on CMC documentation to be submitted in NDA's and ANDA's for nasal spray and inhalation solution, suspension, and spray drug products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

Interested persons may, on or before August 31, 1999, submit to the Dockets Management Branch (address above) written comments on the draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 25, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–13921 Filed 6–1–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–281]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the Information collections referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed prior to the expiration of the normal time limits under OMB's regulations at 5 CFR, Part 1320. The HCFA–R–281 will be used to evaluate the effects of the ''Medicare and You Handbook: 2000'' to determine that beneficiaries not only received it and are aware of the information, but whether they understand the information and are able to use it in making informed choices about their Medicare plan. Without this information, HCFA would not be able to obtain the information necessary to determine whether these goals have been met. The Agency cannot reasonably comply with the normal clearance procedures because public harm is likely to result due to the possibility of beneficiaries not being properly informed/educated as to the importance of their Medicare plan choices.

HCFA is requesting OMB review and approval of this collection by 6/14/99, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individuals designated below, by 6/10/99. During this 180-day period, we will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements. We will submit the requirements for OMB review and an extension of this emergency approval.

Type of Information Collection Request: New Collection.

Title of Information Collection: Survey of Medicare Beneficiaries for the

National ''Medicare and You Handbook: 2000'' Evaluation.

Form No.: HCFA–R–281 (OMB 0938–NEW).

Use: As part of the National Medicare Education Program (NMEP), HCFA plans a national mailing of the Medicare & You 2000 handbook to the entire Medicare population in September 1999. To evaluate the effects of the handbook, HCFA needs to know not only that beneficiaries received it and are aware of the information, but whether they understand the information and are able to use it in making informed choices about their Medicare plan.

To quantify whether these goals have been met, measures of what beneficiaries currently know and understand about the Medicare program must be established. It is also necessary to compare attitudes and behavior of beneficiaries who receive the information to those who do not to determine if the print campaign of the NMEP (Medicare & You handbook) has been effective.

This survey will be used to determine the effectiveness of the ''Medicare and You Handbook: 2000''.

Frequency: Other: one time.

Affected Public: Business or other for-profit, and Individuals or Households.

Number of Respondents: 4,000.

Total Annual Responses: 4,000.

Total Annual Hours: 2,950.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of Information requirements. However, as noted above, comments on these Information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below, by 6/10/99:

Health Care Financing Administration, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Fax Number: (202) 395–6974 or (202) 395–5167, Attn: Allison Herron Eydt, HCFA Desk Officer.

Dated: May 20, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–13870 Filed 6–1–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) will publish periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Organ Procurement and Transplantation Network (OPTN) Data System (OMB No. 0915–0157)—Revision

This is a request for revision of the data system for the Organ Procurement and Transplantation Network (OPTN) and the Scientific Registry of Transplant Recipients (SRTR) and the following associated forms: (1) cadaver donor registration/referral; (2) living donor registration; (3) donor histocompatibility; (4) potential recipient form; (5) recipient histocompatibility; (6) transplant candidate registration; (7) thoracic organ recipient registration; (8) thoracic organ recipient follow-up; (9) kidney transplant recipient registration; (10) kidney transplant recipient follow-up form; (11) liver transplant recipient registration; (12) liver transplant recipient follow-up; (13) pancreas transplant recipient registration; (14) pancreas transplant recipient follow-up; (15) intestine transplant recipient registration; and (16) intestine transplant recipient follow-up. New forms are related to intestine transplants to collect data similar to other types of transplants.

The estimated respondent burden is as follows:

	Number of respondents	Responses per respondent	Hours per response	Total hour burden
Cadaveric Registration or Referral	65	277	0.3	5,400
Living Donor Registration	680	7	0.2	920
Living Donor Follow-up	680	14	0.1	952
Donor Histocompatibility	159	75	0.1	1,200
Potential Recipient Form	65	385	0.3	7,500
Recipient Histocompatibility	159	157	0.1	2,500
Transplant Candidate Registration	387	114	0.2	15,600
Thoracic Registration	153	27	0.3	1,230
Thoracic Follow-up	153	144	0.2	4,400
Kidney Registration	252	58	0.3	4,380
Kidney Follow-up	252	500	0.2	25,200
Liver Registration	125	40	0.4	2,000

	Number of respondents	Responses per respondent	Hours per response	Total hour burden
Liver Follow-up	125	192	0.3	7,200
Pancreas Registration	125	11	0.3	420
Pancreas Follow-up	125	56	0.2	1,400
Intestine Registration	33	3	0.2	20
Intestine Follow-up	33	6	0.2	40
Total	911			80,362

Send comments to: Susan Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–36, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Written comments should be received within 60 days of this notice.

Dated: May 26, 1999.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 99–13924 Filed 6–1–99; 8:45 am]

BILLING CODE 4160–15–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

''Low Income Levels'' for Health Professions and Nursing Programs

The Health Resources and Services Administration (HRSA) is updating income levels used to identify a ''low income family'' for the purpose of providing training in the various health professions and nursing programs included in titles VII and VIII of the Public Health Service Act (the Act).

The Department periodically publishes in the **Federal Register** low income levels used for grants and cooperative agreements to institutions providing training for (1) Disadvantaged individuals, (2) individuals from a disadvantaged background, or (3) low-income families.

The programs under the Act that may use ''low income levels'' as one of the factors in determining a disadvantaged or low-income status are the:

Advanced Education Nursing (section 811)
Allied Health Special Projects (section 755)
Basic Nurse Education and Practice (section 831)
Dental Public Health (section 768)
Faculty Loan Repayment and Fellowships Program (section 738)
Financial Assistance for Disadvantaged Health Professions Students (section 739 (a)(2)(F))
General or Pediatric Dentistry (section 747)
Health Administration Traineeships and Special Projects (section 769)
Health Careers Opportunity (section 739)
Loans to Disadvantaged Students (section 724)
Maternal and Child Health Research (section 701)
Physician Assistant Training (section 747)
Primary Care Residency Training (section 747)
Public Health Traineeships (section 767)
Quentin N. Burdick Rural Health (section 754)
Residency Training in Preventive Medicine (section 768)
Scholarships for Health Professions Students From Disadvantaged Backgrounds (section 737)
Public Health Training Centers (section 766)
Workforce Diversity (section 821)

These programs generally award grants to accredited schools of medicine, osteopathic medicine, public health, dentistry, veterinary medicine, optometry, pharmacy, allied health, podiatric medicine, nursing, chiropractic, public or nonprofit private schools which offer graduate programs in clinical psychology, and other public or private nonprofit health or educational entities to assist the disadvantaged to enter and graduate from health professions schools. Some programs provide for the repayment of health professions education loans for disadvantaged students.

The following income figures were taken from low income levels published by the U.S. Bureau of the Census, using an index adopted by a Federal Interagency Committee for use in a variety of Federal programs. That index includes multiplication by a factor of 1.3 for adaptation to health professions and nursing programs which support training for disadvantaged individuals or those from disadvantaged backgrounds. The income figures have been updated to reflect increases in the Consumer Price Index through December 31, 1998.

Size of parents' family [1]	Income level [2]
1	$10,900
2	14,100
3	16,800
4	21,500
5	25,400
6 or more	28,500

[1] Includes only dependents listed on Federal income tax forms.
[2] Rounded to the nearest $100. Adjusted gross income for calendar year 1998.

Definition

(a) *Income.* The Bureau of the Census and the Department of Health and Human Services define ''income'' to include total annual cash receipts before taxes from all sources with the following exceptions: Capital gains; any assets drawn down as withdrawals from a bank, the sale of property, a house, or a car; or tax refunds, gifts, loans, lump-sum inheritances, one-time insurance payments, or compensation for injury. A more detailed definition of ''income'' is available from the Bureau of Census.

Dated: May 25, 1999.

Claude Earl Fox,

Administrator.

[FR Doc. 99–13923 Filed 6–1–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Extramural Support Program for Projects To Increase Organ and Tissue Donation

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Announcement for submitting applications for funding.

On April 5, 1999, the Health Resources and Services Administration (HRSA) published in the **Federal Register** a notice announcing a proposed competitive extramural support program for fiscal year 1999 to fund projects to increase organ and tissue donation (64 FR 16473).

Comments were solicited on the parameters of the program, including performance measures, funding priorities, and review criteria. The comment period closed on May 5, 1999, and we have considered the comments that were submitted as we developed the final guidance.

Guidance for submitting applications for funding under the ''Extramural Support Program: Model Interventions to Increase Organ and Tissue Donation,'' sponsored by HRSA, can be obtained by calling the HRSA Grants Application Center, at 1–888–333–4772, or by assessing the following three web sites: www.hrsa.gov, www.organdonor.gov, and www.hrsa.gov/osp/dot. Submission of the applications should be in accordance with the provisions of the Guidance.

Dated: May 25, 1999.

Claude Earl Fox,

Administrator.

[FR Doc. 99–13922 Filed 6–1–99; 8:45 am]

BILLING CODE 4160–15–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Request for Comments for Scholarships for Disadvantaged Students

The Health Resources and Services Administration (HRSA) announces that applications for fiscal year (FY) 1999 for the Scholarships for Disadvantaged Students (SDS) program are being accepted under the authority of section 737 of the Public Health Service Act (the Act), Title VII, Part B, as amended by the Health Professions Education Partnerships Act of 1998, Pub. L. 105–392, dated November 13, 1998. This notice requesting comments on proposed eligibility criteria, preferences and priorities includes updates to information provided in the January 6, 1999 program announcement.

Purpose

The SDS program provides funds to health professions and nursing schools for the purpose of assisting such schools in providing scholarships to individuals from disadvantaged backgrounds who are enrolled (or accepted for enrollment) as full-time students in the schools.

For purposes of the SDS program in FY 1999, an ''individual from a disadvantaged background'' is defined in 42 CFR 57.1804, subpart S, as one who:

(1) Comes from an environment that has inhibited the individual from obtaining the knowledge, skill, and abilities required to enroll in and graduate from a health professions or nursing school, or from a program providing education or training in allied health professions; or

(2) Comes from a family with an annual income below a level based on low-income thresholds according to family size published by the U.S. Bureau of the Census, adjusted annually for changes in the Consumer Price Index, and adjusted by the Secretary for use in all health professions and nursing programs. The Secretary will periodically publish these low income levels in the **Federal Register**.

The following income figures determine what constitutes a low-income family for purposes of the SDS program for FY 1999.

Size of parents' family [1]	Income level [2]
1	$10,900
2	14,100
3	16,800
4	21,500
5	25,400
6 or more	28,500

[1] Includes only dependents listed on Federal income tax forms.

[2] Adjusted gross income for calendar year 1998, rounded to nearest $100.

Under the FY 1999 appropriations bill, $38.1 million has been appropriated for this program. Of the funds available for FY 1999, 16 percent shall be made available to schools agreeing to expend the funds only for nursing scholarships. The balance will support scholarships for eligible health professions students. An estimated 490 awards will be made to institutions participating in this program. The period of fund availability will be for one academic year.

Use of Funds

Funds awarded to a school under this program may be used as follows:

(1) To award scholarships to former recipients of scholarships under the Exceptional Financial Need (EFN) Scholarship program and the Financial Assistance for Disadvantaged Health Professions Students (FADHPS) program (sections 736 and 740(d)(2)(B) of the Public Health Service Act, as such sections existed prior to the enactment of Pub. L. 105–392), at levels comparable to what these students would have received prior to phase out of the EFN and FADHPS programs, and with service agreements that are consistent with those the students entered into to receive EFN and FADHPS funds in FY 1998. The Secretary has notified those schools with former EFN and FADHPS recipients (who are enrolled in allopathic medical, osteopathic medical, or dental schools only) regarding the procedures for receiving funding for these students.

(2) To award scholarships to eligible students enrolled in the school, to be expended only for tuition expenses, other reasonable educational expenses, and reasonable living expenses (as defined by the school for all students attending the school) incurred while enrolled in a school as a full-time student. The amount of the scholarship may not, for any year of attendance, exceed the total amount required for the year for the expenses specified above, and may not exceed the student's financial need, as determined in accordance with a need analysis procedure approved by the Department of Education.

Any school receiving SDS funds must maintain separate accountability for these funds.

School Eligibility

An entity that is eligible to receive funds under this program is:

(1) As defined in section 799B of the Act, a school of medicine, osteopathic medicine, dentistry, pharmacy, podiatric medicine, optometry, veterinary medicine, public health, chiropractic, or allied health, a school offering a graduate program in behavioral and mental health practice, or an entity providing programs for the training of physician assistants; or, as defined in section 801 of the Act, is a school of nursing. Each school or program must be accredited by a recognized body or bodies approved for such purpose by the Secretary of Education, and by a specialized accrediting body approved for the health discipline applying for program participation; and

(2) Carrying out a program for recruiting and retaining students from disadvantaged backgrounds, including students who are members of racial and ethnic minorities.

Proposed School or Program Eligibility Criteria

The Senate Report accompanying Pub. L. 105–392 states that the committee expects the Secretary to apply appropriate standards in determining which schools or programs from all eligible disciplines have complied with the requirement to be carrying out a program for recruiting and retaining students from disadvantaged backgrounds, using

outcome-based measures that provide an indication of the success of the program. The report further states that the existence of a recruitment and retention program for students from disadvantaged backgrounds should not, in itself, result in the eligibility of a school or program if the school or program is unable to demonstrate that the recruitment and retention program has achieved success, based on the number and/or percentage of disadvantaged students who graduate from the school (p. 20, Senate Report 105–220). Accordingly, the Secretary is proposing to establish the following outcome-based measures with which a school or program must comply to be eligible to receive SDS funds in FY 1999:

(1) Individuals from disadvantaged backgrounds must comprise at least 5 percent of the total enrollment in the school or program for which funds are requested, based on enrollment data for academic year 1997–98;

(2) Individuals from disadvantaged backgrounds must comprise at least 5 percent of the total graduates from the school or program for which funds are requested, based on graduates for academic year 1997–98; and

(3) The ratio of individuals from disadvantaged backgrounds who graduated, compared with the individuals from disadvantaged backgrounds who are enrolled, must be at least 15 percent for 5-year programs, 20 percent for 4-year programs, 25 percent for 3-year programs, and 40 percent for 2-year programs.

Since the use of outcome measures to determine eligibility would be a new requirement in FY 1999, and since the timing of the enactment of the new statute has provided very little lead time to notify schools or programs of the new outcome measures, the Secretary has established very low measures for FY 1999. It is the Secretary's view that any school or program that cannot meet the 5 percent thresholds and the retention ratio described above cannot reasonably be considered to have a strong commitment to the recruitment and retention of individuals from disadvantaged backgrounds. However, recognizing that these initial levels are very low, and that many schools and programs have indicated since the SDS program began that they have activities in place to support the education of individuals from disadvantaged backgrounds, the Secretary is proposing that the outcome-based measures with which a school or program must comply to be eligible to receive SDS funds be increased, for FY 2000, to the following levels:

(1) Individuals from disadvantaged backgrounds must comprise at least 10 percent of the total enrollment in the school or program for which funds are requested, based on enrollment data for academic year 1998–99;

(2) Individuals from disadvantaged backgrounds must comprise at least 10 percent of the total graduates from the school or program for which funds are requested, based on graduates for academic year 1998–99; and

(3) The ratio of individuals from disadvantaged backgrounds who graduated, compared with the individuals from disadvantaged backgrounds who are enrolled, must be at least 15 percent for 5-year programs, 20 percent for 4-year programs, 25 percent for 3-year programs, and 40 percent for 2-year programs.

The Secretary intends that the proposed threshold levels for determining a school or program's eligibility will continue to increase gradually each year until they reach an optimal level for assuring that disadvantaged students are represented in the health care workforce at levels that best address the HRSA goals of improved diversity and distribution.

Evaluation Criteria for Fiscal Year 1999

For FY 1999, the Secretary is proposing that applications will be evaluated based on the degree to which a school or program meets the requirements listed above under ''School Eligibility.'' Guidance for presenting the information will be provided in the FY 1999 application materials. Due to the new eligibility requirements, all applicant schools and programs, including schools and programs that received funds for academic year 1998–99, must submit an application to be considered for funding in FY 1999.

Student Eligibility

To qualify for the SDS program, a student would be required to:

(1) Be a resident of the U.S. and either be a U.S. citizen, a U.S. national, an alien lawfully admitted for permanent residence in the U.S., a citizen of the Commonwealth of the Northern Mariana Islands, a citizen of the Commonwealth of Puerto Rico, or a citizen of the Republic of Palau, or a citizen of the Marshall Islands, or a citizen of the Federated States of Micronesia;

(2) Meet the definition of an ''individual from a disadvantaged background'' as defined above; and

(3) Have a financial need for a scholarship, in accordance with a need analysis procedure approved by the Department of Education (Pub. L. 105–244, Part F, The Higher Education Act of 1965 as amended). In addition, any student who is enrolled (or accepted for enrollment) in a health profession school or program must provide information on his or her parents' financial situation, regardless of the tax status of the student; and

(4) Be enrolled (or accepted for enrollment) at an eligible school for enrollment as a full-time student in a program leading to a degree in a health profession or nursing.

Student Preferences

The law requires that in providing SDS scholarships, the school or program give preference to students for whom the cost of attending an SDS school or program would constitute a severe financial hardship. Severe financial hardship is to be determined by the school or program in accordance with standard need analysis procedures prescribed by the Department of Education for its Federal student aid programs. The school or program has discretion in deciding how to determine which students have ''severe financial hardship,'' as long as the standard is applied consistently to all eligible students.

The law also requires that schools give preference to former recipients of scholarships under sections 736 (EFN Scholarships) and 740(d)(2)(B) (FADHPS Scholarships), as such sections existed on November 12, 1998. The Secretary is implementing this preference by making a separate allocation of funds for these students, based on information provided by schools (allopathic medical, osteopathic medical, and dental schools with former EFN and FADHPS recipients only), prior to allocating the remaining SDS money for all other eligible students.

Proposed Student Preference

The Secretary is also proposing that, beginning in academic year 2000–2001, schools or programs give preference in the awarding of SDS funds to students who have participated in an academic enrichment program funded in whole or in part by the Health Careers Opportunity Program (HCOP), authorized by section 739 of the Act. This preference is intended to help assure that students who have participated in HCOP programs are not deterred from enrolling in a health professions school or program due to a lack of financial aid. Under this preference, it would be the school's or program's responsibility to identify HCOP students to assure that they receive preference in the awarding of SDS funds. For example, the school or

program could ask, as part of the financial aid application, whether the student participated in an academic enrichment program funded by HCOP, or could work with the admissions office to determine which students have been involved in HCOP programs. The Secretary intends that schools and programs implement this preference without a significant additional burden. Under this preference, the school or program would continue to have discretion in determining the amount of funds to award to HCOP students, but would be required to identify and fund HCOP students (provided they have financial need) before funding other eligible students who do not meet a student preference.

Schools and programs that currently have access to information on which students have participated in HCOP programs are encouraged to implement this preference beginning in academic year 1999–2000. However, since some schools and programs may not currently have access to this information, the Secretary would not require schools and programs to implement the preference for HCOP students until academic year 2000–2001.

Definitions

Black or African American means a person having origins in any of the black racial groups of Africa.

Hispanic or Latino means a person of Cuban, Mexican, Puerto Rican, South or Central American or other Spanish culture or origin, regardless of race.

American Indian or Alaska Native means a person having origins in any of the original peoples of North and South America (including Central America) and who maintains tribal affiliation or community attachment.

Definitions listed above are contained in Directive No. 15 of Office of Management and Budget Circular No. A–46, as revised.

Native American as defined in Pub. L. 101–527, means American Indian, Alaska Native, Aleut, or Native Hawaiian.

Graduate program in behavioral health and mental health practice means a graduate program in clinical psychology, clinical social work, professional counseling, or marriage and family therapy as defined in section 799B(1)(D) of the Act.

Graduate program in clinical social work means an accredited graduate program in a public or nonprofit private institution in a State that provides training in a concentration in health or mental health care leading to a graduate degree in social work as defined in section 799B(1)(C) of the Act.

Graduate program in marriage and family therapy means an accredited graduate program in a public or nonprofit private institution in a State that provides training in a concentration leading to a graduate degree in marriage and family therapy as defined in section 799B(1)(C) of the Act.

Graduate program in professional counseling means an accredited graduate program in a public or nonprofit private institution in a State that provides training in a concentration leading to a graduate degree in gerontological counseling, mental health counseling, or rehabilitation counseling.

Medically underserved community means any geographic area and/or population served by any of the following practice sites—

(1) Community Health Centers (section 330 of the Act);

(2) Migrant Health Centers (section 329 of the Act);

(3) Health Care for the Homeless Grantees (section 340 of the Act);

(4) Public Housing Primary Care Grantees (section 340A of the Act);

(5) Rural Health Clinics, federally designated (section 1861(aa)(2) of the Social Security Act);

(6) National Health Service Corps sites, freestanding (section 333 of the Act);

(7) Indian Health Service sites (Pub. L. 93–638 for tribally operated sites and Pub. L. 94–437 for Indian Health Service operated sites);

(8) Federally Qualified Health Centers (section 1905(a) and (1) of the Social Security Act);

(9) Primary Medical Care, Mental Health, and Dental Health Professional Shortage Areas (HPSAs) (designated under section 332 of the Act);

(10) State or Local Health Departments as defined and published in the **Federal Register** Notice of April 4, 1994 (59 FR 15741–44); or

(11) Ambulatory practice sites designated by State Governors as serving medically underserved communities as defined and published in the **Federal Register** Notice of April 4, 1994 (59 FR 15741–44).

Proposed Institutional Preferences

The Senate Report accompanying Pub. L. 105–392 directs the Secretary to restrict eligibility, for purposes of ''allied health,'' to the following baccalaureate or graduate degree allied health professions schools or programs: Dental hygiene, medical laboratory technology, occupational therapy, physical therapy, radiologic technology, speech pathology, audiology, and registered dieticians (Senate Report 105–220, p. 20). Accordingly, for fiscal year 1999 and beyond, among allied health schools or programs, the Secretary proposes to give preference to the allied health schools or programs listed above.

Proposed Institutional Funding Priorities

In accordance with section 737(c) of the Act, the Secretary shall give priority to eligible entities based on the proportion of graduating students going into primary care, the proportion of underrepresented minority students, and the proportion of graduates working in medically underserved communities. Any eligible school or program that qualifies for one or more funding priorities will receive extra weighting in the allocation formula.

Primary Care Funding Priority

For purposes of determining which schools and programs receive priority based on the proportion of graduating students going into primary care, the Secretary proposes to define primary care to include:

(1) Allopathic and osteopathic medical students that enter family medicine, general internal medicine, general pediatrics, and preventive medicine, and general osteopathic medicine. This is consistent with the statutory definition of primary care for the Primary Care Loan (PCL) program, authorized under section 723 of the Act;

(2) General dentistry, which has been included as primary care for purposes of the Exceptional Financial Need (EFN) Scholarship program and the Financial Assistance for Disadvantaged Health Professions Students (FADHPS) program;

(3) Nurse practitioners and nurse midwives who are practicing primary care; and

(4) Physician assistants who are practicing primary care.

For purposes of the SDS program, the Secretary is defining ''primary care'' to include the above disciplines because, with the exception of general dentistry, they are involved in the provision of comprehensive and continuous care and provide an entry to the health care system. The Secretary has included general dentistry because it acts as the entry to the health care system for a particular type of care which is not covered by the other disciplines.

For the above disciplines, a school or program may qualify for the primary care priority if at least 50 percent of its graduates from the specified year are practicing primary care. For allopathic and osteopathic medical schools, the determination of which schools are eligible for the funding priority would

be based on the same data used to determine compliance with the PCL school requirements. Thus, for the FY 1999 award process, priority would be based on the activities, during academic year 1997–98, of Post Graduate Year (PGY)–3 graduates (i.e., those who graduated during academic year 1994–95), but for FY 2000, priority would be based on the activities, during academic year 1998–99, of PGY–4 graduates (i.e., those who graduated during academic year 1994–95). This would allow allopathic and osteopathic medical schools to submit, for the SDS program, the same data submitted for the PCL program if they are PCL participants. For the remaining primary care disciplines, the determination of compliance would be based on the activities, during academic year 1997–98, of students who graduated during academic year 1996–97.

Underrepresented Minority Funding Priority

For purposes of granting priority based on the proportion of underrepresented minority students in FY 1999, the Secretary proposes to give priority to any school or program that has an underrepresented minority enrollment that is above the national average for the discipline. It is the Secretary's intention to gradually increase this percentage in future years until it is equal to the underrepresented minority enrollment needed to reach parity in the health care workforce.

Medically Underserved Community Funding Priority

For purposes of granting priority based on the proportion of graduates working in medically underserved communities, the Secretary proposes to give priority to any school or program for which at least 10 percent of the graduates from the specified year are practicing in medically underserved communities. It is the Secretary's intention to gradually increase this percentage in future years until it is representative of a level that has a meaningful impact on the elimination of medically underserved communities. For allopathic and osteopathic medical schools, the determination of which schools are eligible for the funding priority would be based on the same population of graduates used to determine compliance with the primary care funding priority. Thus, for the FY 1999 awards, priority would be based on the activities, during academic year 1997–98, of allopathic and osteopathic medical students who graduated 3 years earlier (academic year 1994–95), but for FY 2000, priority would be based on the activities, during academic year 1998–99, of allopathic and osteopathic medical students who graduated 4 years earlier (academic year 1994–95). For other schools and programs, priority would be based on the activities of students during 1997–98 who graduated in 1996–97. Schools and programs that do not have data on the percentage of their graduates who are practicing in medically underserved communities may still apply for SDS funds, but would not be considered for this funding priority.

Proposed Procedures for Calculating Awards

Awards to eligible schools and programs would be calculated by comparing the weighted number of eligible students in each eligible school and program with the total weighted number of eligible students in all eligible schools and programs. For FY 1999 and beyond, the number of ''eligible students'' for each school or program would be the lesser of:

(1) The number of disadvantaged graduates for academic year 1997–98 multiplied times the number of years required to complete the program (based on a 9-month academic year); or

(2) The total disadvantaged enrollment during academic year 1997–98. For example, if a 4-year program had 100 disadvantaged graduates and a disadvantaged enrollment of 500, its award would be based on 400 eligible students (100 graduates times 4). If another 4-year program had 100 disadvantaged graduates and a disadvantaged enrollment of 300, its award would be based on 300 eligible students (the total disadvantaged enrollment).

After determining the number of eligible students at each school or program, this number would be adjusted to reflect the extra weighting associated with any funding priorities. Depending upon the number of schools and programs that qualify for one or more funding priorities, it is possible that some eligible schools and programs may not receive funding.

National Health Objectives for the Year 2000

The Public Health Service is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The Scholarships for Disadvantaged Students program is related to the priority area of Academic and Community Partnership Programs. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–0325; telephone (202) 783–3238.

Education and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between Department education programs and programs which provide comprehensive primary care services to the underserved.

Smoke-Free Workplace

The Department strongly encourages all award recipients to provide a smoke-free workplace and promote the non-use of all tobacco products, and Pub. L. 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Interested persons are invited to comment on the proposed eligibility criteria and preferences for participating institutions, institutional funding priorities and preferences, nonstatutory preference of awarding funds to prior HCOP recipients, and procedures for calculating scholarship awards. The comment period will close on July 2, 1999.

All comments received before the deadline date will be considered before final acceptability of the eligibility criteria for participating institutions, institutional funding priorities and preferences, nonstatutory preference of awarding funds to prior HCOP recipients, and procedures for calculating scholarship awards for the FY 2000 will be applied.

Written comments should be addressed to: Capt. Bruce C. Baggett, Director, Division of Student Assistance; Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8–48, 5600 Fishers lane, Rockville, Maryland 20857; telephone (301) 443–5395.

Application Availability

Applications are required from all schools and programs which are interested in applying for funding in FY 1999. The SDS application for FY 1999 must be filed via the Internet. Schools may access the SDS application at www.hrsa.gov/bhpr/dsa/sds. All applications and fiscal reports will be required to be filed electronically. However, if assistance is required,

please contact the Scholarship Team at the above address.

The deadline for submitting application materials is July 2, 1999. The materials for this program have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The OMB clearance number is 0915–0061.

The Catalog of Federal Domestic Assistance Number for the Scholarships for Disadvantaged Students program is 93.925. This program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

This program is not subject to the Public Health Systems Reporting Requirements.

Dated: May 25, 1999.

Claude Earl Fox,

Administrator.

[FR Doc. 99–13925 Filed 6–1–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies, and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

This Notice is now available on the internet at the following website: http://www.health.org/workpl.htm

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, 5600 Fishers Lane, Rockwall 2 Building, Room 815, Rockville, Maryland 20857; Tel.: (301) 443–6014.

SPECIAL NOTE: Please use the above address for all surface mail and correspondence. For all overnight mail service use the following address: Division of Workplace Programs, 5515 Security Lane, Room 815, Rockville, Maryland 20852.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, ''Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies,'' sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840 (formerly: Bayshore Clinical Laboratory)

Advanced Toxicology Network, 15201 East I–10 Freeway, Suite 125, Channelview, TX 77530, 713–457–3784/800–888–4063 (formerly: Drug Labs of Texas, Premier Analytical Laboratories)

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770/888–290–1150

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400

Alabama Reference Laboratories, Inc., 543 South Hull St., Montgomery, AL 36103, 800–541–4931/334–263–5745

Alliance Laboratory Services, 3200 Burnet Ave., Cincinnati, OH 45229, 513–585–9000 (formerly: Jewish Hospital of Cincinnati, Inc.)

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 20151, 703–802–6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866/800–433–2750

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787/800–242–2787

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783 (formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802, 800–445–6917

Cox Health Systems, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652/417–269–3093 (formerly: Cox Medical Centers)

Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, P. O. Box 88–6819, Great Lakes, IL 60088–6819, 847–688–2045/847–688–4171

Diagnostic Services Inc., dba DSI, 12700 Westlinks Drive, Fort Myers, FL 33913, 941–561–8200/800–735–5416

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31604, 912–244–4468

DrugProof, Division of Dynacare/Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2672/800–898–0180 (formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310

Dynacare Kasper Medical Laboratories *, 14940–123 Ave., Edmonton, Alberta, Canada T5V 1B4, 780–451–3702/800–661–9876

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 601–236–2609

Gamma-Dynacare Medical Laboratories *, A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall St., London, ON, Canada N6A 1P4, 519–679–1630

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6267

Hartford Hospital Toxicology Laboratory, 80 Seymour St., Hartford, CT 06102–5037, 860–545–6023

Info-Meth, 112 Crescent Ave., Peoria, IL 61636, 309–671–5199/800–752–1835 (formerly: Methodist Medical Center Toxicology Laboratory)

Integrated Regional Laboratories, 1400 Northwest 12th Ave., Miami, FL 33136, 305–325–5784 (formerly: Cedars Medical Center, Department of Pathology)

LabCorp Occupational Testing Services, Inc., 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–672–6900/800–833–3984 (formerly: CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

LabCorp Occupational Testing Services, Inc., 4022 Willow Lake Blvd., Memphis, TN 38118, 901–795–1515/800–223–6339 (formerly: MedExpress/National Laboratory Center)
LabOne, Inc., 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–728–4064 (formerly: Center for Laboratory Services, a Division of LabOne, Inc.)
Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986 (formerly: Roche Biomedical Laboratories, Inc.)
Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823
Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–331–3734
MAXXAM Analytics Inc.*, 5540 McAdam Rd., Mississauga, ON, Canada L4Z 1P1, 905–890–2555 (formerly: NOVAMANN (Ontario) Inc.)
Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43614, 419–383–5213
MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 651–636–7466/800–832–3244
Methodist Hospital Toxicology Services of Clarian Health Partners, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Blvd., Indianapolis, IN 46202, 317–929–3587
MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–4512/800–950–5295
Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, Minnesota 55417, 612–725–2088
National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 805–322–4250
NWT Drug Testing, 1141 E. 3900 South, Salt Lake City, UT 84124, 801–268–2431/800–322–3361 (formerly: NorthWest Toxicology, Inc.)
Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–341–8092
Pacific Toxicology Laboratories, 6160 Variel Ave., Woodland Hills, CA 91367, 818–598–3110 (formerly: Centinela Hospital Airport Toxicology Laboratory)
Pathology Associates Medical Laboratories, 11604 E. Indiana, Spokane, WA 99206, 509–926–2400/800–541–7891
PharmChem Laboratories, Inc., 1505–A O'Brien Dr., Menlo Park, CA 94025, 650–328–6200/800–446–5177
PharmChem Laboratories, Inc., Texas Division, 7610 Pebble Dr., Fort Worth, TX 76118, 817–595–0294 (formerly: Harris Medical Laboratory)
Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372/800–821–3627
Poisonlab, Inc., 7272 Clairemont Mesa Blvd., San Diego, CA 92111, 619–279–2600/800–882–7272
Quest Diagnostics Incorporated, 4444 Giddings Road, Auburn Hills, MI 48326, 810–373–9120/800–444–0106 (formerly: HealthCare/Preferred Laboratories, HealthCare/MetPath, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, National Center for Forensic Science, 1901 Sulphur Spring Rd., Baltimore, MD 21227, 410–536–1485 (formerly: Maryland Medical Laboratory, Inc., National Center for Forensic Science, CORNING National Center for Forensic Science)
Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 972–916–3376/800–526–0947 (formerly: Damon Clinical Laboratories, Damon/MetPath, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, 875 Greentree Rd., 4 Parkway Ctr., Pittsburgh, PA 15220–3610, 412–920–7733/800–574–2474 (formerly: Med-Chek Laboratories, Inc., Med-Chek/Damon, MetPath Laboratories, CORNING Clinical Laboratories)
Quest Diagnostics of Missouri LLC, 2320 Schuetz Rd., St. Louis, MO 63146, 314–991–1311/800–288–7293 (formerly: Quest Diagnostics Incorporated, Metropolitan Reference Laboratories, Inc., CORNING Clinical Laboratories, South Central Division)
Quest Diagnostics Incorporated, 7470 Mission Valley Rd., San Diego, CA 92108–4406, 619–686–3200/800–446–4728 (formerly: Nichols Institute, Nichols Institute Substance Abuse Testing (NISAT), CORNING Nichols Institute, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, One Malcolm Ave., Teterboro, NJ 07608, 201–393–5590 (formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratory)
Quest Diagnostics LLC (IL), 1355 Mittel Blvd., Wood Dale, IL 60191, 630–595–3888 (formerly: Quest Diagnostics Incorporated, MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratories Inc.)
Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130
Scott & White Drug Testing Laboratory, 600 S. 31st St., Temple, TX 76504, 254–771–8379/800–749–3788
S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300/800–999–5227
SmithKline Beecham Clinical Laboratories, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590 (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–637–7236 (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 801 East Dixie Ave., Leesburg, FL 34748, 352–787–9006 (formerly: Doctors & Physicians Laboratory)
SmithKline Beecham Clinical Laboratories, 400 Egypt Rd., Norristown, PA 19403, 610–631–4600/800–877–7484 (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 506 E. State Pkwy., Schaumburg, IL 60173, 847–447–4379/800–447–4379 (formerly: International Toxicology Laboratories)
SmithKline Beecham Clinical Laboratories, 7600 Tyrone Ave., Van Nuys, CA 91405, 818–989–2520/800–877–2520
South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219–234–4176
Southwest Laboratories, 2727 W. Baseline Rd., Tempe, AZ 85283, 602–438–8507
Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517–377–0520 (formerly: St. Lawrence Hospital & Healthcare System)
St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202, 573–882–1273
Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260
UNILAB, 18408 Oxnard St., Tarzana, CA 91356, 818–996–7300/800–492–0800 (formerly: MetWest-BPL Toxicology Laboratory)
Universal Toxicology Laboratories, LLC, 10210 W. Highway 80, Midland, Texas 79706, 915–561–8851/888–953–8851
UTMB Pathology—Toxicology Laboratory, University of Texas Medical Branch, Clinical Chemistry Division, 301 University Boulevard, Room 5.158, Old John Sealy, Galveston, Texas 77555–0551, 409–772–3197

*The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. DHHS, with the DHHS' National Laboratory Certification Program (NLCP) contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, the DHHS will recommend that DOT certify the laboratory (Federal Register, 16 July 1996) as meeting the minimum standards of the ''Mandatory Guidelines for Workplace Drug Testing'' (59 **Federal Register**, 9 June 1994, Pages 29908–29931). After receiving the DOT certification, the laboratory will be included in the monthly list of DHHS certified laboratories and participate in the NLCP certification maintenance program.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 99–13869 Filed 6–1–99; 8:45 am]

BILLING CODE 4160–20–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Grants to State Mental Health Authorities and Single State Agencies for Alcohol and Other Drug Abuse for Technical Assistance

AGENCY: Center for Mental Health Services, and the Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration, (SAMHSA), HHS.

ACTION: Grants to State Mental Health Authorities and Single State Agencies for Alcohol and Other Drug Abuse for technical assistance to States to improve the availability and use of data related to mental health and substance abuse needs.

SUMMARY: This notice is to inform the public of planned grants for technical assistance that the Center for Mental Health Services (CMHS), under its State Reform Grant Program, and the Center for Substance Abuse Treatment (CSAT), under its State Treatment Needs Assessment Program, intend to award to State Mental Health Authorities (SMHAs) and Single State Agencies (SSAs) for Alcohol and Other Drug Abuse. In fiscal year 1999, CMHS has approximately $500,000 available to fund 5 grants; CSAT has approximately $4.5M available to fund 9–15 grants. Depending on the availability of funds in future fiscal years, CMHS and CSAT may re-announce the program and award additional grants. Awards will be made if the applications are scored by the initial review groups and concurred with by the CMHS and CSAT National Advisory Councils, respectively. This is not a formal request for applications; assistance will be provided only to SMHAs and SSAs for Alcohol and Other Drug Abuse.

Eligibility for grants is limited to SMHAs and SSAs for Alcohol and Other Drug Abuse because these entities have the statutory responsibility to develop and submit needs assessment data as part of their Block Grant applications. By providing assistance to the States in the area of needs assessment, CSAT, under its State Treatment Needs Assessment Program, seeks to insure that data needed for the rational allocation of scarce resources for substance abuse treatment are available for States to use in their planning activities. Grant funds will support States in (1) developing the infrastructure, and (2) improving the availability and use of data of treatment needs beyond that required to meet statutory requirements under the Substance Abuse Prevention and Treatment Block Grants. CMHS, under its State Reform Grants Programs, seeks to support States to facilitate the integration, analysis, synthesis, and use of information for State mental health planning efforts and to manage State mental health care reform efforts.

Authority: Grants to SMHAs will be made under the authority of section 1948(a) of the Public Health Service Act, as amended (42 U.S.C. 300x–58). Grants to SSAs for Alcohol and Other Drug Abuse will be made under the authority of section 1935(b)(1)(A) of the Public Health Service Act, as amended, (42 U.S.C. 300x–35). The Catalog of Federal Domestic Assistance number for the CSAT State Treatment Needs Assessment Program is 93.238; the Catalog of Federal Domestic Assistance for the CMHS State Reform Grants is 93.119.

CONTACTS: For the CMHS State Reform Grants Program contact: Olinda Gonzales, Ph.D., CMHS/SAMHSA , Parklawn Building, Room 15C–04 (Tele: 301–443–3343). For the CSAT State Treatment Needs Assessment Program contact: Roger Straw, Ph.D., CSAT/SAMHSA, Rockwall II Building, Suite 840 (Tele: 301–443–7747). The mailing address for these individuals is 5600 Fishers Lane, Rockville, Maryland 20857.

Dated: May 26, 1999.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 99–13857 Filed 6–1–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4340–FA–10]

FY 1998 Public and Indian Housing New Approach Anti-Drug Program (Formerly Known as the Safe Neighborhood Grant Program Announcement of Funding Awards

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the FY 1998 Super Notice of Funding Availability (SuperNOFA) for the New Approach Anti-Drug Program. This announcement contains the consolidated names and addresses of those award recipients under the New Approach Anti-Drug Program and the amounts of the awards.

FOR FURTHER INFORMATION CONTACT: For questions concerning awards, contact the Office of Public and Indian Housing's Grant Management Center Director Michael E. Diggs, Department of Housing and Urban Development, Washington, DC, telephone (202) 358–0221. For the hearing- or speech-impaired, these numbers may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at 1 (800) 877–8339. (Other than the ''800'' TTY number, these telephone numbers are not toll-free.).

SUPPLEMENTARY INFORMATION: This program is a comprehensive neighborhood/community-based approach to crime. The purpose of these competitive grants under the New Approach Anti-Drug Program, is to assist entities managing or operating Federally assisted multifamily housing developments, public and Indian housing developments or other multifamily-housing developments for low-income families supported by non-Federal governmental housing entities or similar housing developments supported by nonprofit private sources, to augment security (including personnel costs), assist in the investigation and/or prosecution of drug-related criminal activity in and around such developments, and provide for the development of capital improvements directly related to security.

Crime-fighting efforts are most effective when partnering takes place with law-enforcement agencies at various levels and with a full range of community stakeholders (such as public housing agencies (PHAs) and Tribally Designated Housing Entities (THDEs)).

The 1998 awards announced in this Notice were selected for funding in a competition announced in a **Federal Register** Notice published on March 31, 1998 (63 FR 15597). Applications were scored and selected for funding based on the selection criteria in that Notice.

A total of $11,665,903.98 was awarded to 53 New Approach grantees who have submitted comprehensive implementation plans with specific measurable goals to promote self sufficiency of public and Native American housing residents. In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the names, addresses, and amounts of those awards

provided in Appendix A to this document.

Dated: March 17, 1999.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

APPENDIX A.—GRANTEES FOR THE FY 1998 PUBLIC AND INDIAN HOUSING NEW APPROACH ANTI-DRUG PROGRAM FORMERLY KNOWN AS THE SAFE NEIGHBORHOOD GRANT PROGRAM

Grantees	Amount
American Housing Foundation, James I. Fletcher, 1800 South Washington, Amarillo, TX 79102	$250,000.00
Arbor Court, L.P., Steve Sisson, 2171 Judicial Drive, Germantown, TN 38183	250,000.00
Armory Square L.P., Ann Beregin, 667 Main Street, Holyoke, MA	88,390.00
Armour Boulevard Neighborhood Task Force, Nancy Lee, 914 E. Armour Blvd., Kansas City, MO	126,960.00
Beacon Residential Management, William J. Bransky, 2 Oliver Street, Boston, MA 21090	245,440.18
Bethesda Apts. Assoc., George Arendas, c/o Brandywine agncy. 480 Lincoln Hway, N. Versailles, PA 15137	223,060.00
Broad Street Management, Inc. A, Gregory J. Dara, 935 E. Broad Street, Columbus, OH 43205	250,000.00
Broad Street Management, Inc. B, Gregory J. Dara, 935 E. Broad Street, Columbus, OH 43205	227,500.00
Casa Community Association, Frank J. Desantis, Jr., 7225 Cartwright Avenue, Sun Valley, CA	250,000.00
Century Pacific Housing Partnership VI, Dilia Camacho-Saeedi, 1610A Edgewood Drive, Danville, IL 61832	171,448.80
Chelsea Plaza Homes, Ltd., Angela Chico-Augustin, 1021 North Seventh Street, Kansas City, MO 66101	155,000.00
City of Mount Vernon, Constance G. Post, Roosevelt Square, 2nd Floor, Mount Vernon, NY 10550	250,000.00
Colonial American Development Corporation, Jeanne M. Shull, 400 S. Fifth Street, Columbus, OH 43215	243,000.00
Corinthian Housing Development Corporation, Hal Hamilton, 595 South 10th Street, Newark, NJ 07103	250,000.00
Creative Choice West Ltd., Vera Banks, 4243–D Northlake Boulevard, Palm Beach Gardens, FL 33410	250,000.00
Detroit Int'l Stake Adult Housing Corp., Thomas Jeffers, 16651 Lahser, Detroit, MI	250,000.00
Foresight Affordable Housing of MD, Inc., Robert E. Sampson, Jr., 1395 Kersey Lane, Rockville, MD 20854	209,525.00
G Management Corporation (A), Juan Gonsalez Feliciano, P.O. Box 276, St Just, PR 978	250,000.00
G Management Corporation (B), Juan Gonsalez Feliciano, P.O. Box 276, St Just, PR 978	250,000.00
Haddington Family Associates, Robert Sampson, Jr., 1 East Stowe Road, Marlton, NJ 08053	249,542.00
Hart Realty, Inc., Thomas Denhart, 1534 Race Street, Cincinatti, OH 45210	250,000.00
Hickory Heights L.P., Claude Killingeworth, 1108 Cambridge Street, Abbeville, SC 29620	212,045.00
Homes of Oakridge, Inc., Margaret M. Toomey, 1236 Oakridge Drive, Des Moines, IA 50314	250,000.00
Insignia Residential Group, Dan Hoefner, P.O. Box 1089, Greenville, SC 29602	250,000.00
Jackson Terrace Associates, Peter G. Florey, 100 Terrace Ave, Hempstead, NY 11550	250,000.00
Jersey City Management, Inc., John Skelly, 50 Journal Square, Jersey City, NJ 07306	218,900.00
King of Kings Housing Development Corporation I, Charles E. Figgs, P.O. Box 8036, Fresno, CA 93747	250,000.00
L.A. Gardens Community Association, Joseph Fernandez, 7225 Cartwright Avenue, Sun Valley, CA 91352	250,000.00
Lakeview Presbyterian Homes, Inc., Thomas Ahrenhozz, 515 E. Orange Street, Lakeland, FL 33801	250,000.00
LDC Borinquen, Inc., Alan Regon, 3 Townline Circle, Rochester, NY 14623	250,000.00
Montgomery Family Associates, Robert Sampson, Jr., P.O. Box 994, Marlton, NJ 08053	249,542.00
Morehouse Gardens Apartments, LTD, M. Barclay Coffman, 601 Pleasant Drive, Morehouse Parish, LA 71220	209,000.00
Mt. Zion Housing Corporation, Edith Parkman, 2445 Amsterdam Drive, Augusta, GA 30906	250,000.00
Northwood Apartments, LTD, Becky Thompson, 531 Brower Road, Lima, OH 45801	197,305.00
Nueva Esperanza Inc., Carlos A. Vega, 401 Main Street, Holyoke, MA 01040	211,845.00
Peabody Properties, Doreen Bushaskin, 159 Burgin Parkway, Quincy, MA 02169	244,400.00
People Self-Help Housing Corporation, Jill Martinez, 29 East Canon Perdido, Santa Barbara, CA 93101	148,120.00
River Place Limited Partnership, Ann Berezin, 667 Main Street, Holyoke, MA 01040	129,960.00
Ross Management Group, Deborah Ross-Weseloh, 2211 Olive Street, Denver, CO 80207	209,108.00
RPS Management Company, Mike Meyer, 1935 El Camino Vida Roble, Carlsbad, CA 92008	250,000.00
Sherwood Glen on the Fox I & II, Diane Pedersen, 3 Oxford Road #14, Carpentersville, IL 60110	247,077.00
Shoreline Limited Partnership, Eric R. Vogt, 200 Niagra Street, Buffalo, NY 14201	250,000.00
Swift Creek Apts., Melanie Thompson, 405 Swift Creek Road, Hartsville, SC 29550	112,125.00
Talcott Gardens Apartments, 135 West Street, New Britain, CT 06051	242,000.00
Terra Genesis Housing, Inc., Ron Anderson, 301 S. Frio, #470, San Antonio, TX 78207	250,000.00
Thetford Properties III, David Nagel, 7610 Falls of the Neuse, Raleigh, NC 27624	228,000.00
Thetford Properties IV, David Nagel, P.O. Box 97188, Raleigh, NC 27624	240,000.00
Tulsa Senior Housing Association, Steve Cowen, P.O. Box 3465, Tulsa, OK 74101	121,514.00
Tyler Apartments, LDC, Grant Trivett II, P.O. Box 58, Johnson City, TN 37605	232,978.00
US Shelter Corp., Melanie Thompson, 619 Ervine Court, Florence, SC 29506	32,275.00
Victory Economy Development/Washington Invests in, John J. Lucas, Jr., 907 East Tuscarawas Street, Canton, OH 44707	249,936.00
West Gate Apartments, Inc., Beverly Rochell, c/o RPM Management P.O. Box 7300, Little Rock, AR 72212	246,908.00
Williamsport Village Apartments, Deborah Orolin, 357 Federal Avenue, Williamsport, PA 17701	243,000.00

[FR Doc. 99–13882 Filed 6–1–99; 8:45 am]

BILLING CODE 4210–33–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of Application for Incidental Take Permit for Golden-Cheeked Warbler During the Construction of One Single Family Residence on 0.75 Acre of the 5 Acres on Spicewood Springs Road in Travis County, TX

SUMMARY: Anita and Kent Chambers (Applicants) have applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicant has been assigned permit number TE–010979–0. The requested permit, which is for a period of 5 years, would authorize the incidental take of the endangered golden-cheeked warbler (Dendroica chrysoparia). The proposed take would occur as a result of the construction of one single family residence on Spicewood Springs Road, Austin, Travis County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made before 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application should be received by July 2, 1999.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Christina Longacre, Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0057). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8:00 to 4:30) at the U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application and EA/HCP should be submitted to the Field Supervisor, Ecological Services Field Office, Austin, Texas at the above address. Please refer to permit number TE–010979–0 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Christina Longacre at the above Austin Ecological Services Field Office.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the ''taking'' of endangered species such as the golden-cheeked warbler. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Applicant: Anita and Kent Chambers plan to construct a single family residence on Spicewood Springs Road in Austin, Travis County, Texas. This action will eliminate less than one acre of habitat and indirectly impact less than four additional acres of golden-cheeked warbler habitat. The applicant proposes to compensate for this incidental take of golden-cheeked warbler habitat by donating $1,500 into the Balcones Canyonlands Preserve to acquire/manage lands for the conservation of the golden-cheeked warbler.

Alternatives to this action were rejected because not developing the subject property with federally listed species present was not economically feasible and alteration of the project design would not decrease the impacts.

Geoffery L. Haskett,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 99–13885 Filed 6–1–99; 8:45 am]

BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–910–0777–30]

Northeastern Great Basin Resource Advisory Council Meeting Location and Time

AGENCY: Bureau of Land Management.

ACTION: Resource advisory councils' meeting location and time.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C., the Department of the Interior, Bureau of Land Management (BlM), Council meetings will be held as indicated below. The agenda for the June 18, 1999 meeting includes: Approval of minutes of the previous meeting, Standards and Guidelines for wild horses, renewal of the RAC Charter and subject matter for future meetings.

All meetings are open to the public. Citizens may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend or need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Curtis Tucker, Special Projects Coordinator, Ely Field Office, 702 North Industrial Way, HC 33 Box 33500, Ely, NV 89301–9408, telephone 702–289–1841.

DATES, TIMES & LOCATION: The time and location of the meeting is as follows: Northeastern Great Basin Resource Advisory Council meeting, June 18, 1999, starting at 9:00 a.m., Ely Field Office, 702 North Industrial Way, Ely, NV; public comments will be at 11:30 a.m.; tentative adjournment 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Curtis Tucker, Special Projects Coordinator, Ely Field Office, 702 North Industrial Way, HC 33 Box 33500, Ely, NV 89301–9408, telephone 702–289–1841.

SUPPLEMENTARY INFORMATION: The purpose of the Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues, associated with the management of the public lands.

Dated: May 20, 1999.

Helen Hankins,

District Manager, Elko.

[FR Doc. 99–13871 Filed 6–1–99; 8:45 am]

BILLING CODE 4310–HC–M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act Meeting

June 15, 1999 Board of Directors Meetings.

TIME AND DATE: Tuesday, June 15, 1999, 1:00 pm (open Portion); 1:30 pm (closed portion).

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, N.W., Washington, D.C.

STATUS: Meeting open to the Public from 1:00 pm to 1:30 pm; Closed portion will commence at 1:30 pm (approx.).

MATTERS TO BE CONSIDERED: 1. President's Report.

FURTHER MATTERS TO BE CONSIDERED: (Closed to the Public 1:30 pm)

1. Finance Project in Brazil and Bolivia

2. Insurance Project in Brazil
3. Insurance Project in Argentina
4. Insurance Project in Argentina
5. Insurance Project in Turkey
6. Insurance Project in Algeria
7. Pending Major Projects
8. Report on Equity Fund

CONTACT PERSON FOR INFORMATION: Information on the meeting may be obtained from Connie M. Downs at (202) 336–8438.

Dated: May 28, 1999.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 99–14045 Filed 5–28–99; 2:53 pm]

BILLING CODE 3210–01–M

INTERNATIONAL TRADE COMMISSION

Sunshine Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: June 11, 1999 at 11 a.m.

PLACE: Room 101, 500 E Street SW, Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–807 (Final) (Certain Hot-Rolled Steel Products from Japan)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on June 18, 1999.)
5. Outstanding action jackets:

(1.) Document No. EC–99–008: Approval of 50th report of the Operations of the Trade Agreements Program, The Year in Trade, 1998.

(2.) Document No. EC–99–009: Approval of final report in Inv. No. 332–325 (The Economic Effects of Significant U.S. Import Restraints: Second Update).

(3.) Document No. GC–99–047: Inv. Nos. 751–TA–17–20 (Titanium Sponge from Japan, Russia, Kazakhstan, and Ukraine).

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: May 25, 1999
By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–14057 Filed 5–28–99; 2:49 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—DeepVision L.L.C.

Notice is hereby given that, on March 12, 1999, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Baker Hughes DeepVision Holdings, Incorporated has filed written notification simulataneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are Baker Hughes DeepVision Holdings, Inc., Houston, TX; Baker Hughes Oilfield Operations, Inc., Houston, TX; Transocean Offshore Inc., Houston, TX; and Transocean Offshore D.V. Inc., Houston, TX. In addition, each of the following companies, none of which has an equity or other ownership interest in DeepVision L.L.C. (''DeepVision''), has agreed to fund a portion of the costs required to determine the feasibility of, and to develop, certain technology to be used in the services proposed to be offered by DeepVision: Amoco Production Company, New Orleans, LA; Mobil Technology Company, Dallas, TX; EEX Corporation, Houston, TX; and Chevron Petroleum Company, Houston, TX (collectively, the Operator participants). In return for such funding, the Operator Participants will have preferential rights to contract with DeepVision for such services, if such technology is developed and is determined to be commercially feasible.

The nature and objectives of the venture are for the purpose of marketing and selling services (and developing technology to provide those services) for offshore oil and gas wells that have all of the following elements: (1) The services are provided to offshore wells and for offshore operations; (2) the services utilize reeled systems technology that DeepVision has developed or acquired; and (3) the services consist of services for one or more of the following activities: (a) the drilling and/or completion of new subsea wellbores; (b) the intervention and/or workover of existing subsea wellbores; or the installation, maintenance and repairs of subsea oilfield facilities associated with subsea wellbores. As used herein, ''subsea wellbores'' means offshore wellbores having a subsea wellhead at or near the sea bottom. However, the scope of DeepVision's operations does not extend to services provided by Transocean Offshore Inc.'s (and its affiliates') existing fleet of conventional coiled tubing drillling vessels and systems for semi-submersibles and offshore platforms, nor to Baker Hughes Incorporated's (and its affiliates') coil tubing services of the type corresponding to their existing services that operate (a) Onshore, (b) through surface completions or (c) through conventional subsea workover, drilling or production risers.

Constance K. Robinson,

Director of Operations, Antitrust Divison.

[FR Doc. 99–13275 Filed 6–1–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: Application for Nonresident Alien's Mexican Border Crossing Card.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on February 23, 1999 at 64 FR 8861, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until July 2, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the 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 Collection

(1) Type of Information Collection: Reinstatement without change of a previously approved collection.

(2) Title of the Form/Collection: Application for Nonresident Alien's Mexican Border Crossing Card.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form I–190, Inspections Division, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or Households. This form will be used to obtain data from an applicant for replacement lost, stolen, or mutilated Mexican Border Crossing Card.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 270,410 responses at 5 minutes (.083 hours) per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 22,444 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan, 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

In additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: May 27, 1999.

Richard A. Sloan,

Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–13889 Filed 6–1–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: Petition for nonimmigrant worker.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on January 22, 1999 at 64 FR 3572, allowing for emergency OMB review and a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until July 2, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the 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 Collection

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Petition for Nonimmigrant Worker.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–129, Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. This form is used to petition for temporary workers and for the admission of treaty traders and investors. It is also used in the process of an extension of stay or for a change of nonimmigrant status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 368,948 responses at 1 hour 55 minutes (1.916) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 706,904 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally,

comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: May 27, 1999.

Richard A Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–13890 Filed 6–1–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review; Registration for Classification as Refugee.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until August 2, 1999.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Registration for Classification as Refugee.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–590. Office of International Affairs, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This information collection provides a uniform method for applicants to apply for refugee status and contains the information needed in order to adjudicate such applications.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 140,000 responses at 35 (.583) Minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 81,620 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: May 27, 1999.

Richard A. Sloan,

Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–13891 Filed 6–1–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information collection under Review: Medical Certification for Disability Exceptions.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. A final rule containing this information collection was previously published in the **Federal Register** on February 18, 1999 at 64 FR 7990. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until July 2, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the 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 Collection

(1) *Type of Information Collection:* Revision of currently approved collection.

(2) *Title of the Form/Collection:* Medical Certification for Disability Exceptions.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form N–648. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. These medical certifications will be used to support an applicant's claim to an exception of the literacy and history/government knowledge requirements found in section 312 of the Immigration and Nationality Act. These certifications which are executed by licensed health care providers, are needed to support the applicant's claim of an exception to this naturalization requirement.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 20,000 responses at two (2) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 40,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: May 27, 1999.

Richard A. Sloan,

Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–13892 Filed 6–1–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Employment and Training Administration

Office of Job Training Programs; Workforce Investment Act; Title I, National Programs: Youth Opportunity Grants

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of Availability of Funds and Solicitation for Grant Applications (SGA).

SUMMARY: The U.S. Department of Labor, Employment and Training Administration, announces the competitive grants to be awarded under the Youth Opportunity initiative. Part I of this announcement provides the legislative authority and provides background information on this initiative; Part II provides instructions on the application submission process; Part III describes the Youth Opportunity Grant initiative; Part IV describes how to apply for urban and rural grants; and Part V describes how to apply for Native American grants. This announcement includes all of the information and forms needed to apply for Youth Opportunity Grants.

DATES: The closing date for receipt of applications is September 30, 1999, by 4 p.m. eastern standard time. No exceptions to the mailing and hand-delivery conditions set forth in Part II of this notice will be granted. Applications that do not meet the conditions set forth in this notice will not be considered.

ADDRESSES: Applications must be mailed or hand-delivered to: U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: Yvonne Harrell, Reference: SGA/DFA 99–015; 200 Constitution Avenue, NW., Room S–4203; Washington, DC 20210. Your application should specify on the cover whether you are applying for an urban, rural, or Native American grant. Areas that are not EZ/ECs are urban if they are located in metropolitan areas as defined by the Census.

FOR FURTHER INFORMATION CONTACT: Fax questions to Yvonne Harrell, Division of Federal Assistance at (202) 219–8739. This is not a toll-free number. All inquiries sent via fax should include the SGA number (DFA 99–015) and a contact name and phone number. This announcement is also being published on the Internet on the Employment and Training Administration's Home Page at http://doleta.gov. Commonly asked questions and answers regarding these grants will also be published on the ETA Home Page. Award notifications will also be published on the Home Page.

SUPPLEMENTARY INFORMATION:

Part I. Authority

Section 169 of the Workforce Investment Act of 1998. Regulations applicable to this Act are at 20 CFR parts 660 through 671, published at 64 F.R. 18662 (April 15, 1999). Regulations specifically applicable to Youth Opportunity Grants are at 20 CFR part 664, subpart H (§§ 664.800–664.830).

Background

The Nation's overall unemployment rate is near its lowest level in almost 30 years, but there continue to be serious economic inequalities and pockets of poverty in this country. Youth living in inner-city and rural areas with poverty rates of 30 percent or higher face considerable barriers to succeeding in life. The employment rate for out-of-school youth in high-poverty areas typically is less than 50 percent. In our country's largest urban school districts, less than 50 percent of each year's entering 9th grade class graduates four years later. Many of these out-of-school youth are at risk of becoming permanently lost to the legitimate economy. The labor market is simply not working for these youth.

The Youth Opportunity Grants authorized under Section 169 of the Workforce Investment Act (WIA) of 1998 significantly increase resources available for serving youth growing up in high-poverty urban and rural areas. The Department of Labor (DOL) envisions that these new resources will be used as a complement to the Job Corps, School-to-Work, formula-funded WIA programs, Department of Education programs, and other programs funded at the Federal, State, and local level to help youth make the transition to adulthood. We expect through these grants to develop high-quality programs that help individual youth find better jobs and increase their educational attainment. In addition to these positive outcomes for individual youth, we also expect to achieve community-wide impacts in increasing youth employment rates and educational attainment.

The Youth Opportunity Grants also offer a chance to build improved systems for serving youth. Planning and implementing these grants will require local areas to think geographically in targeting resources; to coordinate more closely with the public school system, juvenile justice system, the private sector, community-based organizations, and existing programs providing services to youth; to retain dedicated staff over several years; to develop high-quality programs based on best practices; and to provide follow-up services to youth for a longer period than previously required by employment and training grants. A primary goal of Youth Opportunity Grants is to put systems in place that will be sustained after grant funds cease and result in long-term improvements in our capacity to serve youth.

Grantees must assure that youth with disabilities have physical and programmatic access to programs operated with Youth Opportunity funds, and that programs include extensive and targeted outreach to ensure that eligible disabled youth are served under these initiatives.

DOL also requires that grantees ensure that young workers placed by their programs receive on-the-job occupational safety and health training, and that employers guarantee that jobs provided are in compliance with all appropriate State and Federal labor standards, including child labor.

Part II. Application Submission Process

This part pertains to ''ALL'' eligible applicants (Workforce Investment Boards, SDA administrative entity receiving JTPA formula funds, and Native American, JTPA section 401 or WIA section 166 Grantees).

What Should My Application Consist of?

You must include both a financial and a technical proposal. An original and three (3) copies of the application must be submitted. The application will consist of two (2) separate and distinct Sections: (1) The Financial Proposal, (2) the Technical Proposal. Your application must specify on the cover sheet whether you are applying for an urban, rural, or Native American grant. Areas that are not EZ/ECs are urban if they are located in metropolitan areas as defined by the Census.

What Information Should Be Included in Section I—The Financial Proposal?

Section I must include your Financial Proposal which consists of the required forms listed in Appendix ''A'' (Cover Sheet, Application for Federal Assistance, SF424 and the Budget Information Sheet). Do not attach any documents on top of the ''Cover Sheet''. This sheet must be the first page of your application package. The ''Budget Information Sheet'' must reflect the 12-month initial grant period. The budget include on a separate page a detailed breakout of each proposed budget line item. For each budget line item that includes funds or in-kind contributions from a source other than grant funds, identify the source, the amount, and any restrictions that may apply to these funds. You should reserve funds in the budget for staff development and travel to training conferences. Also include in this section a two page Executive/Project Summary, and the letter from the Governor designating your area as eligible for award if you are not an EZ/EC. The Federal Domestic Assistance Catalogue Number is 17.249. This number must be placed in Block # 10 of the SF424.

What Information Should Be Included in Section II—Technical Proposal?

Section II of your application will contain your ''Technical Proposal'' which should address the grant requirements identified in Part IV for urban and rural grants and Part V for Native American grants. Technical proposal must be limited to 30 double-spaced single-side, 8.5-inch × 11-inch pages with a 1-inch margin. The text type must be 12 point or larger. Attachments must not exceed ten (10) pages. Applications that do not meet these requirements will not be considered. Each application must include the Checklist provided as Appendix B. NO COST DATA OR REFERENCE TO PRICE SHALL BE INCLUDED IN THE TECHNICAL PROPOSAL.

May an Application Be Hand-Delivered?

Applications should be mailed no later than five (5) days prior to the closing date for the receipt of applications. However, if applications are hand-delivered, they must be received at the designated place by 4 p.m., Eastern Time on the closing date for receipt of applications. All overnight mail will be considered to be hand-delivered and must be received at the designated place by the specified time and closing date. Telegraphed and/or faxed proposals will not be honored. All applications that fail to adhere to the above instructions will not be honored.

What Happens if an Application Is Delivered Late?

Any application received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it:

(1) Was sent by U.S. Postal Service registered or certified mail not later than the fifth calendar day before the closing date specified for receipt of applications (e.g., an offer submitted in response to a solicitation requiring receipt of application by the 30th of January must have been mailed by the 25th); or

(2) Was sent by U.S. Postal Service Express Mail Next Day Service—Post Office to Addressee, not later than 5 p.m. at the place of mailing two working days prior to the date specified for receipt of application. The term ''working days'' excludes weekends and U.S. Federal holidays. The only acceptable evidence to establish the date of mailing of a late application sent by U.S. Postal Service registered or certified mail is the U.S. postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. Both postmarks must show a legible date or the proposal shall be processed as if it had been mailed late. ''Postmark'' means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore, applicants should request the postal clerk to place a legible hand cancellation ''bull's eye'' postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late application sent by ''Express Mail Next-Day Service—Post Office to Addressee'' is the date entered by the post office receiving clerk on the ''Express Mail Next Day Service—Post Office to Addressee'' label and the postmarks on both the envelope and wrapper and the original receipt from the U.S. Postal Service. ''Postmark'' has the same meaning as defined above. Therefore, an applicant should request the postal clerk to place a legible hand cancellation ''bull's eye'' postmark on both the receipt and the envelope or wrapper.

How May I Withdraw an Application?

Applications may be withdrawn by written notice or telegram (including mailgram) received at any time before award. Applications may be withdrawn in person by the applicant or by an authorized representative thereof, if the representative's identity is made known and the representative sign a receipt for the proposal.

Part III. Youth Opportunity Grant Initiative

What Is DOL's Vision of the Youth Opportunity Initiative?

At DOL, the vision of the Youth Opportunity Grant Program, and all of its other youth programs, is to assist all youth, particularly those out of school, to acquire the necessary academic, technical, and workplace skills and work experience to successfully transition into adulthood, careers, and further education and training. The Department envisions a ''youth movement,'' involving partnerships with local education agencies, the private sector, post-secondary institutions, community-based organizations, and foundations. As well, we will be promoting public awareness of the Department's commitment to America's youth.

What Are the Objectives and Goals of the Initiative?

The Workforce Investment Act specifies that Youth Opportunity grants are to be used to increase the long-term employment of youth who live in empowerment zones, enterprise communities, and high-poverty areas. Currently, both the employment rates and the educational attainment of youth in these areas are very low. DOL expects to achieve individual positive outcomes in job placement and retention, high school completion, and college enrollment. By serving large numbers of youth in target areas, DOL also expects to achieve community-wide impacts on employment rates, high school completion rates, and college enrollment rates.

Am I an Eligible Applicant for These Grants?

You are an eligible applicant for these grants if you are a Local Workforce Investment Board (or, in areas that have not yet made the transition to Workforce Investment Boards, the administrative entity that receives formula funds for a local service delivery area (SDA) under the Job Training Partnership Act) serving a community that meets one of the following three criteria:

(1) The community has been designated a federal Empowerment Zone or Enterprise Community (EZ/EC) by the Department of Housing and Urban and Development or the Department of Agriculture under section 1391 of the Internal Revenue Code of 1986;

(2) If the State has no federally designated EZ/EC, the community has been designated by the Governor as a high poverty area; or

(3) If the State has one or more EZs or ECs, the community is one of two additional areas in the state that the Governor has designated as eligible to apply for funds under this grant program. Such communities must meet the poverty criteria for EZ/ECs set forth in section 1392 (a)(4), (b), and (d) of the Internal Revenue Code of 1986.

You may also apply for a Youth Opportunity Grant if you are a Workforce Investment Act section 166 (JTPA section 401) Native American Grantee and the community that you serve meets certain criteria. Part V of this grant announcement, which deals specifically with Native American applications, lists these criteria.

What Are Applicant Restrictions?

Under the Lobbying Disclosure Act of 1995, section 18, an organization described in Section 501(c)4 of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible for the receipt of Federal funds constituting a award grant or loan.

How Large Should the Target Area Be?

We recommend that you make your entire EZ/EC the target area for this grant, except for the largest urban EZs with populations of over 70,000. For these large EZs, we recommend that the target area be limited to a population of 70,000 and be among the poorest areas within the EZ. In the interest of fairness, we recommend that Governors follow EZ/EC population criteria in designating areas other than EZ/ECs as eligible for these grants. Thus, we are recommending that (1) cities with populations of over 700,000 have target areas limited to 70,000 people; (2) cities with populations of less than 700,000 have target areas limited to 50,000 people; and (3) rural areas have target areas limited to 30,000 people.

Do Target Areas Need To Be Contiguous?

For EZ/ECs that are not contiguous, local boards can submit the entire EZ/EC as the target area or a sub-part of the EZ/EC. For areas that are not EZ/ECs, we recommend that the target area be contiguous. Having contiguous areas will make it much easier for sites to operate their projects. Further, for areas that are not EZ/ECs or are part of EZ/ECs, the target area should follow existing and meaningful geographic, labor market, neighborhood, and economic borders as much as possible. Following service area demarcations that are meaningful to the local neighborhood will increase a project's chances of affecting community-wide change.

How Large a Grant May I Apply for?

Cities serving a target area with a population of 70,000 can apply for a first-year grant of up to $12 million. Cities serving a target area with a population of 45,000 to 70,000 can apply for first-year grants of up to $8 million. Cities with target areas with a population of less than 45,000 and rural areas can apply for first-year grants of up to $5 million.

What Is the Grant Period?

Grant awards will be made for an initial period of one year, with up to 4 additional option years based on the availability of funds and satisfactory progress towards achieving the goals and objectives of the grant. If the grant is extended to the third and fourth years, the grant will be reduced to 75 percent of the initial grant amount. If the grant is extended to the fifth year, the grant will be 50 percent of the initial grant amount.

What Is the Expected Number of Awards?

We expect to award approximately 25 and 30 grants. Grants will be distributed equitably among local boards and entities serving urban areas, rural areas, and Indian reservations based on factors such as the poverty rate in these areas, the number of people in poverty in these areas, and the quality of proposals received.

Can DOL Migrant Worker Grantees Apply for These Grants?

Separate funds have been authorized for new projects to serve youth from migrant and seasonal farmworker families, and these funds will be competed separately. Youth from migrant and seasonal farm worker families can be served in the rural projects funded under Youth Opportunity Grants, and we encourage sites to include services to such youth in these proposals, but Local Boards rather than Migrant Worker Grantees must apply for these grants.

How Will Applications Be Reviewed and Selected?

The Department will screen all applications to determine whether all required elements are present and clearly identifiable. These required elements are discussed in the application process in Sections IV and V and are summarized in Appendix B ''Application Checklist.'' Failure to include all required elements will result in rejection of the application. Proposals will be reviewed by an independent panel including both federal staff and peer reviewers. Site visits will be made

to finalists. We will put more weight on site visits in this competition than we have in any recent grant selection process, and expect to meet with all key local partners during these site visits. The panel recommendations to the Grant Officer are advisory in nature. Final award decisions will be based on the best interests of the government, including consideration of geographic and urban/rural balance. The Grant Officer may elect to award grants either with or without discussions with the applicant. In situations where no discussions occur, an award will be based on the applicant's signature on the SF424 form, which constitutes a binding offer.

Will There Be Technical Assistance Conferences?

Technical assistance conferences will be held at the following times and places:

June 15: Washington, DC at the Hilton Washington Embassy Row Hotel, 2015 Massachusetts Avenue NW, Washington, DC 20036 (202–265–1600)

June 16: Chicago at the Westin O'Hare Hotel, 6100 River Road, Rosemont, Illinois 60018 (847–698–6000)

June 23: Denver (for Native American grants only, see Section V)

June 24: Los Angeles (location to be announced on the DOL Home Page)

June 29: Atlanta (location to be announced on the DOL Home Page)

For general information and up-to-date information regarding these technical assistance conferences, please call 703–299–1680. You can register for one of these conferences by fax at 703–299–4589 or by e-mail at youthbid@dtihq.com. To register, please include the following information: Full name, Title, Organization, Address, Phone, Fax, E-mail, number of participants, and which conference you will be attending. Please identify any special needs. You will need to make hotel reservations on your own. Please call the above number for information on the hotels in which the technical assistance conferences will be held.

Who May Be Served Under These Grants?

These grants can serve all youth who live in the target community who are not less than age 14 and not more than age 21 at the time of initial enrollment. We are looking for proposals that address the needs of both in-school and out-of-school youth. We expect that the largest share of funds from these grants will go towards serving out-of-school youth, with some grant funds and many complementary activities going towards decreasing the dropout rate and increasing the college enrollment of in-school youth. Project operators should take care not to give incentives for in-school youth to drop out of high school to participate in any programs offered here.

What Are Allowable Uses of Grant Funds?

The allowable uses of grant funds are described in the activities authorized at sections 129 and 169(b)(2) of the Workforce Investment Act, and at 20 CFR 664.400 through 664.620 of the WIA regulations. Allowable activities include intensive placement services and follow-up services. (Specific examples of all allowable uses of funds, including intensive placement services and follow-up services are described in detail later in this announcement.)

What Restrictions Are There on the Use of These Grant Funds?

The restrictions described at section 181 of the Workforce Investment Act and at 20 CFR 667.260 through 667.268 of the WIA regulations apply to the use of these grant funds.

Will There Be a Planning Period for Sites After Grant Award?

We understand that it will take sites that have been awarded grants some time to hire staff, formalize partnerships, and locate and renovate operating space. We will work with sites and provide technical assistance from the beginning of the grant period to help sites avoid start-up problems and get off as fast a start as is possible. Most likely, sites will be able to start some components of their projects fairly quickly, and then gradually introduce other components.

Will DOL Conduct an Evaluation of This Initiative?

DOL will conduct an evaluation of the Youth Opportunity Grant initiative. Grantees will be required to cooperate by providing enrollment and participation data and other information, but there will be no significant burden on sites for this evaluation. We also may require quarterly progress reports.

Part IV. Application for Urban and Rural Grants

What Should I Do if I Wish To Apply for an Urban or Rural Grant?

Begin your planning process early and include the public and private sectors and members of the community. Suggested agencies that should be represented in the planning include local youth councils, the mayor's office in urban sites and county government in rural areas, One-Stop Centers, local employers, high schools and middle schools in the target area, EZ/EC Boards, the juvenile justice system, public housing agencies, community colleges, local four-year colleges, local Job Corps centers, representatives of Job Corps center industry councils, community-based organizations, local foundations, and faith-based organizations. You should also try to get the community involved, including youth and their parents or guardians. This is not an exhaustive list. Considering how the various components in your project will be sustained after grant funds cease should be an integral part of your planning process.

What Will Be the Criteria for Award?

Panelists will rate proposals based on answers to the questions which are more fully explained below in this section. DOL is especially interested in how grantees will sustain their programs after federal funds cease, and plans for sustainment will be a key factor for award. For urban and rural grants, the weight for each answer is as follows:

(1) Need in the target area (no regular points, but up to 10 bonus points)

(2) Project design and service strategy (40 points)

(3) Management and accountability (20 points)

(4) Sustainability: Public sector and community partnerships and complementary resources (15 points)

(5) Private sector resources (15 points)

(6) Dropout prevention plans (10 points)

How Should My Technical Proposal Be Organized?

The technical proposal must be organized to follow the format and answer the questions below. The criteria below will be used to evaluate your proposal. Points will be deducted from applications that are not responsive to these questions. The technical questions are as follows:

1. What Is the Need for the Project in the Target Area? (up to 10 bonus points)

Provide a good general description of the target area and the extent of poverty and other risk factors for youth. Most important, provide the population of the area in the 1990 Census, the poverty rate of the area in the 1990 Census, and the dropout rate of target area high schools calculated by showing the 9th grade enrollment at each high school in 1994 and the graduating class in June of 1998. If circumstances have changed markedly in the target community since the 1990

Census, describe such changes and provide any additional information on the community. Also provide an estimate of the number of youth in the target community based on the 1990 Census or other information. Describe how the area compares with other communities in the city or State regarding poverty and unemployment. Describe what the target area looks like; its relation to downtown or the center of activity and/or commerce; the elementary, middle, and high schools in the area; other organizations in the target community that serve youth such as Job Corps, One-Stop Centers, and YouthBuild, and the number of youth they serve; and other features that will help us understand the area. Also provide a map of the target community, with schools in the area identified, and the planned location of program activities.

2. What Is the Project Design and Service Strategy? (40 points)

The Department of Labor is committed to ensuring that several core principles underlie an effective youth strategy. These principles include: Providing comprehensive services; ensuring the participation of caring adults; a commitment to excellence; and guaranteeing long term follow-up to all youth participants. We are also committed to instilling in youth a sense of personal responsibility and accountability for their actions. These core principles must be present in all Youth Opportunity Grant initiatives. These principles are quite similar to the effective practices common to successful youth programs identified by the Promising and Effective Practices Network (PEPNet). Information from PEPNet can be obtained from the National Youth Employment Coalition at 202–659–1064 (nyec@nyec.org).

Two critical components for ensuring that design requirements will be enhanced are: Youth Opportunity Community Centers, where most of the project activities such as case management should take place; and a core staff of youth development specialists serving as case managers who will play a critical role in recruiting youth and assuring intensive placement, follow-up, and other identified services are provided to youth. Applications must address how these two critical components will be provided.

A. Youth Opportunity Community Center. We expect that Community Youth Opportunity Centers and perhaps some satellites offices will be set up in the target area. This center must be tied into One-Stop Centers serving the target area—either co-located at a One-Stop Center or as a satellite of a full One-Stop Center. The youth center must be a well-situated place where youth can enroll, receive an individual assessment, develop their service strategy, and meet with youth development specialists for referrals to job training, intensive placement, education programs, the Job Corps, other youth programs, follow-up, job development, and other services. It must also be a place where youth receive training in basic employability skills, and access to program information, referrals, and other youth development activities. Applications must discuss tentative locations for such centers and satellites. Also be specific about renovations that will be needed to establish the center, and the costs of such renovations.

B. Core Staff. The staff must be of a size sufficient to handle the expected demand for services. We expect that typical urban sites will have a core staff of 40 to 50 youth development specialists and job developers working to place and retain out-of-school youth in private sector jobs and to keep in-school youth from dropping out of school, as well as up to 10 additional outreach workers actively recruiting youth into the program. For urban grants in target areas with populations of 70,000, we expect even larger numbers of core staff. Rural sites will have smaller grants and may wish to have fewer job developers. Grantees must hold steady the amount of grant funds for core staff throughout the five years of the grant, even though the overall grant funding will decline over time. Your plan must also indicate the expected number of youth each case worker will be assigned to at a given point in time, understanding that, over time, many youth will require less attention and new youth can be brought onto the caseload. You must indicate how many staff will be working with out-of-school youth and how many will be working with in-school youth.

C. Building a Better System for Serving Youth. Describe in this section the gaps in the current system for serving youth in the target community. Explain how the services provided under this grant will improve this system. Describe your vision of how the new system for serving youth will work as opposed to the old system. Also describe gaps that will remain, and plans for building capacity so as to eventually fill these gaps. The existing Out-of-School Youth Opportunity grantees applying under this solicitation should indicate how they plan to include and transition their current project into a larger initiative funded under the Youth Opportunity Grant.

D. Program Activities. The framework for serving youth under the Workforce Investment Act and in this project must provide for: Individual needs assessments; individual service strategies; preparation for employment and/or post-secondary education; linkages between academic and occupational learning and connections to intermediaries; a menu of program elements; intensive placement and follow-up services; and access to information and referrals.

Individual assessments and services strategies. Discuss how you will actively recruit youth through various strategies rather than waiting for them to apply. Provide a description of the individual assessment and service strategy development processes.

Program elements. 20 CFR 664.410 lists ten elements that must be included in all local workforce investment area youth programs. These ten program elements can be grouped around four broad themes: (1) Preparation for and success in employment (including summer jobs, paid and unpaid work experience, and occupational skills training); (2) improving educational achievement (including such elements as tutoring, study skills training, instruction leading to a high school diploma, alternative school and dropout prevention); (3) support for youth (including meeting supportive service needs, providing mentoring and follow-up activities); and (4) services to develop the potential of youth as citizens and leaders (the concept of leadership and youth development). In addition, these program elements must incorporate preparation for employment and/or post-secondary education; linkages between academic and occupational learning; and connections to intermediaries for job development assistance. We are particularly interested in teaching methods which put learning in a real-world context. Applications must describe how each of these program elements is present in your project. While every youth does not have to be provided each of the ten program elements (with the exception of intensive placement and follow-up services), each site must ensure that they are available as the services will be provided on an individual assessment. Discuss how the array of services will be sequenced, and how various activities will be available taking into account the different ages, language proficiency, ethnicity, culture, disabilities, stages of development, and job readiness of individual youth.

DOL expects that the costs for serving individual youth will vary greatly—from perhaps $20,000 a year for conservation corps programs to less than $2,000 for youth who primarily need job placement. The Department of Labor's budget presented to Congress assumes that the average cost for serving youth will be $5,000 a year in Youth Opportunity Grant funds. The average cost per youth can be supplemented with other resources. Applicants can use this average cost figure as a guide, but will not be penalized for proposing a different average cost figure.

The program elements can be met in a variety of ways. Possible new initiatives which correspond to the required program elements include, but are not limited to, the following activities (where we refer to an existing program, we have provided a telephone number as well as a web site where available where additional information can be obtained):

—Pre-employment training emphasizing the development of positive social behaviors and then job placement, with long-term follow-up by case managers;
—A new alternative school started in partnership with the public school system, using average daily attendance funds as a match;
—A vocational training program modeled after the Center for Employment Training (CET) (408–294–7849) in San Jose, California;
—A pre-apprenticeship program to train and place youth in construction or other trades;
—Training programs to get youth interested in non-traditional occupations;
—On-the-job training with local employers;
—A YouthBuild construction training program (617–623–9900, www.youthbuild.org);
—A Youth Conservation Corps (National Association of Service and Conservation Corps, 202–737–6272, www.nascc.org);
—A work/study program started by the local community college;
—Offering incentives to youth for completing education or training;
—A dropout prevention program in the target area high schools;
—Expanded tutoring and mentoring programs for high school youth, including tutoring programs conducted by Sylvan Learning Centers (800–338–2283, www.educate.com/home.html), Score! Educational Services (949–363–6764, www.score-ed.com), and Huntington Learning Centers (201–261–8400, www.tutoringhlc.com);
—Remedial education and GED courses, including those that lead to regular high school diplomas;
—A comprehensive sports, cultural, music, dance, art, and drama program;
—Expanded work-based learning opportunities for high-school youth, and 2+2+2 programs with community colleges and four-year colleges;
—The Federal Bonding Program to cover job applicants, such as youth without prior work history, who employers may otherwise consider too much of a risk to hire (888–266–3562);
—English to Speakers of Other Languages services; and
—An on-the-job mentor training program operated by the local Chamber of Commerce designed to build relationships between youth placed in work experiences and local employers.

Leadership development, citizenship, community service, and recreation activities. These activities are specifically authorized in the Youth Opportunity section of the legislation. DOL expects that all sites will place great emphasis on having youth participate in community service. We encourage applicants to coordinate with community service programs such as AmeriCorps wherever possible. Discuss plans for engaging both in-school and out-of-school youth in community service projects, and the skills you expect them to learn from these projects. Discuss plans for youth development activities, including how you will provide training in positive social behavior. For example, conflict resolution classes and diversity training can be provided. Also discuss peer-centered activities that encourage youth to take responsibility for their own lives, and efforts to develop youth leadership through activities that build decision-making skills, team work, and self-esteem. Comprehensive sports and cultural programs are one way grantees can instill leadership and a sense of community to participants. Leagues can be started in the target area in several sports for both boys and girls. Cultural activities can also be provided. Discuss the availability of existing resources such as cultural offerings and playing fields in the target area. Also discuss whether you will have youth sign a contract describing program rules of conduct, mutual responsibilities of enrollees and staff, and expected outcomes for each enrollee. Also discuss how you will involve the parents and guardians of youth and how you will involve youth in advisory boards.

Intensive placement and follow-up services. As required under the WIA youth formula-funded program, intensive placement and follow-up services must be provided to every youth enrolled in the program. The Youth Opportunity Grant section of the legislation goes further in requiring that every youth must receive follow-up services for a minimum of 24-months. Describe complementary strategies for placement and long-term follow-up activities.

One-Stop Center linkages. Describe linkages with local One-Stop Centers and how these connections will be accomplished. In most cases, we expect that the Youth Opportunity Community Center will be co-located at the One-Stop Center or a satellite of the One-Stop Center.

Job Corps center linkages. The plan must describe linkages with local Job Corps centers, and how these connections will be accomplished.

Access to information and referrals. Project staff must ensure that eligible youth receive information on the full array of appropriate services available to them and referrals to appropriate training and educational programs. Discuss how you will tie into the existing One-Stop system to provide such information and referrals.

Serving youth with disabilities. Describe how you will recruit and serve youth with disabilities, and how you will assure that they have full access to programs under the grant.

E. Case Studies. To help us better understand how your new system will work in serving youth in the target community, describe how your project would address the needs of the following youth. Feel free to add other details to these examples, and contrast how these youth would be served under the old system and the new system you are planning.

Case Study #1. An 17-year-old who has completed the eighth grade has a history of substance abuse and school suspensions due to fighting, and has subsequently dropped out of school with a poor academic record. This youth has had limited and intermittent work experience at fast food restaurants, since the age of 14, but has never held any one job for longer than 3 months. This youth lives in a household headed by a grandmother who also cares for three younger siblings. This youth has had minor brushes with the juvenile justice system, but hangs out with other youth and young adults who have serious criminal records. This youth has been identified by a school counselor as having certain artistic gifts which have never been developed.

Case Study #2. An 18-year-old is a teen mother. She has a learning

disability, and is not interested in returning to school. Her main goal in life is to be able to support herself.

Case Study #3. A brother and sister have become involved in your program through sports activities you provide. The brother is age 19 and has just lost his job after getting into a fight with his boss. He does not do well in school, and mainly he wants to work right now. The sister is age 15 and will be entering ninth grade in the fall. She has only average grades, but always gets one of the highest scores at her school on national standardized tests. She has a lot of energy, but has given little thought to what she wants to do with her life.

3. How Will the Project Be Managed? (20 points)

A commitment to excellence and quality management reflect both DOL and PEPNet core principles discussed earlier in this section. You should discuss in your answer here how this project will be managed to ensure excellence.

Program Structure. You must provide a diagram to show the sequence and flow of Youth Opportunity services. You must show coordination between Youth Opportunity sub-grantees and other programs and services in terms of recruitment, assessment, and referrals. Also show links between the Youth Opportunity program and complementary new activities promised by public and private sector partners. You should also show links between the Youth Opportunity program and existing services available to youth in the target community, including the Job Corps and other youth employment, education, and training programs.

Fiscal Management. Describe the fiscal management systems that you have in place. Describe the fiscal management experience of your organization. How will you provide fiscal oversight of sub-grantees?

Staffing Plan. Provide a staffing plan in which you discuss how you will select a project coordinator and the qualifications this person must possess; how you will recruit and retain quality staff, including paying competitive salaries; how you will select staff, with the main criteria for selection being their ability to motivate youth and be positive role models. We expect that most staff will have attended college, so that they can be role models for youth to further their education.

Accountability. Which agency or agencies will hire the case managers and other core staff for this project? Describe why this agency was selected to be the lead for this project, the background of the agency, and current or past projects conducted by the agency. We wish to avoid situations in which case managers and job developers are spread out over several agencies, with little or no accountability to the lead agency. We also wish to avoid situations in which case managers are accountable to one agency and job developers to another. Where possible, the bulk of core staff should be hired by one agency, and then perhaps stationed at different sites. An alternative is to divide the target area into three or four geographic segments and assign agencies to be accountable for each of these segments.

Expected Performance Levels. Your application must propose expected levels of performance. (The levels of performance will be negotiated with the Department before the grant is awarded.) Your plan must indicate the number of 14–18 year-olds and 19–21 year-olds you plan to enroll during the first year of the project. For 19–21 year-olds, you must indicate the number of first-year enrollees who will enter unsubsidized employment, enter education or training programs, join the military, be retained in employment for six months, one year, and two years, and the earnings of these youth six months, one year, and two years after placement. For 14–18 year-olds, you must indicate the number of first-year enrollees who will attain basic skills, work readiness skills, and occupational skills; attain high school diplomas or GEDs; and be placed and retained in post-secondary education, employment, the military, or apprenticeships. In particular, we want to know the overall number of youth who will be placed in jobs, school, training, college, and the military. You must also estimate the proportion of employers and participants who will indicate satisfaction with services received in surveys which you will need to conduct. You can also propose other performance measures for the indicators of performance described in WIA section 136 to either replace some of the above measures or complement them, and we will negotiate the measures with you prior to grant award. DOL expects to implement a performance incentive system in which the best performing sites receive some increases in grant funds, while sites not meeting their goals are subject to sanctions. Urban, rural, and Native American sites will be judged separately in determining these incentives.

Role of Local Workforce Investment Board and Youth Council. DOL expects that the Local Board, through its Youth Council, will be heavily involved in this project and will be ultimately responsible for the project's success or failure. We also envision the chief elected official being accountable for the success of the project. We also see Local Boards taking the lead in helping business leaders see youth in the target community as a positive resource and their future workforce. How will the Board and Youth Council involve itself in the project so that it is responsible for the project's success? How will the Local Board provide programmatic oversight? How will the Board hold the staff accountable? How will the chief local elected official provide oversight and direction? How will the Board work with business leaders to promote the sustainment of the project after grant funds cease? What will be the relationship between the Board and the One-Stop Center? If you do not have a Youth Council yet, you can discuss your plans for developing the Council.

Community Involvement. How will you use your Youth Council to involve the community served by this grant? DOL expects that each site will set up a community advisory board to participate in the planning and oversight of this project. You must discuss what the role of this community advisory board will be. You must also discuss how you plan to have community residents and families involved in program efforts, including sports leagues, cultural activities, community service, job shadowing, mentoring, and leadership development.

Staff Development. You must discuss how you provide initial training and offer development opportunities to project staff, including educational opportunities at local community colleges and four-year colleges and additional training to help support the case managers and job developers with the demands of their jobs. Describe ways in which existing local resources such as technical assistance and supportive services from staff in other youth programs such as the Job Corps and YouthBuild can be used and integrated into staff development.

4. How Will You Sustain Your Program and Leverage Other Resources? (15 points)

Sustainability. Discuss in this section how you plan to sustain this project after grant funds cease. Your sustainment plan must include a combination of federal, state, and local public sector resources, as well as local non-profit sector resources. Sustainment must be built into the design and ongoing operation of the project. We are particularly interested in service strategies that can be sustained with average daily attendance funds provided through State Educational Agencies.

Encouraging community ownership and participation in these projects will also help promote sustainment. We especially encourage sites to commit increasing cash resources during the declining years of federal funding to encourage sustainability, and up to five of the 15 points under this criteria will be awarded based on the increasing cash commitments.

Other Resources. You must discuss here how you will use Workforce Investment Act adult and youth formula funds to complement these grant funds, including having a One-Stop satellite center co-located with the Youth Opportunity Community Center. You also must discuss the role of the public school system, the EZ/EC Board, social service agencies, the Parks and Recreation Department, the juvenile justice system, the Police Athletic League, police, health service agencies, local charter schools, community colleges, four-year colleges, local foundations, Boys and Girls Clubs, adult education, YWCAs and YMCAs, 4–H Youth Development, Big Brothers/Big Sisters, parents, faith-based organizations, community development corporations, and State agencies, including State Educational Agencies, and any other potential community participants. You should also show linkages with agencies that serve youth with disabilities and youth who will be leaving foster care. Rural sites must show coordination with the cooperative extension of Land-Grant Universities, and with the research and extension of Regional Rural Development Centers.

We also encourage grantees to use the Department of Housing and Urban Development's Community Development Block Grants (CDBG) funds to help renovate buildings for the new Youth Centers that will be needed for these grants. Other possible federal collaborations include Juvenile Justice gang prevention projects; the Department of Education's 21st Century Community Learning Centers, Kids in Family Camp, and Upward Bound programs; the Department of Agriculture's Children, Youth and Families at Risk program; Housing and Urban Development's Youth Build projects; Welfare-to-Work formula and competitive grants; School-to-Work local partnership activities; the Job Corps; the Department of Health and Human Services' child health and child development programs; the AmeriCorps and VISTA programs; and the National Guard's Community Learning and Information Network.

We are not interested in promises of in-kind commitments representing already existing services. Rather, we are looking for detailed commitments for specific new activities in the target area. These commitments can be either to complement services to 14–21 year-olds or to serve younger youth or young adults above 21 years old. If you have recently received a grant from another agency or started a new initiative in the target area, you can discuss this in the proposal—but be precise about which activities precede this grant and which will occur because of the grant. You must discuss in this section how supportive services such as child care, substance abuse assistance, health services, and mental health services will be made available to enrollees through your partners. You must also discuss in this section how public sector commitments can contribute to the sustainment of this project after federal funds cease. It may be helpful to include a flowchart that describes the interrelationships between the various agencies and partners described in your plan. Examples of the types of public sector commitments we are looking for include the following:

—The Workforce Investment Board commits to use WIA adult formula funds and Welfare-to-Work funds for job training and placement in the target area, and to opening a One-Stop Center or satellite in the target area.

—The school system commits to starting an alternative school in the target community and to use average daily attendance funds, as well as funds from this grant, to operate the school.

—The school system commits to a major early intervention and dropout prevention program in the target area's elementary and middle schools, including home visits, modeled after the program operated by the Rheedlen Foundation (212–866–0770, or at www.pbs.org/jobs/rheedlen.html) in New York City.

—The mayor's office commits to starting a comprehensive after-school program for elementary and middle school youth in the target community similar to the LA's Best After School Program (213–847–3681) in Los Angeles.

—The city commits to using CDBG funds to renovate a building for the Youth Community Opportunity Center.

—The Parks Department and the school district jointly agree to develop new baseball and soccer fields in the target neighborhood and to open school playing fields after school so that a comprehensive sports and recreation program can be developed in the community.

—The Police Department commits to increase community policing in the target community and an expanded Police Athletic League in the area, and the juvenile justice system commits to a new alternative sentencing program for youth offenders in the target community.

—The city starts a new program to assist youth leaving foster care to make the transition to independence.

—The local school board authorizes the use of school buses for transporting youth who participate in after-school training and education programs. (Oran MOU with the local Head Start agency to use their vehicles during non-Head Start time).

—AmeriCorps commits to financing education awards for a certain number of youth in the target area.

Summary Table of New Initiatives. Your plan should include a summary table of the various new initiatives started under this grant, numbers of youth to be served by each initiative each year, and annual funding levels. An example of such a summary table is provided below:

	DOL grant	Other resources
Job developers/case managers (staff of 50)	$1,800,000	.....
Outreach workers (staff of 10)	300,000	.....
Pre-employment soft skills (500 youth @ $1,000)	500,000	.....
CET training (100 youth @ $6,000)	300,000	300,000
Work experience (80 youth @ $5,000)	400,000	.....
Pre-apprenticeship (200 youth @ $5,000)	500,000	500,000
Local conservation corps (80 youth @ $20,000)	800,000	800,000
Alternative school (120 youth @ $8,000)	500,000	440,000
Community College 2+2+2 (100 @ $10,000)	500,000	500,000
Futures program in high school (500 @ $4,000)	1,000,000	1,000,000
Sylvan, Score!, or Huntington Learning Center	200,000	200,000

	DOL grant	Other resources
College Bound program (400 @ $2,000)	800,000	.....
Sports and cultural program	240,000	100,000
Transportation and supportive services	500,000	500,000
Juvenile alternative sentencing program	300,000	200,000
Gang prevention program	160,000	160,000
Renovation of Youth Opportunity Center	.....	500,000
Job Corps (80 youth)	.....	.....
Total	8,000,000	6,000,000

5. How Will You Involve the Private Sector? (15 points)

You must include in your answer here a description of the local labor market in the target area, city, and surrounding region—who are the employers, what kinds of jobs are available, the skill requirements for available jobs, the employment outlook, the unemployment rate in the area, and wage data for the area. You could also discuss the public transportation system, and the availability of transportation to jobs downtown and in the suburbs. A goal of the project is to expand the job horizon of youth to occupations and employers throughout the local area.

Vocational training must be available for a range of occupations that are in demand locally and that offer career-track jobs. Identify the occupations for which you plan to provide training, the reasons why you selected these occupations, how employers will be involved in designing the training, and any commitments made by employers to offer apprenticeship, work-based learning, or employment opportunities. Describe how you will use existing vocational training programs like the Job Corps and vocational schools to assist in providing training.

Discuss in this section the private sector role in your project. We are not looking here for vague promises of hundreds of jobs, but rather for detailed commitments for specific activities. Explain how you will identify potential employers, secure job commitments, and maintain the participation of those employers. Discuss new school-to-work initiatives that will be started in conjunction with this project, including new work-based learning opportunities. Explain the role in the project of business representatives on your local Workforce Investment Board or Private Industry Council, and the role of major Corporate Partnerships or Compacts in your area and the role of the Chamber of Commerce. Also discuss possible mutual agreements in which the private sector commits jobs or resources in exchange for commitments from schools, public agencies, or students. Also discuss how private sector commitments can help sustain this project after federal funds cease. Examples of possible commitments include the following:

—A consortium of major corporations agrees to be partners in the project and assign a staff person responsible for coordinating work-based internships with target area high schools and identifying job openings within the corporations for target area youth.

—A firm agrees to be a corporate sponsor of the project and to make available its management expertise, advertising department, and other resources to the project.

—Local foundations and corporations form a public/private partnership to start a college access program for target area youth similar to the CollegeBound Foundation (410–783–2905) in Baltimore.

—A corporation adopts a high school in the target community and agrees to provide school-to-work opportunities for students and $1,000 college scholarships to all youth who graduate with a B average or higher.

—The local Chamber of Commerce recruits small business owners and operators to serve as mentors and entrepreneurial coaches for youth interested in business operation (including providing apprenticeship opportunities).

—A faith-based organization commits to finding mentors for 100 middle school youth in the target area.

—A university commits to providing 100 student volunteers for an after-school tutoring program in target area elementary and middle schools.

—Various community agencies commit to providing part-time jobs for youth in the target area.

Special Note to Rural Areas: We fully understand that rural sites will not have as much access to private sector jobs and partnerships as urban sites, and that some extremely poor rural areas may have few if any private sector partners with which to work. Rural sites can still get full credit under this question if they make the best use of private sector resources available. For example, rural sites could propose either paid or unpaid internships at small stores or small companies in the target area. Rural sites can also substitute public and non-profit sector internships and job placements for private sector job placements. Rural sites can also propose strong school-to-work components, which include work-based learning opportunities and class trips to major corporations in nearby cities to expand the career horizons of students. Rural sites could also propose school-to-work efforts to expand the interest of students in science and technology careers.

6. How Will You Reduce the School Dropout Rate and Increase the College Enrollment of Youth in the Target Area (10 points)

Increasing high school graduation and college enrollment rates are fundamental steps to improving the long-term employability of target area youth. In this section you must present a detailed plan for increasing the educational attainment of youth growing up in the target community. We expect that local public schools will have the lead in developing this section of the proposal, and that the plan presented includes new initiatives in target area schools and new collaborations with the public, private, and non-profit sectors. Dramatic increases in the educational attainment will require new dropout prevention efforts in neighborhood elementary and middle schools as well as high schools. Given the age restrictions on this grant, new dropout prevention efforts in elementary and middle schools must be paid for with other sources of funds. Your answer to this question must include both efforts paid for through this grant and new complementary efforts that are proposed. Your answer must clearly distinguish between what is being paid for by the grant and what

will be provided through other resources.

Discuss current efforts and future plans for breaking large high schools and middle schools in the target area into ''houses'' or schools-within-schools. Discuss plans for reducing the student-teacher ratio in target area schools. A dropout prevention model that sites may wish to consider is the Futures Program operated by the City of Baltimore's Office of Employment Development (410–396–1910). In this program, entering ninth graders are provided remedial education in August prior to starting high school, receive various incentives throughout their four years of high school, and have case managers who are stationed at their high school. Other dropout prevention models include the Rheedlen Foundation's efforts to serve chronic truants in elementary and middle schools, the Quantum Opportunity Program developed by Opportunities Industrialization Centers (OIC) of America (215–236–4500), and the LA's Best After-School Program. Other options include hiring additional reading teachers, a new remedial reading program for middle school youth, or hiring outreach counselors to work with truant youth. Another option is tutoring programs in which high school youth, local Job Corps youth, or AmeriCorps volunteers serve as tutors for elementary school children. You may also want to introduce or expand Communities in Schools programs (703–519–8999) in the target area middle schools and high schools. You may also may wish to involve private sector educational services such as Sylvan Learning Centers, Score! Educational Centers, and Huntington Learning Centers. Grant funds can be used to pay for tutoring services for youth ages 14 and above, while matching funds would be needed to pay for tutoring services for younger youth.

We would also like local community colleges, four-year colleges, and corporations to take on the challenge of increasing the college enrollment rate of target area youth. There are numerous ways corporations could become involved in such an effort. Baltimore's CollegeBound Foundation is a partnership of major corporations and the public sector that provides counselors and financial aid to help inner-city youth enter college. The Chamber of Commerce in Detroit (313–596–0478) guarantees college financial aid to youth meeting attendance and academic criteria. There are also examples of colleges making special efforts to serve youth from particular high-poverty areas. Berea College (606–986–9341) serves youth from Appalachia; Alice Lloyd College (606–368–2101) serves youth from specific counties in Kentucky and Tennessee; and Brandeis University (781–736–3500) has a program guaranteeing acceptance to youth in certain neighborhoods in Boston who meet specified criteria.

Should Letters of Support Be Included?

You can include letters of support if they provide specific commitments. Such letters can increase your score by showing that commitments presented in the text of your proposal are serious. Form letters will not be considered. We encourage you to have letters of support from your chief local elected official and the public school superintendent. Letters of support must be included as part of the 10 page attachment to your proposal.

Is a Letter from the Governor Required?

If you are not an EZ/EC, you must include a letter from the Governor stating that your area has been designated as eligible to apply for one of these grants. We encourage State involvement in all of these projects and if the State is contributing resources to the project, then a letter indicating such support from the Governor would show that the State's commitment is serious. We especially encourage States to help rural areas prepare their proposals and to contribute resources to these grants, as these sites may not have the resources available to them that large cities will have. States must be given an information copy of all urban and rural proposals when they are submitted to the Department of Labor.

What Should Be Included in the Financial Proposal? (Please See Part II)

Part V. Application for Native American Grants

Can I Apply for One of These Grants?

You may apply for a Youth Opportunity Grant if you are a Workforce Investment Act Section 166 (JTPA Section 401) Native American Grantee and the community that you serve meets both of the following criteria:

(1) It meets the poverty rate criteria set forth in Section 1392 (a)(4), (b), and (d) of the Internal Revenue Code; and

(2) It is located on an Indian reservation or serves Oklahoma Indians or Alaska Native villages or Native groups (as such defined in section 3 of the Alaska Native Claims Settlement Act).

Can DOL Native American Grantees Serving Persons in State-Wide or Urban Programs Apply for One of These Grants?

Except for the provisions pertaining to Oklahoma Indians and Alaskan Native Villages, Native American Grantees can only apply for projects serving reservations. Native Americans living in cities and rural areas outside of reservations can be served in urban and rural Youth Opportunity Grant projects and we encourage services to such youth in these proposals, but Local Boards rather than Section 166 Native American Grantees must apply for grants outside of reservations.

How Large of a Grant Can I Apply For?

Reservations with a Native American population of over 70,000 can apply for a first-year grant of up to $12 million. Reservations and target areas with a population of 5,000 to 70,000 Native Americans can apply for a first-year grant of up to $5 million. Reservations and target areas with a Native American population of less than 5,000 can apply for first-year grants of up to $2 million.

What Will Be the Criteria for Award for Native American Grants?

Panelists will rate proposals based on answers to the questions presented below. The weights for each answer are as follows:

(1) Need in the target area (no regular points, but up to 10 bonus points)

(2) Project design and service strategy (40 points)

(3) Youth development and community service (20 points)

(4) Dropout prevention (20 points)

(5) Management and accountability (20 points)

These questions are discussed in more detail below.

Will There Be a Technical Assistance Conference for Sites Applying for Native American Grants?

There will be a technical assistance conference specifically for sites applying for Native American grants on June 23 in Denver. It will be held at the Stapleton Plaza Hotel & Fitness Center, 3333 Quebec Street, Denver CO 80207 (1–800–950–6070). A block of hotel rooms have been reserved. Please indicate to the hotel that you will be attending the U.S. Department of Labor-Employment & Training Administration conference.

For general information and up-to-date information regarding this technical assistance conference, please call 703–299–1680. You should make hotel reservations on your own, but we would also like you to let us know you

will be attending the conference by fax at 703–299–4589 or by e-mail at youthbid@dtihq.com. Please include the following information: Full name, Title, Organization, Address, Phone, Fax, and e-mail.

What Should My Application Consist Of?

You must include both a technical proposal and a financial proposal. The technical proposal must be limited to 30 double-spaced pages and must be organized to follow the format and questions below.

1. What Is the Need for the Project on Your Reservation or in Your Target Area? (up to 10 bonus points)

You must provide a good general description of the reservation or, in the case of Oklahoma Indians or Alaskan Villages, the target area. Most importantly, you must provide the Native American population of the reservation or target area, the Native American youth population, the poverty rate, and the dropout rate of target area high schools. You can use the best data available to you including statistics from the Bureau of Indian Affairs and the Department of Health and Human Services. Dropout rates must be calculated by showing the ninth grade enrollment at each high school in 1994 and the graduating class in June of 1998. You must also describe what the target area looks like; the towns in the area; the elementary, middle, and high schools in the area; other organizations in the target community that serve youth and the number of youth they serve; and other features that will help us understand the area. You must also provide a map of the reservation or target community, with schools identified and the planned location of program activities.

2. What Is Your Project Design and Service Strategy? (40 points)

The Department of Labor is committed to ensuring that several core principles underlie an effective youth strategy. These principles include: providing comprehensive services; ensuring the participation of caring adults; a commitment to excellence, and guaranteeing long term follow-up to all youth participants. These core principles must be present in all youth Opportunity Grant initiatives. These principles are quite similar to the effective practices common to successful youth programs identified by the Promising and Effective Practices Network (PEPNet). Information from PEPNet can be obtained from the National Youth Employment Coalition at 202–659–1064 (nyec@nyec.org).

Two critical components for ensuring that design requirements will be enhanced are: Youth Opportunity Community Centers, where most of the project activities such as case management should take place; and a core staff of youth development specialists serving as case managers who will play a critical role in assuring intensive placement, follow-up, and other identified services are provided to youth. Your plan must address how these two critical components will be provided.

A. Youth Opportunity Community Center. We expect that Youth Opportunity Community Centers and perhaps some satellites offices will be set up on the reservation or in the target area. The center should be a well-situated place where youth can enroll, receive an individual assessment, develop their service strategy and meet with youth development specialists for referrals to job training, intensive placement, follow-up, job development, other youth programs, and other services. It should also be a place where there is access to program information, referrals, and other youth development activities. If there is a tribal college on your reservation, this may be the most appropriate place to have the center. Discuss tentative locations for such centers and satellites and how the proposed Center meets the criteria discussed in this paragraph. Also, be specific about renovations that will be needed to establish the center, and the costs of such renovations.

B. Core Staff. The staff must be of a sufficient size to handle the expected demand for services. We expect that reservations with total Native American populations in the 5,000 to 12,000 range will have a core staff of 25 to 35 youth development specialists working with youth. We would expect even a larger core staff for a larger reservation, and less core staff in smaller reservations. Sites must hold steady the amount of grant funds for core staff throughout the five years of the grant, even though the overall grant funding will decline over time. Indicate the expected number of youth each case worker will be assigned to at a given point in time, understanding that over time many youth will require less attention and new youth can be brought onto the caseload. You must indicate how many staff will be working with out-of-school youth and how many will be working with in-school youth.

C. Building a Better System for Serving Youth. Describe in this section the gaps in the current system for serving youth on the reservation or in the target community. Explain how the services provided under this grant will improve this system. Describe your vision of how the new system for serving youth will work as opposed to the old system. Also describe gaps that will remain, and plans for building capacity so as to eventually fill these gaps.

D. Program Activities. The framework for serving youth under the Workforce Investment Act and in this project must provide for: individual needs assessments; individual service strategies; preparation for employment and/or post-secondary education; linkages between academic and occupational learning and connections to intermediaries; a menu of program elements; intensive placement and follow-up services; and access to information and referrals.

Individual assessments and services strategies. Discuss how you will actively recruit youth through various strategies rather than waiting for them to apply. Provide a description of the individual assessment and service strategy development processes.

Program elements. 20 CFR 664.410 lists ten elements that must be included in all local workforce investment area youth programs. These ten program elements can be grouped around four broad themes: (1) Preparation for and success in employment (including summer jobs, paid and unpaid work experience, and occupational skills training); (2) improving educational achievement (including such elements as tutoring, study skills training, instruction leading to a high school diploma, alternative school and dropout prevention); (3) Supports for youth (including meeting supportive service needs, providing mentoring and follow-up activities; and (4) services to develop the potential of youth as citizens and leaders (the concept of leadership and youth development). In addition, as required under program design, these program elements should incorporate preparation for employment and/or post-secondary education; linkages between academic and occupational learning and connections to intermediaries for job development assistance.

Describe how you will ensure that each of these program elements is present in your project. Although every youth does not have to be provided each of the ten program elements (with the exception of intensive placement and follow-up services), each site must ensure that they are available. In particular, describe the supportive services that will be provided to youth.

Supportive services can include, but are not limited to, transportation, life skills development, alcohol and drug rehabilitation, teen pregnancy prevention, and job retention skills. Supportive services need to be limited to 14 to 21 year-olds, but we encourage you to find other resources to address the needs of the entire family through other WIA funds, Welfare-to-Work Funds, or other resources. DOL expects that the costs for serving individual youth will vary greatly—from perhaps $20,000 a year for conservation corps programs to less than $2,000 for youth who primarily need job placement. The Department of Labor's expects that the average cost for serving youth will be $7,500 a year in Native American Youth Opportunity Grant funds. The average cost per youth can be supplemented with other resources. Applicants can use this average cost figure as a guide, but will not be penalized for proposing a different average cost figure.

Work experience. Discuss how you will provide work experience for youth. In particular, you may wish to establish either a Youth Conservation and Service Corps or YouthBuild program, or both of these. Conservation and Service Corps (202–737–6272, www.nascc.org) allow youth to work on community service and environmental projects. Such programs can serve large numbers of youth, perhaps 100 at a time. The California Conservation Corps (916–324–4785, www.ccc.ca.gov/frame.ntm) is probably the best example of such a program. YouthBuild (617–623–9900, www.youthbuild.org) teaches construction skills to enrollees while they rehabilitate houses and public buildings.

Career development. Discuss adding new or expanded fields of study at the tribal college that would allow youth to get a college degree yet still return to work on or near the reservation if they so chose. For example, youth getting degrees in forestry and conservation would be able to find work for federal land management agencies near their reservation if they so chose. We are particularly interested in proposals that link new fields of study in forestry and land management with efforts to have the reservation become involved in land preservation and conservation. One example of tribal involvement in conservation is the work done by the Department of Resource Preservation in the Pueblo Jemez. We also are very interested in proposals that include linkages with state universities in which youth would take the first and possibly second years of study at the tribal college and then move on to the state university to complete the degree. We also are interested in links between land grant extension services at State universities and tribal colleges that could increase the number of jobs near the reservation in land conservation.

Job training. Discuss how you will provide vocational training or on-the-job training in occupations in demand on or near the reservation. For example, job training could be provided in health professions or construction. We are particularly interested in commitments from the Bureau of Indian Affairs and nearby federal and State land management agencies to provide on-the-job training or work experience slots. Discuss possible links to nearby Job Corps Centers for vocational training.

Intensive placement and follow-up services. As required under WIA section 169, intensive placement and follow-up services must be provided to every youth enrolled in the program. Since an increased level of funding is available under this initiative for intensified follow-up services, the requirement is that every youth must receive follow-up services for a minimum of 24 months. Describe complementary strategies for long-term follow-up activities.

E. Case Studies. To help us better understand how your new system will work in serving youth in the target community, describe how your project would address the needs of the following youth. Feel free to add other details to these examples, and contrast how these youth would be served under the old system and the new system you are planning.

Case Study #1. A 19-year-old who has completed the eighth grade, has a history of substance abuse, school suspensions due to fighting and has subsequently dropped out of school with a poor academic record. This youth has had limited work experience since the age of 14, but has never held any one job for longer than 3 months. This youth lives in a household headed by a grandmother who also cares for three younger siblings. This youth has had minor brushes with the tribal justice system, but hangs out with other youth and young adults who have serious criminal records. This youth has been identified by a school counselor as having certain artistic gifts which have never been developed.

Case Study #2. An 18-year-old is a teen mother. She has a learning disability, and is not interested in returning to school. Her main goal in life is to be able to support herself.

Case Study #3. A brother and sister have become involved in your program through sports activities you provide. The brother is age 19 and has just lost his job after getting into a fight with his boss. He does not do well in school, and mainly he wants to work right now. The sister is age 15 and will be entering ninth grade in the fall. She has only average grades, but always gets one of the highest scores at her school on national standardized tests. She has a lot of energy, but has given little thought to what she wants to do with her life.

3. What Youth Development and Community Service Activities Will You Establish? (20 points)

DOL expects that youth development will be a key part of Native American Youth Opportunity Grants. Youth development can include community service, UNITY (405–236–2800, www.unityinc.org) leadership development activities, and sports and cultural programs. Some examples of possible youth development activities include the following. Youth development specialists from your core staff could serve as the staff for these programs.

—The forming of a UNITY Youth Council in which youth identify and carry out community service projects. For example, on one reservation, youth councils have repaired homes of elders, become Big Brothers and Big Sisters to elementary school youth, and helped the Forestry Department by serving as guides and tree planting.

—A leadership development program in which youth visit other reservations to learn about their culture and tribal governments; visit Washington, D.C. to learn about the national government; and tour the United Nations headquarters to learn about international conflict resolution;

—Computer links to youth from other reservations and other exchanges and research projects with elders to help youth better understand the history and shared culture of the various Native American peoples;

—A community service project developed by UNITY in which youth help promote health on their reservation through a National Fitness Initiative;

—A comprehensive sports and recreation program, including baseball, basketball, and soccer leagues;

—A 4–H community service project in which older youth tutor younger youth; and

—An outdoors group in which youth participate in community service conservation projects, and also go on hiking, backpacking, cross-country skiing, and camping trips.

4. How Will You Reduce the School Dropout Rate and Increase the College Enrollment of Youth on the Reservation or Target Area? (20 points)

DOL also sees efforts to reduce the dropout rate and increase college enrollment as critical to Native American Youth Opportunity projects. We are also interested in programs to better prepare youth for college so that they have a better chance of graduating once they get there. We are particularly interested in tribal colleges being involved in dropout prevention and college bound efforts, especially instances in which tribal colleges in turn are linked to State universities or other colleges. We would like to see dropout prevention efforts at the elementary, middle school, and high school levels. Given the age restrictions on this grant, new dropout prevention efforts in elementary and middle schools will need to be paid for with other sources of funds.

Describe how you will reduce the dropout rate and increase the college enrollment rate of youth on your reservation.

Dropout prevention and college bound programs you may wish to consider include the following. Youth development specialists from your core staff could serve as the staff for these programs. The following are some examples of successful youth development programs:

—The Futures Program operated by the City of Baltimore's Office of Employment Development (410–396–1910) provides entering ninth graders with remedial education in August prior to starting high school; students receive various incentives throughout their four years of high school; and students have case managers who are stationed at their high school.

—The Rheedlen Foundation (212–866–0770) in New York City begins serving chronic truants in elementary and middle schools. Case managers make home visits to the families of these children, and attempt to work with parents and guardians to get children attending school regularly.

—The Opportunities Industrialization Centers (OIC) of America (215–236–4500) Quantum Opportunity Program combines entering ninth graders into groups of 20 or 25, and students stay with the same group and same youth worker throughout their four years in high school. Students participate in community service projects, receive remedial education and tutoring, make trips to college campuses and cultural events, and receive stipends and educational accrual accounts based on hours of participation.

—Sylvan Learning Centers (800–338–2283, www.educate.com./home.html), Score! Educational Centers (949–363–6764, www.score-ed.com), and Huntington Learning Centers (201–261–8400, www.tutoringhlc.com) are for-profit firms that provide remedial education and tutoring. Their programs can be set up both within schools or after school.

—Baltimore's CollegeBound Foundation (410–783–2905) provides counselors to let students and their parents know about college, take students on visits to college campuses, make sure that students take the necessary courses to go to college, take SAT tests, and apply on time to colleges and for financial aid. The program also works with colleges to get youth accepted, and provides ''last dollar'' financial aid if scholarships and loans do not fully cover students needs.

—A program being developed by UNITY takes students on trips to visit major corporations in order to widen the occupational awareness and aspirations of youth.

—2+2+2 Programs link courses in high school, community colleges, and four-year colleges to increase high school graduation and college enrollment rates. Such programs could be developed with tribal colleges and State universities.

—There are efforts in some communities to turn high schools into ''high-technology schools'' with the latest generation of computers and software and teachers trained in computer technology.

—Bridge projects help youth make the transition from grade school to middle school, middle to high school, and high school to college. Examples of bridges to college programs include the American Summer Bridge program operated by the University of New Mexico (305–277–2611), and similar programs at Arizona State University, Northern Arizona, Montana State, and Stanford. The Tribal Institute for Business, Engineering, and Science also offers such a bridge program.

—The High Plains Rural Systemic Initiative funded by the National Science Foundation encourages youth to go into math and science careers, and similar efforts could be funded through this grant.

—Communities in Schools (703–519–8999) provide counseling and a variety of supportive services to in-school youth.

—State universities could form linkages with tribal colleges to guarantee admission to two-year graduates of tribal colleges; exchange professors; and share resources, research projects, and supportive services available to students.

—On reservations with State-funded public schools, the State could commit to additional resources for additional reading, math, and science teachers at the elementary, middle school, and high school levels.

—Summer Institutes could be set up at tribal colleges to give high school youth summer jobs, remedial education, and a chance to become familiar with college environments.

5. How Will the Project Be Managed? (20 points)

A commitment to excellence and quality management reflect both DOL and PEPNet core principles discussed earlier in this section. You must discuss in your answer here how this project will be managed to ensure excellence.

Program Structure. You must provide a diagram to show the sequence and flow of Youth Opportunity services. You must show coordination between Youth Opportunity sub-grantees in terms of recruitment, assessment, and referrals. You must also show links between the Youth Opportunity program and existing services available to youth in the target community.

Fiscal Management. Describe the fiscal management systems that you have in place. Describe the fiscal management experience of your organization. How will you provide fiscal oversight of sub-grantees?

Staffing Plan. Discuss how you will select a project coordinator and the qualifications this person should possess. Discuss how you will recruit and retain quality staff, including paying competitive salaries. In particular, discuss how you will recruit the project coordinator and youth development specialists, as these will be key people for your project. We expect that most youth development specialists will have attended college, so that they can be role models for youth to further their education. We expect that you will recruit widely—either regionally or nationally—for these positions.

Accountability. Which entity (tribal government, tribal college, employment and training department) will hire the youth development specialists and other core staff for this project? Describe why this entity was selected to be the lead for this project and current or past projects conducted by the entity. If you have a tribal college on your reservation, the tribal college may be best positioned to be the lead agency. We wish to avoid situations in which case managers and

job developers are spread out over several agencies, with little or no accountability to the lead agency. We also wish to avoid situations in which case managers are accountable to one agency and job developers to another. Where possible, the bulk of core staff should be hired by one agency, and then perhaps out stationed at different sites. For a large reservation, an alternative would be to divide the target area into three or four geographic segments and assign agencies to be accountable for each of these segments.

Your plan must propose expected levels of performance. (The levels of performance will be negotiated with the Department before the grant is awarded.) Your plan must indicate the number of 14–18 year-olds and 19–21 year-olds you plan to enroll during the first year of the project. For 19–21 year-olds, you must indicate the number of first-year enrollees who will enter unsubsidized employment, enter education or training programs, join the military, be retained in employment for six months, one year, and two years, and the earnings of these youth six months, one year, and two years after placement. For 14–18 year-olds, you must indicate the number of first-year enrollees who will attain basic skills, work readiness skills, and occupational skills; attain high school diplomas or GEDs; and be placed and retained in post-secondary education, employment, the military, or apprenticeships. In particular, we want to know the overall number of youth who will be placed in jobs, school, training, college, and the military. You must also estimate the proportion of employers and participants who will indicate satisfaction with services received in surveys which you will need to conduct. You can also propose other performance measures for the indicators of performance described in WIA section 136, to either replace some of the above measures or complement them, and we will negotiate the measures with you prior to grant award. DOL expects to implement a performance incentive system in which the best performing sites receive some increases in grant funds, while sites not meeting their goals are subject to sanctions. Urban, rural, and Native American sites will be judged separately in determining these incentives.

Community Involvement. How will the tribal government encourage community participation and ownership in this project? We encourage the tribal government to set up a community advisory board made up of the various partner agencies, community residents, and youth to participate in the planning and oversight of this project. Discuss what the role of this community advisory board will be. Discuss how you plan to have community residents and families involved in program efforts, including sports leagues and cultural activities.

Staff Development. Discuss how you provide initial training and offer development opportunities to project staff, including educational opportunities at local community colleges and four-year colleges and additional training to help support the case managers and job developers with the demands of their jobs.

Summary Table of New Initiatives. Include a summary table of the various new initiatives started under this grant, numbers of youth to be served by each initiative each year, and annual funding levels. An example of such a summary table is provided below:

	DOL grant
Youth Development Specialists (staff of 30)	$1,080,000
Conservation corps (80 youth @ $20,000)	1,600,000
Tribal College 2+2+2 Pre-Forestry Program	320,000
Work experience (50 youth @ $3,000)	150,000
Pre-construction training (50 youth @ $3,000)	150,000
Futures program in high school (100 @ $4,000)	400,000
Sylvan, Score!, or Huntington Learning Center	200,000
College Bound program (100 youth @ $2,000)	200,000
Youth Leadership Program (100 youth @$1,000)	100,000
Community Service Projects (100 youth @ $2,000)	200,000
Residential summer program (100 youth @ $1,000)	100,000
Transportation and other supportive services	200,000
Sports and cultural program	100,000
Making the high school a ''High-Tech School''	200,000
Job Corps (50 youth)	.....
Total	5,000,000

Should Letters of Support Be Included?

You can include letters of support if they provide specific commitments. Such letters can increase your score by showing that commitments presented in the text of your proposal are serious. Form letters will not be considered. You must have a letter from tribal government and we encourage a letter from the tribal college if one exists on your reservation. Letters of support must be included as part of the 10 page attachment to your proposal. The closing date for receipt of proposals is September 30, 1999. Your application should specify on the cover sheet, whether you are applying for an urban, rural, or Native American grant.

Signed at Washington, DC this 26th day of May 1999.

Janice E. Perry,

Chief, Division of Federal Assistance.

Appendices

1. Appendix A—Cover Sheet, Application for Federal Assistance (Standard Form 424), and Budget Information Sheet.
2. Appendix B—Application Checklist.

BILLING CODE 4510–30–P

APPENDIX A

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

		2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction	Preapplication ☐ Construction ☐ Non-Construction	3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, State and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code):

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

☐☐-☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H Independent School Dist.
I State Controlled Institution of Higher Learning
J . Private University
K Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify): _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐-☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, States, etc.):

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:	
a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

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Standard Form 424 (REV 4-88) Authorized Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required face sheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which ave established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable)
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake this assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided. - "New" means a new assistance award. - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is required.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of the project.
12.	List only the largest political entities affected (e.g., State, counties, cities.
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

Appendix A

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	(A)	(B)	(C)
1. Personnel			
2. Fringe Benefits (Rate %)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Training Cost/Stipends			
11. TOTAL Funds Requested (Lines 8 through 10)			

SECTION B - Cost Sharing/ Match Summary (if appropriate)

	(A)	(B)	(C)
1. Cash Contribution			
2. In-Kind Contribution			
3. TOTAL Cost Sharing / Match (Rate %)			

NOTE: Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).

INSTRUCTIONS FOR PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. ***Personnel:*** *Show salaries to be paid for project personnel which you are required to provide with W2 forms.*

2. ***Fringe Benefits:*** *Indicate the rate and amount of fringe benefits.*

3. ***Travel:*** *Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.*

4. ***Equipment:*** *Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more. Also include a detailed description of equipment to be purchased including price information.*

5. ***Supplies:*** *Include the cost of consumable supplies and materials to be used during the project period.*

6. ***Contractual:*** *Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.*

7. ***Other:*** *Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.*

8. ***Total, Direct Costs:*** *Add lines 1 through 7.*

9. ***Indirect Costs:*** *Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.*

10. ***Training /Stipend Cost:*** *(If allowable)*

11. ***Total Federal funds Requested:*** *Show total of lines 8 through 10.*

SECTION B - Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

NOTE:

PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

Cover Sheet

Applicant #: _____
(Leave Blank)

SOLICITATION FOR GRANT APPLICATION
(SGA# 99-015)

YOUTH OPPORTUNITY INITIATIVE GRANT

_____

Enter Legal Name of Applying Organization

Your application must specify, on this sheet, whether you are applying for an Urban, Rural or Native American grant.
(ONLY CHECK ONE BELOW)

_____ Urban

_____ Rural

_____ Native American

PLEASE NOTE: Areas that are not EZ/ECs are urban, if they are located in metropolitan areas as defined by the census.

Appendix B

Application Checklist

Please complete and submit this checklist with your application. It should be used as a quick reference of key provisions of the solicitation and whether or not these provisions have been included, complied with or addressed. This document is not intended to be comprehensive or address every aspect of the solicitation.

Organization Applying: _____.

Contact Person:_____.

Phone Number:_____.

Date submitted:_____.

1. ____ Cover Sheet

2. ____ Standard Form 424

3. ____ Detailed budget and budget information sheet

4. ____ Eligibility Status
   a. ___ Applicant must be a Local Workforce Investment Board;
   b. ___ Applicant is the SDA administrative entity receiving JTPA formula funds in an area not yet transitioned to a Workforce Investment Board; or
   c. ___ Applicant is a Native American WIA Section 166 Grantee or a JTPA 401 Grantee

5. ____ Target area:
   (1) ___ EZ/EC or part of an EZ/EC
   (2) ___ Governor has designated as a high poverty area in state without EZ/EC
   (3) ___ Additional area designated by the Governor as eligible to apply in states with EZ/ECs
   (4) ___ Native American Reservation, Native Alaskan Village(s), or area serving Oklahoma Indians

6. ____ Letter from the Governor designating your area as eligible for award if you are not an EZ/EC.

[FR Doc. 99–13920 Filed 6–1–99; 8:45 am]
BILLING CODE 4510–30–C

THE U.S. NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE (NCLIS)

Sunshine Act Meeting and Open Hearing

TIME, DATE, AND PLACE: July 8, 1999 from 9:00 a.m. to 3:00 p.m.; Kellogg Conference Center, Gallaudet University, 800 Florida Avenue, NW, Washington, DC.

Hearing on Library and Information Services for Individuals With Disabilities

Purpose of the Hearing: The Commission recognizes that recent advances in information technology have improved conditions for some people with disabilities while presenting new challenges to others. Commission members wish to explore the gamut of issues raised in order to develop policy recommendations to appropriate government agencies and other organizations.

The NCLIS hearing is being held to offer the NCLIS members an opportunity to hear from individuals with disabilities of all types, as well as from legislators, educators, parents, library and information service professionals, representatives from national associations and organizations, volunteers, physicians, and researchers. The Commission wants to hear, first hand, of the various kinds of assistance being provided by libraries to persons with permanent or temporary disabilities, including assistance in ordering materials in alternative formats, searching and retrieving materials (both online and print), accessing library buildings and parking facilities, providing adequate space for study and testing, and furnishing special equipment.

Requests to present oral testimony should be received by June 18, 1999. Because of time constraints, participation will be limited. Written comments will be accepted before, during or up to 30 days after the hearing. All comments must be received at NCLIS no later than the close of business on July 8, 1999 to become part of the hearing record.

Written request for invitations must be submitted to NCLIS, Attn: Barbara Whiteleather, 1110 Vermont Avenue, NW., Suite 820, Washington, DC 20005–3522; fax 202–606–9203; or e-mail <bw__nclis@inet.ed.gov>

To request further information or to make special arrangements for physically challenged persons, contact Barbara Whiteleather (202–606–9200) no later than one week in advance of the meeting.

For further information contact Robert Willard, Executive Director (202) 606–9200.

Dated: May 27, 1999.

Robert S. Willard,

NCLIS Executive Director.

[FR Doc. 99–14094 Filed 5–28–99; 3:57 pm]

BILLING CODE 7527–$$–M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Comment Request Entitled Small Business Competitiveness Demonstration Program

AGENCY: Office of Federal Procurement Policy (OFPP), Office of Management and Budget (OMB).

ACTION: Notice of request regarding the reinstatement, with changes, of a previously approved collection (OMB Clearance 9000–0100) for which approval is now being requested by OFPP.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), OFPP notified the public concerning a request to reinstate, with changes, a previously approved information collection requirement concerning the Small Business Competitiveness Demonstration Program. A request for public comment was published at 63 FR 51962, September 29, 1998. No comments were received. This is a second request for comments and notice that the proposed information collection has been submitted to OMB for approval.

COMMENTS: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden should be submitted to Edward Springer at the Office of Management and Budget, Desk Officer for OMB, Room 10236, New Executive Office Building, Washington, DC 20503. Please cite the Small Business Competitiveness Demonstration Program.

DATES: Comments may be submitted on or before July 1, 1999.

FOR FURTHER INFORMATION CONTACT: Linda G. Williams, Deputy Associate Administrator, Office of Federal Procurement Policy, 202–395–3302.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Small Business Competitiveness Demonstration Program Act of 1988 (Title VII, Public Law 100–656), as amended, established the Small Business Competitiveness Demonstration Program (Program). The Program was established to (1) demonstrate whether or not small businesses in certain industry groups can compete successfully on an unrestricted basis for Federal contracts, and (2) to demonstrate whether or not targets goaling and management techniques can expand Federal contract opportunities for small businesses in industry categories where such opportunities historically have been low despite adequate numbers of small business contractors in the economy. Section 401 of the Small Business Reauthorization Act of 1997 (Public Law 105–135) extends the Program indefinitely.

Under the current Federal Acquisition Regulation (FAR), small businesses are required only to represent their status (i.e., whether small, small disadvantaged, or women-owned small businesses). Section 714(c) of the Small Business Competitiveness Demonstration Program Act requires each participating agency to collect data pertaining to the size as well as the status of the small business concern receiving any award for services in the designated industry groups and products or services in the agencies' ten targeted industry categories. The size of the small business is collected in terms of the number of employees or dollar volume of sales. The number of employees is based on the average of the pay periods for the last twelve months. The volume of sales is based on the average annual gross revenue for the last three fiscal years (See FAR 19.101). The size information is collected during the solicitation process as part of the representation requirement. This data will be used to evaluate the small business impact of the Program.

The former information collection requirements set forth in Section 714(b) of the Small Business Competitiveness Demonstration Program Act, pertaining to the simplified system to collect data on the participation of small business concerns as subcontractors under prime contracts for architectural and engineering (A&E) services, expired on September 30, 1997. Accordingly, this proposed reinstatement excludes that data collection requirement.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average five minutes per response, including the time to gather the information and complete the solicitation provision. The annual

reporting burden is estimated as follows: Respondents, 603,524; responses per respondent, 1; total annual responses, 603,524; preparation hours per response, .08333, and total response burden hours, 50,273. The collection is voluntary.

Copies of the Proposal

A copy of the Paperwork proposal is available from the Office of Federal Procurement Policy, Room 352, OEOB, Washington, DC 20503. Please cite the Small Business Competitiveness Demonstration Program in all correspondence.

Deidre A. Lee,

Administrator.

[FR Doc. 99–13880 Filed 6–1–99; 8:45 am]

BILLING CODE 3110–01–P

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy; Small Business Administration

Final Policy Directive, Small Business Competitiveness Demonstration Program

AGENCIES: Office of Federal Procurement Policy (OFPP), and Small Business Administration (SBA), OMB.

ACTION: Notice of final policy directive.

SUMMARY: The OFPP and SBA are issuing a final policy directive and implementation plan to implement the Small Business Competitiveness Demonstration Program established by the Small Business Competitiveness Demonstration Program Act of 1988 (Pub. L. 100–656), as amended, 15 U.S.C. 644 note. As a result of comments received following publication of an interim policy directive and implementation plan in the **Federal Register** on September 19, 1998 (63 FR 51981), we are revising the interim policy directive and implementation plan as indicated below. The changes to the implementation plan include:

1. We added a new subparagraph 7. in section III.A. to make clear that the very small business pilot program does not apply to any requirement that is subject to the Small Business Competitiveness Demonstration Program.

2. We revised section IIIC.1. to allow participating agencies to apply the 40 percent small business goal separately for east coast non-nuclear ship repair and west coast non-nuclear ship repair.

3. We revised section IVA.5. to clarify that SBA has the authority to request quarterly reports from the Federal Procurement Data System (FPDS) to monitor agencies' progress towards meeting their annual goals.

4. We revised section V.A.1 to delete reference to the solicitation date, but retained the requirement for agencies to distinguish awards made under the Program from other contract awards.

EFFECTIVE DATE: October 1, 1999.

FOR FURTHER INFORMATION CONTACT: Linda G. Williams, Deputy Associate Administrator, (202) 395–3302.

SUPPLEMENTARY INFORMATION:

A. Background

Congress established the Small Business Competitiveness Demonstration Program in 1988 to test the effectiveness of eliminating small business set-asides in certain industries. (See Pub. L. 100–656, the Small Business Competitiveness Demonstration Program Act of 1988 (''Act''), as amended, at 15 U.S.C. 644 note.) The Program has two primary objectives: (1) to demonstrate whether or not small businesses in certain industry groups can compete successfully on an unrestricted basis for Federal contracts, and (2) to demonstrate whether or not targeted goaling and management techniques can expand Federal contract opportunities for small businesses in industry categories where such opportunities historically have been low despite adequate numbers of small business contractors in the economy. A separate program to expand small business participation in the dredging industry, to be overseen by the Department of the Army, was also included in the Act. As originally established, the Demonstration Program extended through December 31, 1992.

To implement the Program, Congress in section 715(a) of the Act, authorized the OFPP Administrator to issue a test plan pursuant to section 15 of the Office of Federal Procurement Policy Act (41 U.S.C. 413). In addition, in section 715(b), Congress directed the OFPP Administrator, in cooperation with the SBA Administrator, to issue a policy directive (binding on all participating agencies) to ensure consistent government-wide implementation of the Act in the Federal Acquisition Regulation (FAR).

After requesting public comment on an interim policy directive and test plan (53 FR 52889 (December 29, 1988), OFPP implemented the Program by issuing a final policy directive and test plan dated August 31, 1989, 54 FR 37741 (September 12, 1989). In accordance with section 715(b) of the Act, the policy directive and test plan were implemented in the FAR (48 CFR subpart 19.10).

In 1992, Congress in sections 201–203 of the Small Business Credit and Business Opportunity Enhancement Act of 1992 (Pub. L. 102–366; ''1992 Act''), extended the Demonstration Program through September 30, 1996, and made amendments to the Program. To carry out these amendments, Congress in Section 202(i) of the 1992 Act directed the OFPP Administrator to issue conforming modifications to the test plan and policy directive. The conforming modifications were issued in an interim policy directive with request for comments (58 FR 19849, April 16, 1993), and were incorporated into the FAR (48 CFR subpart 19.10). In 1996, Congress extended the Demonstration Program for one year, through September 30, 1997. Public Law 104–208, Div. D, Title I, Sec. 108. In 1997, Congress also extended the aspect of the Program covering expansion of small business participation in the dredging industry. Public Law 105–18, Title II, Sec. 2002.

In December 1997, the Small Business Reauthorization Act of 1997 (Public Law 105–135) was enacted into law (''1997 Act''). Sections 401–405 of the 1997 Act made the Demonstration Program permanent, and made further amendments to the Program.

In order to respond to the comments that we received on the April 1993 interim policy directive and test plan, and to make conforming changes to reflect the amendments made by the 1997 Act, we issued a newly revised interim OFPP policy directive and implementation plan on September 29, 1998. In addition to making conforming revisions to reflect the amendments made by Congress in the 1997 Act, we made non-substantive revisions in various parts of the document, which are intended to improve its clarity. For ease of reading, we reissued the interim policy directive and implementation plan in its entirety for comment.

B. Public Comments

OFPP received seven letters in response to the request for comments on the September 29, 1998, interim policy directive and implementation plan. A summary of the main issues and concerns raised in the comments follows:

1. *Comment:* SBA should change the small business size standard for the construction industry to make appropriate adjustments for inflation.

Response: SBA is reviewing the size standards for construction and will make adjustments for inflation if deemed necessary. SBA will publish

any new size standards in the **Federal Register** for public comment. No changes to the policy directive and implementation plan would be necessary because they do not contain the size standards. SBA size standards are published in the FAR.

2. *Comment:* The policy directive should allow subcontract awards to count towards the 40 percent small business goal in construction. OFPP should continue and expand the use of the simplified data collection system for architectural and engineering (A&E) services, which expired on September 30, 1997, to allow participating agencies to track subcontract awards under construction contracts. If agencies cannot count subcontracts to small businesses towards their goal accomplishments, the policy directive should exempt task order contracts for construction. In addition, the policy directive ignores the provision at 713(b) of Public Law 100–656, which establishes a 35 percent goal for A&E until the subcontracting reporting system is implemented.

Response: The commenter states that agencies with recurring construction needs use task order IDIQ contracts to respond quickly to maintenance, alteration, and repair services. Under these task order contracts, small businesses perform more than 75 percent of the work as subcontracts. We support the use of small businesses as subcontractors under construction projects. However, there is no statutory basis to require participating agencies to count subcontracts to small businesses toward goal achievement for A&E services or to expand the subcontracting reporting system to other industries. As the commenter recognizes, section 714(b) of Public Law 100–656, which required OFPP to develop a simplified data collection system to collect data on the participation of small business concerns as subcontractors under prime contracts for A&E services, expired on September 30, 1997. Accordingly, the implementation plan excludes the subcontracting reporting system and deletes reference to the 35 percent goal for A&E services. Under current law, each participating agency has a small business goal that is 40 percent of the agency's total contract dollars awarded in each designated industry group. Participating agencies determine their small business goal achievement using prime contract award data.

3. *Comment:* The policy directive should not refer to the Program as a ''demonstration'' program since it was extended indefinitely by the Small Business Reauthorization Act of 1997.

Response: The Small Business Reauthorization Act did not amend section 711(a) of Public Law 100–656 to rename the Program. Section 711(a) established the Program as the ''Small Business Competitiveness Demonstration Program.'' Therefore, we do not believe it is appropriate to change the Program title.

4. *Comment:* The policy directive substitutes ''unrestricted competition'' for ''full and open competition'' throughout the document whenever it refers to procurements below the simplified acquisition threshold (SAT) but above the emerging small business reserve amount. The directive also allows for ''maximum practicable competition'' below the simplified acquisition threshold. The references to ''unrestricted competition'' and ''maximum practicable competition'' should be amended to confirm that neither phrase excludes ''Brooks Act A&E procurements'' from its terms.

Response: Contrary to the commenter's statement, the policy directive substitutes ''unrestricted competition'' for ''full and open competition'' throughout the interim policy directive for all procurements, not just those below the SAT and above the emerging small business reserve amount. As explained in the preamble to the Sept. 29, 1998 interim policy directive, we used the term ''unrestricted competition'' to encompass both agencies' use of ''maximum practicable competition'' for procurements below the SAT and ''full and open competition'' for procurements above the SAT. This is necessary because the Federal Acquisition Streamlining Act and the Competition in Contracting Act establish different competition standards for procurements above and below the SAT. This change does not affect the qualification-based selection procedures for acquiring A&E services because these procedures are considered full and open competition under FAR subpart 6.102.

5. *Comment:* FAR 19.1202–2 provides that the extent of small disadvantaged business (SDB) participation shall be an evaluation factor in competitive procurements over $500,000 ($1 million in construction) and does not list the Small Business Competitiveness Demonstration Program as an exception. This is contrary to the intent of the Program which seeks to provide an open competition among firms with qualifications and experience related to the scope of work. By reference to ''construction'' it is clear that FAR 19.1202–2 does not recognize the exemption for the four designated industry groups from restraints on their competition. FAR 19.1202–2 seeks to impose an evaluation factor inconsistent with either the ''unrestricted competition'' or full and open competition terminology used in the Program. OFPP should change the final directive to resolve the conflict with FAR 19.1202–2.

Response: The policy directive and the SDB reform program are consistent. FAR subpart 19.12 requires agencies to use the SDB participation evaluation factor (FAR 19.1202) in certain unrestricted negotiated procurements. Agencies use the SDB participation evaluation factor along with other evaluation factors or subfactors to determine the successful contractor. The use of this evaluation factor is consistent with the ''unrestricted competition'' terminology used in the Program.

6. *Comment:* There is no statutory basis to reimpose set-asides in the event small business participation in a SIC code falls below 35 percent even if the major group exceeded the 40 percent small business goal.

Response: The legislative history supporting Public Law 100–656 states that consistent efforts shall be made to achieve the 40 percent small business goal and the 15 percent emerging small business goal evenly across all the SIC codes that comprise a designated industry group. Firms within individual SIC codes shall not be disproportionally burdened. Therefore, to comply with the legislative intent, we included the requirement for set-asides to be reimposed when an individual SIC code falls below 35 percent even if the industry group exceeded 40 percent.

7. *Comment:* Transferring from OFPP to SBA the responsibility to report to the Congress within 180 days after FPDS data are available should not deter or disrupt an agency's process of maintaining or returning, by the start of the calendar year, to open competition where such action is supported by the data. The directive should make clear that there is no congressional action required prior to agency action on data from the prior fiscal year.

Response: The Federal Register notice preamble mentions SBA's responsibility to report to the Congress on the results of the Program. However, there is no mention of a Congressional requirement in the directive and implementation plan. Rather, the implementation plan (Paragraph IIID.2.c.) makes clear that agencies must make appropriate changes to solicitation practices (reinstituting restricted competition or reinstituting unrestricted competition)

not later than 30 days following their annual reviews.

8. *Comment:* The final policy directive should separate east and west coast non-nuclear ship repair when monitoring goal achievement rather than considering performance of the industry as a whole.

Response: The comments suggest that small business participation in non-nuclear ship repair is significantly different on the east coast and the west coast. Small firms are performing above the 40 percent goal on the east coast while performance on the west coast is below the 40 percent goal. The comments suggest that the policy directive should recognize the non-nuclear ship repair industry as two separate markets, rather than monitoring small business performance for the industry as a whole. We believe this suggestion has merit. Therefore, we will revise the Policy Directive and Implementation Plan to allow participating agencies to apply the 40 percent small business goal separately for east coast non-nuclear ship repair and west coast non-nuclear ship repair.

9. *Comment:* The policy directive should allow organizational units within a participating agency to return to unrestricted competition independent of the overall agency review to determine if the goal has been met.

Response: Section 712(d) of Public Law 100–656 requires participating agencies to monitor attainment of small business goals. Any modification to a participating agency's solicitation practices (using restricted or unrestricted competitions) shall be made as soon as possible after the agency's annual review. Allowing organizational units within a participating agency to return to unrestricted or restricted competition independent of the overall agency review would be contrary to the statutory intent.

10. *Comment:* It is not clear why the policy directive excludes awards made under Federal supply schedules (FSS) contracts from being covered by the Program. Given the increased emphasis on the use of FSS contracts, exclusion of these awards could distort small business participation in the designated industry groups. Consideration should be given to allowing participating agencies to count awards under FSS contracts in the designated industry groups toward their small business goals under this program.

Response: We did not include FSS contracts when the Program began because there were no FSS contracts for the services in the four designated industries groups. In addition, SBA historically did not count such awards toward attainment of the government-wide small business goal. Although SBA now allows agencies to count awards under the FSS contracts toward the government-wide goal, there still are no schedule contracts for the designated industry groups covered by the Program. Therefore, the Policy Directive will continue to exclude awards under the FSS from coverage in the Program.

11. *Comment:* The policy directive should include language that gives SBA the authority to obtain regular quarterly reports from the Federal Procurement Data System to monitor agencies' progress in meeting their goal attainment under the Program.

Response: SBA already has the authority to obtain quarterly reports from the Federal Procurement Data System to monitor agencies' progress toward meeting their annual goals. For purposes of clarity, however, we will revise section IV.A.5. of the implementation plan to include SBA's authority.

12. *Comment:* OFPP should establish a web site to maintain a current statement of the emerging small business reserve amount and include the web site in the implementation plan.

Response: OFPP has made only one adjustment to the emerging small business reserve amount (for architectural and engineering services) since the beginning of the Program. Therefore, we believe a **Federal Register** notice is the most appropriate way to provide notice of any change in the reserve amount. We also will include the final policy directive and any subsequent changes to it on the Acquisition Reform Network (ARNet).

13. *Comment:* The policy directive should no longer require participating agencies to track awards made outside the Program because the requirement has outlived its usefulness.

Response: It is essential that participating agencies distinguish awards made under the Program from other contract awards so that SBA and other data users can easily retrieve information about the Program. We do, however, believe that a reference to the solicitation date is no longer necessary. Therefore, we will revise the language in section V.A.1 accordingly.

C. Regulatory Flexibility Act Statement and Review Under E.O. 12866

OFPP and SBA certify that the changes made by this final directive 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.* because this final directive makes ministerial changes to the Program required by the Small Business Reauthorization Act of 1997 (Sections 401–405 of Pub. L. 105–135). For this same reason, the changes made by this final directive are not ''significant'' under Executive Order 12866.

For those interested in the overall economic scope and effect of this Program, we note that SBA forwards a report to Congress on an annual basis describing the economic impact of the program, and that copies of such report are available from SBA.

D. Paperwork Reduction Act

The information collection requirements related to this policy directive and implementation plan were previously approved by OMB and assigned OMB control number 9000–0100. A revised information collection request was submitted to OMB for approval under the Paperwork Reduction Act (44 U.S.C. Chapter 35). Public comments concerning this request were invited through a **Federal Register** notice published on September 29, 1998. No comments were received.

Deidre A. Lee,

Administrator, Office of Federal Procurement Policy.

Richard L. Hayes,

Associate Deputy Administrator for Government Contracting and Minority Enterprise Development, Small Business Administration.

MEMORANDUM FOR: THE SECRETARY OF AGRICULTURE, THE SECRETARY OF DEFENSE, THE SECRETARY OF ENERGY, THE SECRETARY OF HEALTH AND HUMAN SERVICES, THE SECRETARY OF THE INTERIOR, THE SECRETARY OF TRANSPORTATION, THE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY, THE ADMINISTRATOR OF GENERAL SERVICES, THE ADMINISTRATOR OF THE NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, THE SECRETARY OF VETERANS AFFAIRS;

SUBJECT: The Small Business Competitiveness Demonstration Program

Dated: May 25, 1999.

1. *Purpose.* This memorandum provides policy direction to the participating agencies for implementation of the Small Business Competitiveness Demonstration Program Act of 1988 (Title VII, Pub. L. 100–656), as amended by sections 23–27 of the Business Opportunity Development Reform Act Technical Corrections Act (Pub. L. 101–37), sections 201 and 202 of the Small

Business Credit and Business Opportunity Enhancement Act of 1992 (Pub. L. 102–366), section 108 of the Omnibus Consolidation Appropriation Act of 1997 (Pub. L. 104–208), and sections 401–405 of the Small Business Reauthorization Act of 1997 (Public Law 105–135).

2. *Authority.* This memorandum is issued pursuant to section 715 of Public Law 100–656, which requires that the Office of Federal Procurement Policy (OFPP) and the Small Business Administration (SBA) issue a policy directive to ensure consistent government-wide implementation of Title VII in the Federal Acquisition Regulation (FAR); section 202(i) of the Small Business Credit and Business Opportunity Enhancement Act of 1992 (Public Law 102–366), which requires appropriate modifications to the policy directive to conform to amendments made by that Act; sections 401–405 of the Small Business Reauthorization Act of 1997 (Pub. L. 105–135), which further amends Title VII; and section 15 of the Office of Federal Procurement Policy Act, 41 U.S.C. 413, which provides for the testing of innovative procurement methods and procedures.

3. *Background.* Section 15(a) of the Small Business Act mandates that small businesses receive a fair proportion of Federal procurements. To achieve this goal, subpart 19.5 of the FAR requires that Federal agencies reserve, or set aside, procurements for exclusive small business participation when a contracting officer determines that two or more small businesses are capable of providing the goods or services at reasonable prices. While restricting procurements for exclusive small business participation has been very effective in assuring a small business share of Federal contracts, one unintended result is a concentration of awards in certain industries often dominated by small businesses. A further result is that agencies expend resources in those industries that are conducive to high levels of small business participation rather than expand the base of small business contracting into areas where small businesses do not traditionally obtain a significant share of procurement awards.

4. *Policy.* The goals of the Program are to assess the ability of small businesses in certain designated industry groups to retain a fair proportion of procurement awards in unrestricted competition in those industry groups and to expand small business participation in a broader range of industry categories. The Act designates the Small Business Administration as OFPP's executive agent to monitor the Program. The procedures for implementing the Program are set forth in the attached implementation plan.

5. *Implementation.* This policy directive shall be implemented in FAR Part 19. Pursuant to Section 715(a) of the Small Business Competitiveness Demonstration Program Act, provisions of the FAR that are inconsistent with this policy directive and the attached implementation plan are hereby waived.

6. *Expiration Date.* The Small Business Competitiveness Demonstration Program has no expiration date.

Deidre A. Lee,

Administrator, Office of Federal Procurement Policy.

Richard L. Hayes,

Associate Deputy Administrator for Government Contracting and Minority Enterprise Development, Small Business Administration.

Small Business Competitiveness Demonstration Program Implementation Plan

I. Purpose

This document implements the Small Business Competitiveness Demonstration Program Act of 1988 (Title VII, Pub. L. 100–656), as amended by sections 23–27 of the Business Opportunity Development Reform Act Technical Corrections Act (Pub. L. 101–37), sections 201 and 202 of the Small Business Credit and Business Opportunity Enhancement Act of 1992 (Pub. L. 102–366), section 108 of the Omnibus Consolidation Appropriations Act of 1997 (Pub. L. 104–208), and sections 401–405 of the Small Business Reauthorization Act of 1997 (Public Law 105–135). The Program seeks to assess whether or not the competitive capabilities of small business firms in certain industry groups will enable them to successfully compete on an unrestricted basis for Federal contracts. In addition, the Program attempts to assess whether or not the use of targeted goaling and management techniques by procuring agencies, in conjunction with the Small Business Administration (SBA), will expand small business participation in Federal contracting opportunities that have been historically low despite adequate numbers of qualified small business contractors in the economy. The Program further seeks to assess whether or not expanded use of unrestricted competition adversely affects small business participation in certain industry groups, taking into consideration the numerical dominance of small firms, the size and scope of most contracting opportunities, and the competitive capabilities of small firms.

II. Authority

The Program is established pursuant to the Small Business Competitiveness Demonstration Program Act of 1988 (Title VII, Pub. L. 100–656), sections 201 and 202 of the Small Business Credit and Business Opportunity Enhancement Act of 1992 (Public Law 102–366), Sections 401–405 of the Small Business Reauthorization Act of 1997 (Public Law 105–135), and Section 15 of the Office of Federal Procurement Policy Act, 41 U.S.C. 413.

III. Program Requirements

A. Applicability

1. The Program began on January 1, 1989 and consists of two major components: (1) unrestricted competition in four Designated Industry Groups, and (2) enhanced small business participation in agencies' ten Targeted Industry Categories. Contracts resulting from solicitations issued on or after January 1, 1989 and any subsequent modifications to such contracts, are covered by this Program.

2. Contract awards in the following designated industry groups are covered by this Program:

a. Construction under standard industrial classification (SIC) codes that comprise major groups 15, 16, and 17 (excluding dredging—Federal Procurement Data System (FPDS) service codes Y216 and Z216);

b. Refuse systems and related services, including portable sanitation services, under SIC code 4212 or 4953, limited to FPDS service code S205;

c. Architectural and engineering (A&E) services (including surveying and mapping) under SIC codes 7389, 8711, 8712, or 8713 (limited to FPDS service codes C111 through C216, C219, T002, T004, T008, T009, T014, and R404), awarded under the qualification-based selection procedures required by 40 U.S.C. 541 *et seq.* (the ''Brooks A-E Act''); and

d. Non-nuclear ship repair—ship repair (including overhauls and conversions) performed on non-nuclear propelled and nonpropelled ships under SIC code 3731, limited to FPDS service codes J998 (repair performed east of the 108th meridian) and J999 (repair performed west of the 108th meridian).

3. Upon regulatory implementation by SBA and the FAR Council, the North American Industry Classification System (NAICS) codes will be substituted for SIC codes.

4. Targeted industry categories for enhanced participation are determined

by each participating agency, in conjunction with SBA.

5. Contract awards under the Federal Schedule Program are not covered by the Program.

6. Contract awards to educational and non-profit institutions or governmental entities are not covered by the Program.

7. The Very Small Business Pilot Program does not apply to any requirement that is covered by the Program.

B. Participating Agencies

The following agencies are participants in the Program:

1. The Department of Agriculture,
2. The Department of Defense, except the National Imagery and Mapping Agency,
3. The Department of Energy,
4. The Department of Health and Human Services,
5. The Department of Transportation,
6. The Environmental Protection Agency,
7. The General Services Administration,
8. The National Aeronautics and Space Administration,
9. The Department of Veterans Affairs, and
10. The Department of the Interior.

C. Agency Goals for the Four Designated Industry Groups

1. Each participating agency shall have a small business participation goal that is 40 percent of the agency's total contract dollars awarded for construction major group 15, major group 16, and major group 17; A&E services; refuse systems and related services; east coast non-nuclear ship repair; and west coast non-nuclear ship repair. The 40 percent goal applies separately to each construction major group and to east coast and west coast non-nuclear ship repair. In addition, each participating agency must make a good faith effort to assure that emerging small businesses receive not less than 15 percent of the agency's total contract dollars awarded for each of the four designated industry groups.

2. The Small Business Competitiveness Demonstration Program Act of 1988 defines an emerging small business as one whose size is no greater than 50 percent of the numerical size standard applicable to the SIC Code assigned to the procurement. Subject to the requirements of paragraph III.D.3 below, contract opportunities in the four designated industry groups, which have an estimated award value equal to or less than the reserve amount established for emerging small businesses, are reserved for such businesses.

3. Contract awards made to fulfill the 15 percent goal for emerging small businesses also count toward attainment of the 40 percent goal. All prime contract awards to small businesses, including awards under section 8(a) of the Small Business Act; 10 U.S.C. 2323; section 7102 of the Federal Acquisition Streamlining Act of 1994; the HUBZone Act of 1997 (Title VI of the Small Business Reauthorization Act, Public Law 105–135); and sole source awards, count toward attainment of goals.

D. Procurement Procedures for the Four Designated Industry Groups

Participating agencies shall use the following procedures for procurements in the four designated industry groups.

1. Unrestricted Competition for Contracts in Excess of the Emerging Small Business Reserve Amount

a. Subject to the requirements of the Competition in Contracting Act of 1984 and section 4201 of the Federal Acquisition Streamlining Act of 1994, participating agencies are required to use unrestricted competition for all solicitations in the four designated industry groups, if the anticipated award value exceeds the dollar amount reserved for emerging small businesses (unless the procurement is placed under section 8(a) of the Small Business Act; or is set aside under 10 U.S.C. 2323, section 7102 of the Federal Acquisition Streamlining Act of 1994, or the HUBZone Act of 1997 (Title VI of the Small Business Reauthorization Act, Public Law 105–135). Each participating agency shall continue to use unrestricted competition as long as annual reviews show that the agency's 40 percent goal is being attained. The continued use of unrestricted competition is not affected by an agency's failure to meet its 15 percent award goals for emerging small businesses.

b. Notwithstanding the provisions of paragraph III.D.1.a., above, the Department of Defense shall solicit contracting opportunities for A&E services (including surveying and mapping), in accordance with the provisions of subsections (a) and (b) of section 2855 of title 10, United States Code.

2. Restricted Competition for Contracts in Excess of the Emerging Small Business Reserve Amount

a. If any participating agency's annual review of its awards to small businesses in the four designated industry groups shows that the agency has failed to attain its 40 percent goal for any of the groups, subsequent contracting opportunities, in excess of the amount reserved for emerging small businesses, shall be solicited through competition restricted to eligible small businesses only at the organizational unit(s) within the agency that failed to attain the small business participation goals. (Organizational unit(s) shall be no larger than the major agency components or services, e.g., Army, Air Force, Navy, etc. for Department of Defense, regional offices for the General Services Administration, or space flight and research centers for the National Aeronautics and Space Administration.) Such solicitations (unless placed under section 8(a) of the Small Business Act or set aside under 10 U.S.C. 2323, section 7102 of the Federal Acquisition Streamlining Act of 1994, or the HUBZone Act of 1997 (Title VI of the Small Business Reauthorization Act, Public Law 105–135) shall be conducted in accordance with section 15(a) of the Small Business Act and Subpart 19.5 of the Federal Acquisition Regulation (FAR).

b. Agencies shall return to the use of unrestricted competition upon determining, after their annual review, that their contract awards to small business concerns again meet the required goals.

c. Modifications to agency solicitation practices (instituting restricted competition and reinstituting unrestricted competition) shall be made as soon as practicable, but no later than 30 days following completion of the review indicating the need for such change. The reinstitution of restricted competition or unrestricted competition shall be announced to the public through a notice published in the **Federal Register** if restricted or unrestricted competition is to be reimposed broadly by a participating agency. ''Special notices'' in the *Commerce Business Daily* shall be used periodically to supplement such **Federal Register** notices, and may be used as an alternative means of providing such notices, if the reinstitution of restricted competition or unrestricted competition will affect only a limited number of buying activities.

3. Reserve Program for Emerging Small Businesses

a. The emerging small business reserve amount is $25,000, or such higher amount as OFPP sets in the event that emerging small concerns are not receiving 15 percent of the total dollar value of contract awards in one or more of the four designated industry groups. The emerging small business reserve amount for architectural and engineering services is $50,000 (56 FR

46656, September 13, 1991). Any required adjustments to the emerging small business reserve amount will be made annually by industry group.

b. Competition for all contract opportunities in the four designated industry groups with an estimated award value that is equal to or less than the emerging small business reserve amount shall be restricted to emerging small businesses, provided that the contracting officer determines that there is a reasonable expectation of obtaining offers from two or more responsible emerging small businesses that will be competitive in terms of market price, quality, and delivery. If no such reasonable expectation exists, requirements will be processed in accordance with FAR 19.5 or FAR 19.8. However, if no such reasonable expectation exists where OFPP has raised the small business reserve amount to a level over $25,000, requirements over $25,000 will be processed in accordance with paragraphs III.D.1 and III.D.2, above.

c. The use of simplified acquisition procedures is not required under the reserve program; any competitive source selection method may be used. The reserve program applies only to new awards within the emerging small business reserve threshold. Modifications within the scope of work of contracts having an initial award value in excess of the emerging small business reserve amount are not subject to the reserve program.

d. Each solicitation under the Program that utilizes simplified acquisition procedures shall include the applicable SIC code and size standard for the procurement.

4. Solicitation Provisions for Procurements in the Four Designated Industry Groups

a. The provision set forth in FAR 52.219–19 entitled ''Small Business Concern Representation for the Small Business Competitiveness Demonstration Program'' shall be inserted in full text in all solicitations issued by the participating agencies under the Small Business Competitiveness Demonstration Program for the four designated industry groups.

b. The provision set forth in FAR 52.219–20 entitled ''Notice of Emerging Small Business Set-Aside'' shall be inserted in full text in all solicitations and resulting contracts restricted to emerging small businesses pursuant to paragraph III.D.3.

c. The face of each award issued by a participating agency under the Small Business Competitiveness Demonstration Program for the four designated industry groups shall contain a statement that the award is being issued pursuant to such Program.

E. Agency Programs for Targeted Industry Categories With Limited Small Business Participation

1. Each participating agency is required to select ten industry categories (four-digit SIC Code or some segmented portion(s) of such code(s), as identified by FPDS product or service code) as targeted categories for expansion of small business participation.

2. In order to achieve such expanded participation, agencies shall select categories that represent products and services purchased in substantial quantities by the agency; that historically have had a small business participation rate of less than 10 percent by category, and in which there is a significant amount of small business productive capacity that has not been utilized by the Government.

3. Each participating agency shall consult with the Administrator of SBA in selecting the ten targeted categories, developing the plan for expanded small business participation, and establishing the goals for the Program. Upon completion of their consultation with SBA, participating agencies shall publish in the **Federal Register**, an announcement soliciting public comment on that agency's program for expansion of small business participation in the targeted categories. Each participating agency shall notify SBA of any additions or deletions to the ten targeted industry categories. Subsequent to the SBA notification, the participating agency shall publish the changes in the **Federal Register**.

4. Each plan shall be submitted to the Administrator of SBA and shall contain a detailed time-phased strategy with incremental goals, including reporting on goal attainment. To the extent practicable, provisions that encourage and promote teaming and joint ventures shall be included. These provisions should permit small business firms to effectively compete for contracts that individual small businesses would be ineligible to compete for because of lack of production capacity or capability. Such joint ventures or teams shall comply with the applicable small business guidelines. (See 13 CFR 121.103(f) and 121.105(b)).

5. Participating agencies shall report to SBA on the results of the expansion program regarding the ten targeted categories on the same annual schedule as required for the four designated industry groups.

6. Goal attainment for the ten targeted industry categories shall be determined on the basis of awards to U.S. business firms. Participating agencies may use the format in Attachment A to report accomplishments.

7. The provision set forth in FAR 52.219–21 entitled ''Small Business Size Representation For Targeted Industry Categories Under the Small Business Competitiveness Demonstration Program'' shall be inserted in full text in any solicitation issued in each of the ten targeted industry categories under the Small Business Competitiveness Demonstration Program that is expected to result in a contract award in excess of $25,000.

8. The face of each award issued in any of the ten targeted industry categories under the Small Business Competitiveness Demonstration Program shall contain a statement that the award is being issued pursuant to such Program.

IV. Monitoring and Reporting for Four Designated Industry Groups

A. Monitoring of Goals for the Four Designated Industry Groups

1. Each participating agency shall monitor attainment of its small business and emerging small business participation goals on an annual basis and provide the information in a written report to SBA. The report shall specify the industry groups for which restricted or unrestricted competition have been imposed. Agencies shall complete their annual reviews and submit their reports not later than January 31 of each year, based on the data for the preceding fiscal year, from October 1 through September 30. The Department of Defense shall submit a report that separately identifies performance by the Army, Air Force, Navy and the Defense Agencies. The report submitted by the General Services Administration shall separately identify performance by the Public Building Service.

2. Monitoring and reporting of goal attainment will be based on awards (and any subsequent modifications to those awards) in the individual codes comprising the industry, as specified in paragraph IV.B., below.

3. Any necessary modifications to agency solicitation practices for the purpose of achieving the agency's small business participation goals (instituting restricted competition or reinstituting unrestricted competition) will be accomplished for each of the industry groups as follows:

a. Construction (excluding dredging)

i. Major group 15

ii. Major group 16
iii. Major group 17

b. Refuse systems and related services.

c. A&E services (including surveying and mapping), limited to contracts awarded under the qualification-based selection procedures required by 40 U.S.C. 541 *et seq.* (the ''Brooks A–E Act'').

d. Non-nuclear ship repair.
i. FPDS Code J998 (East Coast)
ii. FPDS Code J999 (West Coast)

However, if goal attainment for any individual FPDS service code within the A&E services industry group falls below 35 percent, the agency shall reinstitute set-asides for that individual service code at the organizational unit(s) within the agency that failed to achieve the 35 percent goal, even if overall goal attainment in the industry group is 40 percent or more. In addition, if goal attainment for any individual SIC code within one of the major groups comprising the construction industry group falls below 35 percent, the agency shall reinstitute set-asides for that individual SIC code at the organizational unit(s) within the agency that failed to achieve the 35 percent goal, even if overall goal attainment in the major group is 40 percent or more. The 35 percent rule does not apply to refuse systems and related services, east coast non-nuclear ship repair, and west coast non-nuclear ship repair because there are no individual FPDS service codes or SIC codes within the major group.

4. Agencies shall monitor goal attainment in the four designated industry groups by reviewing total prime contract award dollars to (a) All U.S. business firms, (b) small U.S. business concerns and (c) emerging small U.S. business concerns. Awards to educational and non-profit institutions or governmental entities are not part of the Program and do not count towards goal attainment.

5. SBA will closely monitor the Program to ensure that each participating agency makes a consistent effort to achieve goals evenly across all individual codes that comprise a designated industry group. SBA may obtain quarterly reports from the FPDS using the format set forth at Attachment A to monitor agencies' progress during the fiscal year.

6. All prime contract awards to small businesses, including awards under section 8(a) of the Small Business Act; 10 U.S.C. 2323; section 7102 of the Federal Acquisition Streamlining Act of 1994; the HUBZone Act of 1997 (Title VI of the Small Business Reauthorization Act, Public Law 105–135); and sole source awards, count toward attainment of goals.

B. Codes for Monitoring and Reporting Goal Attainment for the Four Designated Industry Groups

1. Refuse Systems and Related Services

The Small Business Competitiveness Demonstration Program Act of 1988 outlines the SICs that are included in the designated industry groups. However, in the area of refuse systems and related services, SIC codes 4212 and 4953 include services that should not be included in the Program. The Program is designed to assess small firms' competitiveness generally in procurements for the collection, transportation, and disposal of residential and nonhazardous commercial garbage, refuse, and waste materials. For example, contracts for the regular collection and disposal at publicly or privately operated landfills of residential and nonhazardous commercial solid waste, garbage, debris, or other refuse from military installations, federal office buildings, and other federal facilities, and garbage processing and recycling activities, should be included. Contracts for the operation of those facilities, collection and disposal of acid, radioactive, or other hazardous waste should not be included. Therefore, participating agencies shall use FPDS service code S205 (trash/garbage collection services—including portable sanitation services) to monitor goal attainment for refuse systems and related services.

2. Architectural and Engineering Services

a. The Small Business Competitiveness Demonstration Act of 1988 provides that A&E services (including surveying and mapping) shall include contracts assigned SIC codes 8711, 8712, 8713, and 7389 (if identified as mapping), and awarded under the qualification-based selection procedures required by 40 U.S.C. 541 *et seq.* (the ''Brooks A–E Act''). Since SIC code 7389 includes many more services than mapping, participating agencies shall use the following FPDS service codes to monitor goal attainment for mapping services:
T002 Cartography services
T004 Charting services
T008 Photogrammetry services
T009 Aerial photographic services
T014 Topography services

b. Participating agencies shall use the following FPDS service codes to monitor A&E services under SIC codes 8711, 8712, and 8713:
C111 Administrative and Service Buildings
C112 Airfield, Communication and Missile Facilities
C113 Educational Buildings
C114 Hospital Buildings
C115 Industrial Buildings
C116 Residential Buildings
C117 Warehouse Buildings
C118 Research and Development Facilities
C119 Other Buildings
C121 Conservation and Development
C122 Highways, Roads, Streets and Bridges
C123 Electric Power Generation (EPG)
C124 Utilities
C129 Other Non-Building Structures
C130 Restoration
C211 Architect—Engineer Services (non-construction)
C212 Engineering Drafting Services
C213 A&E Inspection Services (non-construction)
C214 A&E Management Engineering Services
C215 A&E Production Engineering Services
C216 Marine A&E Services
C219 Other Architect and Engineering Services
R404 Land Surveys, Cadastral Services—non construction

3. Non-nuclear Ship Repair

Non-nuclear ship repair is included within SIC code 3731. Since this SIC includes all ship repair as well as shipbuilding, participating agencies shall use the following FPDS service codes to monitor goal attainment for non-nuclear ship repair: J998 (Ship Repair, Including Overhauls and Conversions, Performed on Non-nuclear Propelled and Nonpropelled Ships East of the 108th Meridian) or J999 (Ship Repair, Including Overhauls and Conversions, Performed on Non-nuclear Propelled and Nonpropelled Ships West of the 108th Meridian).

4. Construction

Goal attainment for construction shall be monitored through the use of the SIC codes identified in Attachment A.

V. FPDS Data Collection Requirements

Participating agencies shall maintain and report procurement data to the Federal Procurement Data System (FPDS) in order to determine the level of small business participation in the four designated industry groups and the ten targeted industry categories for the small business expansion program.

A. Awards in Excess of $25,000

For contract awards in excess of $25,000, the FPDS (1) has information on the SIC code of the procurement and (2) can distinguish awards to small business concerns and small

disadvantaged business concerns, as required by section 714(c) of the Small Business Competitiveness Demonstration Program Act of 1988. However, for purposes of the Program, the FPDS reporting requirements have been revised to also:

1. Distinguish awards made under the Program in the four designated industry groups and the targeted industry categories.

2. Distinguish emerging small business firms from other small businesses. Participating agencies must make a good faith effort to award not less than 15 percent of the dollar value of awards in the four designated industry groups to emerging small businesses.

3. Distinguish awards to emerging small business firms in the small business reserve program. Participating agencies must reserve for exclusive competition among emerging small business concerns all contracts of $25,000 or less in the four designated industry groups or a greater amount set by OFPP if the 15 percent goal is not attained. Emerging small businesses can also receive awards above the small business reserve threshold.

4. Provide the size of the small business concern in terms of number of employees or dollar volume of sales for awards in the four designated industry categories and ten targeted industry categories. Section 714(c) of the Small Business Competitiveness Demonstration Program Act requires each participating agency to collect data pertaining to the size of the small business concern receiving any award for services in the four designated industry groups and products or services in the ten targeted industry categories. The number of employees shall be based on the average of the pay periods for the last twelve months. The volume of sales shall be based on the average annual gross revenue for the last three fiscal years (See FAR 19.101).

5. Limit A&E services to contracts awarded under the qualification-based selection procedures of 40 U.S.C. 541 *et seq*. (the ''Brooks A–E Act'').

6. Specific details outlining the FPDS changes have been included in the FPDS Reporting Manual (September 1997).

B. Awards of $25,000 or less

Each award of $25,000 or less made by a participating agency for the procurement of a service in the four designated industry groups shall be reported to the Federal Procurement Data Center in the same manner as if the award was in excess of $25,000. This means that all applicable data collected in the FPDS via the Individual Contract Action Report (SF 279), or agencies' equivalent computer-generated format, shall be reported for these purchases. It should be noted that awards of $500 or less are not reportable to the FPDS.

Specific details outlining the FPDS changes have been included in the FPDS Reporting Manual (September 1997).

Attachment A—Report on Small Business Participation Under the Small Business Competitiveness Demonstration Program for Designated Industry Groups

Fiscal Year _____ Quarter_____

Agency: _____

Subagency (if applicable) _____

Designated groups	Total US business actions/ dollars	Small business actions/ dollars*	Percentage of dollars	Small disadvantaged business Actions/dollars	Percentage of dollars	Emerging small business Actions/dollars	Percentage of dollars
I. Construction, Excluding Dredging (Dollars in Thousands; Percentage in Whole Numbers)							
SIC Group 15:							
1521							
1522							
1531							
1541							
1542							
Subtotal							
SIC Group 16:							
1611							
1622							
1623							
1629							
Subtotal							
SIC Group 17:							
1711							
1721							
1731							
1741							
1742							
1743							
1751							
1752							
1761							
1771							
1781							
1791							
1793							
1794							

Designated groups	Total US business actions/ dollars	Small business actions/ dollars*	Percentage of dollars	Small disadvantaged business Actions/dollars	Percentage of dollars	Emerging small business Actions/dollars	Percentage of dollars
1795							
1796							
1799							
Subtotal							
Grand Total							
II. Refuse Systems and Related Services (Dollars in Thousands; Percentages in Whole Numbers)							
PSC S205:							
Total							
III. Architectural and Engineering Services, Including Mapping and Surveying (Dollars in Thousands; Percentages in Whole Numbers)							
SIC 7389:							
PSC T002							
PSC T004							
PSC T008							
PSC T009							
PSC T014							
Subtotal							
SIC 8711 or SIC 8712 or 8713:							
PSC C111							
PSC C112							
PSC C113							
PSC C114							
PSC C115							
PSC C116							
PSC C117							
PSC C118							
PSC C119							
PSC C121							
PSC C122							
PSC C123							
PSC C124							
PSC C129							
PSC C130							
PSC C211							
PSC C212							
PSC C213							
PSC C214							
PSC C215							
PSC C216							
PSC C219							
PSC R404							
Subtotal							
Grand Total							
IV. Non-Nuclear Ship Repair (Dollars in Thousands; Percentages in Whole Numbers)							
SIC 3731:							
PSC J998							
PSC J999							
Total							

*Small Business Dollars include dollars to Emerging Small Businesses.

[FR Doc. 99–13879 Filed 6–1–99; 8:45 am]

BILLING CODE 3110–01–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99–071]

NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Structure and Evolution of the Universe Advisory Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science Advisory Committee, Structure and Evolution of the Universe Subcommittee.

DATES: Wednesday, June 16, 1999, 8:30 a.m. to 5:00 p.m.; Thursday, June 17, 1999, 8:30 a.m. to 5:00 p.m.; and Friday, June 18, 1999, 8:30 a.m. to 2:00 p.m.

ADDRESSES: NASA Headquarters, Conference Room 7H46, 300 E Street, SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Alan N. Bunner, Code SA, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0364.

SUPPLEMENTARY INFORMATION: The meeting will be open to the Public up to the capacity of the room. The agenda for the meeting is as follows:

—Theme Director's Report: Status of SEU programs

—Constellation-X project report

—SEUS Technology Working Group

—SEU outreach efforts: Report from the SEU Forum

—Discussion of Action Items and Matters Arising

—SEU contributions to NASA Strategic Plan

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: May 26, 1999.

Lori Garver,

Associate Administrator for Policy and Plans.

[FR Doc. 99–13952 Filed 6–1–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Eandowment for the Arts

Combined Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Panel, Media Arts Section (Creation & Presentation and Planning & Stabilization categories) to the National Council on the Arts will be held on June 28–30, 1999. The panel will meet from 9 a.m. to 6 p.m. on June 28th, from 9 a.m. to 6:30 p.m. on June 29th, and from 9 a.m. to 5:30 p.m. on June 30th, in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, D.C., 20506. A portion of this meeting, from 1 p.m. to 2:30 p.m. on June 30th, will be open to the public for a policy discussion.

The remaining portions of this meeting, from 9 a.m. to 6 p.m. on June 28th, from 9 a.m. to 6:30 p.m. on June 29th, and from 9 a.m. to 1 p.m. and 2:30 p.m. to 5:30 p.m. on June 30th, are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 12, 1999, these sessions will be closed to the public pursuant to (c)(4)(6) and(9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Accessability, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: May 25, 1999.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 99–13916 Filed 6–1–99; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Nancy E. Weiss, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* June 24, 1999.

Time: 8:30 a.m. to 6:00 p.m.

Room: 415.

Program: This meeting will review applications for Art Museums: Other Humanities Organizations and Programs, submitted to the Office of

Challenge Grants at the May 1, 1999 deadline.

2. *Date:* June 28, 1999.

Time: 8:30 a.m. to 6:00 p.m.

Room: 415.

Program: This meeting will review applications for College and Universities I, submitted to the Office of Challenge Grants at the May 1, 1999 deadline.

Nancy E. Weiss,

Advisory Committee Management Officer.

[FR Doc. 99–13862 Filed 6–1–99; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Privacy Act of 1974: Revisions to System of Records: Revised Systems

SUMMARY: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), the National Science Foundation (NSF) is providing notice of revisions to two existing systems and the planned creation of one new system. The revisions to current systems NSF–52 ''Office of Inspector General—Investigative Files'' and NSF–59 ''Science and Technology Centers (STC) Database'' are being made to more accurately reflect the current system records and use. The new system, NSF–71 ''General Correspondence Files,'' covers general correspondence with individuals that is filed alphabetically rather than chronologically.

EFFECTIVE DATE: Sections 552a(e)(4) and (11) of Title 5 of the U.S. Code require that the public have thirty days to comment on the routine uses of systems of records. The new routine uses that are the subject of this notice will take effect on July 2, 1999, unless modified by a subsequent notice to incorporate comments received from the public.

COMMENTS: Written comments should be submitted to Leslie Crawford, NSF Privacy Act Officer, National Science Foundation, Office of the General Counsel, 4201 Wilson Boulevard, Room 1265, Arlington, VA 22230.

Dated: May 27, 1999.

Leslie Crawford,

Privacy Act Officer.

NSF–52

SYSTEM NAME:

Office of Inspector General—Investigative Files.

SYSTEM LOCATION:

Office of Inspector General, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

In connection with its investigative duties, the Office of Inspector General (OIG) maintains records on the following categories of individuals: (a) Individuals or entities who are or have been the subject of inquiries or investigations conducted by OIG, including current and former employees of NSF; and current and former contractors (or applicants for contracts), subcontractors, consultants, or the recipients of (or applicants for) NSF grants or cooperative agreements, and their current or former employees, students, or collaborators; and (b) Individuals who are witnesses; complainants; confidential or nonconfidential informants; and parties who have been identified by OIG (on the basis of information received or developed by OIG) as potentially possessing information relevant to an investigation under the jurisdiction by the OIG.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information relating to investigations including: (a) Letters, memoranda, and other documents citing complaints or alleged criminal, civil, or administrative misconduct; (b) Investigative files, which include: reports of investigations to resolve allegations of misconduct or violations of law or administrative or ethical requirements; exhibits, statements, affidavits, or other records obtained or generated during investigations; prior criminal or noncriminal records of individuals as they relate to the investigations; reports from or to other law enforcement bodies; information obtained from informants and identifying data with respect to such informants; nature of allegations made against suspects and identifying data concerning such subjects; and public source materials.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Inspector General Act, as amended, 5 U.S.C. app.

PURPOSE(S):

The Office of the Inspector General (OIG) for the National Science Foundation (NSF) maintains this system of records in order to conduct its responsibilities pursuant to the Inspector General Act of 1978, as amended, 5 U.S.C. app. section 4. The OIG is statutorily directed and authorized to conduct and supervise investigations relating to programs and operations of NSF, to promote economy, efficiency, and effectiveness in the administration of such programs and operations, and to prevent and detect fraud, waste and abuse in such programs and operations. Accordingly, the records are used in investigations of individuals and entities suspected of having committed illegal or unethical acts, and in any resulting criminal prosecutions, civil proceedings, or administrative actions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be disclosed as follows:

1. In the event that records indicate a violation or potential violation of a requirement, whether criminal, civil, regulatory, administrative, contractual, or ethical in nature, whether arising by statute, regulation, rule, order, contract (including a grant or cooperative agreement), or ethical practices or norms, the relevant records in the system of records may be disclosed, as a routine use, to the appropriate entity, whether governmental (federal, foreign, state, local, or international) or non-governmental, charged with the responsibility of investigating or prosecuting such violation or potential violation, or charged with enforcing, implementing, or complying with such statute, regulation, rule, order, contract, or ethical practices or norms.

2. Disclosure may be made to appropriate entities, whether governmental (federal, foreign, state, local or international) or non-governmental, or to an individual, when necessary to elicit information that will assist an investigation or audit.

3. Disclosure may be made to a federal, state, local, foreign, or international entity maintaining civil, criminal, or other relevant information if necessary to obtain information relevant to an OIG decision concerning the assignment, hiring, or retention of an individual and/or employee or disciplinary or other administrative action concerning an employee, the issuance or revocation of a security clearance, the reporting of an investigation of an individual and/or employee, or the award of a contract (including a grant or cooperative agreement).

4. Disclosure may be made to a federal, state, local, foreign, or international entity in response to its request in connection with the assignment, hiring, or retention of an individual and/or employee, or disciplinary or other administrative action concerning an employee, the issuance or revocation of a security clearance, the reporting of an investigation of an individual and/or employee, or the award of a contract

(including a grant or cooperative agreement) or other benefit by the requesting agency to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

5. Disclosure may be made to the Office of Personnel Management or the Merit Systems Protection Board (including the Office of the Special Counsel) of information relevant and necessary to carrying out their functions.

6. In the event OIG is aware of information about possible misconduct in science and engineering, disclosure of relevant records may be made by OIG to institutions or entities that have proposed or received contracts, grants, or cooperative agreements so that they can conduct inquiries and investigations into possible misconduct in science and engineering pursuant to 45 CFR part 689.

7. Disclosure may also be made to independent auditors, contractors, experts, and other individuals who perform a service to or work on or under a contract, or other arrangement with or for the federal government, as necessary to carry out their duties. Such contractors will be required to maintain Privacy Act safeguards with respect to such records.

8. Disclosure may be made to another federal agency, a court, or a party in litigation before a court or in an administrative proceeding being conducted by a federal agency when the government is a party to the judicial or administrative proceeding.

9. In the event the OIG deems it desirable or necessary, in processing a Freedom of Information Act or Privacy Act request, disclosure may be made to the Department of Justice or the Office of Management and Budget for the purpose of obtaining its advice.

10. Disclosure may be made to the Department of Justice, to the extent it is compatible with the purpose for which the record was collected, and is relevant and necessary to litigation or anticipated litigation, in which one of the following is a party or has an interest: (a) NSF or any of its components; (b) an NSF employee in his or her official capacity; (c) an NSF employee in his or her official capacity when the Department of Justice is representing or considering representing the employee; or (d) the United States, when NSF determines that litigation is likely to affect NSF.

11. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

12. Disclosure may be made to representatives of the General Services Administration and the National Archives and Records Administration who are conducting record management inspections under 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The OIG Investigative Files consist of automated data and paper records. The paper records are stored in file cabinets and the automated data are maintained in computers in OIG.

RETRIEVABILITY:

The records are retrieved by the name of the subject of the investigation or by a unique control number assigned to each investigation.

SAFEGUARDS:

These records are kept in OIG offices within limited access areas of the National Science Foundation during duty hours, and in locked offices at all other times. Passwords are required to access the automated data.

RETENTION AND DISPOSAL:

The Investigative Files are kept indefinitely pending adoption of an NSF-specific approved records retention schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Inspector General, Office of Inspector General, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

NOTIFICATION PROCEDURE:

The Privacy Act Officer should be contacted in accordance with procedures found at 45 CFR part 613.

RECORD ACCESS PROCEDURES:

The major part of this system is exempted from this requirement pursuant to 5 U.S.C. 552a(j)(2) or (k)(2). To the extent that this system of records is not subject to exemption, it is subject to access. A determination as to exemption shall be made at the time a request for access is received. Access requests must be sent to the Privacy Act Officer in accordance with procedures found at 45 CFR part 613.

CONTESTING RECORD PROCEDURES:

The major part of this system is exempted from this requirement pursuant to 5 U.S.C. 552a(j)(2) or (k)(2). To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for contest is received. Requests must be sent to the Privacy Act Officer in accordance with procedures found at 45 CFR part 613.

RECORD SOURCE CATEGORIES:

The subjects of investigations; individuals with whom the subjects of investigations are associated; current and former NSF employees; federal, state, local, and foreign law enforcement and non-law enforcement agencies; private citizens; witnesses; confidential and nonconfidential informants; and public source materials.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempted from 5 U.S.C. 552a except subsections (b); (c)(1) and (2); (e)(4)(A) through (F); (e) (6), (7), (9), (10), and (11); and (i) under 522a(j)(2) to the extent the system of records pertains to enforcement of criminal laws; and is exempted from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) under 5 U.S.C. 552a(k)(2) to the extent the system of records consists of investigatory material compiled for law enforcement purposes, other than material within the scope of the exemption at 5 U.S.C. 552a(j)(2). These exemptions are contained in 45 CFR 613.

NSF–59

SYSTEM NAME:

Science and Technology Centers (STC) Database.

SYSTEM LOCATION:

Office of Integrative Activities, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals participating in NSF funded Science and Technology Center (STC) Activities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records vary by year. From FY90 until FY98, the records may include name, institution, social security number, gender, ethnicity, year of highest degree, citizenship, areas of research, type of financial support and other related information. These STC databases may also include the results of follow-up surveys of STC Center participants. The records will be used to help evaluate the STC Center's achievement of program goals. Evaluation may include follow-up surveys of STC Center participants. The results of evaluations will be statistical and will not identify individual participants.

Beginning with FY98, covered records include only faculty names associated with type of financial support. Other program records from FY98 forward are not part of this system of records because they include no individual names or identifiers. These records report only the number of STC participants by STC Center categorized as faculty, postdoctoral fellows, graduate students, undergraduate students, visiting scientists, support staff (scientific, technical, and administrative), and precollege students and teachers. These records include data on gender, disability status, citizenship, ethnicity/race, areas of research, shared experimental facilities, type of financial support, and other related information. Because these data are collected without individual name or other identifier, it cannot be so retrieved and are not part of this system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 3101; 42 U.S.C. 1870.

PURPOSE(S):

Information from this system may be used to enable NSF to identify research areas under STC Center awards and determine the level of support for STC Center personnel and STC Center research; to help evaluate the STC Center's achievement of program goals, such as enhancement of skills; to report periodically, in statistical form only, on the participation of men and women by ethnicity, disability, discipline, and citizenry; and to enable NSF to monitor the effectiveness of NSF-sponsored STC Centers for management evaluation and for reporting to the Administration and Congress, especially under the Government Performance and Results Act, 5 U.S.C. 306 and 39 U.S.C. 2801–2805.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. An STC Center and its authorized personnel may have access to data submitted by that Center for the purpose of administration and for other uses consistent with the purpose above.

2. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

3. Information from the system may be disclosed to contractors, grantees, volunteers, experts, advisors, and other individuals who perform a service to or work on or under a contract, grant, cooperative agreement, advisory committee, committee of visitors, or other arrangement with or for the Federal government, as necessary to carry out their duties in pursuit of the purposes described above. The contractors are subject to the provisions of the Privacy Act.

4. Information from the system may be merged with other computer files in order to carry out statistical studies or assist with program management, evaluation, and reporting. Disclosure may be made for this purpose to NSF contractors and collaborating researchers, other Government agencies, and qualified research institutions and their staffs. The results of such studies, evaluations, or reports are statistical in nature and do not identify individuals.

5. Information from the system may be disclosed to the Department of Justice or the Office of Management and Budget for the purpose of obtaining advice on the application of the Freedom of Information Act or Privacy Act to the records.

6. Information from the system may be given to another Federal agency, a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency when the Government is a party to the judicial or administrative proceeding.

7. Information from the system may be given to the Department of Justice, to the extent disclosure is compatible with the purpose for which the record was collected and is relevant and necessary to litigation or anticipated litigation, in which one of the following is a party or has an interest: (a) NSF or any of its components; (b) an NSF employee in his/her official capacity; (c) an NSF employee in his/her individual capacity when the Department of Justice is representing or considering representing the employee; or (d) the United States, when NSF determines that litigation is likely to affect the Agency.

8. Records from this system may be disclosed to representatives of the General Services Administration and the National Archives and Records Administration who are conducting records management inspections under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Some of the records are stored electronically and some are stored in paper format in file folders.

RETRIEVABILITY:

By the STC Center and then alphabetically by individual.

SAFEGUARDS:

Building is locked during non-business hours. Records at NSF are kept in rooms that are locked during non-business hours. Records maintained in electronic form are password protected.

RETENTION AND DISPOSAL:

The file for each STC Center is cumulative and maintained indefinitely pending adoption of an approved records retention schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Integrative Activities, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

NOTIFICATION PROCEDURE:

The NSF Privacy Act Officer should be contacted in accordance with procedures set forth at 45 CFR part 613.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above.

RECORD SOURCE CATEGORIES:

Science and Technology Centers.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

NSF–71

SYSTEM NAME:

General Correspondence Files.

SYSTEM LOCATION:

Correspondence files maintained by name, rather than chronologically, in some NSF offices or divisions at the National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Most NSF general correspondence is filed chronologically. This system covers only individuals who write to the NSF or its officers or employees, or individuals whose letter has been referred to NSF by other parts of the Federal government when such general correspondence is filed by name of the sender rather than chronologically.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system includes the original correspondence received as well as any response, referral letters concerning the correspondence and copies of any enclosures.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

These records are kept for administrative convenience pursuant to 44 U.S.C. 3101.

PURPOSE(S):

These records are kept for administrative convenience to document responses to general correspondence.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Information from the system may be provided to a referrer of the original correspondence.

2. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

3. Information from the system may be disclosed to contractors, volunteers, advisors, and other individuals who perform a service to or work on or under a contract, or other arrangement with or for the Federal government, as necessary to carry out their duties. The contractors are subject to the provisions of the Privacy Act.

4. Information from the system may be disclosed to the Department of Justice or the Office of Management and Budget for the purpose of obtaining advice on the application of the Freedom of Information Act or Privacy Act to the records.

5. Information from the system may be given to another Federal agency, a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency when the Government is a party to the judicial or administrative proceeding.

6. Information from the system may be given to the Department of Justice, to the extent disclosure is compatible with the purpose for which the record was collected and is relevant and necessary to litigation or anticipated litigation, in which one of the following is a party or has an interest: (a) NSF or any of its components; (b) an NSF employee in his/her official capacity; (c) an NSF employee in his/her individual capacity when the Department of Justice is representing or considering representing the employee; or (d) the United States, when NSF determines that litigation is likely to affect the Agency.

7. Records from this system may be disclosed to representatives of the General Services Administration and the National Archives and Records Administration who are conducting records management inspections under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The material is stored in file folders within file cabinets in individual Offices or Divisions of NSF.

RETRIEVABILITY:

The system covers correspondence maintained within individual Offices or Divisions that is arranged alphabetically by name of original correspondent.

SAFEGUARDS:

Correspondence is maintained in rooms occupied by office personnel during the work day and locked during non-business hours.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with approved record retention plans, and are maintained for a minimum of three months.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Division or Office maintaining such records, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

NOTIFICATION PROCEDURE:

The NSF Privacy Act Officer should be contacted in accordance with procedures set forth at 45 CFR part 613.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above.

RECORD SOURCE CATEGORIES:

Letters received from the original correspondent along with any referral letters, and the NSF office which wrote the response, along with any transmitted information or enclosures.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 99–13950 Filed 6–1–99; 8:45 am]
BILLING CODE 7555–01–U

NUCLEAR REGULATORY COMMISSION

Sunshine Act Notice

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of May 31, June 7, June 14, and 21, 1999.

PLACE: Commissioners's Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Weeks of May 31

There are no meetings scheduled for the Week of May 31.

Week of June 7—Tentative

There are no meetings scheduled for the Week of June 7.

Week of June 14—Tentative

Monday, June 14
- 2:00 p.m. Briefing on 10 CFR Part 70—Proposed Rule for Revised Requirements for Domestic Licensing of Special Nuclear Material (Public Meeting) (Contact: Ted Sherr, 301–415–7218)

Tuesday, June 15
- 10:30 a.m. All Employees Meeting (Public Meeting) (''The Green'' Plaza Area)
- 1:30 p.m. All Employees Meeting (Public Meeting) (''The Green'' Plaza Area)

Wednesday, June 16
- 9:00 a.m. Briefing on Proposed Export of High Enriched Uranium to Canada (Public Meeting) (Contact: Ron Hauber, 301–415–2344)

Thursday, June 17
- 9:00 a.m. Briefing on Status of Uranium Recovery (Public Meeting) (Contact: King Stablein, 301–415–7238)
- 11:00 a.m. Affirmation Session (Public Meeting) (If needed)
- 1:30 p.m. Discussion of Management Issues (Closed-Ex. 2 and 6)

Friday, June 18
- 9:30 a.m. Briefing on NRC International Activities (Public Meeting) (Contact: Karen Henderson 301–415–1771)

Week of June 21—Tentative

There are no meetings scheduled for the Week of June 21.

*The schedule for commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Bill Hill (301) 415–1661.

* * * * *

ADDITIONAL INFORMATION: By a vote of 5–0 on May 27, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that ''Affirmation of (a) Final Rule: Amendments to 10 CFR Part 72—Miscellaneous Changes to Licensing Requirements for the Independent Storage of Spent Nuclear Fuel and High-Level Radioactive Waste and (b) Hydro Resources, Inc. (HRI)—ENDAUM's & SRIC's Petition for Interlocutory Review of Presiding Officer's Order Seeking Additional Information (April 21, 1999) & ENDAUM's & SRIC's Motion for

Reconsideration of a May 3, 1999 Order'' (Public Meeting) be held on May 27, and on less than one week's notice to the public.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.ncr.gov/SECY/smj/schedule.htm

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, DC 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: May 27, 1999.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 99–14041 Filed 5–28–99; 12:10 pm]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from May 8, 1999, through May 20, 1999. The last biweekly notice was published on May 19, 1999.

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administration Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By July 2, 1999, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Boston Edison Company, Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: May 5, 1999.

Description of amendment request: The proposed amendment would change the technical specifications (TS) and licensing basis for the required amount of diesel fuel to be stored on-site and its sources.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change affects only the on-site diesel fuel storage capacity for the operation of emergency diesel generators [EDG]. The on-site storage capacity is not associated with an accident precursor/initiator; thus, it has no impact on the probability of [an] accident occurring. The consequences of an accident would not be significantly increased because reasonable measures will be available to ensure the EDGs are supplied with enough fuel from the on-site sources to operate for seven days at rated capacity.

The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not affect normal plant operation or the immediate response to an accident. The only change is the proposed refilling operation to transfer fuel from the Class II SBODG [Station Blackout Diesel Generators] storage tanks to the Class I EDG tanks. The refilling operation would occur entirely outdoors through above ground hoses connecting the EDG and SBODG tanks. This operation would only be required following a LOCA [loss-of-coolant accident], an accident already analyzed. Since the proposed refilling operation is a post-accident evolution, it would not be in place to cause an accident of a different type during non-accident conditions. No reasonable malfunction of equipment associated with the evolution could create a new or different kind of accident than previously evaluated.

The proposed amendment does not involve a significant reduction in the margin of safety.

The proposed amendment for licensing basis change and TS change does not significantly reduce the margin of safety. The proposed change restores the licensing basis to provide sufficient fuel in on-site storage tanks for continuous operation of each EDG for approximately seven days. The revised licensing basis requires 36,800 gallons of fuel per EDG to be stored on-site. A minimum of 19,800 gallons of fuel will be stored in Class I EDG storage tanks and the remaining will be stored in Class II SBODG on-site storage tanks. The storage of fuel in Class I tanks does not reduce the margin of safety. The only potential reduction in the margin of safety is due to the use of Class II SBODG tanks and associated transfer equipment for the storage and transfer of additional fuel. These Class II tanks are rugged, double-wall fiberglass tanks. While not designed to safety-related requirements, the failure of these tanks under extreme environmental conditions, such as an earthquake, has been evaluated to be very unlikely. Thus, on-site storage of sufficient fuel for operation of both EDGs is assured to mitigate the consequences of an accident previously evaluated. All stored fuel is maintained at the same quality standard. The proposed diesel fuel refilling operation is a post design basis accident activity, which does not create the possibility of a new accident or impact an accident previously evaluated. Therefore, there is no significant reduction in the safety margin.

The NRC has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Plymouth Public Library, 132 South Street, Plymouth, Massachusetts 02360.

Attorney for licensee: J. Fulton, Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199.

NRC Section Chief: James W. Clifford.

Commonwealth Edison Company, Docket Nos. 50–295 and 50–304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois

Date of application of amendment request: October 2, 1998, as supplemented by letter dated April 19, 1999.

Description of amendment request: By letter dated February 13, 1998, Commonwealth Edison Company (ComEd) certified that they have permanently ceased operations at Zion Nuclear Power Station (ZNPS), Units 1 and 2. Since ComEd has permanently ceased operations at ZNPS, they have requested an amendment to the Facility Operating Licenses to eliminate license conditions that are no longer applicable and to replace the existing technical specifications in their entirety with permanently defueled technical specifications (PDTS). The PDTS reflect the permanently shutdown and defueled condition of the ZNPS.

Basis for a proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration and has determined that the proposed changes do not:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The administrative changes remove requirements that are not invoked with the reactors permanently defueled. The editorial changes alter format, word choice, grammar, terminology, etc., but do not change requirements. The more restrictive changes add new requirements, remove existing exceptions, or make existing limits more conservative. The relocation or redundancy changes remove requirements from the facility operating licenses or technical specifications because they exist in another document controlled by other approved methods. None of these types of changes affect the probability or consequences of a previously evaluated accident since there is no functional reduction in the limitations imposed on structures, systems, components or activities with the reactors permanently defueled.

The less restrictive changes to the license conditions eliminate requirements for programs and commitments that address hazards or conditions that are no longer credible with both reactors permanently defueled. Since these hazards or conditions are not credible, no increase in the probability or consequences of a previously evaluated accident will result from the elimination of these requirements.

The less restrictive changes to the equipment-related technical specifications eliminate or modify restrictions involving certain structures systems and components (SSCs). Some of the equipment-related technical specifications have been eliminated because, with both reactors permanently defueled, the spectrum of previously evaluated credible accidents has been significantly reduced and many of the associated hazards (such as reactor coolant gaseous activity, hydrogen, and radioactive iodine) will not occur. Since those previously evaluated accidents and associated hazards are no longer credible, their probability and consequences are not increased by the changes eliminating the associated technical specifications. Other equipment-related technical specifications have been modified to address previously evaluated accidents that are still relevant in the permanently defueled condition more logically and consistently, without increasing their probability or consequences.

The less restrictive changes to the Administrative Control technical specifications affect a variety of functions. They provide flexibility in Quality Assurance Program administration, allow a reduction in shift staffing, eliminate certain training requirements for personnel who have little or no safety involvement, change certain procedure processing requirements, provide consistency in scheduling certain radiological surveillances and reports, eliminate reports that are no longer needed, eliminate unnecessary flood door requirements, and allow alternative methods of administering Process Control Program changes. Since none of these changes directly involve the previously evaluated accidents that remain credible with both reactors permanently defueled, the changes will not increase the probability or consequences of any previously evaluated accident.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. The administrative changes do not alter any SSCs or activities involved with the safe storage of nuclear fuel. The editorial changes do not alter any requirements. The more restrictive changes make the technical specifications more limiting. The relocation/redundancy changes only change the location of requirements. None of these types of changes create the possibility of a new or different kind of accident from any accident previously evaluated.

The less restrictive changes to the license conditions eliminate requirements for programs and commitments involving hazards or conditions that are no longer credible with both reactors permanently defueled. Since these changes do not result in any new programs or activities, they do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The less restrictive changes to the equipment-related technical specifications do not alter any SSC or cause any SSC to be operated in a manner that could initiate any event or accident. Therefore, these changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The less restrictive changes to the Administrative Control technical specifications do not change the design, function, or operation of any SSC except the flood doors and the change involving the flood doors does not introduce any new type of event. Therefore, the less restrictive changes to the Administrative Control technical specifications do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The administrative changes do not alter any SSCs or activities involved with the safe storage of nuclear fuel. The editorial changes do not alter any requirements. The more restrictive changes make the technical specifications more limiting. The relocation/redundancy changes only change the location of requirements. None of these types of changes reduce any safety margin.

The less restrictive changes to the license conditions eliminate requirements that apply to hazards or conditions that are no longer relevant with both reactors permanently defueled. The safety margins that may have been associated with those license conditions are no longer relevant.

There are no longer any relevant margins of safety associated with the less restrictive changes to the equipment-related technical specifications except for those involving criticality control and seismic criteria. The proposed technical specifications maintain the same margin of safety for criticality control in the spent fuel pool, and the Defueled Safety Analysis Report imposes seismic criteria that provide an adequate safety margin.

The less restrictive changes to the Administrative Control technical specifications do not directly involve any limits or parameters and therefore cannot affect any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Attorney for licensee: Pamela B. Strobel, Senior Vice President and General Counsel, Commonwealth Edison Company, P.O. Box 767, Chicago, Illinois 60690–076.

NRC Project Director: Stuart A. Richards.

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: May 14, 1999.

Description of amendment request: The proposed amendment would revise the Technical Specification requirements affecting the surveillance criteria for that portion of the once-through steam generator tubes regarded

as a primary-to-secondary pressure boundary located within the upper tube sheet and impacted by a specific degradation mechanism, namely, outside diameter intergranular attack.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1—Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The once-through steam generators OTSG are used to remove heat from the reactor coolant system during normal operation and during accident conditions. The OTSG tubing forms a substantial portion of the reactor coolant pressure boundary. An OTSG tube failure is a breach of the reactor coolant pressure boundary and is a specific accident analyzed in the ANO–1 [Arkansas Nuclear One, Unit 1] Safety Analysis Report.

The purpose of the periodic surveillance performed on the OTSGs in accordance with ANO–1 Technical Specification (TS) 4.18 is to ensure that the structural integrity of this portion of the reactor coolant system will be maintained. The TS plugging limit of 40% of the nominal tube wall thickness requires tubes to be repaired or removed from service because the tube may become unserviceable prior to the next inspection. Unserviceable is defined in the TS as the condition of a tube if it leaks or contains a defect large enough to affect its structural integrity in the event of an operating basis earthquake, a loss-of-coolant accident, or a steam line or feedwater line break. The proposed TS change allows OTSG tubes with ODIGA [outside diameter intergranular attack] indications contained within a defined area of the UTS [upper tube sheet] to remain in service with existing degradation exceeding the existing 40% through-wall (TW) plugging limit.

Extensive testing and plant experience has illustrated that ODIGA flaws confined to this area within the OTSG will not result in tube burst or tube leakage. Therefore, allowing ODIGA flaws in this specific region to remain in service will not alter the conditions assumed in the current ANO–1 accident analysis for OTSG tube failures under postulated accident conditions. In addition, the condition of the OTSG tubes in this region are monitored during regular inspection intervals to assess for evidence of growth. Any growth noted will be addressed through testing and the operational assessment * * *.

Application of the ODIGA alternate repair criteria will allow leaving tubes with ODIGA indications found in the defined area of the UTS in service while ensuring safe operation by monitoring and assessing the present and future conditions of the tubes. ANO–1 has operated since 1984 with ODIGA affected tubes in service with no appreciable effect on structural integrity or indications of tube leakage from ODIGA sources within the UTS. Through the inspection, testing, monitoring, and assessment program previously mentioned, and the on-line leak detection capabilities available during plant operation, continued safe operation of ANO–1 is reasonably assured.

Therefore, the application of the ODIGA alternate repair criteria...does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2—Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated

The implementation of the ODIGA alternate repair criteria will not result in any failure mode not previously analyzed. The OTSGs are passive components. The intent of the TS surveillance requirements are being met by these proposed changes in that adequate structural and leak integrity will be maintained. Additionally, the proposed change does not introduce any new modes of plant operation.

Therefore, this change does *not* create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—Does Not Involve a Significant Reduction in the Margin of Safety

The application of an alternate repair criteria for ODIGA provides adequate assurance with margin that ANO–1 steam generator tubes will retain their integrity under normal and accident conditions. The structural requirements of ODIGA affected tubes have been evaluated satisfactorily and meet or exceed regulatory requirements. Leakage rates for these tubes within the defined region of the upper tubesheet are essentially zero and are reasonably assured to remain within the assumptions of the accident analysis by proper application of the ODIGA alternate repair criteria program. Because no appreciable impact is evidenced on the tubes structural integrity or its resulting leak rate, the margin to safety remains effectively unaltered.

Therefore, this change does *not* involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Nuclear Generating Plant, Unit No. 3, Citrus County, Florida

Date of amendment request: May 5, 1999.

Description of amendment request: The proposed amendment would revise the Crystal River Unit 3 (CR–3) Improved Technical Specifications to approve an alternate repair criteria (ARC) for axial tube end crack-like indications in the upper and lower tubesheets of the CR–3 Once Through Steam Generators (OTSGs). The ARC will allow leaving OTSG tubes with axially oriented tube end cracks located within the clad region of the tube-to-tubesheet roll joint in service. Tubes with crack-like indications within the carbon steel portion of the tubesheet, or tubes with circumferentially oriented tube end cracks or volumetric indications within the Inconel clad region of the tubesheet, would be repaired or removed from service.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below.

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

This LAR [License Amendment Request] proposes to implement an alternate repair criteria (ARC) for Once Through Steam Generator (OTSG) tubes with axial tube end crack (TEC) indications. Application of the ARC will allow tubes with axially oriented TEC to remain in service in accordance with specific conditions. Based on a combination of structural analyses, mock-up testing and inservice inspections, as detailed in Topical Report BAW–2346P, allowing tubes with TEC indications to remain in service is safe and justified.

Potential leakage from tubes with TEC will be bounded by the main steam line break (MSLB) evaluation presented in the Final Safety Analysis Report (FSAR). The proposed change requires inspections during subsequent outages of tubes remaining in-service with the TEC indications. The addition of this inspection does not change any accident initiators. The proposed inspection of these indications during the subsequent OTSG inservice inspections assures continuous monitoring of these tubes such that degradation of tubes containing TEC indications will be detected. Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed alternate repair criteria for axial TEC indications introduces no new failure modes or accident scenarios. Topical Report BAW–2346P demonstrated structural and leakage integrity for all normal operating and accident conditions for Crystal River Unit 3 (CR–3). Furthermore, leaving TEC in service does not change the design or operating characteristics of the OTSGs. In the unlikely event that a tube with a TEC should

fail and sever completely, the tube would remain engaged in the tubesheet bore, preventing interaction with other surrounding tubes. In this case, leakage is bounded by the steam generator tube rupture (SGTR) accident analysis. Therefore, this change does not create a possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in a margin of safety.

The mechanical joint is constrained within the tubesheet bore; thus, there is no additional risk associated with tube rupture. ITS [Improved Technical Specifications] Bases 3.4.12 contains relevant information pertaining to limitations on Reactor Coolant System leakage. The accident leakage is shown to be less than one gallon per minute primary-to-secondary leakage. Therefore, the FSAR analyzed accident scenarios remain bounding, and the use of the proposed alternate repair criteria does not reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 34428.

Attorney for licensee: R. Alexander Glenn, General Counsel, Florida Power Corporation, MAC–A5A, P.O. Box 14042, St. Petersburg, Florida 33733–4042.

NRC Section Chief: Sheri R. Peterson.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of amendment request: April 26, 1999.

Description of amendment request: The proposed amendments would revise the Turkey Point Plant, Units 3 and 4, Facility Operating Licenses and the Technical Specifications (TS): (1) To remove a part of license condition 3.L that is obsolete, (2) to update the TS Index to reflect all changes made to the TS Sections, TS Figures, and TS Tables by previously approved license amendments, and (3) to remove Table and Figure numeration inconsistencies found in TS 3/4.1.2.5 and TS 3/4.7.6. These proposed changes represent an administrative update to the Turkey Point Plant, Units 3 and 4, Facility Operating Licenses and to the TS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed changes are administrative in nature removing obsolete references in the license conditions, updating the Technical Specification (TS) Index to reflect the revisions made to the TS Sections, Tables, and Figures via previous TS amendments. These amendments will not involve a significant increase in the probability or consequences of an accident previously evaluated because they do not affect assumptions contained in plant safety analyses, the physical design and/or operation of the plant, nor do they affect Technical Specifications that preserve safety analysis assumptions. Therefore, the proposed changes do not affect the probability or consequences of accidents previously analyzed.

(2) Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The use of the modified specifications can not create the possibility of a new or different kind of accident from any previously evaluated since the proposed amendments will not change the physical plant or the modes of plant operation defined in the facility operating license. No new failure mode is introduced due to the administrative changes since the proposed changes do not involve the addition or modification of equipment nor do they alter the design or operation of affected plant systems, structures, or components.

(3) Operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The operating limits and functional capabilities of the affected systems, structures, and components are unchanged by the proposed amendments. The proposed changes to the Facility Operating License Conditions and to the Technical Specifications are administrative and do not significantly reduce any of the margins of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Project Director: Herbert N. Berkow.

PECO Energy Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: March 1, 1999.

Description of amendment request: Changes are proposed to support a modification which will install a digital Power Range Neutron Monitoring (PRNM) system and incorporate long-term thermal-hydraulic stability solution hardware.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

i. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

As discussed in the LTR [licensing topical report], the [Nuclear Measurements Analysis and Control] NUMAC PRNM modification and associated changes to the TS [technical specifications] involve equipment that is designed to detect the symptoms of certain events or accidents and initiate mitigating actions. The worst case failure of the equipment involved in the modification is a failure to initiate mitigating action (scram or rod block), but no failure can cause an accident. The PRNM replacement system is designed to perform the same operations as the existing Power Range Monitor system and meets or exceeds all operational requirements. Therefore, it is concluded that the probability of an accident previously evaluated is not increased as a result of replacing the existing equipment with the PRNM equipment.

The PRNM system reduces the need for tedious operator actions during normal conditions and allows the operator to focus more on overall plant conditions. The automatic self-test and increased operator information provided with the replacement system are likely to reduce the burden during off-normal conditions as well. The replacement equipment qualifications fully envelope the environmental conditions, including electromagnetic interference, in the PBAPS [Peach Bottom Atomic Power Station] control room.

The replacement equipment has been specifically designed to assure that it fully meets the response time requirements in the worst case. As a result, due to statistical variations resulting from the sampling and update cycles, the response time is typically faster than required in order to assure that the required response time is always met.

Setpoints are changed only when justified by the improved equipment performance specifications and by setpoint calculations which show that safety margins are maintained. There is no impact to the Control Rod Drop accident analysis because the PRNM system maintains all existing system functions with a reliability equal to or better than the existing Power Range Monitor system.

The replacement equipment includes up to 5 LPRM [Local Power Range Monitor] inputs on a single module compared to one per module on the current system. Up to 17 LPRM signals are processed through one preprocessor. The recirculation flow signals are processed in the same hardware as the LPRM processing. The net effect of these architectural aspects is that there are some single failures that can cause a greater loss of ''sub-functionality'' than in the current system. Other architectural and functional aspects, however, have an offsetting effect. Redundant power supplies are used so that a single failure of AC power has no effect on the overall PRNM system functions while still resulting in a half scram as does the current system. Continuous automatic self-test also assures that if a single failure does occur, it is much more likely to be detected immediately. The net effect is that from a total system level, unavailability of the safety-related functions in the replacement system is equal to or better than the current Power Range Monitor system.

Based on the extensive and through [sic] [thorough] verification and validation program used in the PRNM design and field operating experience, common cause failures in software controlled functions are judged to not be a significant failure mode. However, in spite of that conclusion, means are provided within the system to mitigate the effects of such a failure and alert the operator. Therefore, such a failure, even if it occurred, will not increase the consequences of a previously evaluated accident.

To reduce the likelihood of common cause failure of software controlled functions, thorough and careful verification and validation (V&V) activities are performed both for the requirements and the implementing software design. In addition, the software is designed to limit the loading that external systems or equipment can place on the system, thus significantly reducing the risk that some abnormal dynamic condition external to the system can cause system functional performance problems due to processing ''overload'' (i.e., ''slowing down'' or stopping the processing).

As a conservatism, however, despite these V&V activities, common cause failures of software controlled functions due to residual software design faults are assumed to occur. Both the software and hardware are designed to manage the consequences of such failure (and also cover potential common cause hardware failures). Safety outputs are designed to be fail safe by requiring dynamic update of output modules or data signals, where failure to update the information is detected by simple receiving hardware, which, in turn, forces a trip. This aspect covers all but rather complex failures where the software or hardware executes a portion of the overall logic but fails to process some portion of new information (inputs ''freeze'') or some portion of the logic (outputs ''freeze'').

To help reduce the likelihood of complex failures, a watchdog timer is used which is updated by a very simple software routine that in turn monitors the operational cycle time of all tasks in the system. The software design is such that as long as all tasks are updated at the design rate, it is likely that software controlled functions are executing as intended. Conversely, if any task fails to update at the design rate, that is a strong indication of at least some unanticipated condition. If such a condition occurs, the watchdog timer will not be updated, the computer will be automatically restarted, and the system will detect an abnormal condition and provide an alarm and trip.

The information available to the operator is at least the same as with the current system and, in many cases, improved. No actions are required by the operator to obtain information normally used and equivalent to that available with the current equipment. However, the replacement system does provide more directly accessible information regarding the condition of the equipment, including automatic self-test, which can aid the operator in diagnosing unusual situations beyond those defined in the licensing basis.

In summary, the reliability of the new PRNM system and its ability to detect and mitigate abnormal flux transients have either remained the same or improved over the existing Power Range Monitor system. Since these postulated reactivity transients are mitigated by the new system as effectively and reliability [sic] [reliably] as the existing system, the consequences of these transients have not changed. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

ii. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

PBAPS Modification P00507 uses digital processing with software (firmware) control for the main signal processing part of the modification. The remainder of the equipment in the modification uses conventional equipment similar to the current system (e.g., penetrations, cables, interface panels).

The digital equipment has ''control'' processing points and software controlled digital processing where the current system has analog and discrete component processing. The result is that the specific failures of hardware and potential software common cause failure are different from the current system. The effects of software common cause failure are mitigated by hardware design and system architecture, but are of a ''different type'' of failure than those evaluated in the PBAPS Updated Final Safety Analysis Report (UFSAR). In general, the PBAPS UFSAR assumes simplistic failure modes (relays for example) but does not specifically evaluate such effects as self-test detection and automatic trip or alarm. Therefore, the replacement system may have a malfunction of a different type from those evaluated in the PBAPS UFSAR [* * *]. However, when these PRNM failures are evaluated at the system level, there are no new effects.

PBAPS Modification P00507 involves equipment that is intended to detect the symptoms of certain transients and accidents and initiate mitigating action. The worst case failure of the equipment involved in the modification is a failure to initiate mitigating action (scram), but no failure can cause an accident. This is unchanged from the current system. Software common cause failures could cause the system to fail to perform its safety function, but this possibility is addressed in Section (i) above. In that case, it might fail to initiate action to mitigate the consequences of an accident, but would not cause one. No new system level failure modes are created with the PRNM system.

Therefore, PBAPS Modification P00507 does not create the possibility of a new or different kind of accident from any accident previously evaluated.

iii. The proposed changes do not involve a significant reduction in a margin of safety.

The PRNM system response time and operator information is either maintained or improved over the current Power Range Monitor system.

The PRNM system has improved channel trip accuracy compared to the current system and meets or exceeds system requirements assumed in setpoint analysis. The channel response time exceeds the requirements.

The channel indicated accuracy is improved over the current system and meets or exceeds all of the system requirements.

The PRNM system was developed to detect the presence of thermal-hydraulic instabilities and automatically initiate the necessary actions to suppress the oscillations prior to violating the MCPR Safety Limit. The NRC has reviewed and approved the LTR concluding that the PRNM system will provide the intended protection.

Therefore, PBAPS Modification P00507 does not result in a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

Attorney for Licensee: J.W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, PECO Energy Company, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief: James W. Clifford.

Power Authority of The State of New York, Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: January 28, 1999, as supplemented April 29, 1999, and May 17, 1999. This notice supersedes a previous notice (64 FR 19563) published April 21, 1999, which was based upon the licensee's application for amendment dated January 28, 1999.

Description of amendment request: This application for amendment to the Indian Point 3 Technical Specifications (TSs) proposes to reduce the number of Emergency Diesel Generators (EDGs) required to be operable during cold shutdown from 2 to 1 under certain conditions.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously analyzed?

Response: No. The equipment, which is affected by the proposed Technical Specification change, is not an initiator to those accidents postulated to occur during Cold Shutdown or Refueling operating conditions. A comprehensive systems review and EDG loading electrical analysis has demonstrated the ability of those shutdown support systems, necessary to provide safe shutdown needs, to perform their safety functions for the postulated accidents during Cold Shutdown and Refueling conditions. One EDG can support the necessary electrical loads required in Cold Shutdown and Refueling in the event of postulated accidents along with a LOOP [loss of offsite power] in the time frame required to prevent reactor core/cavity/SFP [spent fuel pit] heatup concerns. This EDG support relies upon existing plant designed manual closure of 480VAC EDS [electrical distribution system] bus tie breakers to allow a single EDG to pick up other 480VAC EDS bus loads, such as supplying an RHR [residual heat removal] pump and SFP cooling pump, located on 480VAC EDS buses 3A, 5A, or 6A. Together, operability of the required offsite circuit(s) and one EDG along with necessary portions of the AC, DC and 120 VAC vital instrument bus electrical power distribution subsystems ensures the availability of sufficient electrical sources to operate the unit in a safe manner and to mitigate the consequences of postulated accidents during shutdown (e.g., Fuel Handling Accidents), as well as other postulated events. Action statements provide prompt, specific guidance to ensure sufficiently conservative plant response should the expected EDG power supply or required offsite power supply feeders or necessary portions of AC, DC and 120 VAC vital instrument bus electrical power distribution subsystems not be available. These Action Statements are similar to those in the STS [Standard Technical Specifications]. Therefore, the proposed license amendment (i.e., changes to 3.7.F.4 and the added sections of 3.7.F.5 & 3.7.F.6) does not involve a significant increase in the probability or consequences of an accident previously analyzed.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No. The proposed license amendment does not involve any physical changes to plant systems or component set points. The use of 480VAC EDS bus tie breakers to power loads from necessary energized 480VAC bus(es) is part of present plant design and included within the present LOOP Off-Normal operating procedures when the reactor is in Cold Shutdown operating conditions. As discussed in the Standard Technical Specifications, NUREG 1431, during plant shutdown with one EDG, it is not required to assume a single failure and concurrent loss of all offsite or all onsite power. Worst case bounding events are deemed not credible in Cold Shutdown and Refueling conditions because the energy contained within the reactor pressure boundary, reactor coolant temperature and pressure, and the corresponding stresses result in the probabilities of occurrence being significantly reduced or eliminated, and ultimately result in minimal consequences. The lone EDG is capable of accepting and starting required loads within the assumed loading sequence intervals and in the time frame required to prevent reactor core/cavity/SFP heatup concerns, with sufficient ''kW loading''. Action statements provide prompt, specific guidance to ensure sufficiently conservative plant response should the expected EDG or offsite supply feeder or the necessary portions of the AC, DC and 120 VAC vital instrument bus electrical power distribution subsystems not be available. These action statements are similar to those in the STS. Therefore, the proposed license amendment (i.e., changes to 3.7.F.4 and added sections 3.7.F.5 & 3.7.F.6) does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Does the proposed license amendment involve a significant reduction in the margin of safety?

Response: No. The electrical power system specifications support the equipment required to be operable, commensurate with the current level of safety, including the equipment requiring an EDG backed power source. The design review results demonstrate that operation in the conditions of Cold Shutdown and Refueling, in accordance with the proposed Technical Specification change, is acceptable from an accident mitigation standpoint. The basic system functions in Cold Shutdown and Refueling operating conditions are not changed. One EDG, along with the necessary portions of the AC, DC and 120 VAC vital instrument electrical power distribution subsystems available, can supply the necessary electrical power requirements during these plant operating conditions, and in the time frame required to prevent reactor core/cavity/SFP heatup concerns, with sufficient ''kW loading''. The analysis conducted shows that the systems are capable of performing their design basis functions. Applicable safety analysis in the Standard Technical Specifications, NUREG 1431, discusses these system requirements as well (i.e., it is not required to assume a single failure and concurrent loss of all offsite or all onsite power). Action statements, similar to those in the Standard Technical Specifications, provide prompt, specific operator actions to ensure sufficiently conservative plant response should the expected EDG power supply or the required offsite power supply feeders or AC, DC and 120 VAC vital instrument bus electrical power distribution subsystems not be available. On this basis, the proposed license amendment (i.e., changes to 3.7.F.4 and added sections 3.7.F.5 & 3.7.F.6) does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. David E. Blabey, 10 Columbus Circle, New York, New York 10019.

NRC Section Chief: S. Singh Bajwa.

Power Authority of The State of New York, Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: April 6, 1999.

Description of amendment request: This application for amendment to the Indian Point 3 (IP3) Technical Specifications (TSs) proposes to change sections 3.7.A.5 and 3.7.F.4 by removing the words ''three individual underground'' and ''underground'' from the limiting conditions for operation (LCO) when referring to the emergency diesel generator (EDG) fuel oil storage tanks (FOSTs).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed change would not change the design configuration or function of the permanently installed EDG FOSTs. The revision of TS 3.7.A.5 and 3.7.F.4 to remove the descriptive words ''three individual underground'' and ''underground'' from the text of the two LCOs is intended as a line item change, to remove unnecessarily restrictive wording in the TS. While the Standard Technical Specifications (STS), NUREG–1431, mentions in the Bases section that ''all outside tanks, pumps, and piping are located underground'', the specification itself does not contain this requirement. The intent of this TS change is to allow for, if acceptable under 10CFR50.59, the potential installation of an alternate above ground FOST to an EDG if needed to perform repairs/testing of the permanently installed FOST. This alternate tank would need to be qualified and have the required capacity to maintain the associated EDG operable. This potential modification would include design of the temporary tank to preclude winds loads from a tornadic event causing the associated EDG to become inoperable. Installation of this temporary tank would then permit repair work or replacement of an installed EDG FOST, or subsequent similar work on either of the other EDG FOSTs, one at a time. The changes to the Bases for Specification 3.7 are consistent with the change in the LCO Specification and do not alter the design or functionality of the existing EDG FOSTs. The revised LCOs are consistent with the STS in that the FOSTs will no longer be identified as ''three individual underground''. Control of future modifications to support EDG FOST work would ensure proper licensing and design basis compliance in accordance with the change process of 10CFR50.59. The associated changes of the TS Bases provide clarification regarding the normal underground configuration of the EDG FOSTs. The proposed TS change will not reduce the ability of any system, structure, or component in preventing or mitigating a design basis accident since no plant features are being altered in conjunction with this change, and future changes would be evaluated under 10CFR50.59. The description of the FOSTs, including the fact that they are underground, remains part of the current licensing basis because it is described in FSAR [final safety analysis report] section 8.2.

Therefore, the proposed changes to the TS will not result in an increase in the probability or consequences of any previously evaluated accidents. The other changes to the TS pages are editorial only, moving text to different pages.

2. Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed change would not change the design configuration or function of the permanently installed EDG FOSTs. The changes to TS 3.7 and its bases in describing the physical location of the EDG FOSTs will not alter the required design criteria of these tanks nor their ability to withstand the effects of a tornado. These changes will not reduce the ability of the EDG's in meeting their design requirements of providing emergency power towards mitigating an accident. The intent of these changes is to permit the potential use of a temporary above ground FOST(s) to supply the EDGs and to fulfill the intent and requirements of the present EDG fuel oil storage system while allowing for maintenance on an EDG FOST. The 10CFR50.59 change process will be used to determine this potential modification acceptability. The intent of the temporary configuration of an above ground FOST would be to maintain the fuel oil system and EDG operable. The associated changes to the Bases section of TS 3.7 provide additional clarification of the ''underground'' nature of the EDG FOSTs. Neither the changes to the LCO in describing the EDG FOSTs (whether the normal underground tanks or any temporary above ground FOSTs) nor any changes to the TS Bases (which do not alter the design or operation of the EDG fuel oil transfer system) will affect the ability of the EDGs to provide the necessary power for operation of equipment required for mitigating previously analyzed accident scenarios. No plant features, or FSAR description of such, are being altered in conjunction with this change, and future changes would be evaluated under 10CFR50.59. Therefore, the proposed changes will not result in an unanalyzed condition and does not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in the margin of safety?

No. The proposed changes will not alter any assumptions, initial conditions, or the results of any accident analyses. The design and licensing requirements for the EDG fuel oil storage system are defined in other parts of the IP3 licensing and design basis, specifically in FSAR section 8.2. Potential modifications supported by this change would require a subsequent safety evaluation in accordance with 10 CFR 50.59 regarding the design requirements (e.g., fire loads, tornadic wind loads, tornado missile criteria, security, etc.) for an alternate FOST if repairs to present ''underground'' FOSTs are undertaken. The proper design criteria for the presently installed EDG FOSTs or for potential, alternate EDG FOSTs will be maintained via present licensing and design basis requirements and through the 10 CFR 50.59 change process as required. No plant features are being altered in conjunction with this change, and future changes would be evaluated under 10 CFR 50.59. Therefore, this proposed license amendment will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. David E. Blabey, 10 Columbus Circle, New York, New York 10019.

NRC Section Chief: S. Singh Bajwa.

Power Authority of The State of New York, Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: April 9, 1999.

Description of amendment request: This application for amendment to the Indian Point 3 Technical Specifications (TSs) proposes to increase the allowed outage time (AOT) for any one safety injection pump from 24 hours to 72 hours.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously analyzed?

Response: The proposed 72-hour allowed outage time for any one safety injection pump does not involve a significant increase in the probability or consequences of an accident previously analyzed. The plant Technical Specifications provides allowed outage times for systems and components to accommodate preventive or corrective maintenance. A variation in the allowed outage time is not an accident initiator and thus does not result in a significant increase in the probability of an accident previously analyzed. The proposed change provides for an increase in allowed outage time for any one safety injection pump. The operability of the remaining two safety injection pumps is required by the Technical Specifications during this period. The Indian Point 3 High Head Safety Injection System consists of three safety injection pumps, each capable of providing 50 percent of the Emergency Core Cooling System [ECCS] design flow requirement. Therefore, with only one pump inoperable the remaining two pumps are capable (assuming that no single failure occurs during the period of the allowed outage time) of mitigating the consequences of previously analyzed accidents. In addition, a 72-hour allowed outage time for safety injection pumps was evaluated by the NRC (Reference 3) [NRC Memorandum, R.L. Baer to V. Stello, ''Recommended Interim Revisions to LCOs for ECCS Components,'' dated December 1, 1975] and generically approved in the Standard Technical Specifications (Reference 1) [NUREG–1431 ''Standard Technical Specifications—Westinghouse Plants,'' Revision 1, dated April 1995].

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: The proposed 72-hour allowed outage time for any one safety injection pump does not create the possibility of a new or different kind of accident from any accident previously evaluated. Changing the allowed outage time is accomplished through administrative changes, such as changes to plant procedures that implement Technical Specification requirements for allowed outage time. This change does not require physical changes to plant systems or components and also does not involve changes to plant setpoints. This change also does not affect how the safety injection pumps are operated under design basis accident conditions. Therefore there are no changes resulting from the proposed new allowed outage time that alter system operation or that could create the possibility of a new or different kind of accident. In addition, a 72-hour allowed outage time safety injection [pump] was generically approved in the Standard Technical Specifications.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

Response: The proposed 72-hour allowed outage time for any one safety injection pump does not involve a significant reduction in a margin of safety. With one safety injection pump inoperable, the remaining two pumps are capable of providing 100% of the fuel cooling flow assumed for pertinent accident analyses with the provision that the single-failure assumption is relaxed during the time period of the allowed outage time. The acceptability of a 72-hour allowed outage time for ECCS components was established in an NRC reliability analysis (Reference 3) [NRC Memorandum, R.L. Baer to V. Stello, ''Recommended Interim Revisions to LCOs for ECCS Components,'' dated December 1, 1975]. The use of the 72-hour allowed outage time was generically approved in the Standard Technical Specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. David E. Blabey, 10 Columbus Circle, New York, New York 10019.

NRC Section Chief: S. Singh Bajwa.

Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: April 14, 1999.

Description of amendment request: The proposed amendments would revise Technical Specification (TS) 3/4.9.12, ''Fuel Handling Area Ventilation System (FHAVS),'' to (1) reflect the latest filter testing standards in the test requirements, (2) add, modify, or delete certain surveillance test requirements, and (3) clarify the information in the applicable TS Bases section. The proposed amendments would also make the TS requirements more consistent with the system design basis.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

A Fuel Handling Accident, as described in the Updated Final Safety Analysis Report (UFSAR) Section 15.4.6, is the design basis accident considered for establishing system configuration and performance capability for the FHAVS. This accident is defined as the dropping of a spent fuel assembly onto the spent fuel rack resulting in a rupture of the cladding of all the spent fuel rods in the assembly.

The probability of a fuel handling accident is independent of the changes proposed in this submittal and it is unaffected by this submittal. The consequences of a dropped fuel rod are significantly reduced by pre-aligning the system to its design basis function prior to moving fuel in the fuel handling building. Pre-aligning the system eliminates the potential detrimental consequences associated with a single failure of an active component on the filter train. The proposed change will not change the way the FHAVS functions to control the release of radioactive gaseous effluents. Filter testing is improved by applying more current filter testing requirements to both Units 1 and 2.

The proposed change will not modify equipment used to store or move irradiated fuel assemblies, or equipment used to move heavy loads in the Fuel Handling Building. The proposed new surveillance will be incorporated into a new or existing procedure.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not result in any design or physical configuration changes to the FHAVS, or to the equipment used to store or move irradiated fuel within the Fuel Handling Building. Pre-aligning the system to its design basis function prior to moving fuel in the fuel handling building eliminates the potential detrimental consequences associated with a single failure of an active component on the filter train. The system will not be operated or placed in a configuration that is different from the configuration that it was designed to operate.

Therefore, the proposed amendment will not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes will ensure that the FHAVS is operated and tested in accordance to its design basis requirements as specified in the Salem UFSAR.

The proposed changes will clarify the requirements of the system to be considered operable to ensure that the FHAVS will perform its intended safety function in the event of a Fuel Handling Accident. These changes ensure that the existing margin is maintained and improved by pre-aligning the system to its accident configuration.

The proposed change does not involve the addition or modification of plant equipment. It is consistent with the intent of the existing TS, the design basis of the FHAVS as described in the UFSAR, and the [Standard Technical Specifications Westinghouse Plants, NUREG–1431] ITS and associated Bases.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, NJ 08079.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Section Chief: James W. Clifford.

TU Electric Company, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station (CPSES), Units 1 and 2, Somervell County, Texas

Date of amendment request: May 4, 1999.

Brief description of amendments: The proposed license amendments would change the CPSES Units 1 and 2 Technical Specifications. The first change revises Surveillance Requirement (SR) 3.8.4.7 to allow the unrestricted substitution of the modified battery performance discharge test in lieu of the service discharge test. The second change revises SRs 3.8.1.7, 3.8.1.12 , 3.8.1.15, and 3.8.1.20 to separate the voltage and frequency acceptance criteria for the Diesel Generator (DG) start surveillances into two sets of criteria; those criteria required to be met within 10 seconds, and those criteria required to be met following achievement of steady state conditions. The third change corrects

miscellaneous editorial errors resulting from issuance of Amendment No. 64.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequence of an accident previously evaluated?

(1) Batteries are used to support mitigation of the consequences of an accident, and are not considered to be an initiator of any previously analyzed accident. The proposed change would not effect the design or performance of the batteries. The allowance to perform the modified performance discharge test in lieu of the service test at any time is permissible since the test's discharge rate envelopes the duty cycle of the service test. Therefore, the allowance for unrestricted substitution of the modified performance discharge test in lieu of the service discharge test does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) The diesel generators are used to support mitigation of the consequences of an accident, and are not considered to be an initiator of any previously analyzed accident. The proposed change does not affect the accident analysis assumption that the DG reaches minimum conditions to accept load within 10 seconds. The ability of the DG to maintain steady state operation within 10 seconds is not an accident analysis assumption and is primarily used to identify degradation of governor and voltage regulator performance. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(3) The editorial changes are non-technical and therefore do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

(1) The allowance for unrestricted substitution of the modified performance discharge test in lieu of the service discharge test does not involve any physical alteration to the plant. No new failure mechanisms will be introduced and the change does not affect the ability of the batteries to fulfill their safety-related function. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(2) The separation of the DG start surveillance criteria into those criteria required to be met within 10 seconds, and those criteria required to be met following achievement of steady state conditions, does not involve any physical alteration to the plant. No new failure mechanisms will be introduced and the change does not affect the ability of the DGs to fulfill their safety-related function. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The editorial changes are non-technical and therefore do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

(1) The allowance for unrestricted substitution of the modified performance discharge test in lieu of the service discharge test will not alter any accident analysis assumptions, initial conditions, or results. Consequently, it does not have any effect on the margin of safety. Therefore, this change does not involve a significant reduction in a margin of safety.

(2) The proposed change to delete the requirement to demonstrate that the DG can achieve and maintain steady state operation within 10 seconds is not an accident analysis assumption. The accident analysis assumption that the DG reaches minimum conditions to accept load within 10 seconds is preserved. Consequently, it does not have any effect on the margin of safety. Therefore, this change does not involve a significant reduction in a margin of safety.

(3) The editorial changes are non-technical and therefore do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, Texas 76019.

Attorney for licensee: George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.

NRC Section Chief: Robert A. Gramm.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Unit No. 1 and Unit No. 2, Louisa County, Virginia

Date of amendment request: May 3, 1999.

Description of amendment request: The proposed changes will delete and/or relocate the additional primary-to-secondary leak rate limits and enhanced leakage monitoring requirements imposed following the 1987 steam generator tube rupture event.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

[O]peration of the North Anna Power Station in accordance with the proposed Technical Specification changes will not:

Involve a significant increase in the probability or consequences of an accident previously evaluated.

Eliminating the conservative primary-to-secondary leakage limits associated with the replaced steam generators and the operability requirements for the leakage monitoring instrumentation does not change the operation of the plant. The steam generators will be operated, inspected, and maintained in the same manner. No new accident initiators are established as a result of the proposed changes. Therefore, the probability of occurrence is not increased for any accident previously evaluated.

Removing the conservative primary-to-secondary leakage limits associated with the replaced steam generators and the operability requirements for the leakage monitoring instrumentation does not change the operation of the plant. Although the conservative leakage limits are being deleted, the remaining leakage limits will maintain the dose rate, in the event of a tube rupture, within the analyzed limits. Therefore, there is no increase in the consequences of any accident previously analyzed[.]

Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not affect the operation of the plant. The steam generators will be operated, inspected, and maintained in the same manner. There are no modifications to the plant or steam generators as a result of the change. No new accident or event initiators are created by the removal of the conservative primary-to-secondary leakage limits associated with the replaced steam generators and the operability requirements for the leakage monitoring instrumentation. Therefore, the proposed changes do not create the possibility of any accident or malfunction of a different type.

Involve a significant reduction in the margin of safety as defined in the bases on any Technical Specifications.

The proposed changes have no effect on any safety analyses assumptions. The remaining limits maintain primary-to-secondary leakage within the accident analysis assumptions. The proposed changes only eliminate overly conservative primary-to-secondary leakage requirements and the operability and surveillance requirements for the leakage monitoring system associated with the replaced steam generators. Therefore, the proposed changes do not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903–2498.

Attorney for licensee: Mr. Donald P. Irwin, Esq., Hunton and Williams,

Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia.

NRC Section Chief: Richard L. Emch, Jr.

Yankee Atomic Electric Co., Docket No. 50–029, Yankee Nuclear Power Station (YNPS) Franklin County, Massachusetts

Date of amendment request: March 24, 1999.

Description of amendment request: The licensee submitted a request to delete License Condition 2.C.(10), which states: ''The licensee shall maintain a Fitness for Duty Program in accordance with the requirements of 10 CFR Part 26.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change is administrative in nature in that it removes a reference in the YNPS Part 50 License to a regulatory requirement no longer applicable to a plant which has permanently ceased power operations and permanently removed fuel from its reactor vessel. This will permit more cost beneficial use of available resources with no diminution in the YNPS staff's ability to maintain the safe operation of the YNPS SFP [spent fuel pool]. The change will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. Each potential accident in the YNPS FSAR [final safety analysis report] projects a maximum release of activity and no prompt mitigation actions. None of the analyzed scenarios resulted in a situation which could significantly [a]ffect the public health and safety. Removal of a regulatory requirement which does not apply to a plant which has permanently ceased power operations and permanently removed fuel from its reactor vessel cannot be deemed to involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different accident from any previously evaluated. The proposed change will not modify any plant systems or components and, therefore will not create the possibility of a new or different accident from any previously evaluated.

3. Involve a significant reduction in the margin of safety. Removal of a regulatory requirement which does not apply to a plant which has permanently ceased power operations and permanently removed fuel from its reactor vessel cannot be deemed to involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Attorney for licensee: Thomas Dignan, Esquire, Ropes and Gray, One International Place, Boston, Massachusetts 02110–2624.

NRC Section Chief: Michael T. Masnik.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Texas Utilities Electric Company, et al., Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: February 11, 1999.

Description of amendment request: The proposed amendments would credit soluble boron in the spent fuel pool water, in the maintenance of a subcritical condition, and allow an increase in spent fuel storage from 1291 to 2026 fuel assemblies.

*Date of publication of individual notice in **Federal Register***: May 12, 1999 (64 FR 25522).

Expiration date of individual notice: June 11, 1999.

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 702 College, P. O. Box 19497, Arlington, Texas.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Duquesne Light Company, et al., Docket No. 50–334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of application for amendment: January 17, 1998, as supplemented by letters dated February 10, 1998, November 9, 1998, February 8, 1999, and February 26, 1999.

Brief description of amendment: This amendment authorizes changes to the Beaver Valley Power Station, Unit No. 1 (BVPS–1) Updated Final Safety Analysis Report (UFSAR). Specifically, the authorized changes to the UFSAR reflect revisions to the control room radiological dose calculations for the waste gas system line break accident analysis to correct a mathematical error discovered in a previous calculation, and use of more conservative assumptions in the revised analysis.

Date of issuance: May 12, 1999.

Effective date: As of the date of issuance.

Amendment No: 222.

Facility Operating License No. DPR–66. Amendment approved changes to the UFSAR.

Date of initial notice in ***Federal Register***: February 25, 1998 (63 FR 9601).

The February 10, 1998, November 9, 1998, February 8, 1999, and February 26, 1999, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the amendment request beyond the scope of the initial notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 12, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: August 23, 1996, as supplemented on April 9, 1999.

Brief description of amendment: The amendment revises Section 5.0, ''Design Features,'' and Section 6.0, ''Administrative Controls,'' of the Technical Specifications, adopting, for the most part, the format and content of the NUREG–1432, Revision 1, ''Standard Technical Specifications [STS] for Combustion Engineering Plants'' for the changes requested. This amendment also relocates certain portions of the design features section to other licensee-controlled documents in accordance with the STS.

Date of issuance: May 19, 1999.

Effective date: As of its date of issuance and shall be implemented within 30 days from the date of issuance: May 19, 1999.

Amendment No: 205.

Facility Operating License No. NPF–6: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register***: October 9, 1996 (61 FR 52965).

The April 9, 1999, letter provided clarifying information that did not change the scope of the original application and initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 19, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Entergy Operations, Inc., Docket No. 50–313 and 50–368, Arkansas Nuclear One, Units 1 and 2, Pope County, Arkansas

Date of amendment request: December 19, 1996, as supplemented by letters dated August 6, 1998, and December 3, 1998.

Brief description of amendments: The amendments change requirements for the control room ventilation system for both Units 1 and 2.

Date of issuance: May 19, 1999.

Effective date: As of the date of issuance and shall be implemented within 30 days of the date of issuance.

Amendment Nos.: 196 and 206.

Facility Operating License Nos. DPR–51 and NPF–6: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register***: January 29, 1997 (62 FR 4348).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 19, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: January 12, 1999, which superseded application dated May 31, 1996.

Brief description of amendment: The amendment adds an additional required action to the Limiting Condition for Operation (LCO) 3.9.1, ''Refueling Equipment Interlocks,'' of the Grand Gulf Technical Specifications. The additional action will allow an alternative to the current action for one or more inoperable refueling equipment interlocks. The current action is to ''suspend in-vessel fuel movement with equipment associated with the inoperable interlock(s).'' The alternative action will be to (1) insert a control rod withdrawal block, and (2) verify all control rods are fully inserted in core cells containing one or more fuel assemblies. The amendment also revised the Bases for LCO 3.9.1 actions to describe the alternative action.

Date of issuance: May 7, 1999.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment No.: 138.

Facility Operating License No. NPF–29: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register***: February 10, 1999 (64 FR 6695), which superseded original notice of June 16, 1996 (61 FR 31178).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 7, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Judge George W. Armstrong Library, 220 S. Commerce Street, Natchez, Mississippi 39120.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of application for amendment: October 28, 1998, as modified by letter dated March 19, 1999.

Brief description of amendment: This amendment revises administrative requirements relating to: TS 6.5.1.6, Station Review Board Responsibilities; TS 6.8.4.d, Radioactive Effluent Controls Program; TS 6.10, Records Retention; TS 6.11, Radiation Protection Program; TS 6.12, High Radiation Area; and TS 6.15, Offsite Dose Calculation Manual.

Date of issuance: May 19, 1999.

Effective date: May 19, 1999.

Amendment No.: 231.

Facility Operating License No. NPF–3: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register***: December 18, 1998 (63 FR 64126).

The supplemental information contained clarifying information and did not change the initial proposed no significant hazards consideration determination and did not expand the scope of the application as described in the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 19, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, OH 43606.

GPU Nuclear, Inc. et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: May 5, 1998, as supplemented August 3 (2 letters), September 14, and December 22, 1998.

Brief description of amendment: The amendment approves the use of a small amount of containment overpressure to ensure sufficient net positive suction head for the emergency core cooling system pumps.

Date of Issuance: May 13, 1999.

Effective date: As of the date of issuance, to be implemented within 30 days.

Amendment No.: 206.

Facility Operating License No. DPR–16. Amendment authorizes changes to the Updated Final Safety Analysis Report.

Date of initial notice in ***Federal Register***: October 21, 1998 (63 FR 56250).

The supplemental letters provided additional information that was within the scope of the original application and did not change the staff's proposed no significant hazards consideration determination.

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated May 13, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, NJ 08753.

GPU Nuclear, Inc. et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: November 10, 1998.

Brief description of amendment: The proposed Technical Specification (TS) change would remove the restriction on the sale or lease of property within the exclusion area and replace the restriction with a requirement to retain complete authority to determine and maintain sufficient control of all activities including the authority to exclude or remove personnel and property within the minimum exclusion distance. A TS Bases page for the proposed change is included. Also included are clarifications and administrative changes which: (1) clarify TS definition 1.38 to become ''Site Boundary'' rather than the current term ''Exclusion Area'' to be consistent with the 10 CFR 20.1003 definition for Site Boundary and the 10 CFR 100.3 definition of Exclusion Area, (2) revise the TS definition from Exclusion Area to Site Boundary in TS 6.8.4(a)(9), and (3) revise and update the TS Table of Contents for Section I Definitions.

Date of Issuance: May 12, 1999.

Effective date: As of the date of issuance, to be implemented within 30 days.

Amendment No.: 205.

Facility Operating License No. DPR–16. Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register: December 12, 1998 (63 FR 66595).***

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated May 12, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, NJ 08753.

GPU Nuclear, Inc. et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: February 12, 1999.

Brief description of amendment: The amendment deletes the organizational chart and related references from the Appendix B Environmental Technical Specifications (ETS). In addition, the appearance and format of the ETS have been extensively revised.

Date of Issuance: May 18, 1999.

Effective date: As of the date of issuance, to be implemented within 30 days from the date of issuance.

Amendment No.: 207.

Facility Operating License No. DPR–16. Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register: April 7, 1999 (64 FR 17026).***

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated May 18, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, NJ 08753.

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: January 18, 1999, as supplemented February 3 and March 17, 1999.

Brief description of amendment: The amendment removes Technical Specification (TS) 3/4.6.4.3, ''Containment Systems, Hydrogen Purge System,'' from the TS and allows downgrading the system to a non-safety-related system.

Date of issuance: April 12, 1999.

Effective date: As of the date of issuance to be implemented within 60 days from the date of issuance.

Amendment No.: 233.

Facility Operating License No. DPR–65: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register***: February 10, 1999 (64 FR 6704).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 12, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: January 18, 1999.

Brief description of amendment: The amendment modifies Technical Specification 3/4.2.2 to be in accordance with NRC-approved Westinghouse methodologies for the heat flux hot channel factor—$F_Q(Z)$. In addition, the amendment makes changes to the core operating limits and the analytical methods used to determine core operating limits contained in Section 6.9.1.6.a and b, respectively, by adding, modifying, or deleting references.

Date of issuance: May 10, 1999.

Effective date: As of the date of issuance to be implemented within 30 days from the date of issuance.

Amendment No.: 170.

Facility Operating License No. NPF–49: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register***: February 10, 1999 (64 FR 6705).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 10, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, ThreeRivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut

PECO Energy Company, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania.

Date of application for amendments: October 30, 1998, as supplemented February 22, 1999.

Brief description of amendments: These amendments revised the overvoltage, undervoltage, and underfrequency allowable values

associated with the reactor protection system monitoring channels and add supporting details to the Technical Specifications Bases 3/4.8.4.

Date of issuance: May 13, 1999.

Effective date: Units 1 and 2, as of date of issuance and shall be implemented within 30 days.

Amendment Nos.: 134 and 96.

Facility Operating License Nos. NPF–39 and NPF–85. The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register***: November 18, 1998 (64 FR 64120)

The February 22, 1999, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 13, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, PA 19464.

PECO Energy Company, Docket No. 50–353, Limerick Generating Station, Unit 2, Montgomery County, Pennsylvania

Date of application for amendment: January 12, 1999, as supplemented January 29 and March 10, 1999.

Brief description of amendment: This amendment revised Technical Specifications (TSs) Section 3/4.4.2, ''Safety/Relief Valves,'' and TS Bases Sections B 3/4.4.2, B 3/4.5.1 and B 3/4.5.2 to increase the allowable as-found main steam safety relief valve (SRV) code safety function lift setpoint tolerance from plus or minus 1% to plus or minus 3%. Also, the required number of operable SRVs in operational conditions 1, 2 and 3 will be increased from 11 to 12.

Date of issuance: May 17, 1999.

Effective date: May 17, 1999.

Amendment No.: 98.

Facility Operating License No. NPF–85. The amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register***: February 24, 1999 (64 FR 9194)

The January 29 and March 10, 1999, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 17, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, PA 19464.

PECO Energy Company, Docket No. 50–353, Limerick Generating Station, Unit 2, Montgomery County, Pennsylvania

Date of application for amendment: March 11, 1999, as supplemented April 21, 1999.

Brief description of amendment: The amendment revised the minimum critical power ratio safety limits and revised the associated Technical Specification Bases.

Date of issuance: May 14, 1999.

Effective date: As of the date of issuance and shall be implemented prior to restart following completion of the April 1999 refueling outage.

Amendment No.: 97.

Facility Operating License No. NPF–85. The amendment revised the Technical Specifications and/or License.

Date of initial notice in ***Federal Register***: April 7, 1999 (64 FR 17028). The April 21, 1999, letter provided clarifying information that did not change the initial no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 14, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, PA 19464.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: May 22, 1997, as supplemented by letters dated June 12, 1997, August 28, 1997, January 29, 1998, July 9, 1998, and March 12, 1999.

Brief description of amendments: The amendments authorize revisions to the licensing basis as described in the Final Safety Analysis Report (FSAR) Update to incorporate a modification to the Diablo Canyon Power Plant, Unit Nos. 1 and 2 component cooling water system.

Date of issuance: May 13, 1999.

Effective date: May 13, 1999, and shall be implemented in the next periodic update to the FSAR Update in accordance with 10 CFR 50.71(e).

Amendment Nos.: **UNIT 1–134; UNIT 2–132.**

Facility Operating License Nos. DPR–80 and DPR–82: The amendments revised the Final Safety Analysis Report Update.

Date of initial notice in ***Federal Register***: July 29, 1998 (63 FR 40558).

The supplemental letters dated July 9, 1998, and March 12, 1999 provided additional clarifying information, did not expand the scope of the application as originally noticed, and did not change the staff's initial no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 13, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of application for amendments: May 8, 1996, as supplemented January 13, 1999.

Brief description of amendments: The amendments modified the technical specifications to allow refueling operation with 20 feet of water level in the refueling cavity for many operating conditions and at 12 feet of water level for certain specified conditions. The amendments also restored a phrase to a note to Limiting Conditions for Operation for TSs 3.9.4 and 3.9.5 that was inadvertently deleted by previous amendments.

Date of issuance: May 13, 1999.

Effective date: May 13, 1999, to be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 2–153; Unit 3–144.

Facility Operating License Nos. NPF–10 and NPF–15: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: March 24, 1999 (64 FR 14285).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 13, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Main Library, University of California, P.O. Box 19557, Irvine, California 92713.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama.

Date of amendments request: April 2, 1999.

Brief Description of amendments: The amendment changes TS 3/4.4.9, ''Specific Activity,'' and the associated bases to increase the limit associated with dose equivalent iodine-131. The

steady-state dose equivalent iodine-131 limit would be increased from 0.15μCurie/gram to 0.3 μCurie/gram and the transient limit for 80 percent to 100 percent power provided by Technical Specificaton Figure 3.4–1 will increase 9 μCurie/gram to 18 μCurie/gram with a corresponding increase in the 0 percent to 80 percent power limits.

Date of issuance: May 10, 1999.

Effective date: As of the date of issuance, and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 1–142; Unit 2–134.

Facility Operating License Nos. NPF–2 and NPF–8: Amendments revise the Technical Specifications.

Date of initial notice in ***Federal Register***: April 8, 1999 (64 FR 17201).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 10, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas.

Date of amendment request: September 29, 1998.

Brief description of amendments: The amendments authorize the revision of the South Texas Project updated final safety analysis report (UFSAR) to incorporate the revised methodology to calculate the mass and energy release following a postulated large-break loss-of-coolant accident.

Date of issuance: May 20, 1999.

Effective date: May 20, 1999 Revisions will be incorporated into the next UFSAR update in accordance with the schedule in 10 CFR 50.71(e).

Amendment Nos.: Unit 1–110; Unit 2–97.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments authorize the revision of the UFSAR to incorporate the revised methodology.

Date of initial notice in ***Federal Register***: November 18, 1998 (63 FR 64123).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 20, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location:

Wharton County Junior College, J. M. Hodges.

Learning Center, 911 Boling Highway, Wharton, Texas 77488.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: October 29, 1998, supplemented by letter dated March 15, 1999.

Brief description of amendments: The amendments relocate the requirements in Technical Specifications 3/4.7.9 and 6.10.3.l for snubbers to the Technical Requirements Manual.

Date of issuance: May 17, 1999.

Effective date: As of the date of issuance to be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 1–109; Unit 2–96.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register***: December 16, 1998 (63 FR 69346); renoticed April 7, 1999 (64 FR 17031).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 17, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488.

Wisconsin Public Service Corporation, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: February 15, 1999.

Brief description of amendment: This amendment revised Technical Specification Section 6, ''Administrative Controls,'' to reflect organizational changes, to relocate certain review and audit functions to the Operational Quality Assurance Program Description, and to eliminate redundant requirements.

Date of issuance: May 11, 1999.

Effective date: May 11, 1999.

Amendment No.: 145.

Facility Operating License No. DPR–43: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register***: April 7, 1999 (64 FR 17031).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 11, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Wisconsin, Cofrin Library, 2420 Nicolet Drive, Green Bay, WI 54311–7001.

Dated at Rockville, Maryland, this 25th day of May 1999.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–13765 Filed 6–1–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Consolidated Guidance About Materials Licenses: Program-Specific Guidance About 10 CFR Part 36 Irradiator Licenses, Dated January 1999

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is announcing the availability of NUREG–1556, Volume 6, ''Consolidated Guidance about Materials Licenses: Program-Specific Guidance about Part 36 Irradiator Licenses,'' dated January 1999.

ADDRESSES: Copies of NUREG–1556, Vol. 6, may be obtained by writing to the Superintendent of Documents, U.S. Government Printing Office, PO Box 37082, Washington, DC 20402–9328. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. A copy of the document is also available for inspection and/or copying for a fee in the NRC Public Document Room, 2120 L Street, NW, (Lower Level), Washington, DC 20555–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Sally L. Merchant, Mail Stop TWFN 9–F–31, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 415–7874, E-mail: slm2@nrc.gov.

SUPPLEMENTARY INFORMATION: On April 23, 1998 (63 FR 20224), NRC announced the availability of draft NUREG–1556, Volume 6, ''Consolidated Guidance about Materials Licenses: Program-Specific Guidance about Self-Shielded Irradiator Licenses,'' dated March 1998, and requested comments on it. This draft NUREG report was the sixth program-specific guidance developed to support an improved materials licensing process. The NRC staff considered all the comments, including constructive suggestions to improve the document, in the preparation of the final NUREG report.

The final version of NUREG–1556, Volume 6, is now available for use by applicants, licensees, NRC license reviewers, and other NRC staff. It supersedes the guidance for applicants and licensees previously found in Draft Regulatory Guide DG–0003, ''Guide for the Preparation of Applications for Licenses for Non-Self-Contained Irradiators,'' dated January 1994, and the guidance for licensing staff previously found in NMSS Policy and Guidance Directive, FC 84–23, ''Standard Review Plan for Licenses for the Use of Panoramic Dry Source-Storage Irradiators, Self-Contained Wet Source-Storage, and Panoramic Wet Source-Storage Irradiators,'' dated December 27, 1984. In addition, this report also contains information found in pertinent Technical Assistance Requests and Information Notices. NRC staff will use this final report in reviewing these applications.

Electronic Access

NUREG–1556, Volume 6, will also be available electronically approximately 1 month after publication of this notice by visiting http://www.nrc.gov/NRC/NUREGS/SR1556/V6/index.html.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Act of 1996, NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget.

Dated at Rockville, Maryland, this 3rd day of May, 1999.

For the Nuclear Regulatory Commission.

Patricia K. Holahan,

Acting Chief, Rulemaking and Guidance Branch, Division of Industrial and Medical Nuclear Safety, NMSS.

[FR Doc. 99–13893 Filed 6–1–99; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Proposed Submission of Information Collection for OMB Review Under the Paperwork Reduction Act; Comment Request; Locating and Paying Participants

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of intention to request OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation intends to request that the Office of Management and Budget extend its approval of a collection of information under the Paperwork Reduction Act, with revisions. The information collection is used by the PBGC to pay benefits to participants and beneficiaries in plans covered by the PBGC insurance program. The revisions are to PBGC forms and instructions related to benefit payments.

ADDRESSES: All written comments should be addressed to: Office of the General Counsel, Pension Benefit Guaranty Corporation, Suite 340, 1200 K St., NW., Washington, DC 20005. The comments will be available for public inspection at the PBGC Communications and Public Affairs Department, Suite 240, 1200 K Street, NW., Washington, DC 20005–4026, between the hours of 9 a.m. and 4 p.m. A copy of the proposed collection can be obtained, without charge, by writing to the PBGC at the above address.

DATES: Comments should be received by August 3, 1999.

FOR FURTHER INFORMATION CONTACT: Marc L. Jordan, Attorney, Office of the General Counsel, Suite 340, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.

SUPPLEMENTARY INFORMATION: An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The PBGC intends to request that OMB extend its approval of a collection of information needed to pay participants and beneficiaries who may be entitled to pension benefits under a defined benefit plan that has terminated (OMB Control No. 1212–0055; expires June 30, 2000). The collection consists of information participants and beneficiaries are asked to provide in connection with an application for benefits. In addition, in some instances, as part of a search for participants and beneficiaries who may be entitled to benefits, the PBGC requests individuals to provide identifying information as part of an initial contact with the PBGC. All requested information is needed to enable the PBGC to determine benefit entitlements and to make appropriate payments.

The PBGC intends to request that OMB approve revisions to the forms and instructions. The revisions simplify language and incorporate regulatory changes. The PBGC does not anticipate a change in burden hours currently approved as a result of these revisions.

The PBGC estimates that it will request that 71,250 individuals submit identifying applications for benefits and that the associated burden is 30,875 hours (an average of slightly less than 30 minutes per individual). The PBGC further estimates that 5,000 individuals will provide the PBGC with identifying information as part of an initial contact and that the associated burden is 1,250 hours (15 minutes per individual). The average annual postage cost is approximately $24,400. Thus, the total estimated burden associated with this collection of information is approximately 32,125 hours and $24,400.

The PBGC solicits comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Issued at Washington, DC, this 26th day of May, 1999.

Stuart A. Sirkin,

Director, Corporate Policy and Research Department, Pension Benefit Guaranty Corporation.

[FR Doc. 99–13926 Filed 6–1–99; 8:45 am]

BILLING CODE 7708–01–M

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Committee Meetings

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Thursday, July 15, 1999
Thursday, July 29, 1999

The meetings will start at 10 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chair, five representatives from labor unions holding exclusive bargaining rights for Federal blue-collar employees, and five representatives from Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meetings either the labor members or the management members may caucus separately with the Chair to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of a meeting.

Annually, the Chair compiles a report of pay issues discussed and concluded recommendations. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chair on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on this meeting may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 5559, 1900 E Street, NW., Washington, DC 20415, (202) 606–1500.

Dated: May 24, 1999.

John F. Leyden,

Chairman, Federal Prevailing Rate Advisory Committee.

[FR Doc. 99–13861 Filed 6–1–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41441; File No. SR–NYSE–98–47]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. To Adopt Rule 440 I Requiring Records of Compensation Arrangements Concerning Floor Brokerage

May 24, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 23, 1998, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. Amendment No. 1 was filed with the Commission on May 14, 1999.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE is filing a proposed rule change to adopt new Rule 440 I, *Records of Compensation Arrangements—Floor Brokerage.* Below is the text of the proposed rule change. Additions are italicized.

Rule 440 I Records of Compensation Arrangements—Floor Brokerage

(a) Every member not associated with a member organization and each member organization primarily engaged as an agent in executing transactions on the Floor of the Exchange must maintain a written record including a description of each type of compensation arrangement entered into with other members, member organizations, non-member organizations and customers in connection with transactions executed on the Floor of the Exchange.

(b) Records maintained in accordance with paragraph (a) of this Rule must identify, by name, the members, member organizations, non-member organizations and customers who are parties to each type of compensation arrangement in effect.

••• Supplementary Material

.10 For purposes of paragraphs (a) and (b) of this Rule 440 I, the requirement to maintain a written record of each type of compensation arrangement shall not apply to:

(a) any compensation arrangement wherein a member or member organization receives gross compensation of less than $10,000 per year from any member, member organization, non-member organization or customer; or

(b) any compensation arrangement involving the transmission of orders solely through the Exchange's electronic order routing system.

.20 A member or member organization is deemed to be primarily engaged as an agent in executing transactions on the Floor of the Exchange if at least 75% of its revenue is derived from floor brokerage.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

New Rule 440 I will require that every member not associated with a member organization, and each member organization primarily engaged as an agent in executing transactions on the Floor of the Exchange, maintain a written record of each type of compensation arrangement that they enter into with other members, member organizations, non-member organizations, or customers relating to transactions on the Floor. The written record must include a description of each type of arrangement and identify, by name, the parties to each type of arrangement in effect.

In addition, proposed Rule 440 I, Supplementary Material .10 excludes the following compensation arrangements from the requirements to maintain a written record:

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter to Richard C. Strasser, Assistant Director, Division of Market Regulation, SEC, from James E. Buck, Senior Vice President and Secretary, NYSE dated May 12, 1999.

(1) arrangements involving gross compensation of less than $10,000 per year; and

(2) arrangements involving orders transmitted solely through the Exchange's electronic order routing system (*e.g.* SuperDot).

Rule 440 I, Supplementary Material .20 provides that a member or member organization is deemed to be primarily engaged as an agent in executing transactions on the Floor of the Exchange if at least 75% of its revenue is derived from floor brokerage.

Rule 440 I will enhance the Exchange's oversight of floor brokerage compensation arrangements in connection with Exchange members' and member organizations' compliance with Section 11(a) of the Act[4] and Rule 11a–1[5] thereunder which, among other things, prohibit a member or member organization from executing on the Exchange an order for that member's or member organization's ''own account'' or any account in which the member or member organization has an interest, unless the member or member organization acts in reliance on one of the exceptions provided in Section 11(a).[6]

The new rule will apply to members and member organizations primarily engaged as agents in executing transactions on the Floor of the Exchange (*e.g.*, so called ''$2 brokers'' or ''independent brokers''). The Exchange has determined to exclude from the scope of proposed new Rule 440 I ''upstairs'' (*i.e.*, off the Floor) members and member organizations because the Exchange believes that the requirements would be unduly burdensome on and impractical for those members and member organizations, based on the diverse nature and size of their business activities and customer base. Because of their size, the Exchange believes that these upstairs organizations generally have independent supervisory structures and internal control procedures of the supervision and review of the organization's diverse business activities, including the monitoring and review of compensation arrangements. Accordingly, the Exchange believes that the existing regulatory scheme is adequate, and that the application of the requirements of the new rule to upstairs organizations would be duplicative and unnecessary.

In contrast, according to the NYSE, the supervisory oversight and review structure for Floor members and member organizations is very different from upstairs organizations. Many Floor members act as sole proprietors with a limited customer and product base and, therefore, do not generally have independent supervisory structures nor are they subject to the same formalized internal supervisory oversight as upstairs organizations. Absent the requirements of proposed new Rule 440 I, records of compensation arrangements may not be maintained in a formalized manner by the Floor members and member organizations. Rule 440 I will provide an audit trail by requiring the creation of records of compensation arrangements that will facilitate the implementation and maintenance of the Exchange's new examination program geared specifically to such members. Proposed Rule 440 I specifies a type of record, records of compensation arrangements, in addition to the records required to be maintained pursuant to Rules 17a–3[7] and 17a–4 of the Act,[8] that will be critical in providing the Exchange the ability to monitor Floor Broker activities.

Maintaining records of compensation arrangements by members and member organizations primarily engaged as agents in executing transactions on the Floor will facilitate the Exchange's review of these members' and member organizations' activities on an ongoing basis as part of the routine examination process, as well as on a for cause basis. During the course of routine reviews and examinations, the Exchange will be able to sample those compensation arrangements in place to review for compliance with section 11(a) of the Act in terms of whether any such arrangement constitutes a member or member organization having an interest in an account.

The adoption of proposed new Rule 440 I will better enable the Exchange to review and examine, as necessary, members' and member organizations' activities in connection with the Exchange's regulatory oversight responsibility to surveil for potentially violative conduct.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5)[9] that an Exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general to protect investors and the public interest. The Exchange represents that the proposed rule change is designed to accomplish these ends by strengthening the Exchange's ability to examine and surveil activities on the Exchange Floor.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange represents that the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference

[4] 15 U.S.C. 78k(a).

[5] 17 CFR 240.11a–1.

[6] The circumstances under which a member or member organization may trade for its ''own account'' or any account in which the member or member organization has a interest are listed in Section 11(a)(1)(A)–(I). 15 U.S.C. 78k(a)(1)(A)–(I).

[7] 17 CFR 204.17a–3.

[8] 17 CFR 204.17a–4.

[9] 15 U.S.C. 78f(b)(5).

Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–98–47 and should be submitted by June 23, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–13867 Filed 6–1–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41449; File No. SR–PHLX–99–10]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Exchange Fees for Trading Floor Members Participating in the Wireless Telephone System

May 25, 1999.

Pursuant Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is thereby given that on April 19, 1999, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interest persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Phlx proposes to amend its schedule of dues, fees and charges to adopt user fees for all option floor members participating in Phlx's new wireless telephone system.[4]

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1, which proposed a Wireless Telephone System policy, was submitted on April 19, 1999. The Amendment was replaced by SR–PHLX–99–14 and subsequently withdrawn on May 18, 1999. *See* Letter to Michael Walinskas, Associate Director, Division of Market Regulation SEC from John Dayton Counsel Phlx, dated May 18, 1999. *See also* SR–PHLX–99–14 and SR–PHLX–99–15 relating to the use of wireless telephones. Securities Exchange Act Release Nos. 41450 (May 25, 1999) and 41451 (May 25, 1999).

[4] Phlx currently intends to make this telephone system available to the equity and index options floor, not the foreign currency options floor.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend Phlx's fee schedule to adopt a wireless telephone system fee applicable to all option floor members participating in the Ericsson wireless telephone system offered by Phlx. All options floor members participating in the wireless telephone system would be assessed a one-time fee of $1,000 to purchase a handset, headset, battery, charger and clip. In addition, for each handset purchased, each participant must agree to pay a monthly charge of $200 for a period of twelve months. The twelve-month period will commence on the date of the agreement signed by the participant. At the end of the twelve-month period, a new agreement will be presented to the participant. Payment of the monthly fees will be governed by Phlx Rule 50.

Furthermore, a fee for a lost, stolen or damaged headset, handset, battery charger or clip will be assessed at the current replacement or repair cost.[5]

2. Statutory Basis

Phix believes that the proposed rule change is consistent with Section 6(b)[6] of the Act in general and furthers the objectives of Section 6(b)(4)[7] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among Phlx members using its facilities.[8]

[5] Each Participant will be required to sign an agreement that states that a one-year warranty period does not apply (i) to damage caused by a subscriber, third parties or force of nature, and (ii) to any system repaired or altered, except by Ericsson, or subjected to misuse, negligence or accident. Batteries and accessories are not covered under the warranty.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] In reviewing the proposed rule change, the Commission considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

the Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change, which establishes or changes a due, fee, or other charge imposed by the Exchange, has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and subparagraph (f)(2) or rule 19b–4 thereunder.[10] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–PHLX–99–10 and should be submitted by June 23, 1999.

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–13866 Filed 6–1–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41451; File No. SR–PHLX–99–15]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Use of Wireless and Radio Frequency Communications and the Prevention of Related Interference

May 25, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 11, 1999, the Philadelphia Stock Exchange, Inc. (''Phlx'' of ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by the Exchange.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Phlx proposes to adopt a policy and rule regarding the use of wireless and radio frequency (''RF'') communications and the prevention of related interference at Phlx. Specifically, proposed Rule 606(b)(2) would state that no member, member organization or person associated with a member organization shall (i) establish or maintain any telephonic, electronic or wireless transmitting system or device, including related antennas, on the Options Floor or (ii) operate any other equipment on the Options Floor that creates RF or other interference with the systems of the Exchange or other members.[4] Proposed rule 606(c) would state that the Exchange may remove any telephonic, electronic or wireless equipment that violates Rule 606(b)(2) from any Exchange facility.

Below is the text of the proposed rule change. Proposed additions are in italics and deletions are in brackets.

Rule 606. [Connection with Non-members] *Communications and Equipment*

(a) No member or member organization shall establish or maintain any private wire connection, private radio, television or wireless system, between the Exchange Trading Floor and a nonmember without application to and approval by the Committee.

Every such means of communication shall be registered with the Committee. Notice of the discontinuance of any such means of communication shall be promptly given to the Committee.

(b)

* * * * *

(2) No member, member organization or person associated with a member organization shall:

(i) establish or maintain any telephonic, electronic or wireless transmitting system or device, including related antennas, on the Options Floor or

(ii) operate any other equipment on the Options Floor that creates radio frequency (RF) or other interference with the systems of the Exchange or other members.

(c) The Exchange may remove any telephonic, electronic or wireless equipment that violates subsection (b)(2) from any Exchange facility.

Supplementary Material:

.01 Specialists on the Exchange's equity floor shall permit each NASDAQ System market maker telephone access to the specialist post in any NASDAQ/NMS Security for which the latter is the assigned specialist.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to adopt a policy and a rule concerning wireless and RF interference emanating from member systems on the (index/equity) Options Floor. The Financial Automation Department (''FA'') of the Exchange has determined that certain member's wireless and RF equipment operating on the Options Floor is causing interference with other member and Exchange systems. The uncoordinated use of RF and other wireless equipment on the trading floor creates an unmanageable environment for both the Exchange and the members.

The proposed policy and rule will prohibit any member, member organization or person from establishing, maintaining or operating any telephonic, electronic or wireless transmitting system or device, including related antennas on the Option Floor that create RF or other interference with the systems of the Exchange or other members. In addition to the normal disciplinary proceedings that accompany violation of an Exchange rule, the proposed rule will allow the Exchange to remove any telephonic, electronic or wireless equipment that causes such interference. The proposed policy will be included in a memorandum that will be distributed to all Option Floor members.

FA has employed a wireless industry consultant to investigate the current situation and environment on the entire trading floor. Following this effort, FA intends to issue a comprehensive plan which will manage the finite RF and wireless availability on the trading floor. However, at this time, FA is concerned about potential, existing interference. This proposed policy and rule will address this issue by explicitly prohibiting equipment that creates interference and allow the Exchange to immediately act to curtail it.

2. Statutory Basis

Phlx believes that the proposed rule change is consistent with Section 6[5] of the Act in general and furthers the objectives of Section 6(b)(5)[6] in particular, because it removes

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The proposal was initially submitted on May 7, 1999. Amendment No. 1, correcting the numbering of proposed subparagraph ''(c)'' to ''9d),'' was filed with the Commission on May 11, 1999. *See* Letter from John Dayton, Counsel, Phlx, to Michael A. Walinskas, Associate Director, Division of Market Regulation, SEC (May 11, 1999).

[4] The Phlx also has filed a proposed rule change to adopt Rule 606(b)(1) and Supplementary Material .02 and add language to Rule 606(c) respecting wireless telephone access. *See* Securities Exchange Act Release No. 41450 (May 25, 1999) (SR–PHLX–99–14).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

impediments to and perfects the mechanism of a free and open market and protects investors and the public interest by prohibiting wireless and RF interference and allowing the Exchange to manage wireless and RF transmissions on the floor of the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [7] and Rule 19b–4(f)(6) thereunder [8] because the proposed rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; (3) does not become operative for 30 days from the date of filing, or such shorter time that the Commission may designate if consistent with the protection of investors and the public interest; and (4) Phlx provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

The Exchange has requested that the rule change be accelerated to become operative immediately, in order to address existing interference issues. According to the Exchange, the uncoordinated use of RF communications and other wireless equipment on the trading floor creates an unmanageable environment for both the Exchange and the members. Because the proposed policy helps to remove these impediments to and perfect the mechanism of a free and open market by making more efficient the process by which members receive and execute orders on the floor of the Exchange,[9] the Commission finds that accelerating the operative date of the rule change is consistent with the protection of investors and the public interest, and thus designates May 25, 1999, the date of this notice, as the operative date of this filing.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–PHLX–99–15 and should be submitted by June 23, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–13928 Filed 6–1–99; 8:45 am]

BILLING CODE 8010–01–M

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). In reviewing this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] *C.f.*, Securities Exchange Act Release No. 40019 (May 21, 1998), 63 FR 29272 (May 28, 1998) (allowing the American Stock Exchange, LLC, to immediately terminate a member's ability to send wireless communications for failure to comply with the Wireless Communications Policy).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41450; File No. SR–PHLX–99–14]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Adopting a Wireless Communications Policy Relating to the Use of the Wireless Telephone System on the Options Floor

May 25, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder [2] notice is hereby given that on May 11, 1999, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Phlx proposes to adopt a policy and rule regarding the use of telephonic communications devices at Phlx. Specifically, proposed Rule 606(b)(1) will state that no member, member organization or person associated with a member organization shall establish or maintain any telephonic communication between the (index/equity) Options Floor and any other location, or between locations on the Options Floor, without the prior written approval of the Options Committee.[3] Rule 606, Supplementary Material .02, will state that the Exchange has established a Wireless Telephone System policy.[4] Violations of the Wireless Telephone System policy may result in disciplinary action by the Exchange.

Below is the text of the proposed rule change. Proposed additions are in italics, and deletions are in brackets.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange also has filed a proposed rule change to adopt Rule 606(b)(2) and (d) respecting wireless and radio frequency interference on the Options Floor. *See* Securities Exchange Act Release No. 41451 (May 25, 1999) (SR–Phlx–99–15).

[4] The Wireless Telephone System policy comprises proposed Rule 606b(1), (c), and Supplementary Materials .02. Telephone conversation between John Dayton, Counsel, Phlx, and Kathy England, Assistant Director, Division of Market Regulation, SEC (May 18, 1999).

Rule 606. [Connection with Non-members] *Communications and Equipment*

(a) No member or member organization shall establish or maintain any private wire connection, private radio, television or wireless system, between the Exchange Trading Floor and a non-member without application to and approval by the Committee.

Every such means of communication shall be registered with the Committee. Notice of the discontinuance of any such means of communication shall be promptly given to the Committee.

(b) (1) No member, member organization or person associated with a member organization shall establish or maintain any telephonic communication between the Options Floor and any other location, or between locations on the Options Floor, without the prior written approval of the Options Committee.

(c) The Exchange may remove any telephonic, electronic and wireless equipment that has not received written approval under subsection (b)(1) from any Exchange facility.

Supplementary Material

.01 Specialists on the Exchange's equity floor shall permit each NASDAQ System market maker telephone access to the specialist post in any NASDAQ/NMS Security for which the latter is the assigned specialist.

.02 The Exchange has established a Wireless Telephone System policy. Violations of the Wireless Telephone System policy may result in disciplinary action by the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to adopt a wireless communications policy relating to the use of the Wireless Telephone System on the Options Floor. The Exchange has arranged for Ericsson, Inc. to install a wireless telephone communication system on the Exchange's Options Floor. This system will allow only intra-floor telephone calls.[5]

The proposed policy will address restrictions on use of the Wireless Telephone System. The proposed rule also will address sanctions for violations of the policy. For example, all members wishing to use the Ericsson system will be required to sign an agreement prior to receiving their Ericsson phone system. This agreement contains provisions that deal with liability issues, specifically paragraphs 13, 14, and 15.[6] In addition, the policy will amend the Exchange's current prohibition against the use of any wireless voice communications on the equity option trading floor. The proposed policy will be included in a memorandum that will be distributed to all Options Floor members.

The Exchange believes that its customary floor surveillance procedures are sufficient to monitor the system. The Exchange's Wireless Telephone System is designed to allow only intra-floor telephone calls. Members will be allowed to dial only in-house four digit extension telephone numbers. These four digit telephone numbers are not enabled to place outside telephone calls. Therefore, a member will not be able to make outside calls from an Exchange wireless headset. In addition, all incoming and outgoing telephone calls will be captured on a monthly report and may be reviewed by the Exchange's Market Surveillance department.

2. Statutory Basis

Phlx believes that the proposed rule change is consistent with Section 6[7] of the Act in general and furthers the objectives of Section 6(b)(5)[8] in particular, because it removes impediments and perfects the mechanism of a free and open market and protects investors and the public interest by expediting and making more efficient the process by which members receive and execute orders on the floor of the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments or the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder[10] because the proposed rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; (3) does not become operative for 30 days from the date of filing, or such shorter time that the Commission may designate if consistent with the protection of investors and the public interest; and (4) Phlx provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

The Exchange has requested that the rule change be accelerated to become operative immediately to allow for immediate use and enforcement of the Wireless Telephone System policy.

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[5] The system will also allow users to place a telephone call to another four-digit Phlx Complex telephone number.

[6] Paragraph 13 states that Phlx shall not be liable to the Subscriber for any consequential, indirect, special, or incidental damages whatsoever (including, without limitation, any damages claimed for loss of revenues, good will, or profits or claims by third parties) arising from or related to this Agreement. Phlx's sole liability to the Subscriber for any damages claimed under this Agreement shall be limited to the amount of charges actually assessed against the Subscriber by Phlx for the specific time period of the incident(s) for which damages are claimed, and the Subscriber's sole remedy against Phlx in the event of such claims shall be the recovery of an appropriate billing credit. Paragraph 14 states that Phlx assumes no liability to Members or Member firms due to conflicts between handsets in use on the Trading Floor or due to electronic interference problems resulting from the use of the intra-floor handsets on the Trading Floor. Finally, paragraph 15 states that the Subscriber shall indemnify Phlx and hold it harmless from and against any claim, damage, liability or expense referred to in the foregoing paragraphs.

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In reviewing this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

Because the proposed policy helps to remove impediments to and perfect the mechanism of a free and open market by making more efficient the process by which members receive and execute orders on the floor of the Exchange, the Commission finds that accelerating the operative date of the rule change is consistent with the protection of investors and the public interest. The Commission also finds that the proposal is sufficiently similar to a previously approved policy of the American Stock Exchange LLC.[11] Thus, the Commission designates May 25, 1999, the date of this notice, as the operative date of this filing.

IV. Solicitation Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–99–14 and should be submitted by June 23, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–13929 Filed 6–1–99; 8:45 am]

BILLING CODE 8010–01–M

[11] *See* Securities Exchange Act Release No. 37728 (September 26, 1996), 61 FR 51476 (October 2, 1996).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41440; File No. SR–Phlx–98–09]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change to Amend Exchange Rule 1101A and Revise the Intervals Between Index Option Strike Prices

May 24, 1999.

I. Introduction

On February 5, 1998, the Philadelphia Stock Exchange, Inc. (''Exchange'' or ''Phlx'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change that would revise Exchange Rule 1101A(a) to modify the strike price intervals for index options. The proposed rule change was published for comment in the **Federal Register** on May 13, 1998.[3] The Commission did not receive any comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

During recent years, the number of new option products and total series listed by the national securities exchanges has significantly risen. This growth in new options products has increased the number of continuous quote changes disseminated by the exchanges to the Options Price Reporting Authority (''OPRA'')[4] and by OPRA to securities information vendors. In an effort to curb the growth of strike price dissemination and to more accurately reflect the strike prices currently being listed, the Exchange proposes to amend Exchange Rule 1101A(a), ''Terms of Options Contracts,'' to revise the intervals between index option strike (exercise) prices. The Exchange believes the revisions will facilitate the prompt dissemination of quote information and more accurately reflect the strike prices currently being listed.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 39964 (May 6, 1998), 63 FR 26667 (May 13, 1998).

[4] OPRA is a National Market System Plan under Section 11A of the Act that provides for the collection and dissemination of last sale and quotation information on options that are traded on the member exchanges. The five exchange markets that are members of the OPRA Plan are the American Stock Exchange, Chicago Board Options Exchange, New York Stock Exchange, Pacific Exchange, and Phlx.

Presently, Exchange Rule 1101A(a) establishes a formula for strike price intervals which takes into consideration the index value and time remaining until expiration. The Rule establishes a stroke price interval of $5, except: (i) Where the strike price exceeds $500, the strike price interval may be $10; and (ii) where the strike price exceeds $1,000, the interval may be $20. The Exchange may also determine to list strike prices at wider intervals in ''out-of-the money'' for far term series, generally $25, except: (i) Where the strike price exceeds $500, the interval may be $50; and (ii) where the strike price exceeds $1,000, the interval may be $100. Furthermore, where strike price intervals would be greater than $5, the Exchange may list additional strike prices at alternative $5 intervals in response to demonstrated customer interest or specialist request.

The current version of Exchange Rule 1101A(a) was adopted in 1996,[5] and was intended to improve the Exchange's strike price dissemination policy. Based on its experience implementing Rule 1101A(a), the Exchange has determined to revise and simplify the Rule for easier administration. The Exchange believes the revised Rule will more accurately reflect the needs of the marketplace. The Exchange has concluded that basing the strike price interval on an option's value (in the case of options greater than $500 or $1000) has not proven useful. The Exchange believes that widening the interval in far-term series should help to reduce the number of outstanding series listed.

The Exchange's proposed rule change would establish new strike price intervals of: (i) $5 for the three consecutive near-term months; (ii) $10 for the fourth month; and (iii) $30 for the fifth month. However, the Exchange would retain the ability to list additional strike prices at alternative $5 intervals in response to demonstrated customer interest or specialist request. The Exchange believes the continued ability to add strike prices at alternative $5 intervals in response to customer interest will maintain flexibility in the marketplace and preserve specific trading opportunities.

The Exchange believes that listing far-term series at wider strike price intervals should improve the efficiency of quotation dissemination and facilitate speedy pricing by reducing the number of listed strike prices. The Exchange predicts the immediate effect should be a reduction in the number of index option strike prices. Furthermore, the Exchange believes it will experience a

[5] *See* Securities Exchange Release No. 37003 (Mar. 21, 1996), 61 FR 13913 (Mar. 28, 1996).

reduction in its systems capacity and usage as well as its operational burdens. For instance, strike prices currently occupy trading floor screen space and consume transmission line traffic to OPRA and outside vendors that disseminate Exchange trading information. Lastly, the Exchange believes the proposal will enhance the role of the specialist in monitoring multitudes of strike prices.

III. Discussion

For the reasons discussed below, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[6] Specifically, the Commission believes the proposed rule change is consistent with the Section 6(b)(5)[7] requirements that the rules of an exchange market be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.[8]

Compared to the equity securities that underlie many exchange-traded derivative products, option contracts generate significant quote volume because of the various contract months, differentiation between puts and calls, and multiple strike prices. Although trading in option contracts accounts for a small percentage of securities transactions in the aggregate, some have estimated that options quotes—reflecting the numerous classes and series—comprise more than 50% of all quote traffic.[9] In some cases, vendors lacking technological capacity have resorted to screening options quotes and selectively disseminating those quotes believed to be of most interest to customers.[10]

In addition, the number of new option products and total series listed by the national securities exchanges has grown dramatically, thereby increasing the number of continuous quote changes disseminated by the exchanges to the OPRA.

The Commission believes the Exchange's proposal is reasonable and will help to ameliorate quote traffic by reducing the number of index option strike prices. In particular, the proposal will establish new strike price intervals of: (i) $5 for the three consecutive near-term months; (ii) $10 for the fourth month; and (iii) $30 for the fifth month. The Exchange will retain the ability to list additional strike prices at alternative $5 intervals in response to demonstrated customer interest or specialist request.

The Commission believes the wider strike price intervals for the fourth and fifth month series reasonably balances the Exchange's interest in limiting the number of outstanding strike prices in less active series with its interest in accommodating the needs of investors. Generally, index option series nearest to expiration attract most of the trading activity while those farther out tend to attract less interest from customers and floor traders. Although far-term index option series are more likely to have no open interest,[11] their quotes nonetheless contribute to the congestion. Therefore, eliminating, some of the quotes for less active, far-term index option series through wider strike price intervals will help to decrease quote traffic without disrupting the active trading in near-term index option series. By maintaining the $5 strike price interval for the three consecutive near-term months, the Exchanger has ensured that the revised strike price intervals will not affect the overwhelming majority of index options trading that now regularly occurs in near-term months. Thus, the proposed reduction of strike prices for index options will be limited to the series with the least active trading interest.

The Commission notes that the revised strike price intervals will apply only to index options and will not modify the strike price intervals for equity or currency options traded on the Exchange. At the present, the Exchange offers options on 14 different stock indexes.[12] Although the quote traffic relating to a substantial segment of the Exchange's options products will therefore remain unaffected by the proposal,[13] the Commission believes the Exchange's proposal is a practical initiative that addresses the problem of increasing quote traffic.

To evaluate the impact of the proposal, the Exchange analyzed the distribution of strike prices for several of its actively traded stock indexes. The review indicates that in some cases the number of strike prices can be expected to significantly drop as a result of the revised intervals. For example, the number of strike prices for options on the Gold/Silver Sector Index would fall from 75 to 59, a 21% reduction. Likewise, the number of strike prices for options on the Oil Service Sector Index would drop 17%, from 58 to 48.[14] The Commission believes the reduction in strike prices will help to alleviate the quote traffic that currently flows from the Exchange.

The Commission believes it is important that the Exchange will retain the ability to list additional strike prices at alternative $5 intervals in response to demonstrated customer interest[15] or specialist request. The Commission believes the continued ability to add strike prices at alternative $5 intervals will provide the Exchange with the requisite flexibility to satisfy investor needs and respond to customer interest in specific trading opportunities. Furthermore, the customer request provision should help to ensure the availability of options series that provide investors with a means to adequately hedge their portfolios and implement trading strategies designed to meet their investment objectives. The Commission expects the Exchange to closely monitor the listing of additional strike prices at alternative intervals to ensure that new strike prices are added only in response to demonstrated customer interest or specialist request. Unless the Exchange properly controls the addition of alternative strike prices, the effectiveness of the proposal may be undermined if strike prices proliferate

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] In approving the proposed rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital information. 15 U.S.C. 78c(f).

[9] *See e.g.*, SEC's Lindsey to Host Meeting Tomorrow on Quote Traffic, Wall Street Letter, June 8, 1998, at 6.

[10] *See* Options Marts to oversee Selective Quoting, Wall Street Letter, December 15, 1997, at 9. The screening usually occurs during the first 15–20 minutes of the trading day when vendors receive a wave of options quotes from the options exchanges.

[11] According to some options industry studies, up to 40% of listed options issues have no open interest. *See* Gregory Crawford, No Easy Answers to US Options Quote Volume Problem, Reuters Financial Service, May 4, 1997.

[12] The Exchange offers options on the following stock indexes: Computer Box Maker Sector, KBW Bank Sector, Forest & Paper Products Sector, Gold/Silver Sector, National Over-the-Counter Sector, Oil Service Sector, OTC Prime Sector, Phone Sector, Semiconductor Sector, SuperCap Sector, TheStreet.com Internet Sector, U.S. Top 100 Index, Utility Sector, and Value Line Composite Index.

[13] In addition to offering options on 14 stock indexes, the Exchange lists nearly 870 equity options and 100 currency pairs.

[14] *See* Letter to Michael Loftus, Attorney, Division of Market Regulation, Commission, from Nandita Yagnik, Attorney, Exchange, dated November 6, 1998. The Exchange's analysis further indicates that the number of strike prices for options on the U.S. Top 100 Index would decline from 61 to 54, a 12% reduction.

[15] As defined in Exchange Rule 1101A, the term ''demonstrated customer interest'' includes institutional (firm), corporate, or customer interest expressed directly to the Exchange or through the customer's floor brokerage unit, but not interest expressed by a ROT (Registered Options Trader) with respect to trading for the ROT's own account.

without good cause (*i.e.*, genuine customer interest or specialist request).

The Commission is confident that the Exchange's proposal will not adversely affect or disrupt the current system of option quote collection and dissemination. Specifically, OPRA has advised the Commission that the Exchange's proposal would have no negative impact on the operations of OPRA.[16] In addition, OPRA stated that if the other options exchanges adopted similar proposals, the number of strike prices and the level of quote traffic would be reduced.

The Commission believes the Exchange's proposal is consistent with efforts undertaken to limit the unnecessary proliferation of option strike prices.[17] In recently approving 2½ point strike price intervals for 200 exchange-listed equity options classes, the Commission cited the need to balance an exchange's desire to accommodate market participants by offering a wide array of investment opportunities and the need to avoid unnecessary proliferation of options series.[18] The Commission believes the Exchange's proposal achieves such a balance by reducing the number of index option strike prices but also retaining varied investment opportunities through the listing of alternative, customer-requested strike prices.

Moreover, because strike prices for index options must be displayed on the Exchange's trading floor, disseminated to outside vendors, and monitored by specialists, the Commission believes the proposal should reduce the systems and operational burdens associated with the listing of strike prices in far-term series of index options. By reducing the number of listed strike prices, the proposal should improve the efficiency of quotation dissemination and speedy pricing of index options, thereby helping the Exchange to maintain fair and orderly options markets.

Finally, the Commission believes the Exchange will implement the proposal in an orderly manner that will not disrupt current trading in far-term options series. In particular, the Exchange will begin listing index option strike prices at the new, wider intervals following the first quarterly expiration after Commission approval of the proposed rule change.[19] Therefore, after the next quarterly expiration in June, 1999, the Exchange will implement the proposal by listing strike prices for far-term index option series at wider intervals. The Commission expects the Exchange to issue a circular to members informing them of the new strike price intervals and the scheduled date of implementation. The Commission believes it is important that all market participants be advised of the changes so they are provided with sufficient time and notice to make any necessary adjustments to their positions and strategies.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[20] that the proposed rule change (SR–Phlx–09) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–13930 Filed 6–1–99; 8:45 am]

BILLING CODE 8010–01–M

[16] *See* Letter to Michael Loftus, Attorney, Division of Market Regulation, Commission, from Joseph P. Corrigan, Executive Director, OPRA, dated September 10, 1998.

[17] For example, the American Stock Exchange delisted 250 inactively traded index option series in September, 1997, in an attempt to reduce quote traffic. *See* Amex Delists Index Options Series, Wall Street Letter, September 1, 1997, at 4.

[18] *See* Securities Exchange Act Release No. 40662 (Nov. 12, 1998), 63 FR 64297 (Nov. 19, 1998) (joint order approving File Nos. SR–Amex–98–21, SR–CBOE–98–29, SR–PCX–98–31, and SR–Phlx–98–26).

[19] Telephone conversation between Michael Loftus. Attorney, Division of Market Regulation, Commission, and Nandita Yagnik, Attorney, Exchange (Dec. 17, 1998). The Commission notes that this practice is consistent with the one employed by the Exchange in 1996 to implement previous revisions to index option strike price intervals. *See* Securities Exchange Act Release No. 37003 (Mar. 21, 1996), 61 FR 13913 (Mar. 28, 1996).

[20] 17315 U.S.C. 87s(b)(2).

[21] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice No. 3056]

Bureau of Economic and Business Affairs; Guidelines Implementing Title XXII, Section 2225(a) of the Foreign Affairs Reform and Restructuring Act of 1998

AGENCY: Bureau of Economic and Business Affairs.

ACTION: Notice.

SUMMARY: Section 2225(a), of the Foreign Affairs Reform and Restructuring Act of 1998 (''Act''), provides that

Except as otherwise provided in section 401 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (Public Law 104–114), and subject to subsection (b), the Secretary of State may deny the issuance of a visa to any alien who—

(1) through the abuse of position, including a governmental or political party position, converts or has converted for personal gain real property that has been confiscated or expropriated, a claim to which is owned by a national of the United States, or who is complicit in such a conversion; or

(2) induces any of the actions or omissions described in paragraph (1) by any person.

The following guidelines will be used by the Department of State for the purpose of implementing Sec. 2225 of the Act.

EFFECTIVE DATE: This notice is effective on June 2, 1999.

FOR FURTHER INFORMATION CONTACT: Robert Watts, Office of Investment Affairs, Bureau of Economic and Business Affairs, Department of State, 2201 C Street, NW, Washington, D.C. 20520, 202–736–4012.

SUPPLEMENTARY INFORMATION: Department of State Guidelines for Implementation of Title XXII, Section 2225 of the Foreign Affairs Reform and Restructuring Act of 1998.

1. Purpose and Authority. These guidelines will be used by the Department of State (''Department'') for the purpose of implementing Section 2225 of the Foreign Affairs Reform and Restructuring Act of 1998, P.L. 105–277, and other applicable legislation as appropriate.

2. Delegation of Authority. The Secretary of State has delegated authority to the Assistant Secretary of State for Economic and Business Affairs to make determinations under section 2225(a) of the Act, in consultation with the Assistant Secretary of State for the regional bureau or bureaus with jurisdiction over the country where the confiscation or expropriation took place and the country of which the alien who is to be denied a visa is a national, and others as appropriate.

3. Point of Contact. The Office of Investment Affairs in the Bureau of Economic and Business Affairs at the Department is the central point of contact for all inquiries about implementation of Sec. 2225 of the Act. The Office may be contacted in Room 3336, U.S. Department of State, Washington, DC 20520; telephone number 202–736–4012.

4. Collection of Information:

a. The Department will collect information from available sources on whether property abroad, a claim to which is owned by a U.S. national, has been confiscated or expropriated and converted for personal gain by a person in a position covered by the Act. U.S. Embassies will also collect information and provide information and recommendations to the responsible bureaus in the Department of State

concerning activities relevant to Section 2225.

b. As appropriate, the Department will request claimants to provide additional information related to ownership and confiscation or expropriation of the property concerned.

c. The Department will consult as appropriate with other agencies of the U.S. government regarding the identity persons whose actions may be covered by Sec. 2225(a)(1) or Sec. 2225(a)(2).

5. Determinations under Section 2225. Determinations under Section 2225 will be made when facts or circumstances exist that lead the Department to conclude that a person has committed an act covered by Sec. 2225(a)(1) or Sec. 2225(a)(2).

6. Prior Notification:

a. An alien who is the subject of a determination under Sec. 2225 will be sent notification by registered mail that his/her name will be entered in the appropriate consular visa and immigration lookout systems, and that he/she will be denied a visa upon application and/or have his/her visa revoked, 45 days after the date of the notification letter. The Department may inform the government of the alien's country of nationality in confidence through diplomatic channels of the pending action.

b. If no information is received within the 45 day period above that leads the Department to conclude that the person should not be denied a visa pursuant to Sec. 2225(a), the Department will enter the alien's name, including the names of the alien's agents, if applicable, in the appropriate consular visa and immigration lookout systems. Any then-pending visa application from the named alien will be denied, and any visa previously issued to the alien will be revoked in accordance with law.

7. Review of Determinations: The Department may review a determination made under Section 2225 at any time, as appropriate in its discretion.

8. Exceptions: Section 2225 subsection (a) will not be applied to property in (1) any country established by international mandate through the United Nations; or (2) any territory recognized by the United States Government to be in dispute.

9. Relationship to Section 527 of P.L. 103–236: This section supplements Section 527 of the 1994–1995 Foreign Relations Authorization Act, P.L. 103–326 (April 30, 1994), and is not meant to revise or otherwise detract from the substantive requirements of that section of law.

Dated: May 27, 1999.

Wesley S. Scholz,

Director, Office of Investment Affairs.

[FR Doc. 99–13953 Filed 6–1–99; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The nature of the information collection is described as well as its expected burden. The Federal Register Notice with a 60-day comment period soliciting comments on the following collection of information was published on March 16, 1999 [64 FR 13048].

DATES: Comments must be submitted on or before July 2, 1999.

FOR FURTHER INFORMATION CONTACT: Crawford Ellerbe, Office of Maritime Labor, Training and Safety, MAR–250, Maritime Administration, Room 7302, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5755 or FAX 202–493–2288. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title: Request for Waiver of Service Obligation/Request for Deferment of Service Obligation.

OMB Control Number: 2133–0510.

Type of Request: Extension of currently approved collection.

Affected Public: Students and graduates of the U.S. Merchant Marine Academy and subsidized students or graduates of the State Maritime Academies who request waivers of service obligations.

Form (s): MA–355; MA–528; MA–742; MA–828; and MA–942.

Abstract: This information collection is essential for determining if a student or graduate of the U.S. Merchant Marine Academy (USMMA) or subsidized student or graduate of a State Maritime Academy has a waivable situation preventing them from fulfilling the requirements of a service obligation contract signed at the time of their enrollment in a Federal maritime training program.

Annual Estimated Burden Hours: 75.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, Attention MARAD Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Issued in Washington, D.C. on May 27, 1999.

Joel C. Richard

Secretary, Maritime Administration.

[FR Doc. 99–13949 Filed 6–1–99; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 99–5287; Notice 2]

Dailey Body Company; Grant of Application for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 121

We have decided to grant the application by Dailey Body Company of Oakland, California, to exempt five trailers from Motor Vehicle Safety Standard No. 121 *Air Brake Systems.* The statutory basis for our action is that we have found that ''compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.'' 49 U.S.C. 30113.

We published notice of receipt of the application on March 22, 1999, and afforded an opportunity to comment (64 FR 13843). However, no comments were received.

The discussion below is based upon the information that Dailey provided in its application.

Why Dailey Needs an Exemption

Dailey requested an exemption for five ''special reel hauling'' trailers that it was unable to complete before March 1, 1998, because of changes requested by its customer, Pacific Gas & Electric Co., (PG&E) during construction of the trailers. On March 1, 1998, an amendment to Federal Motor Vehicle Safety Standard No. 121 *Air Brake Systems* became effective, requiring these trailers to be equipped with an anti-lock brake system. According to the company, there is no after market kit available to convert the air-over-hydraulic brake system to meet the new requirements of S5.1.6.

Why Compliance Would Cause Dailey Substantial Economic Hardship

Since there is no aftermarket kit available to convert the trailers to a conforming brake system, Dailey would be unable to sell them absent an exemption. It has $250,000 of its operating capital tied up in the trailers, and would have to absorb the loss. This figure is almost equal to its combined net income for the years 1996 and 1997, $252,519.

How Dailey Tried in Good Faith To Comply With Standard No. 121

Dailey's total trailer production in the 12-month period preceding the filing of its application was 43. It was also the final-stage manufacturer and certifier of 938 ''chassis with bodies.'' Other than the five trailers for which it requests exemption, its trailers manufactured since March 1, 1998, comply with Standard No. 121.

Why an Exemption for Dailey Would Be in the Public Interest and Consistent With the Objectives of Motor Vehicle Safety

Dailey believes that it would be in the public interest ''to keep from imposing a hardship, that could adversely affect employment, on a company that has been successfully building truck body equipment for over 50 years.'' Because only five trailers will be exempted, the risk to the public will be small. The trailers were manufactured to conform with regulations that existed at the time production was scheduled.

Our Finding That Compliance Would Cause Substantial Economic Hardship to a Manufacturer That Has Tried in Good Faith To Comply With Standard No. 121

If we denied Dailey's application, the company would be unable to sell the five trailers. We assume that some of the $250,000 of its operating capital tied up in the vehicles would not be totally lost as Dailey indicates, but, in large part, could be reclaimed over time by sales of components of the trailers as replacement parts. Nevertheless, it is evident that the company's net income has been marginal in recent years, and that recoupment of $250,000 plus profit from the sales of the five trailers would make an immediate and material improvement in its income statements. These trailers represent over 10 percent of its annual trailer production.

With the exception of these trailers, Dailey's vehicles are complying with Standard No. 121. These trailers also would have complied had not the customer ordered changes during their production. Dailey has sought, but not found, a means of bringing them into conformity.

Our Finding That an Exemption Would Be in the Public Interest and Consistent With the Objectives of Motor Vehicle Safety

Dailey argued that an exemption would be in the public interest as avoiding an adverse effect upon employment. We agree that full employment is in the public interest, and also conclude that the fact that the vehicles are intended for work-performing use by a public utility is also a factor in favor of an exemption. The presence of five reel-hauling trailers on the public roads will not have a discernable effect on motor vehicle safety. Further, the trailers will be certified as meeting all other applicable Federal motor vehicle safety standards.

For the reasons discussed in the two sections above, it is hereby found that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard from which it has requested exemption. It is further found that a temporary exemption would be in the public interest and consistent with the objectives of motor vehicle safety.

Accordingly, Dailey Body Company is hereby granted NHTSA Temporary Exemption No. 99–6, from S5.1.6 of 49 CFR 571.121 *Air Brake Systems,* to cover the manufacture for sale, sale, offer for sale, introduction into interstate commerce, and delivery for introduction in interstate commerce, of five reel-hauling trailers manufactured for Pacific Gas & Electric Co., said exemption to expire when the last of the acts stated above occurs with respect to the last trailer exempted by this notice, or August 1, 1999, whichever first occurs.

Authority: 49 U.S.C. 30113; delegation of authority at 49 CFR 1.50.

Issued on: May 26, 1999.

Ricardo Martinez,

Administrator.

[FR Doc. 99–13894 Filed 6–1–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 98–3343; Notice 2]

Mercedes-Benz U.S. International, Inc.; Grant of Application for Temporary Exemption From Five Federal Motor Vehicle Safety Standards

Mercedes-Benz U.S. International, Inc., of Vance, Alabama (''MBUSI''), applied for a temporary exemption from five Federal motor vehicle safety standards on behalf of the Mercedes-Benz M Class vehicle. The basis of the application was that, in the absence of an exemption, MBUSI would be prevented from selling a motor vehicle whose overall level of safety equals or exceeds that of a non-exempted vehicle. The company asked for an exemption of 2 years.

We published notice of receipt of the application on February 2, 1998, and afforded an opportunity for comment (63 FR 5415), receiving two of them. James C. Walker of JCW Consulting, Ann Arbor, Michigan, supported MBUSI. Advocates for Highway and Auto Safety (''Advocates'') opposed granting the requested exemptions for the reasons set forth below. Subsequently, MBUSI submitted a rebuttal of Advocates' comments. We also asked MBUSI to submit a photo of the M Class showing its nighttime illumination from the side, and later requested information pertaining both to German and U.S. tourist delivery programs.

Under the authority of 49 U.S.C. 30113(b)(3)(iv), as implemented by 49 CFR 555.6(d), we may exempt motor vehicles, on a temporary basis of up to 2 years, from compliance with a Federal motor vehicle safety standard upon a finding that ''(iv) compliance with the standard would prevent the manufacturer from selling a motor vehicle with an overall safety level at least equal to the overall safety level of nonexempt vehicles'' (We must also find that the exemption is in the public interest and consistent with objectives of traffic safety). The exemption covers up to 2,500 vehicles for any 12-month period that it is in effect.

MBUSI manufactures the Mercedes-Benz M Class sport utility vehicle. It has developed a version of the M Class for

export which is manufactured to European specifications. It proposes to sell a limited number of these vehicles to ''European citizens'' who ''are either visiting or temporarily assigned to work in the United States.'' This program is similar to those in which a vehicle conforming to U.S. specifications is sold to Americans from various factories in Europe. MBUSI relates that its planned program is similar to one established by General Motors for which we granted GM's petition on August 18, 1988 (53 FR 31411).

MBUSI originally stated that it was developing procedures that will ensure that the vehicles will, in fact, ''be exported within a one year time frame, or at the conclusion of a diplomatic assignment, whichever is applicable.'' Advocates contested the efficacy of such procedures, saying that it is inevitable that some exempted vehicles will be sold and operated on American roads. MBUSI stated that it will retain title along with other shipping documents until the vehicle is exported, thereby rendering subsequent sale impossible. In addition, each European owner will be required to place a deposit on the vehicle to ensure export, refundable at that time. The vehicles will have European VINs so that it will not be possible to register them in any of the states. In February 1999, MBUSI informed us that it had reached a tentative agreement with the Alabama Department of Motor Vehicles that all exempted vehicles that are sold will be fitted with non-renewable registration plates that expire at the end of the next month following delivery, i.e., an exempted vehicle delivered on July 15 will bear plates that expire on August 31. NHTSA is satisfied that MBUSI has met Advocates' objections on this issue.

In MBUSI's view, it requires partial exemptions from five Federal motor vehicle safety standards if it is not to be prevented from selling the M Class. These are set forth below.

1. *Standard No. 101, Controls and Displays.* The European specification M Class brake indicator warning light depicts the ISO brake symbol, rather than the word ''BRAKE'' as required by Table II of Standard No. 101 (this is also a requirement imposed by Standard No. 105 *Hydraulic Brake Systems).*

MBUSI does not believe that this noncompliance degrades the safety of the vehicle. The ISO symbol is well known to the Europeans who will own and drive the M Class. On the other hand, the word ''BRAKE'' could be confusing to operators with a limited command of English.

Advocates opposed granting an exemption from this requirement on the basis that NHTSA rejected the use of ISO symbols in a recent rulemaking as ''inferior in design and comprehension to U.S. symbols. 61 FR 27039, 27041 (May 30, 1996).'' The agency did not adopt certain ISO symbols for vehicles intended for sale in the United States to inhabitants of this country. But it fails to see the relevance of this fact to vehicles that will be sold to drivers who are inhabitants of countries where the ISO symbol is required, and to whom the meaning should be clear. MBUSI commented that the sale of the exempted vehicles will occur in Europe, with delivery only in the United States, so that there is no means by which other persons can purchase a European M Class in the United States. NHTSA concludes that use of the ISO symbol by MBUSI ought to provide protection to European drivers at least equal to the protection provided drivers of American cars though use of the word ''BRAKE'' in Standard No. 101.

2. *Standard No. 108, Lamps, Reflective Devices and Associated Equipment.* There are two requirements of Standard No. 108 from which MBUSI requests relief.

A. *Front and rear side marker lamps and reflectors.* Table II of Standard No. 108 requires vehicles such as the M Class to be equipped with front and rear side marker lamps and reflectors. The M Class will not be equipped with these items.

Although the M Class vehicles will lack side marker lamps and reflectors, they will be equipped with other lighting equipment not required by Standard No. 108, such as side turn signal repeaters. In addition, they will be equipped with front and rear fog lamps. Vehicles destined for Scandinavian countries will be equipped with daytime running lamps. In summary, the combined addition of these devices will, in MBUSI's opinion, add to the visibility of exempted vehicles.

Advocates opposes any exemption from side marker requirements, saying that these are lamps and reflectors which are intended ''to provide constant alerting information to other motorists and to pedestrians of the presence of a motor vehicle under conditions of adverse visibility.'' It does not regard daytime running lamps and turn signals as an acceptable substitute for markers that delineate the side.

Neither do fog lamps, in Advocates' view, serve as an acceptable substitute, because they are used infrequently, and can even be disengaged. Their use, according to Advocates, can increase the risks to highway safety ''because they are often misaimed, resulting in blinding levels of glare.''

NHTSA has considered these views, and reviewed its 1988 grant of an exemption to General Motors (GM) from the side marker lamp and headlamp photometric requirements for a similar tourist delivery program (53 FR 31411). In granting GM's petition, the agency observed:

> Although the safety benefits of side marker lamps and reflectors will not be realized there are other aspects of motor vehicle conspicuity not covered by Standard No. 108 which will be benefitted. Side turn signal lamps, daytime running lamps, * * * and red rear fog lamps have no mandatory U.S. counterparts but will be fitted on exempted vehicles. (p. 31412).

Thus, there is a precedent for granting MBUSI's request from the side marker requirements. The M Class has much the same auxiliary lighting equipment. Moreover, the rear lamp cluster wraps around the side of the vehicle while the front lamp cluster is oriented so that, it, too, is visible from the side. NHTSA asked MBUSI to provide a photograph taken in the dark, showing the side of the vehicle with the headlamps on. This photograph clearly shows that the light from these front and rear lamps allows them to serve as surrogate front and rear side marker lamps, even though the light provided by the headlamp housing wraparound is white rather than amber. In our view, this provides an equivalent level of safety, bearing in mind also that the vehicles will be operated on American roads a limited amount of time (60 days at most), and that the company expects to sell only a small number of them (in an informal conversation, fewer than 100 annually).

B. *Certain headlamp photometrics.* The M Class headlamps are designed to meet the European photometric specifications of ECE R8 rather than those of Standard No. 108. The exempted M Class would not meet the minimum candela prescribed by Standard No. 108 for the upper beam. This affects eight test points. At these points, only 20 percent to 44.9 percent of the minimum required would be reached. With respect to the lower beam, there are two test points that fail to reach the minimum, one achieving 20.2 percent of the required figure and the other 71 percent. At test point 10U–90U, the maximum candela established by Standard No. 108 is exceeded by 270.4 percent.

MBUSI relates that the ''continental European low beam pattern puts less light into the eyes of oncoming drivers * * * thereby reducing the glare experienced by oncoming drivers.'' Although the headlamps do not project

as much light down the road as U.S. headlamps, there are differing opinions ''as to which set of photometric requirements offers the optimum compromise in satisfying competing safety objectives.'' Some countries permit both European and U.S. specification headlamps, but there are no data from these countries suggesting that one type is over or under represented in crashes.

With respect to the upper beam, MBUSI states that the lamps do meet the minimum for test point HV, but not the minima at 9 degrees right and left and 12 degrees right and left. Because the European owners will be accustomed to the forward illumination characteristics of European beam patterns, ''the lighting on these vehicles should provide 'equivalent safety' for these drivers. * * *''

Advocates disagrees with these arguments. In its view, ''the low beam illumination pattern, in particular, is clearly inadequate for even minimum illumination of post- and overhead-mounted U.S. retroreflective traffic control devices, especially signs.'' As a result, ''it would not be tolerable for the agency to permit the operation of thousands of vehicles with substandard headlamps in the U.S. nighttime environment, regardless of the operating familiarity with the beam patterns and illumination characteristics of such headlamps by foreign nationals residing temporarily in the U.S.'' In rebuttal, MBUSI submitted that this deviation from the standard will not cause any adverse impacts to motor vehicle safety. Since Advocates has not cited ''any information indicating any potential for drivers accustomed to this lighting to have a greater likelihood of accidents, there is no basis to suggest this difference is significant for brief operation in the United States.''

Again, we would like to emphasize that we are not making a judgment about the relative equivalence of the U.S. and European beam patterns for vehicles manufactured for use on roads in the United States. We have consistently expressed doubts about the adequacy of the light provided by the European headlamp beam pattern for highway signs and down-the-road lighting. However, MBUSI is not asking us to make a judgment about the relative merits of the European headlamp beam for drivers of vehicles manufactured for use in the United States. Instead, the question is solely whether this beam pattern offers equivalent safety for the driver of a vehicle not manufactured for use in the United States, i.e., European drivers who are familiar with the European beam pattern. In these narrow circumstances we have concluded that, given the continental driving experience of the European M Class purchasers, no safety risk is presented by allowing a limited number of M Class vehicles to be operated for a limited period of time on American roads.

3. *Standard No. 111, Rear View Mirrors.* The passenger side convex rear view mirror will not contain the warning required by S5.4.2 for American-market cars that ''Objects in Mirror Are Closer Than They Appear.''

According to MBUSI, the European drivers will be familiar with outside convex mirrors because they are used throughout Europe without a legend inscribed, and no safety value is added by requiring the legend to be etched into the mirror.

Advocates expressed general opposition to this request, without specific comment. Given that the exempted mirrors will provide an even larger unobstructed field of view without the legend, and that European drivers are used to convex mirrors without the warning, we have concluded that these mirrors will provide an overall level of safety at least equal to that of passenger side exterior rearview mirrors which comply with Standard No. 111.

4. *Standard No. 120, Tires for Vehicles Other Than Passenger Cars.* The M Class exempted vehicles will not carry a tire information label as required by S5.3 of Standard No. 120.

However, there will be a European tire pressure information label adjacent to the fuel filler opening, the location for many European vehicles. Since Europeans are accustomed to that location for the tire information label, there is no safety value added by placing the label in the locations required under the standard. In addition, according to MBUSI, ''since the vehicle will be permanently exported for use in Europe, the tire information label must contain the information required by European standards.''

During the comment period, we asked MBUSI to provide a copy of the tire information label mentioned in its application. MBUSI did so on February 24, 1998, with the contradictory statement that ''under European law, a tire placard is not required. Therefore, there are no European regulations specifying the contents of a tire placard.'' However, the company voluntarily provides tire pressure information on a label affixed to the fuel filler door.

Advocates opposed this exemption on general grounds, without specific comments. MBUSI commented in rebuttal that the location of the label, near the fuel filler opening, may serve to remind drivers to check the vehicle's tires and tire inflation pressure when refueling. Our review of the label shows that it lacks the tire and rim information required by Standard No. 120. This information is required to ensure a correct match between a vehicle and its tires, and its tires and their rims. Given the fact that the vehicles are intended to be exported after no more than 60 days' use in the United States, it is unlikely that tires and rims will have to be replaced before that time. Therefore, while the vehicles are in use in the United States, the tire pressure information should provide a level of safety at least equal to that afforded by a conforming label under Standard No. 120.

5. *Standard No. 209, Seat Belt Assemblies.* The seat belts in the exempted M Class vehicles will not carry the marking required by S4.1(j) of the standard). They will, however, meet ECE R16 and bear the required approval mark. MBUSI believes that the purpose of this information is to allow the belts to be tracked in a recall campaign occurring in the United States. In this case, the vehicles will be shipped to Europe, outside the coverage of any recall campaign, or the United States part-replacement system, and the respective European label is more appropriate for these vehicles.

The information required under S4.1(j) of Standard No. 209 is the name or trademark of the manufacturer, distributor, or importer; the year of manufacture, and the model. During the comment period, we also asked MBUSI to describe the information required under ECE R16. This regulation calls for the manufacturer's name, initials or trademark, the E mark, ''an approval number,'' and symbols indicating the types and performance characteristics of the restraint.

Advocates opposed a grant of the application for exemption from Standard No. 209 only on a general basis, without specific comment. We are satisfied that the ECE marking is sufficiently different from that of Standard No. 209 that, were a recall or replacement required during the period the exempted vehicle is being operated in the United States, the belts could be readily identified. We believe that MBUSI's procedures to ensure timely export will aid in locating exempted vehicles in the United States in the event of a recall. In sum, the information furnished under ECE R16 should provide a level of safety to European owners of M Class vehicles at

least equal to that provided to American owners by S4.1(j).

The Public Interest and Safety

MBUSI argued that the exemption ''would be helpful in improving the trade deficit currently being suffered by the United States,'' possessing the potential to expand into other lines. The owners of exempted M Class vehicles will contribute to local economies during their sojourn in the United States. Advocates argued that foreign tourists will continue to visit the United States and contribute to local economies if the application is denied. Although it may be in the public interest to encourage sales of products made in this country, particularly those that are exclusively made in the United States such as the M Class, this is not a factor that NHTSA considers in its regulatory decisions under the vehicle safety law.

Advocates contends that MBUSI's application ''makes only superficial and conclusory assertions that the vehicles will provide safety equal to that of vehicles built to all U.S. standards.'' Based on our review of the MBUSI petition, as supplemented by materials submitted in response to our request, we conclude that MBUSI has adequately supported its request.

An exemption from the standards would be consistent with motor vehicle safety since the exempted vehicles possess an overall level of safety at least equal to that of nonexempted vehicles and will only be used for a limited time in the United States in any event.

Decision

In consideration of the foregoing, it is hereby found that compliance with each of the standards discussed above would prevent the manufacturer from selling a motor vehicle with an overall safety level at least equal to the overall safety level of nonexempt vehicles, and that an exemption is consistent with the public interest and motor vehicle safety. Accordingly, Mercedes-Benz U.S. International, Inc., is hereby granted NHTSA Temporary Exemption No. 99–3, expiring May 1, 2001, for M Class vehicles, from: providing the word ''brake'' required by Table 2 of 49 CFR 571.101 Standard No. 101 *Controls and Displays,* requirements for side marker lamps and reflectors, and headlamps complying with S7 of 49 CFR 571.108 Standard No. 108 *Lamps, Reflective Devices, and Associated Equipment,* S5.4.2 of 49 CFR 571.111 Standard No. 111 *Rearview Mirrors,* S5.3 of 49 CFR 571.120 Standard No. 120 *Tires for Vehicles Other Than Passenger Cars,* and S4.1(j) of 49 CFR 571.209 Standard No. 209 *Seat Belt Assemblies.*

Authority: 49 U.S.C. 30113; delegation of authority at 49 CFR 1.50.

Issued on: May 26, 1999.

Ricardo Martinez,

Administrator.

[FR Doc. 99–13896 Filed 6–1–99; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Modification of Exemption From the Vehicle Theft Prevention Standard; General Motors Corporation

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of a petition for modification for previously approved antitheft devices.

SUMMARY: This agency granted in part General Motors Corporation's (GM) petitions for exemption from the parts-marking requirements of the vehicle theft prevention standard on April 27, 1990, April 9, 1991 and March 26, 1992, for the Cadillac DeVille, Pontiac Bonneville, and Buick LeSabre car lines, respectively. On August 25, 1993, this agency granted in full General Motors Corporation's (GM) petition for exemption from the parts-marking requirements of the vehicle theft prevention standard for the Oldsmobile Aurora car line. This notice grants in full GM's petition for modification of the previously approved antitheft device for the Aurora car line, and provides for full exemption of three car lines (Cadillac DeVille, Pontiac Bonneville, and Buick LeSabre) that were previously granted partial exemptions. The agency grants this petition because it has determined, based on substantial evidence, that the modified antitheft device described in GM's petition to be placed on the car lines as standard equipment, is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements.

DATES: The exemption granted by this notice is effective beginning with model year (MY) 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalind Proctor, Office of Planning and Consumer Programs, NHTSA, 400 Seventh Street, S.W., Washington, DC 20590. Ms. Proctor's telephone number is (202) 366–4807. Her fax number is (202) 493–2739.

SUPPLEMENTARY INFORMATION: In April 1990, NHTSA published in the **Federal Register** a notice granting in part the petition from General Motors Corporation (GM) for an exemption from the parts-marking requirements of the Theft Prevention Standard (49 CFR Part 541) for the model year MY 1991 Cadillac DeVille. The DeVille car line was equipped with the ''PASS-Key'' antitheft device. (See 55 FR 17854, April 27, 1990). In April 1991, NHTSA published in the **Federal Register** a notice granting in part the petition from General Motors Corporation (GM) for an exemption from the parts-marking requirements of the Theft Prevention Standard (49 CFR Part 541) for the model year MY 1992 Pontiac Bonneville. The Bonneville car line was equipped with the ''PASS-Key'' antitheft device. (See 56 FR 14413, April 9, 1991). In March 1992, NHTSA published in the **Federal Register** a notice granting in part the petition from General Motors Corporation (GM) for an exemption from the parts-marking requirements of the Theft Prevention Standard (49 CFR Part 541) for the model year MY 1993 Buick LeSabre. The LeSabre car line was equipped with the ''PASS-Key II'' antitheft device. (See 57 FR 10517, March 26, 1992). In August 1993, NHTSA published in the **Federal Register** a notice granting in full the petition from General Motors Corporation (GM) for an exemption from the parts-marking requirements of the Theft Prevention Standard (49 CFR Part 541) for the model year 1995 Oldsmobile Aurora. The Aurora car line was equipped with the ''PASS-Key II'' antitheft device. (See 58 FR 44872, August 25, 1993).

The agency granted partial exemptions for the Cadillac DeVille, Pontiac Bonneville and Buick LeSabre lines at that time because the devices lacked an audible and visual alarm system. As such, the GM systems lacked, as standard equipment, an important feature that the agency has defined in its rulemaking on Part 543 as one of several attributes which contribute to the effectiveness of an antitheft device: automatic activation of the device; an audible or visual signal that is connected to the hood, doors, and trunk, and draws attention to vehicle tampering; and a disabling mechanism designed to prevent a thief from moving a vehicle under its own power without a key. The lack of an audible or visual warning device made the agency uncertain as to whether the device would be as effective as parts marking in deterring theft of these vehicles. Consequently, the agency believed that because of the lack of theft data and information available at that time for lines installed with antitheft

devices that did not have an audible or visual alarm system, GM should be granted a partial rather than full exemption. Therefore, GM was required to mark the lines' engine and transmission only.

The ''PASS-Key'' theft deterrent system utilized an ignition key, an ignition lock cylinder and a decoder module. The conventional mechanical code permits the key to release the steering wheel and transmission shift lever locks. Before the vehicle can be started the electrical resistance of a pellet embedded in the shank of the key must be sensed by elements in the lock cylinder and its value compared to a fixed resistance in the decoder module located in the instrument panel in the passenger compartment. If the key pellet has the proper resistance, the starter enable relay is energized and a discrete signal is transmitted to the electronic control module. If a key other than the one with the proper resistance for that vehicle is inserted, the decoder module will shut down for two to four minutes. Use of any keys with different resistance pellets will cause the time to recycle and begin again with each failed attempt. The components are located in the passenger compartment behind the instrument panel, with the exception of the starter solenoid/starter motor combination which is physically located in the engine compartment.

GM's ''PASS-Key II'' device, used on the Oldsmobile Aurora beginning in the1995 model year, utilizes an ignition key, an ignition lock cylinder and a decoder module and is passively activated. Unlike the ''PASS-Key'', in the ''PASS-Key II'', if a key other than the one with proper resistance for the vehicle is inserted, the decoder module will shut down the fuel injector pulses to the engine for three minutes plus or minus eighteen seconds. In the ''PASS-Key'' this shut down period is two to four minutes. Additionally, if during the time the decoder module has shut down in ''PASS-Key II,'' trial and error attempts are made to start the engine with various keys, the timer for the decoder module does not reset back to zero.

''PASS-Key II'' is a modification of the ''PASS-Key'' theft deterrent system. Since August 1989, the agency has determined that the ''PASS-Key'' system, installed as standard equipment, will likely be as effective reducing and deterring motor vehicle theft as compliance with the theft prevention standard (see 54 FR 33655, August 15, 1989). In a February 7, 1992 letter to GM, the agency determined that changes in the ''PASS-Key II'' constituted a de minimis change in the ''PASS-Key'' system, which was the basis for the agency's previous granting of a partial theft exemption for car lines that had, as standard equipment, the ''PASS-Key'' system.

GM stated that for MY 2000, the ''PASS-Key III'' antitheft device to be used on the Cadillac DeVille, Pontiac Bonneville, Buick LeSabre and Oldsmobile Aurora car lines will utilize more advanced technology than the ''PASS-Key'' or ''PASS-Key II'' devices. The ''PASS-Key III'' device will add new features and refinements to some of the previous ''PASS-Key/PASS-Key II'' components. As with the ''PASS-Key'' and ''PASS-Key II'' antitheft devices, the ''PASS-Key III'' device will remain fully functional once the ignition has been turned off and the key has been removed. No operator action will be required other than removing the key. The ''PASS-Key III'' will also use a special ignition key and decoder module. The conventional mechanical key unlocks and releases the steering wheel and transmission lever. However, before the vehicle can be operated, the key's electrical code must be sensed by the key cylinder and properly decoded by the decoder module.

GM stated that the transponder, now embedded in the head of the key for the ''PASS-Key III'' device, is stimulated by a coil surrounding the key cylinder. The transponder in the key then emits a modulated signal at a specified radio frequency. The identity of the key is an integral and unique code within the modulated signal. The key cylinder coil receives and sends the modulated signal to the decoder. When the decoder module recognizes a valid key code, it sends an encoded message to the Powertrain Control Module (PCM) to enable fuel flow and starter operation. If an invalid key is detected, the ''PASS-Key III'' decoder module will transmit a different password to the PCM to disable fuel flow and starter operation.

The ''PASS-Key III'' device has the potential for over four trillion unique electrical key codes. GM states that the sheer volume of these codes is a highly effective deterrent to the common intruder. If an invalid key is detected, the ''PASS-Key'' was designed to shut down for two to four minutes and, the ''PASS-Key II'' for three minutes plus or minus eighteen seconds, preventing further attempts at starting the vehicle during that shutdown. GM believes that the time-consuming task of attempting to defeat a device having over four trillion key codes by a trial-and-error method eliminates the need for such an extensive shutdown period.

The ''PASS-Key III'' antenna will be located in the ignition switch assembly, and the decoder module will be mounted behind the instrument panel for the MY 2000 Oldsmobile Aurora and Pontiac Bonneville. The ''PASS-Key III'' decoder module and antenna will be located in the steering column for the MY 2000 Cadillac DeVille and Buick LeSabre lines. GM stated that the device cannot be defeated by removing and then subsequently reapplying vehicle power. Additionally, GM stated that replacement of the decoder module will not defeat the device because of its decoder module password.

GM stated that the ''PASS-Key III'' device has been designed to enhance the functionality and theft protection of the first and second-generation ''PASS-Key'' and ''PASS-Key II'' devices. However, as in the first and second-generation ''PASS-Key'' devices, the ''PASS-Key III'' device does not provide an alarm, either audible or visual to attract the attention to the efforts of an unauthorized person to enter or move the vehicle by means other than a key (49 CFR § 543.6(a)(3)(ii)). To substantiate its belief that an alarm system is not a necessary feature to effectively deter the theft of a vehicle, GM compared the reduction in thefts for Corvettes equipped with a passive antitheft device with an audible/visible alarm feature, and the Chevrolet Camaro and Pontiac Firebird car lines equipped with a passive antitheft device without an alarm feature. Results of the GM comparison indicate that the lack of an alarm feature did not reduce the effectiveness of the anti-theft system. In fact, while there was a 24 percent reduction in thefts of Corvettes, the Camaro and Firebird car lines experienced theft reductions of 66 and 69 percent respectively.

The following GM car lines have the ''PASS-Key'' device as standard equipment and have been exempted in part from the requirements of 49 CFR Part 541: the Chevrolet Camaro and Pontiac Firebird, beginning with MY 1990 (See 54 FR 33655, August 15, 1989); the Cadillac DeVille/Fleetwood and Oldsmobile 98, beginning with MY 1991 (See 55 FR 17854, April 27, 1990); and the Pontiac Bonneville and Buick Park Avenue, beginning with MY 1992 (See 56 FR 14413, April 9, 1991). NHTSA has also granted exemptions in part for the following GM car lines that have ''PASS-Key II'' as standard equipment: the Oldsmobile 88 Royale and Buick LeSabre, beginning with MY 1993 (See 57 FR 10517, March 26, 1992) and the Cadillac Eldorado and Cadillac Seville, beginning with MY 1994 (see 58 FR 11659, February 26, 1993).

Since deciding those petitions, the agency has become aware that theft data

show declining theft rates for GM vehicles equipped with either version of the ''PASS-Key'' device. A comparison of theft data for car lines incorporating the ''PASS-Key'' and ''PASS-Key II'' devices do not show that the lack of an audible or visual alarm system detracts from the effectiveness of the ''PASS-Key'' and ''PASS-Key II'' devices. The agency believes that the data show that over time, despite the absence of an audible or visual alarm system, the ''PASS-Key'' and ''PASS-Key II'' devices, when placed on car lines as standard equipment, are as likely to be as effective in deterring and reducing motor vehicle theft as compliance with the parts-marking requirements.

Based on this information, the agency has granted two GM petitions for full exemptions for car lines equipped with the ''PASS-Key II'' antitheft device. Those lines are the Chevrolet Lumina and Buick Regal car lines, beginning with the 1997 model year (See 60 FR 25938, May 15, 1995) and the Buick Riviera and Oldsmobile Aurora car lines, beginning with the 1995 model year (See 58 FR 44872, August 25, 1993). In both of those instances, the agency concluded that a full exemption was warranted because the ''PASS-Key II'' device had shown itself to be as likely as parts marking to be effective protection against theft despite the absence of a visual or audible alarm. NHTSA has also granted two exemptions in full for car lines which have the ''PASS-Key III'' device as standard equipment. Those lines are the Buick Park Avenue (See 61 FR 25734, May 22, 1996) beginning with the 1997 model year and the Cadillac Seville beginning with the 1998 model year (See 62 FR 20058, April 24, 1997).

To ensure reliability and durability of the device, GM stated that it conducted tests based on its own specified standards. GM provided a detailed list of specific tests used to validate the integrity, reliability and durability of the ''PASS-Key III'' device. GM stated that the ''PASS-Key III'' device complied with the specified requirements for each test.

To substantiate its beliefs as to the effectiveness of the ''PASS-Key III'' antitheft device, GM referenced data which provide the basis for GM's confidence that the ''PASS-Key III'' system will be effective in reducing and deterring motor vehicle theft that are contained in the response of the American Automobile Manufacturers Association to Docket 97–042; Notice 1 (NHTSA Request for Comments on its preliminary report to Congress on the Anti Car Theft Act of 1992 and the Motor Vehicle Theft Law Enforcement Act of 1984).

Additionally, GM compared its MY 2000 antitheft modification to similar devices that have previously been granted exemptions by the agency. GM stated that theft data have indicated a decline in theft rates for vehicle lines that have been equipped with the ''PASS-Key''-like systems which have exemptions from the parts-marking standard greater than that for earlier models which were parts marked. ''PASS-Key'' was made standard on the Camaro, Firebird, Seville and Eldorado beginning with MY 1989 and on Eldorado beginning with MY 1989 and on the DeVille/Fleetwood beginning with 1990. The data provided by GM were reported by the Federal Bureau of Investigation's National Crime Information Center (NCIC), which is NHTSA's official source of theft data (See 50 FR 46666, November 12, 1985). The NCIC receives reports on all thefts.

GM believes that based on the reduced theft rates of its ''PASS-Key'' and ''PASS-Key II'' equipped car lines and the proven theft-deterrence success of transponder electronics security, the ''PASS-Key III'' device to be introduced on the MY 2000 Cadillac DeVille, Pontiac Bonneville, Buick LeSabre and Oldsmobile Aurora lines is likely to be more effective in reducing and deterring motor vehicle theft than compliance with the parts marking requirements of 49 CFR Part 541.

The agency believes that there is substantial evidence indicating that the modified antitheft device to be installed as standard equipment on the MY 2000 Cadillac DeVille, Pontiac Bonneville, Buick LeSabre and Oldsmobile Aurora car lines will likely be as effective in reducing and deterring motor vehicle theft as compliance with the requirements of the Theft Prevention Standard (49 CFR Part 541). This determination is based on the information that GM submitted with its petition and on other available information. The agency believes that the modified device will continue to provide four of the five types of performance listed in Section 543.6(a)(3): promoting activation; preventing defeat or circumventing of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

As required by 49 CFR Section 543.6(a)(4), the agency also finds that GM has provided adequate reasons for its belief that the modified antitheft device will reduce and deter theft. This conclusion is based on the information GM provided on its ''PASS-Key III'' device. This information included a description of reliability and functional tests conducted by GM for the ''PASS-Key III'' antitheft device and its components.

The agency has evaluated GM's MY 2000 petition for modification of the previous exemptions granted for the Cadillac DeVille, Pontiac Bonneville, Buick LeSabre and Oldsmobile Aurora car lines from the parts-marking requirements of 49 CFR Part 541. The agency has determined that the modified device to be installed on the DeVille, Bonneville and LeSabre car lines are likely to be as effective as parts marking in preventing and deterring theft of these vehicles, and therefore qualifies for a full rather than partial exemption under 49 CFR Part 543.

Additionally, the agency concludes that the improvements made to the device to be installed on the MY 2000 Oldsmobile Aurora car line constitute a de minimis modification to the existing antitheft device.

For the foregoing reasons, the agency hereby grants GM's petition for modification of the exemptions from the parts-marking requirements previously granted to the MY 2000 Cadillac DeVille, Pontiac Bonneville, Buick LeSabre and Oldsmobile Aurora car lines beginning with the 2000 model year.

If, in the future, GM decides not to use the exemption for the car lines that are the subject of this notice, it should formally notify the agency. If such a decision is made, the car line(s) must be fully marked according to the requirements under 49 CFR 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if GM wishes in the future to modify the device on which this exemption is based, it may have to submit a petition to modify the exemption. Section 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, Section 543.9(c)(2) provides for the submission of petitions ''(t)o modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption.''

The agency wishes to minimize the administrative burden which § 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be de

minimis. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as de *minimis,* it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: May 27, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99–13956 Filed 6–1–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 24, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before July 2, 1999 to be assured of consideration.

Departmental Offices/International Portfolio Investment Data Systems

OMB Number: 1505–0001.

Form Number: Treasury International Capitol Form S.

Type of Review: Extension.

Title: Purchases and Sales of Long-Term Securities by Foreigners.

Description: Form S is required by law and is designed to collect timely information on international portfolio capital movements, including foreigners' purchases and sales of long-term securities in transactions with U.S. persons. This information is necessary for compiling the U.S. balance of payments, for calculating the U.S. international investment position, and for formulating U.S. financial and monetary policies.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 475.

Estimated Burden Hours Per Respondent: 5 hours.

Frequency of Response: Monthly.

Estimated Total Reporting Burden: 28,500 hours.

Clearance Officer: Lois K. Holland (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, NW, Washington, DC 20220.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 99–13863 Filed 6–1–99; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 24, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before July 2, 1999 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0987.

Regulation Project Number: IA–62–91 Final and Temporary (formerly LR–168–86 NPRM and LR–129–86 Temporary).

Type of Review: Extension.

Title: Capitalization and Inclusion in Inventory of Certain Costs.

Description: The paperwork requirements are necessary to determine whether taxpayers comply with the cost allocation rules of section 263A and with the requirements for changing their methods of accounting. The information will be used to verify taxpayers' changes in methods accounting.

Respondents: Business or others for-profit, Farms.

Estimated Number of Respondents/Recordkeepers: 20,000.

Estimated Burden Hours Per Respondent/Recordkeeper: 5 hours.

Frequency of Response: Other (in the year of change).

Estimated Total Reporting/Recordkeeping Burden: 100,000 hours.

OMB Number: 1545–1496.

Regulation Project Number: REG–209673–93 Final.

Type of Review: Extension.

Title: Mark to Market for Dealers in Securities.

Description: Under section 1.475(b)–4, the information required to be recorded is required by the IRS to determine whether exemption from mark-to-market treatment is properly claimed, and will be used to make that determination upon audit of taxpayers' books and records. Also, under section 1.475(c)–1(a)(3)(iii), the information is necessary for the Service to determine whether a consolidated group has elected to disregard inter-member transactions in determining a member's status as a dealer in securities.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 3.400.

Estimated Burden Hours Per Respondent/Recordkeeper: 52 minutes.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 63,360 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 99–13864 Filed 6–1–99; 8:45 am]

BILLING CODE 4830–01–P

federal register

Wednesday
June 2, 1999

Part II

Department of Transportation

Office of the Secretary

Federal Highway Administration

Federal Railroad Administration

Federal Transit Administration

23 CFR Part 180

49 CFR Parts 80, 261 and 640

Credit Assistance for Surface Transportation Projects; Fiscal Year 1999 Applications for TIFIA Credit Assistance; Final Rule and Notice

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 180

Office of the Secretary

49 CFR Part 80

Federal Railroad Administration

49 CFR Part 261

Federal Transit Administration

49 CFR Part 640

[OST Docket No. OST–99–5728]

RIN 2125–AE49

Credit Assistance for Surface Transportation Projects

AGENCY: Federal Highway Administration (FHWA), Federal Railroad Administration (FRA), Federal Transit Administration (FTA), Office of the Secretary of Transportation (OST), U.S. Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The Department of Transportation (DOT) is implementing the Transportation Infrastructure Finance and Innovation Act of 1998 (TIFIA) to provide credit assistance to surface transportation projects. The TIFIA authorizes the DOT to provide secured (direct) loans, lines of credit, and loan guarantees to public and private project sponsors of eligible surface transportation projects. Projects will be evaluated and selected by the Secretary of Transportation. Following selections, individual credit agreements will be developed through negotiations between the project sponsors and the DOT.

EFFECTIVE DATE: This final rule is effective August 2, 1999.

FOR FURTHER INFORMATION CONTACT: FHWA: Mr. Max Inman, Office of Budget and Finance, Federal-Aid Financial Management Division, (202) 366–0673; or Mr. Steven M. Rochlis, Office of the Chief Counsel, (202) 366–1395. *FRA:* Ms. JoAnne McGowan, Office of Passenger and Freight Services, Freight Program Division, (202) 493–6390; or Mr. Joseph Pomponio, Office of the Chief Counsel, (202) 493–6051. FTA: Mr. Paul Marx, Office of Policy Development, (202) 366–1734; or Ms. Paula Schwach, Office of the Chief Counsel, (816) 523–0204. OST: Ms. Stephanie Kaufman, Office of Budget and Program Performance, (202) 366–9649; or Mr. Terence W. Carlson, Office of the General Counsel, (202) 366–9161. Department of Transportation, 400 Seventh Street, SW, Washington, DC, 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays. Hearing-and speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL) http://dms.dot.gov. It is available 24 hours each day, 365 days each year. Please follow the instructions on-line for more information and help. An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the **Federal Register**'s home page at http://www.nara.gov/fedreg and the Government Printing Office's web page at http://www.access.gpo.gov/nara.

Additional information on the TIFIA program and credit assistance for surface transportation projects generally is available at the TIFIA web site at http://tifia.fhwa.dot.gov. Among other information, the DOT will provide responses to commonly asked questions and information on participation in the TIFIA program.

Background

The Transportation Equity Act for the 21st Century (TEA–21), Public Law 105–178, 112 Stat. 107, 241, created the Transportation Infrastructure Finance and Innovation Act of 1998 (TIFIA). The TIFIA, as amended by section 9007, Public Law 105–206, 112 Stat. 685, 849, and codified at 23 U.S.C. 181–189, establishes a new Federal credit program for surface transportation projects. Funding for this program is limited, meaning that projects obtaining assistance under the TIFIA program will be selected on a competitive basis. Final selections of projects will be made by the Secretary of Transportation.

Credit assistance programs such as TIFIA are designed to assist financial markets in developing the capability to supplement the role of the Federal Government in financing the costs of large projects of national significance. Developing, implementing, and evaluating financial assistance programs is a crucial mission of the DOT. To help ensure financial and programmatic success, the DOT has established a multi-agency Credit Program Steering Committee and Working Group. The Steering Committee and Working Group are comprised of representatives from the Office of the Secretary, the Office of Intermodalism, the FHWA, the FRA, and the FTA, as well as other DOT agencies and offices. The Steering Committee and Working Group will coordinate and monitor all policy decisions and implementation actions associated with this Federal credit assistance program.

NPRM

The DOT published a notice of proposed rulemaking (NPRM) on February 8, 1999, in the **Federal Register** (64 FR 5996). Comments were filed by: Commonwealth of Virginia Department of Transportation; North Texas Tollway Authority; Transportation Corridor Agencies; Texas Department of Transportation; Washington Airports Task Force; City of Reno, Nevada; San Francisco Bay Area Rapid Transit District; Commonwealth of Pennsylvania Department of Transportation; State of Michigan Department of Transportation; American Public Transit Association; Goldman, Sachs, and Co.; and Salomon Smith Barney. The DOT is now issuing this final rule concerning administration of the TIFIA credit assistance program. This rule reflects the DOT's consideration of the comments filed in response to the NPRM.

Discussion of Rulemaking Text

The following discussion summarizes the comments submitted to the DOT by the twelve commenters on the NPRM, notes where and why changes have been made to the rule, and, where relevant, states why particular recommendations or suggestions have not been incorporated into the following regulations. Paragraph references are as designated in the NPRM.

Discussion of Comments and Responses by Section

Section ____.3 Definitions

Investment-Grade Rating. One commenter suggested that the definition of investment-grade rating include references to the equivalent short-term investment-grade ratings in addition to the long-term investment-grade ratings currently presented.

DOT Response: The ratings specified in the current definition pertain to any fixed-rate debt obligation with a term of one year or longer. For a project with long-term obligations in the form of variable-rate demand notes or other floating-rate instruments, it will be

necessary for the project sponsor to secure a long-term rating as well as a short-term rating.

Lender. One commenter asked whether a lender may be an entity other than a non-Federal qualified buyer (institutional investor).

DOT Response: The DOT must adhere to statutory language appearing at 23 U.S.C. 181(4). This language is explicit in defining lender as a ''non-Federal qualified institutional buyer.''

Local Servicer. One commenter suggested that the definition of ''local servicer'' be revised to clarify that the local servicer may also be the obligor in TIFIA credit transactions.

DOT Response: Although the statutory language appearing at 23 U.S.C. 185 does not address whether a governmental obligor may be its own servicer, it would be unsuitable for an obligor to be a servicer of its own credit instrument. Any local servicer will need to be an agent of the Secretary, rather than the obligor. The Secretary will determine the acceptability of proposed servicers for each project.

Project. One commenter suggested that discrete pieces of a larger project qualify for TIFIA assistance under the definition of ''project.''

DOT Response: In general, the scope of a TIFIA project should align with the definition that appears or will appear in that project's environmental Record of Decision (ROD). However, if one environmental document is prepared for a project of considerable length (such as a facility where various segments of independent utility may be separately financed, constructed, and operated over a significant period of time), that entire facility may not necessarily be considered a single project. The Secretary will make such determinations on a case-by-case basis.

Project Obligation. One commenter suggested that ''project obligation'' include any refinanced or refunded debt that was previously supported by a TIFIA credit instrument.

DOT Response: A project sponsor that receives a TIFIA loan guarantee or line of credit may refund the guaranteed loan or project obligations issued in connection with the line of credit at a subsequent date, provided that the Secretary determines that such refunding does not increase the DOT's credit risk.

Substantial Completion. One commenter suggested more flexibility in the definition of ''substantial completion.''

DOT Response: The definition of substantial completion that appears in § ____.3 of this rule is quoted directly from statutory language appearing at 23 U.S.C. 181(15). The DOT agrees that, in some cases, this statutory language may require elaboration to accommodate certain types of projects that are eligible for TIFIA assistance. Section ____.3 of the rule, therefore, has been revised to reflect that substantial completion means the opening of a project to vehicular or passenger traffic or a comparable event as determined by the Secretary and specified in the credit agreement.

Section ____.5 Limitations on Assistance

Section ____.5(a). Two commenters suggested that eligible project costs should be measured on an aggregate cash (future value) basis when determining the 33 percent ceiling on Federal credit assistance for projects receiving TIFIA funding.

DOT Response: The DOT agrees with the commenters' suggested approach to calculating eligible project costs. The rule has been revised to state that the total amount of credit assistance offered to any project under this part shall not exceed 33 percent of the anticipated eligible project costs, as measured on an aggregate cash (year-of-expenditure) basis.

Section ____.5(b). One commenter requested clarification regarding the need to obtain Secretarial approval for incurring costs before the application process begins.

DOT Response: The project sponsor need not obtain Secretarial approval before incurring costs on a project for which it is seeking TIFIA assistance. However, upon applying for TIFIA assistance, the applicant must obtain Secretarial approval for counting such costs toward ''eligible project costs.'' The Secretary may grant such approval after costs have been incurred and after the application has been submitted. Generally, such costs will be confined to acquisition of right-of-way or development phase expenses incurred no earlier than three years prior to the date of application. The DOT determines that existing language in the rule is sufficiently broad to accommodate this understanding.

The DOT emphasizes that the Secretary will not recognize as ''eligible project costs'' any costs incurred for projects other than the one for which TIFIA assistance is being sought. Eligible project costs will be determined on a project basis, not a system basis.

Section ____.5(d). The DOT received multiple comments regarding contingent commitments of budget authority becoming available in subsequent years and the proposed letter of intent to be used to execute these commitments. Those comments relating to § ____.5(d) are addressed by subtopic below.

Section ____.5(d). Two commenters suggested that a ''letter of intent'' may not be the appropriate vehicle for executing multi-year commitments of funds under TIFIA since, in other Federal programs, it is often deemed unacceptable as a viable and predictable funding source within the investment community.

DOT Response: The DOT acknowledges that the term ''letter of intent'' may be perceived by the financial community in the context of other programs with terms and provisions different from TIFIA, potentially creating confusion or uncertainty. The DOT also recognizes that the TIFIA program's effectiveness in stimulating private investment in transportation infrastructure projects depends, in large part, on investor recognition that TIFIA credit instruments represent solid and reliable Federal commitments. Therefore, the DOT will make a future-year or multi-year contingent commitment of funds for a project using a conditional term sheet. The conditional term sheet will resemble the standard term sheet that activates DOT's obligation of budget authority, but will also include the specific actions necessary to trigger subsequent obligation(s).

Upon execution of the conditional term sheet, the DOT will reserve budget authority attributable to the appropriate year(s). This reservation will ensure that the project has a priority claim (together with that of any other projects receiving such contingent commitments) on budget authority becoming available for the specified year, provided that the project sponsor satisfies each condition outlined in the conditional term sheet. Although the DOT will reserve funding based on the conditional term sheet, it will not obligate budget authority until the specified conditions have been met. Upon satisfaction of those conditions, the conditional term sheet can be amended and/or restated to trigger an obligation of funds.

Section ____.5(d). One commenter voiced concern regarding the potential impact of annual appropriations on the availability of TIFIA budget authority. Another commenter expressed support for the possibility of the DOT placing limits on the amount of future-year budget authority that may be reserved through a conditional document, but noted that the DOT should not place a strict cap on the amount of budget authority that may be reserved in this fashion.

DOT Response: The TIFIA funding is provided through multi-year contract

authority from the Highway Trust Fund, which can be obligated in advance of appropriations. However, this contract authority is subject to the annual Federal-aid highway obligation limitation, so the DOT will exercise restraint in executing conditional term sheets and reserving budget authority. In no event shall the DOT reserve more than 50 percent of the amount of budget authority authorized for a given fiscal year.

Section ____.5(d). One commenter suggested that a project that has not received its environmental Record of Decision (ROD) be eligible for a contingent commitment of funds.

DOT Response: The DOT concurs with the commenter and reserves the right to execute a conditional term sheet with a project sponsor temporarily lacking certain required documents, such as a ROD. Upon satisfaction of the condition(s) specified in the conditional term sheet, the DOT will obligate the budget authority previously reserved. The conditional term sheet will include fixed dates by which any requirements (such as receipt of a ROD) must be satisfied in order for the reserved funding to be obligated. Such requirements should be met within 12 months from the date of execution of the conditional term sheet, except for the project segments or other milestones associated with a multi-year contingent commitment for a project requiring phased funding. In considering requests for contingent commitments of funds for projects temporarily lacking certain requirements, the DOT will give preference to those project sponsors that demonstrate an ability to satisfy such requirements within the fiscal year in which the conditional term sheet is executed.

Section ____.5(d). One commenter asked for clarification regarding how a multi-year commitment would be affected by a downgrade of an initial rating to a below-investment-grade rating.

DOT Response: A project's conditional term sheet, term sheet, and credit agreement, as applicable, will specify the consequences of any changes in its creditworthiness, including a downgraded credit rating. In general, multi-year commitments between the DOT and the project sponsor will specify that future obligations are conditional on the project sponsor maintaining an investment-grade rating on its senior obligations.

Section ____.5(d). Three commenters suggested clarification of the phrase ''satisfactory progress'' in the discussion of multi-year contingent commitments of funds. One of these commenters requested an elaboration on the consequences of a project sponsor's failure to achieve ''satisfactory progress.''

DOT Response: The DOT concurs with the need for specificity when assessing a project's ''satisfactory progress.'' Upon deciding to make a future-year or multi-year contingent commitment of funds for a project, the DOT and the project sponsor will identify precise project-specific milestones or other events to serve as prerequisites for future obligations of funds. These milestones or events will be determined for each project and specified in the conditional term sheet that the DOT and the project sponsor execute when formalizing a future-year or multi-year contingent commitment of funds.

Section ____.7 Application Process

*Section ____.*7(b). One commenter addressed a number of issues regarding the application checklist included as an appendix to the NPRM. Specific concerns related to: the impracticality of requesting copies of all governmental permits obtained for the project; the number of years for which historical information on the project applicant will be required; and the format of a project schedule, particularly with regard to whether the project's annual increments would be represented as dollars or milestones and how costs for design/build projects would be calculated when there are no base years or annual cost escalations.

DOT Response: The DOT agrees with the commenter regarding the impracticality of requiring applicants to include copies of all permits associated with the relevant project. Therefore, the DOT will request copies of only those permits that represent major milestones on the path to construction and completion either as part of the TIFIA application or as part of the credit agreement, as appropriate.

Regarding the number of years for which historical information will be required from the applicant, the DOT intends to require applicants to provide three years of historical financial information.

Concerning the project schedule, the DOT will require applicants to provide a timeline that illustrates the estimated start and completion dates for each major phase of development and construction and/or acquisition. In addition, applicants will be required to provide a statement of sources and uses of funds and a projection of annual cash flows.

Although design/build projects are typically budgeted as a total amount, the cash flow pro forma should indicate the scheduled payouts. Additionally, the terms or anticipated terms of the design/build contract (including incentive payments or penalty provisions) should be explained.

These clarifications will be reflected in the text of the TIFIA application form, and do not necessitate any changes to the final rule itself.

*Section ____.*7(b)(1). Four commenters were concerned that the application process for the TIFIA program would require them to produce more permits and approvals than would be feasible at the time of application, especially with respect to environmental documentation. These commenters requested that DOT clarify that certain permits, approvals, and ratings referred to in the threshold and selection criteria do not necessarily have to be obtained at the time of application.

DOT Response: The DOT recognizes the need for distinguishing between the documentation that must accompany the TIFIA application and the documentation that must be produced later in the funding process. For example, it is not necessary for the applicant to obtain an environmental Record of Decision (ROD) prior to the time of application submission; however, at a minimum the DOT will require applicants to have already circulated a draft Environmental Impact Statement or received a Finding of No Significant Impact or Categorical Exclusion, as applicable. The ROD will then be required as a condition for obligation of funds.

As another example, the DOT will not require that applicants submit a formal investment-grade rating on the project's senior obligations at the time of application submission. Instead, the DOT will require that project sponsors provide a preliminary rating opinion letter at that point. However, the DOT shall disburse TIFIA funds only after the project's senior obligations have obtained a formal investment-grade rating and a formal credit agreement has been executed. This rating requirement is clarified in § ____.11 (a) and (b).

The application materials explicitly state what documentation is required at specific points in the process. As noted above, under limited circumstances, the DOT will consider executing a conditional term sheet that reserves budget authority but postpones obligation until the receipt of specified documentation or satisfaction of other requirements.

*Section ____.*7(d). Several commenters suggested that DOT establish a rolling, rather than annual application and approval process.

DOT Response: The DOT has determined that a rolling application and approval process, which could result in a ''first-come, first-served'' funding process, would be contrary to the public interest. The DOT's commitment to building the strongest TIFIA portfolio possible requires that the Secretary have the opportunity to compare competing proposals each fiscal year.

The DOT recognizes that some prospective applicants may view an annual application process as unduly restrictive. To build greater flexibility into the application process, the DOT may consider establishing a semi-annual process for accepting and approving applications starting in fiscal year 2000. Such a process might be divided into a primary and secondary round of application submissions. For a given fiscal year, the DOT could accept an initial round of applications early in the year and announce project selections by mid-year. If there were current-year budget authority remaining after this initial round, the DOT could choose to accept a second round of applications later in the year, making any additional project selections before the fiscal year-end. Alternatively, the DOT may elect to carry forward unused budget authority without accepting additional applications in a given year. The exact timing of application submittals and project selections in a given fiscal year will be published in advance in the **Federal Register**.

Section ____.11 Investment-grade ratings

Section ____.11. One commenter suggested that DOT consider extending loan guarantees to non-investment-grade credits.

DOT Response: The TIFIA statute is explicit in stating that DOT's funding of a secured (direct) loan is contingent on the project's senior obligations receiving an investment-grade rating (23 U.S.C. 183(a)(4)) and applies this requirement to loan guarantees as well (23 U.S.C. 183(e)). Accordingly, the DOT will not guarantee loans to any project whose senior obligations fail to attain an underlying investment-grade rating.

Section ____.11. One commenter suggested that the formal rating requirement be waived if the project has bond insurance.

DOT Response: The project sponsor's purchase of bond insurance is relevant to the DOT only if the Federal Government enjoys the same security as do other investors in the project. Neither the preliminary rating opinion letter nor the formal credit rating should reflect the effect of bond insurance, unless that insurance provides credit enhancement that secures the TIFIA obligation as well. This clarification appears at § ____.11(c).

Section ____.11. One commenter requested clarification regarding the term ''rating agency.'' Specifically, the commenter asked if a rating agency must be nationally recognized.

DOT Response: The term ''rating agency'' is defined to mean ''a bond rating agency identified by the Securities and Exchange Commission as a nationally recognized statistical rating organization'' in § ____.3 (Definitions) of the final rule.

Section ____.13 Threshold Criteria

Section ____.13(a)(1). Two commenters suggested that the DOT require a project's inclusion on a local and/or regional plan as appropriate, but not on a long-range State transportation plan because many States' plans are policy documents that are not project-specific.

DOT Response: In recognition of commenters' concerns regarding the planning requirements for TIFIA projects, the DOT has clarified its interpretation of the TIFIA statutory provisions that address this issue (23 U.S.C. 182(a)(1) and 23 U.S.C. 182(a)(2)). The DOT has revised Section ____.13(a)(1) to require an applicant to demonstrate that its project is consistent with the long-range State transportation plan and, if located in a metropolitan area, is included in that area's metropolitan transportation plan. As stated in the NPRM, any approved project must appear in an approved State transportation improvement program before the DOT will obligate funds on the project's behalf.

Section ____.13(a)(1). One commenter suggested that for a project subject to multi-State jurisdiction, the DOT accept a plan adopted by an agency's Board of Directors rather than require the project to be in a State transportation improvement program.

DOT Response: The TIFIA statute is explicit in requiring that State support for any TIFIA project be evidenced by the project's inclusion in the State transportation improvement program (23 U.S.C. 182(a)(1)(B)). The fact that a project spans multiple jurisdictions or States does not obviate this requirement. In the event of a multi-jurisdictional project, the project must appear on the approved State transportation improvement program for each State involved.

Section ____.13(a)(4). One commenter requested clarification regarding the threshold criterion that requires a pledge of dedicated revenue sources (23 U.S.C. 182(a)(4)). The commenter asked whether the referenced requirement applies to the entirety of the project financing or only to the portion of the project financing deriving from TIFIA credit assistance.

DOT Response: The TIFIA statute states that ''project financing shall be repayable, in whole or in part, from tolls, user fees, or other dedicated revenue sources,'' (23 U.S.C. 182(a)(4)). The DOT interprets this to mean that an applicant must pledge a dedicated revenue source, as approved by the Secretary, to repay at least part of the entire project financing. Regarding pledged security for the TIFIA credit instrument, the TIFIA statute is again clear in requiring that at least part, but not necessarily all, of the pledge must derive from an approved dedicated revenue source (23 U.S.C. 183(b)(3) and 23 U.S.C. 183 (c)(3)). Securing the TIFIA credit instrument with dedicated revenue sources, at least in part, would satisfy these statutory requirements.

Section ____.13(a)(5). One commenter suggested that the DOT require private project sponsors to demonstrate State support for the project and prove that they will be given the authority from the State to develop the project for which assistance is being sought. The commenter proposed these requirements in addition to the current requirement that projects be included in the State transportation plan and the approved State transportation improvement program.

DOT Response: The DOT considers any project appearing in an approved State transportation improvement program (23 U.S.C. 135(f)) to have been fully reviewed by the State in question. The DOT considers that a project's appearance in the approved State transportation improvement program and its acquisition of necessary permits demonstrate State support for the project, regardless of whether the project is publicly or privately sponsored.

Section ____.13(c). One commenter suggested that the DOT recognize alternative forms of collateral (e.g., revenues from leases or real estate) as pledged security (dedicated revenue sources).

DOT Response: The DOT agrees that the collateral value of other types of pledged assets (such as lease income) should be explicitly recognized, and may, upon thorough evaluation, be deemed to represent a satisfactory dedicated revenue source for the purposes of administering the TIFIA program. The DOT has clarified its position on acceptable forms of dedicated revenue sources and/or pledged security in the rule. New

language has been added to § ____13(c) to specify that the Secretary will determine the acceptability of contributions of collateral and other proposed pledges on a case-by-case basis.

Section ____.13(c). One commenter suggested that the DOT accept a general obligation as a dedicated revenue source and permit project obligations to be repaid from general revenues as well as dedicated revenue sources.

DOT Response: The DOT agrees that general obligation pledges or general corporate promissory pledges should be explicitly recognized, and may represent a satisfactory dedicated revenue source for the purposes of administering the TIFIA program. The DOT has clarified its position on acceptable forms of dedicated revenue sources and/or pledged security in the rule. New language has been added to § ____.13(c) to specify that general obligation pledges may be acceptable.

Section ____.13(c). Two commenters suggested that the DOT allow limited use of Federal funds to repay TIFIA credit.

DOT Response: Federal funds, regardless of source, are not eligible to serve as pledged security for a TIFIA credit instrument. This position is consistent with both Federal credit policy and Congressional intent that the Federal Government encourage the utilization of project-based revenue sources. Revised regulatory language appearing at § ____.13(c) upholds this policy.

Section ____.15 Selection Criteria

Section ____.15(a). One commenter suggested that the DOT clarify how projects will be evaluated and selected.

DOT Response: The TIFIA statute specifies eight criteria by which the Secretary shall evaluate and select qualified projects. The DOT finds these eight mandatory selection criteria to be sufficient, and does not plan to favor certain criteria over others or to establish additional criteria for fiscal year 1999 evaluations and selections. Beginning with fiscal year 2000, and in conjunction with the TIFIA application process, the Secretary will announce specific weighting factors for the statutory selection criteria as well as policy goals for the program. In addition, the Secretary will make publicly available the summary results of each project's evaluation as well as the final project selections.

Section ____.15(a). One commenter suggested that the DOT give priority to projects that improve airport access.

DOT Response: Eligibility for TIFIA assistance extends to all surface transportation projects specified in § ____.3 of this rule, including those that provide airport access. Accordingly, the DOT sees no need for specially recognizing ground transportation systems that seek to improve regional access to airports.

Section ____.15(a)(2). One commenter suggested that a rate covenant is unnecessarily restrictive and that an investment-grade rating should be sufficient to demonstrate a project's creditworthiness.

DOT Response: The TIFIA statute does not require that a rate covenant be provided for proposed TIFIA projects. Rather, the statute notes the need for sufficient pledged security to support the project obligations, and that such security may include a rate covenant, coverage requirement, or other security features (23 U.S.C. 183(b)(3)(iii) and 23 U.S.C. 184 (b)(5)(ii)). The acceptability of pledged security will be determined by the Secretary on a case-by-case basis. There is no need for further clarification in the rule.

Section ____.15(a)(3). One commenter suggested that the DOT modify the language in this paragraph to read: ''The extent to which such assistance would foster innovative public-private partnerships [OR] attract private debt or equity investment.''

DOT Response: The TIFIA statute is clear in its use of the word ''and.'' Accordingly, the DOT will apply this criterion conjunctively by assessing both the extent to which the project involves a public-private partnership and the extent to which the project is funded with private investment. A project may achieve each of the two objectives in varying degrees.

Section ____.15(a)(3). Two commenters suggested that the DOT recognize local and State government investment in projects when evaluating applications for TIFIA assistance.

DOT Response: The DOT recognizes that the TIFIA program will leverage Federal funds with both private investment and State and local government investment. The DOT will acknowledge all sources of contributed or invested capital when evaluating applications and sees no justification for amending the rule on this issue.

Section ____.15(a)(5). One commenter suggested that the DOT further emphasize technology as an evaluation criterion and that the technology requirement not be limited strictly to intelligent transportation systems (ITS).

DOT Response: The selection criterion related to the applicant's use of new technologies appearing in the TIFIA statute (23 U.S.C. 182(b)(2)(A)(v)) and in § ____.15(a)(5) of the rule, which references ITS, is not intended to be limiting. The DOT's project evaluation will take into account all new technologies being deployed.

Section ____.15(a)(6). Two commenters suggested that the DOT measure the impact of TIFIA financing on a relative basis rather than strictly calculating the absolute amount of budget authority needed or the amount of private investment attracted.

DOT Response: The DOT agrees that the absolute amount of budget authority required to fund a TIFIA credit instrument will not indicate the leveraging effect of the credit assistance as effectively as a relative comparison of the required budget authority and nominal value of credit assistance. The DOT intends to evaluate projects on the basis of ratios as opposed to absolute amounts wherever appropriate. The DOT believes that this approach is consistent with the language in § ____.15(a)(6) and does not necessitate any change to the rule.

Section ____.15(d). Two commenters requested that the DOT clarify what is meant by a ''small'' Federal contribution. Additionally, the commenters suggested that the DOT refrain from placing any limits on the level of Federal contribution for those projects receiving TIFIA assistance.

DOT Response: The DOT's assessment of total Federal contributions is intended to support selection criteria three and eight as specified in the TIFIA statute (23 U.S.C. 182(b)(2)(A)(iii and viii)) and the rule (§ ____.15(a)(3 and 8)). The DOT will implement these criteria through a relative evaluation of the total Federal contribution as a share of total project costs, and in considering criterion eight will give preference to projects for which total Federal assistance would be reduced due to the use of the TIFIA credit instrument. The DOT has revised the rule in § ____.15(d) to reflect the Federal Government's interest in the relative reduction in Federal assistance rather than a ''small'' contribution as measured in absolute terms.

Section ____.17 Charges

Section ____.17(c). Two commenters suggested placing limits on the amount of any application initiation charges or credit processing charges. Allowing the DOT to increase the application initiation or credit processing charges up to the full cost of the Federal subsidy seemed unreasonable and could potentially result in lower-risk projects ''subsidizing'' higher-risk projects.

DOT Response: The DOT has clarified its position on various charges relating to the TIFIA program. The DOT will

require a non-refundable application initiation charge for each project applying for TIFIA assistance. The DOT may also require an additional credit processing charge for projects selected to receive assistance. Any required application initiation or credit processing charge must be paid by the project sponsor applying for the TIFIA assistance and cannot be paid by another party on behalf of the project sponsor. The proceeds of any such charges will equal a portion of the costs to the Federal Government of soliciting and evaluating applications, selecting projects to receive assistance, and negotiating credit agreements. For fiscal year 1999, the DOT will require an application initiation charge of $5,000 for each project applying for TIFIA assistance. The DOT will not require any credit processing charges for fiscal year 1999. For each application and approval cycle in fiscal year 2000 and beyond, the DOT may adjust the amount of the application initiation charge and will determine the appropriate amount of the credit processing charge on the basis of its program implementation experience. The DOT will publish these amounts in each **Federal Register** solicitation for applications.

If, in any given year, there is insufficient budget authority to fund the credit instrument for a qualified project that has been selected to receive TIFIA assistance, the DOT and the approved applicant may agree upon a supplemental charge to be paid by or on behalf of the approved applicant to reduce the subsidy cost of that project.

Project sponsors shall not include any of these fees or charges among eligible project costs for the purpose of calculating the maximum 33 percent credit amount.

Sections ____.17(a), ____.17(b), and ____.17(c) have been revised to reflect these clarifications regarding charges.

General Comments

One commenter suggested that the TIFIA regulations be amended to clarify that a project sponsor may draw on a line of credit before drawing on its debt service reserve fund.

DOT Response: Section 184(b)(3) of title 23 provides that the obligor may draw upon the line of credit only if net project revenues (including, among other sources, any debt service reserve fund) are insufficient to pay costs specified in 23 U.S.C. 184(a)(2). These costs include debt service costs. The DOT interprets debt service costs to include both direct payments of principal and interest as well as reimbursements for such payments in the form of legally required deposits to a debt service reserve fund. Nothing would prohibit a credit agreement for a line of credit from allowing immediate reimbursements to a debt service reserve fund in the event of withdrawals from such a fund. This clarification appears at ____.5(e).

One commenter suggested that the 20 percent limitation on annual draws on a line of credit should be adjusted to reflect the amount's future value for the year in which the draw may be made, as opposed to the present value for the year in which the line of credit is executed.

DOT Response: The TIFIA statute is explicit in stating that the total amount of a line of credit shall not exceed 33 percent of the reasonably anticipated eligible project costs (23 U.S.C. 184(b)(2)(A)), and that the amount drawn in any one year shall not exceed 20 percent of the total amount of the line of credit (23 U.S.C. 184(b)(2)(B)). Also, the DOT has determined that eligible project costs will be measured on an aggregate cash basis (i.e., year-of-expenditure dollars) through the end of the construction period (without any discounting or inflating of nominal amounts). It would be both contrary to statute and internally inconsistent to inflate future-year amounts for the draws on a line of credit.

One commenter suggested that the DOT consider the possibility of purchasing the loans it has guaranteed.

DOT Response: While the TIFIA statute explicitly authorizes the DOT to sell direct loans (23 U.S.C. 183(d)), the statute does not provide similar language that would authorize the DOT to purchase guaranteed loans. Moreover, the policy of the DOT acquiring loans it has guaranteed would be contrary to the program's goal of supporting the private sector's ability to accurately assess the risk of revenue-backed surface transportation projects. Other than instances involving the assignment of guaranteed loans due to default, the DOT will not consider the acquisition of guaranteed loans.

Several commenters requested clarification of the statements in the NPRM regarding the provisions of section 149(b) of the Internal Revenue Code (the ''Code'') that deny tax-exempt status to obligations that are directly or indirectly federally guaranteed within the meaning of the Code. Two commenters asked whether interest on otherwise tax-exempt bonds used to finance a TIFIA-assisted project would be deemed taxable as a consequence of Federal assistance to the project under the TIFIA program.

DOT Response: The Conference Report for TIFIA contains the following statements: ''The Conference recognizes that the Congress enacted the Deficit Reduction Act of 1984 provision prohibiting the combination of Federal guarantees with tax-exempt debt, because of concerns that such a double-subsidy could result in the creation of a 'AAA' rated security superior to U.S. Treasury obligations. Accordingly, any project loan backed by a loan guarantee as provided in TIFIA must be issued on a taxable basis.'' And, ''The Conferees are aware that present Federal income tax law prohibits the use of direct or indirect Federal guarantees in combination with tax-exempt debt (section 149(b) of the Internal Revenue Code of 1986). The TIFIA provisions of the conference agreement do not override or otherwise modify this provision of the Code.''

The Internal Revenue Service and the Department of the Treasury, rather than the DOT, are responsible for the interpretation of the Federal tax laws, including Federal guarantee provisions. Applicants intending to use tax-exempt bonds in connection with TIFIA loans or lines of credit should consult with the Internal Revenue Service, the Department of the Treasury, or their bond counsel. The DOT will be available to provide applicants with assistance on the interpretation of the non-tax legal and financial provisions of TIFIA.

One commenter suggested that since mass transit capital projects are eligible for TIFIA credit assistance, the Mass Transit Account of the Highway Trust Fund should fund the subsidy costs of TIFIA credit instruments provided for such projects.

DOT Response: The TIFIA statute explicitly authorizes that funding will be provided from the Highway Trust Fund other than the Mass Transit Account (23 U.S.C. 188(a)(1)).

One commenter requested that DOT clarify how long TIFIA funds are available and whether funds carry over to future years.

DOT Response: As specified in the preamble of the NPRM, the TIFIA authorizes annual funding levels for both total credit amounts (i.e., the total principal amounts that may be disbursed in the form of direct loans, loan guarantees, or lines of credit) and subsidy amounts (i.e., the amounts of budget authority available to cover the estimated present value of expected losses associated with the provision of credit instruments, net of any fee income). Funding for the subsidy amounts is provided in the form of budget authority funded from the Highway Trust Fund, other than the Mass Transit Account. As a practical

example, for fiscal year 1999, the TIFIA authorizes $80 million in budget authority to fund the subsidy costs associated with a total nominal amount of direct loans, loan guarantees, and lines of credit that is limited to $1.6 billion. Depending on the individual risk assessments made for each of the projects receiving assistance, the total amount of credit assistance provided in fiscal year 1999 may be less than the $1.6 billion limitation.

Total Federal credit assistance authorized under the TIFIA program is limited to $1.6 billion in fiscal year 1999; $1.8 billion in fiscal year 2000; $2.2 billion in fiscal year 2001; $2.4 billion in fiscal year 2002; and $2.6 billion in fiscal year 2003. These amounts lapse if not awarded by the end of the fiscal year for which they are provided.

To support this assistance by funding the required subsidy amounts, the TIFIA provides budget authority of $80 million in fiscal year 1999; $90 million in fiscal year 2000; $110 million in fiscal year 2001; $120 million in fiscal year 2002; and $130 million in fiscal year 2003. Of the amounts made available, the Secretary may use up to $2 million for each of the fiscal years for administrative expenses. Unobligated budget authority remains available for obligation in subsequent years.

Note that TIFIA budget authority is subject to an annual obligation limitation that may be established in appropriations law. Like the funding for certain other administrative or allocated programs (not apportioned to the States) that are subject to the annual Federal-aid obligation ceiling, the TIFIA budget authority likely will be reduced each year before it is made available to fund credit instruments. The extent of any budget authority reduction will depend on the ratio of the obligation ceiling, which is determined annually in the appropriations process, to the contract authority for the Federal-aid highway program, which was established in TEA–21. For fiscal year 1999, this reduction was 11.7 percent, which left about $70.6 million of TIFIA budget authority instead of the $80 million originally authorized under TEA–21. Future annual reductions of like amount would result in a cumulative amount of budget authority available to fund TIFIA credit instruments of about $470 million through fiscal year 2003 instead of the $530 million originally authorized under TEA–21. The TIFIA credit amounts authorized under TEA–21 are not subject to this annual reduction.

One commenter suggested that the DOT clarify its position in regard to the Federal Government's ''parity'' claim in the event of bankruptcy.

DOT Response: The statute permits the DOT to have a lien on revenues subject to any lien securing project obligations (see 23 U.S.C. 183(b)(3)(B) and 184(b)(5)(B)), but TIFIA also requires that the secured loan, loan guarantee, or line of credit ''shall not be subordinated to the claims of any holder of project obligations in the event of bankruptcy, insolvency, or liquidation of the obligor'' (see 23 U.S.C. 183(b)(6) and 184(b)(8)). The credit agreement will specify the DOT's interest in the pledged security consistent with these provisions of law and in relation to the interests of any other creditors.

Rule Document Format

In the NPRM, the DOT proposed a common rule that would have been issued by FHWA, FRA, and FTA and repeated verbatim in each of the three Operating Administration's chapters of the Code of Federal Regulations (CFR). After reconsideration, the Secretary of Transportation is issuing the final rule once in a new CFR part (49 CFR Part 80). For clarity, three brief cross-references to the final rule are being added to each of the three Operating Administration's rules. The cross-references are found in 23 CFR Part 180 for FHWA, 49 CFR Part 261 for FRA, and 49 CFR Part 640 for FTA. These cross-references will enable members of the public who are familiar with only one of the Operating Administrations to have a simple way of locating the final rule.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

DOT has determined that issuance of a rule is necessary to implement TIFIA, and has concluded that this action represents a ''significant regulatory action'' within the meaning of DOT's Regulatory Policies and Procedures (44 FR 11034, February 26, 1979) and Executive Order 12866. This determination is based on a finding that the rule may have an annual effect on the economy of $100 million or more. This rule was reviewed by the Office of Management and Budget under E.O. 12866.

This section summarizes the estimated economic impact of this rule. This regulation would affect only those entities that voluntarily elected to apply for TIFIA assistance and were selected to receive a Federal credit instrument. It would not impose any direct costs on non-participants.

The DOT has evaluated the economic impact of this regulatory action. However, because the number, nature, and size of projects to be assisted will not be known until specific project applicants come forward, this analysis is by necessity an estimate. Congress recognized this by including a provision in TIFIA (23 U.S.C. 189) requiring the Secretary to submit a report summarizing the effectiveness of the program within four years of the date of enactment of the legislation (June 9, 2002).

DOT and industry research has indicated that there are substantial economic productivity gains to be derived from capital investment in surface transportation facilities. One study estimates that in the four-decade period from 1950 to 1989, U.S. firms realized annual production cost savings of 18 percent from general highway investment (yearly return of 18 cents per dollar invested in all roads) and 24 percent from investment in non-local roads.[1] In addition to these direct returns, transportation capital investment typically generates significant spillover benefits, which may be of a non-financial nature, such as reduced pollution, increased safety, improved international competitiveness, and enhanced accessibility.

Just as transportation investment produces benefits, failure to invest results in cost increases. Another recent study estimates that congestion costs the average U.S. citizen $370 annually, in terms of time lost and fuel wasted.[2] These costs are expected to increase as growing investment needs—both in terms of system renewal and capacity expansion—and limited availability of public funding contribute to declining performance.

There has been dramatic growth in both freight movement and passenger travel in recent years, which is expected to continue. For example, since 1980, total ton-miles and intercity passenger miles have grown by 30 percent and 60 percent, respectively, according to a recent study by the American Association of State Highway and Transportation Officials.

Despite substantial increases in authorized Federal funding levels for surface transportation under the Transportation Equity Act for the 21st Century, current resources from all levels of government are not expected to be able to keep pace with maintenance and preservation needs, let alone the additional demands resulting from

[1] Contribution of Highway Capital to Industry and National Productivity Growth—Executive Summary, Ishaq Nadirir, New York, FHWA, 1996.

[2] Measuring and Monitoring Urban Mobility, Texas Transportation Institute, November 1996.

growth in population and goods movement. Funding shortfalls can be particularly acute for large infrastructure projects (costing $100 million or more) which, due to their scale, often cannot be readily accommodated in ongoing State and local capital renewal programs.

The economic drag created by under-investment in the nation's transportation network is substantial, as shippers and motorists incur increased vehicle maintenance and fuel costs, shipping delays, safety hazards, and time delays associated with congestion and poorly maintained roads.

The TIFIA was established to provide fractional credit assistance to major transportation infrastructure projects—such as border crossings, trade corridors, and intermodal transfer facilities—that have the potential of generating substantial economic benefits both regionally and nationally. In many cases, such projects are capable of being supported through direct user charges or dedicated revenue streams that can be used to access private capital and other non-Federal funding sources. The TIFIA is designed to fill market gaps through providing supplemental and/or subordinate capital to such projects. It should facilitate their ability to access the capital markets or other financing sources for the majority of their funding needs. Through the TIFIA program's leverage of limited Federal funds with private capital, these capital-intensive projects can be advanced without displacing smaller, more traditional grant-supported projects. Federal risk exposure should be mitigated by substantial co-investment from non-Federal parties and the use of objective, market-based credit evaluation criteria.

The TIFIA is authorized to receive $530 million of budget authority to support up to $10.6 billion in nominal amounts of credit (or such lesser amounts of credit as can be supported by the budget authority). Under the terms of the legislation, the Federal share is limited to not more than 33 percent of total eligible project costs. In many cases, the actual share of TIFIA assistance may be considerably less. For example, prior to passage of the TIFIA, three major surface transportation projects in southern California obtained Federal credit instruments pursuant to special appropriations from Congress. Between 1993 and 1996, the Congress approved a $120 million standby Federal line of credit for the San Joaquin Hills Toll Road; two standby lines of credit totaling $145 million for the Foothill-Eastern Toll Road; and a $400 million direct Federal loan for the Alameda Corridor project. Each of these projects would have met the threshold eligibility criteria under the terms of the TIFIA program. The Federal credit assistance as a percent of total project costs for these three investments is approximately 8.5 percent, 11.5 percent, and 17.5 percent, respectively.

Under the Federal Credit Reform Act of 1990 (FCRA), the amount of budget authority necessary to support a Federal credit instrument depends upon the subsidy cost (i.e., the estimated present value cost of estimated losses that will be incurred as a result of defaults, net of any fee income). Each project will be assigned a subsidy cost based upon an evaluation of its creditworthiness.

Since the actual projects participating in the TIFIA program have yet to be identified, it is not possible at this stage to ascertain the appropriate subsidy amounts. If, for example, the assumed average subsidy rate under TIFIA were 10 percent, the $530 million of budget authority could support $5.3 billion in nominal amount of Federal credit instruments, and (assuming a 33 percent TIFIA share of project costs) an aggregate of $15.9 billion in capital investment. This would represent a benefit:cost ratio (total capital investment compared to federal budgetary cost) of 30:1. If the subsidy rate averaged 5 percent, the budget authority could support $31.8 billion in aggregate investment; and if the subsidy rate averaged 15 percent, the budget authority could support approximately $10.6 billion in aggregate investment. The only costs imposed on the participants are the repayment of credit at the U.S. Treasury rate (which in certain instances may be significantly less than their own marginal cost of capital), a credit processing charge, and an application charge based upon direct costs incurred by the DOT in processing applications.

On this basis, the DOT has concluded that the TIFIA will promote the efficient functioning of project delivery and the private markets, and will generate both direct and indirect benefits, including reduced congestion, greater mobility, improved safety, an enhanced environment, and greater economic growth. These benefits are anticipated to far surpass the combined direct costs to the Federal Government ($530 million) and to the entities that elect to participate in the program.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 5 U.S.C. 601–612) requires an assessment of the extent to which rules will have an impact on small business or other small entities. Consistent with the Regulatory Flexibility Act, the DOT has evaluated the effects of this rule on small business or other small entities. This rule implements a Federal credit assistance program for surface transportation projects. There will be a substantial economic impact on the projects funded. However, the DOT anticipates that few, if any, of the applicants for assistance, will be small entities. Applicants are likely to be States and large public, or quasi-public entities. Based on that evaluation, the DOT hereby certifies that this action will not have significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. This rule would not impose a Federal mandate resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. The rule simply implements a Federal credit assistance program.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. The DOT has determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment. The bases for this determination are that: (a) eligibility for assistance under this program extends to both private and public entities; and (b) the recipients of credit under this voluntary program will receive a benefit, rather than incur costs, through participation.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

This document does not contain information collection requirements for the purposes of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*). Based upon preliminary assessments, research reports, meetings

with focus groups, and discussions with potential respondents, the DOT anticipates approximately six respondents to the application annually. If in the future, the DOT anticipates ten or more respondents annually, immediate steps will be taken to seek approval from OMB for an information collection, as required under the Paperwork Reduction Act.

National Environmental Policy Act

As specified under section 1503 of TIFIA, and codified under section 182(c)(2) of title 23, U.S.C., each project obtaining assistance under this program is required to adhere to the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*). This final rule simply provides the procedure to apply for credit assistance; therefore, by itself, this rule will not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document may be used to cross-reference this action with the Unified Agenda.

List of Subjects

23 CFR Part 180

Credit programs-transportation, Highways and roads, Investments.

49 CFR Part 80

Credit programs-transportation, Highways and roads, Investments, Mass transit, Railroads, Reporting and recordkeeping requirements.

49 CFR Part 261

Credit programs-transportation, Investments, Railroads.

49 CFR Part 640

Credit programs-transportation, Investments, Mass transit.

Federal Highway Administration

23 CFR Chapter I

For the reasons set forth in the preamble, the Federal Highway Administration amends chapter I, title 23, Code of Federal Regulations, as follows:

1. Add Part 180 to read as follows:

PART 180—CREDIT ASSISTANCE FOR SURFACE TRANSPORTATION PROJECTS

Sec.
180.1 Cross-reference to credit assistance.

Authority: secs. 1501 *et seq.*, Pub. L. 105–178, 112 Stat. 107, 241, as amended; 23 U.S.C. 181–189 and 315; 49 CFR 1.48.

§ 180.1 Cross-reference to credit assistance.

The regulations in 49 CFR Part 80 shall be followed in complying with the requirements of this part. Title 49 CFR Part 80 implements the Transportation Infrastructure Finance and Innovation Act of 1998, secs. 1501 *et seq.*, Pub. L. 105–178, 112 Stat. 107, 241.

Dated: May 25, 1999.

Kenneth R. Wykle,

Administrator, Federal Highway Administration.

Office of the Secretary of Transportation

49 CFR Part 80

For the reasons set forth in the preamble, the Office of the Secretary of Transportation amends title 49, Code of Federal Regulations, subtitle 4 as follows:

2. Add Part 80, to read as follows:

PART 80—CREDIT ASSISTANCE FOR SURFACE TRANSPORTATION PROJECTS

Sec.
80.1 Purpose.
80.3 Definitions.
80.5 Limitations on assistance.
80.7 Application process.
80.9 Federal requirements.
80.11 Investment-grade ratings.
80.13 Threshold criteria.
80.15 Selection criteria.
80.17 Charges.
80.19 Reporting requirements.

Authority: secs. 1501 *et seq.*, Pub. L. 105–178, 112 Stat. 107, 241, as amended; 23 U.S.C. 181–189 and 315; 49 CFR 1.48, 1.49, and 1.51.

§ 80.1 Purpose.

This part implements a Federal credit assistance program for surface transportation projects.

§ 80.3 Definitions.

The following definitions apply to this part:

Conditional term sheet means a contractual agreement between the U.S. Department of Transportation (DOT) and the project sponsor (and the lender, if applicable) by which the DOT reserves TIFIA funding for a specific project and commits to providing Federal credit assistance to that project at a future point in time upon satisfaction of specified conditions and subject to the future availability of obligation authority. The DOT will not legally obligate budget authority until those conditions are met. Upon satisfaction of those conditions, the conditional term sheet can be amended and/or restated to trigger an obligation of funds.

Credit agreement means a contractual agreement between the DOT and the project sponsor (and the lender, if applicable) that formalizes the terms and conditions established in the term sheet (or conditional term sheet) and authorizes the execution of a secured loan, loan guarantee, or line of credit.

Eligible project costs mean amounts substantially all of which are paid by, or for the account of, an obligor in connection with a project, including the cost of:

(1) Development phase activities, including planning, feasibility analysis, revenue forecasting, environmental review, permitting, preliminary engineering and design work, and other pre-construction activities;

(2) Construction, reconstruction, rehabilitation, replacement, and acquisition of real property (including land related to the project and improvements to land), environmental mitigation, construction contingencies, and acquisition of equipment; and

(3) Capitalized interest necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses, and other carrying costs during construction.

Federal credit instrument means a secured loan, loan guarantee, or line of credit authorized to be made available under this subchapter with respect to a project.

Investment-grade rating means a rating category of BBB minus, Baa3, or higher assigned by a rating agency to project obligations offered into the capital markets.

Lender means any non-Federal qualified institutional buyer (as defined in 17 CFR 230.144A(a)), known as Rule 144A(a) of the Securities and Exchange Commission and issued under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), including:

(1) A qualified retirement plan (as defined in section 4974(c) of the Internal Revenue Code of 1986, 26 U.S.C. 4974(c)) that is a qualified institutional buyer; and

(2) A governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986, 26 U.S.C. 414(d)) that is a qualified institutional buyer.

Line of credit means an agreement entered into by the Secretary with an obligor under section 184 of title 23 to provide a direct loan at a future date upon the occurrence of certain events.

Loan guarantee means any guarantee or other pledge by the Secretary to pay all or part of the principal of and interest on a loan or other debt

obligation issued by an obligor and funded by a lender.

Local servicer means:

(1) A State infrastructure bank established under title 23; or

(2) A State or local government or any agency of a State or local government that is responsible for servicing a Federal credit instrument on behalf of the Secretary.

Obligor means a party primarily liable for payment of the principal of or interest on a Federal credit instrument, which party may be a corporation, partnership, joint venture, trust, or governmental entity, agency, or instrumentality.

Project means:

(1) Any surface transportation project eligible for Federal assistance under title 23 or chapter 53 of title 49;

(2) A project for an international bridge or tunnel for which an international entity authorized under Federal or State law is responsible;

(3) A project for intercity passenger bus or rail facilities and vehicles, including facilities and vehicles owned by the National Railroad Passenger Corporation, and components of magnetic levitation transportation systems; and

(4) A project for publicly owned intermodal surface freight transfer facilities, other than seaports and airports, if the facilities are located on or adjacent to National Highway System routes or connections to the National Highway System.

Project obligation means any note, bond, debenture, or other debt obligation issued by an obligor in connection with the financing of a project, other than a Federal credit instrument.

Project sponsor, for the purposes of this part, means an applicant for TIFIA assistance or an obligor, as appropriate.

Rating agency means a bond rating agency identified by the Securities and Exchange Commission as a Nationally Recognized Statistical Rating Organization.

Secured loan means a direct loan or other debt obligation issued by an obligor and funded by the Secretary in connection with the financing of a project under section 183 of title 23.

State means any one of the fifty states, the District of Columbia, or Puerto Rico.

Subsidy amount means the amount of budget authority sufficient to cover the estimated long-term cost to the Federal Government of a Federal credit instrument, calculated on a net present value basis, excluding administrative costs and any incidental effects on governmental receipts or outlays in accordance with the provisions of the Federal Credit Reform Act of 1990 (2 U.S.C. 661 *et seq.*).

Substantial completion means the opening of a project to vehicular or passenger traffic or a comparable event as determined by the Secretary and specified in the credit agreement.

Term sheet means a contractual agreement between the DOT and the project sponsor (and the lender, if applicable) that sets forth the key business terms and conditions of a Federal credit instrument. Execution of this document represents a legal obligation of budget authority.

TIFIA means the Transportation Infrastructure Finance and Innovation Act of 1998, Pub. L. 105–178, 112 Stat. 107, 241 (1998).

§ 80.5 Limitations on assistance.

(a) The total amount of credit assistance offered to any project under this part shall not exceed 33 percent of the anticipated eligible project costs, as measured on an aggregate cash (year-of-expenditure) basis.

(b) Costs incurred prior to a project sponsor's submission of an application for credit assistance may be considered in calculating eligible project costs only upon approval of the Secretary. In addition, applicants shall not include application charges or any other expenses associated with the application process (such as charges associated with obtaining the required preliminary rating opinion letter) among the eligible project costs.

(c) No costs financed internally or with interim funding may be refinanced under this part later than a year following substantial completion of the project.

(d)(1) Within the overall credit assistance limitation of 33 percent of eligible project costs, the Secretary may consider making future-year or multi-year contingent commitments of budget authority and associated credit assistance for projects temporarily lacking certain requirements or with extended construction periods and financing needs. The TIFIA's effectiveness in stimulating private investment in transportation infrastructure depends, in large part, on investor recognition that TIFIA credit instruments represent solid and reliable Federal commitments. Therefore, the Secretary shall make any future-year or multi-year contingent commitment of funds for a project using a conditional term sheet. The conditional term sheet will resemble the standard term sheet that enables the obligation of budget authority, but will also specify the additional actions necessary to trigger subsequent obligation(s). The conditional term sheet will include fixed dates by which any requirements must be met in order for the reserved funding to be obligated.

(2) Upon execution of the conditional term sheet, the Secretary shall reserve budget authority attributable to the appropriate year(s). This reservation will ensure that a project with a conditional commitment will have a priority claim (along with that of any other projects receiving such contingent commitments) on budget authority becoming available in the specified year(s), provided that the project sponsor satisfies each condition outlined in the conditional term sheet. The Secretary will limit such reservations to not more than 50 percent of the budget authority becoming available in the applicable year(s). If a multi-year contingent commitment is made, each year's loan will be tied to distinct, clearly identified project segments or stages or other milestones as specified in the credit agreement.

(e) The obligor may draw upon the line of credit only if net project revenues (including, among other sources, any debt service reserve fund) are insufficient to pay costs specified in 23 U.S.C. 184(a)(2) under the line of credit, including debt service costs. Debt service costs include direct payments of principal and interest as well as reimbursements for such payments in the form of legally required deposits to a debt service reserve fund.

(f) The Secretary shall not obligate funds in favor of a project that has not received an environmental Categorical Exclusion, Finding of No Significant Impact, or Record of Decision.

§ 80.7 Application process.

(a) Public and private applicants for credit assistance under this part will be required to submit applications to the DOT in order to be considered for approval by the Secretary.

(b) At a minimum, such applications shall provide:

(1) Documentation sufficient to demonstrate that the project satisfies each of the threshold criteria in § 80.13 and describe the extent to which the project satisfies each of the selection criteria in § 80.15;

(2) Background information on the project for which assistance is sought, such as the project's description, status of environmental and other major governmental permits and approvals, and construction schedule;

(3) Background information on the applicant (project sponsor);

(4) Historical information, if applicable, concerning the applicant's financial condition, including, for

example, independently audited financial statements and certifications concerning bankruptcies or delinquencies on other debt; and

(5) Current financial information concerning both the project and the applicant, such as sources and uses of funds for the project and a forecast of cash flows available to service all debt instruments.

(c) An application for a project located in or sponsored by more than one State or other entity shall be submitted to the DOT by just one State or entity. The sponsoring States or entities shall designate a single obligor for purposes of applying for, receiving, and repaying TIFIA credit assistance.

(d) Each fiscal year for which Federal assistance is available under this part, the DOT shall publish a **Federal Register** notice to solicit applications for credit assistance. Such notice will specify the relevant due dates, the estimated amount of funding available to support TIFIA credit instruments for the current and future fiscal years, contact name(s), and other details for that year's application submissions and funding approvals.

§ 80.9 Federal requirements.

All projects receiving credit assistance under this part shall comply with:

(a) The relevant requirements of title 23, U.S.C., for highway projects, chapter 53 of title 49, U.S.C., for transit projects, and section 5333(a) of title 49 for rail projects, as appropriate;

(b) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*);

(c) The National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*);

(d) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 *et seq.*); and

(e) Other Federal and compliance requirements as may be applicable.

§ 80.11 Investment-grade ratings.

(a) At the time a project sponsor submits an application, the DOT shall require a preliminary rating opinion letter. This letter is a conditional credit assessment from a rating agency that provides a preliminary indication of the project's overall creditworthiness and that specifically addresses the potential of the project's senior debt obligations to achieve an investment-grade rating. However, the DOT shall disburse funds under a secured (direct) loan or line of credit or extend a loan guarantee only after a formal credit agreement has been executed and the project's senior obligations have obtained a formal investment-grade rating.

(b) The full funding of a secured (direct) loan, loan guarantee, or line of credit shall be contingent on the assignment of an investment-grade rating by a nationally recognized bond rating agency to all project obligations that have a lien senior to that of the Federal credit instrument on the pledged security.

(c) Neither the preliminary rating opinion letter nor the formal credit rating should reflect the effect of bond insurance, unless that insurance provides credit enhancement that secures the TIFIA obligation.

§ 80.13 Threshold criteria.

(a) To be eligible to receive Federal credit assistance under this part, a project shall meet the following five threshold criteria:

(1) The project shall be consistent with the State transportation plan, if located in a metropolitan area shall be included in that area's metropolitan transportation plan, and shall appear in an approved State transportation improvement program before the DOT and the project sponsor execute a term sheet or credit agreement that results in the obligation of funds;

(2) The State, local servicer, or other entity undertaking the project shall submit a project application to the Secretary of Transportation;

(3) A project shall have eligible project costs that are reasonably anticipated to equal or exceed the lesser of $100 million or 50 percent of the amount of Federal-aid highway funds apportioned for the most recently completed fiscal year to the State in which the project is located (in the case of a project principally involving the installation of Intelligent Transportation Systems (ITS), eligible project costs shall be reasonably anticipated to equal or exceed $30 million);

(4) Project financing shall be repayable, in whole or in part, from tolls, user fees or other dedicated revenue sources; and

(5) In the case of a project that is undertaken by an entity that is not a State or local government or an agency or instrumentality of a State or local government, the project that the entity is undertaking shall be included in the State transportation plan and an approved State Transportation Improvement Program as provided in paragraph (a)(1) of this section.

(b) With respect to paragraph (a)(3) of this section, for a project located in more than one State, the minimum cost threshold size shall be the lesser of $100 million or 50 percent of the amount of Federal-aid highway funds apportioned for the most recently completed fiscal year to the participating State that receives the least amount of such funds.

(c) With respect to paragraph (a)(4) of this section, the Secretary may accept general obligation pledges or general corporate promissory pledges and will determine the acceptability of other pledges and forms of collateral as dedicated revenue sources on a case-by-case basis. The Secretary shall not accept a pledge of Federal funds, regardless of source, as security for the TIFIA credit instrument.

§ 80.15 Selection criteria.

(a) The Secretary shall consider the following eight criteria in evaluating and selecting among eligible projects to receive credit assistance:

(1) The extent to which the project is nationally or regionally significant, in terms of generating economic benefits, supporting international commerce, or otherwise enhancing the national transportation system;

(2) The creditworthiness of the project, including a determination by the Secretary that any financing for the project has appropriate security features, such as a rate covenant, to ensure repayment;

(3) The extent to which such assistance would foster innovative public-private partnerships and attract private debt or equity investment;

(4) The likelihood that such assistance would enable the project to proceed at an earlier date than the project would otherwise be able to proceed;

(5) The extent to which the project uses new technologies, including Intelligent Transportation Systems (ITS), that enhance the efficiency of the project;

(6) The amount of budget authority required to fund the Federal credit instrument made available;

(7) The extent to which the project helps maintain or protect the environment; and

(8) The extent to which such assistance would reduce the contribution of Federal grant assistance to the project.

(b) In addition, 23 U.S.C. 182(b)(2)(B) conditions a project's approval for credit assistance on receipt of a preliminary rating opinion letter indicating that the project's senior debt obligations have the potential to attain an investment-grade rating.

(c) The Secretary shall evaluate each project's distinct public benefits and contribution to program goals according to each of the selection criteria specified in this section.

(d) In considering the selection criterion in paragraph (a)(8) of this section, the Secretary will give

preference to projects for which the applicant's use of TIFIA credit assistance would reduce the applicant's degree of reliance on Federal grant assistance.

(e) The Secretary may also give preference to applications for loan guarantees rather than other forms of Federal credit assistance. This preference is consistent with Federal policy that, when Federal credit assistance is necessary to meet a Federal objective, loan guarantees should be favored over direct loans, unless attaining the Federal objective requires a subsidy, as defined by the Federal Credit Reform Act of 1990 (2 U.S.C. 661 *et seq.*), deeper than can be provided by a loan guarantee.

§ 80.17 Charges.

(a) The DOT will require a non-refundable application initiation charge for each project applying for credit assistance under TIFIA. The DOT may also require an additional credit processing charge for projects selected to receive assistance. Any required application initiation or credit processing charge must be paid by the project sponsor applying for TIFIA assistance and cannot be paid by another party on behalf of the project sponsor. The proceeds of any such charges will equal a portion of the costs to the Federal Government of soliciting and evaluating applications, selecting projects to receive assistance, and negotiating credit agreements. For fiscal year 1999, the DOT will require an application initiation charge of $5,000 for each project applying for credit assistance under TIFIA. The DOT will not require any credit processing charges for fiscal year 1999. For each application and approval cycle in fiscal year 2000 and beyond, the DOT may adjust the amount of the application initiation charge and will determine the appropriate amount of the credit processing charge on the basis of its program implementation experience. The DOT will publish these amounts in each **Federal Register** solicitation for applications.

(b) Applicants shall not include application initiation or credit processing charges or any other expenses associated with the application process (such as charges associated with obtaining the required preliminary rating opinion letter) among eligible project costs for the purpose of calculating the maximum 33 percent credit amount referenced in § 80.5(a).

(c) If, in any given year, there is insufficient budget authority to fund the credit instrument for a qualified project that has been selected to receive assistance under TIFIA, the DOT and the approved applicant may agree upon a supplemental charge to be paid by or on behalf of the approved applicant at the time of execution of the term sheet to reduce the subsidy cost of that project. No such charge may be included among eligible project costs for the purpose of calculating the maximum 33 percent credit amount referenced in § 80.5(a).

§ 80.19 Reporting requirements.

At a minimum, any recipient of Federal credit under this part shall submit an annual project performance report and audited financial statements to the DOT within 120 days following the recipient's fiscal year-end for each year during which the recipient's obligation to the Federal Government remains in effect. The DOT may conduct periodic financial and compliance audits of the recipient of credit assistance, as determined necessary by the Secretary. The specific credit agreement between the recipient of credit assistance and the DOT may contain additional reporting requirements.

Issued in Washington, DC on May 25, 1999.

Rodney E. Slater,

Secretary, U.S. Department of Transportation.

FEDERAL RAILROAD ADMINISTRATION

49 CFR Chapter II

For the reasons set forth in the preamble, the Federal Railroad Administration amends chapter II, title 49, Code of Federal Regulations, as follows:

3. Add Part 261 to read as follows:

PART 261—CREDIT ASSISTANCE FOR SURFACE TRANSPORTATION PROJECTS

Sec.
261.1 Cross-reference to credit assistance.

Authority: Secs. 1501 *et seq.*, Pub. L. 105–178, 112 Stat. 107, 241, as amended; 23 U.S.C. 181–189 and 315; 49 CFR 1.49.

§ 261.1 Cross-reference to credit assistance.

The regulations in 49 CFR Part 80 shall be followed in complying with the requirements of this part. Title 49, CFR, Part 80 implements the Transportation Infrastructure Finance and Innovation Act of 1998, secs. 1501 *et seq.*, Pub. L. 105–178, 112 Stat. 107, 241.

Dated: May 25, 1999.

Jolene M, Molitoris,

Administrator, Federal Railroad Administration.

FEDERAL TRANSIT ADMINISTRATION

49 CFR Chapter VI

For the reasons set forth in the preamble, the Federal Transit Administration amends chapter VI, title 49, Code of Federal Regulations, as follows:

4. Add Part 640 to read as follows:

PART 640—CREDIT ASSISTANCE FOR SURFACE TRANSPORTATION PROJECTS

Sec.
640.1 Cross-reference to credit assistance.

Authority: Secs. 1501 *et seq.*, Pub. L. 105–178, 112 Stat. 107, 241, as amended; 23 U.S.C. 181–189 and 315; 49 CFR 1.51.

§ 640.1 Cross-reference to credit assistance.

The regulations in 49 CFR Part 80 shall be followed in complying with the requirements of this part. Title 49, CFR, Part 80 implements the Transportation Infrastructure Finance and Innovation Act of 1998, secs. 1501 *et seq.*, Pub. L. 105–178, 112 Stat. 107, 241.

Dated: May 25, 1999.

Gordon J. Linton,

Administrator, Federal Transit Administration.

[FR Doc. 99–13784 Filed 6–1–99; 8:45 am]

BILLING CODE 4910–KE–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Federal Railroad Administration

Federal Transit Administration

Office of the Secretary

Fiscal Year 1999 Applications for TIFIA Credit Assistance

AGENCIES: Federal Highway Administration (FHWA), Federal Railroad Administration (FRA), Federal Transit Administration (FTA), Office of the Secretary of Transportation (OST), U.S. Department of Transportation (DOT).

ACTION: Notice of availability of funds inviting applications for credit assistance for major surface transportation projects.

SUMMARY: The Transportation Equity Act for the 21st Century (TEA–21), Pub. L. 105–178, 112 Stat. 107, created the Transportation Infrastructure Finance and Innovation Act of 1998 (TIFIA). The TIFIA, as amended by section 9007, Pub. L. 105–206, 112 Stat. 685, 849 and codified at 23 U.S.C. 181–189, authorizes the Department of Transportation (DOT) to provide credit assistance in the form of secured (direct) loans, lines of credit, and loan guarantees to public and private sponsors of eligible surface transportation projects. The TIFIA rule (49 CFR Part 80) provides specific guidance on the program requirements. Additionally, the DOT will make available a TIFIA program guide for more general information. Funding for this program is limited, and projects obtaining assistance will be evaluated and selected by the DOT on a competitive basis. Following selections, individual credit agreements will be developed through negotiations between the project sponsors and the DOT. The DOT has available $70,640,000 in budget authority in fiscal year 1999 to cover the subsidy costs of up to $1.6 billion in Federal credit assistance.

DEADLINES AND SUBMISSIONS: For consideration in the fiscal year 1999 funding cycle, letters of interest must be submitted by 4:30 p.m. EDT on June 23, 1999. Formal applications may be submitted at any time after July 7, 1999. The deadline for receipt of the formal application (20 copies plus original) and the non-refundable $5,000 application initiation charge is 4:30 p.m. EDT on August 2, 1999. Applications received in the offices of the DOT after that date and time will not be considered. Applications sent to the DOT electronically or by facsimile will not be accepted. Both the letters of interest and completed applications should be submitted to the attention of Ms. Stephanie Kaufman, Office of Budget and Program Performance, Department of Transportation, Room 10105, B–10, 400 Seventh Street, SW., Washington D.C., 20590.

FOR FURTHER INFORMATION CONTACT: FHWA: Mr. Max Inman, Office of Budget and Finance, Federal-Aid Financial Management Division, (202) 366–0673; FRA: Ms. JoAnne McGowan, Office of Passenger and Freight Services, Freight Program Division, (202) 493–6390; FTA: Mr. Paul Marx, Office of Policy Development, (202) 366–1734; OST: Ms. Stephanie Kaufman, Office of Budget and Program Performance, (202) 366–9649; Department of Transportation, 400 Seventh Street, SW., Washington, D.C., 20590. Hearing- and speech-impaired persons may use TTY by calling the Federal Information Relay Service at 1–800–877–8339. Additional information, including the TIFIA program guide and application materials, can be obtained from the TIFIA web site at http://tifia.fhwa.dot.gov.

SUPPLEMENTARY INFORMATION:

Program Funding and Limitations on Assistance

The TIFIA provides annual funding levels for both total credit amounts (i.e., the total principal amounts that may be disbursed in the form of direct loans, guaranteed loans, or lines of credit) and subsidy amounts (i.e., the amounts of budget authority available to cover the estimated present value of expected losses associated with the provision of credit instruments, net of any fee income). Funding for the subsidy amounts is provided in the form of budget authority funded from the Highway Trust Fund (other than the Mass Transit Account). For fiscal year 1999, the TIFIA authorizes $80 million in budget authority to fund the subsidy costs associated with a total nominal amount of direct loans, loan guarantees, and lines of credit that is limited to $1.6 billion. Depending on the individual risk assessments made for each of the projects receiving assistance, the total amount of credit assistance provided in fiscal year 1999 may be less than the $1.6 billion limitation.

Total Federal credit assistance authorized for the TIFIA program is limited to $1.6 billion in fiscal year 1999; $1.8 billion in fiscal year 2000; $2.2 billion in fiscal year 2001; $2.4 billion in fiscal year 2002; and $2.6 billion in fiscal year 2003. These amounts lapse if not awarded by the end of the fiscal year for which they are provided.

To support this assistance by funding the required subsidy amounts, the TIFIA provides budget authority of $80 million in fiscal year 1999; $90 million in fiscal year 2000; $110 million in fiscal year 2001; $120 million in fiscal year 2002; and $130 million in fiscal year 2003. Of these amounts, the Secretary may use up to $2 million for each of the fiscal years for administrative expenses. Any budget authority not obligated in the fiscal year for which it is authorized remains available for obligation in subsequent years.

The TIFIA budget authority is subject to an annual obligation limitation that may be established in appropriations law. Like the funding for certain other administrative or allocated programs (not apportioned to the States) that are subject to the annual Federal-aid obligation ceiling, the amount of TIFIA budget authority that is available to fund credit instruments in a given year may be less than the amount originally authorized for that year. The extent of any budget authority reduction will depend on the ratio of the obligation ceiling, which is determined annually in the appropriations process, to the contract authority for the Federal-aid highway program, which was established in TEA–21. For fiscal year 1999, this reduction was 11.7 percent, which left $70,640,000 in TIFIA budget authority instead of the $80 million originally authorized. Future annual reductions of like amount would result in a cumulative amount of budget authority available in fiscal years 1999 through 2003 to fund TIFIA subsidy costs of about $470 million instead of the $530 million originally authorized. The credit amounts authorized in TIFIA are not subject to this annual reduction.

The amount of credit assistance that may be provided to a project under TIFIA is limited to not more than 33 percent of eligible project costs.

Types of Credit Assistance Available

The DOT may provide credit assistance in the form of secured (direct) loans, lines of credit, and loan guarantees. These types of credit assistance are defined in 23 U.S.C. 181 and 49 CFR 80.3.

Eligible Projects

Highway, rail, transit, and ''intermodal'' projects may receive credit assistance under the TIFIA. See the definition of ''project'' in 23 U.S.C. 181(9) and 49 CFR 80.3 for a description of eligible projects.

Threshold Criteria

Certain threshold criteria must be met by projects seeking TIFIA assistance. These eligibility criteria are detailed in 23 U.S.C. 182(a) and 49 CFR 80.13.

Application and Selection Process

Each applicant for TIFIA assistance will be required to submit a letter of interest and a formal application to the DOT in order to be considered for approval. The DOT anticipates that there will be fewer than ten applicants annually. The following describes the application process:

1. *Letter of Interest.* Initially, any applicant seeking assistance in fiscal year 1999 must submit a brief letter of interest to the DOT by June 23, 1999. The letter of interest should include a brief project description (including its purpose, basic design features, and estimated capital cost), basic information about the proposed financing for the project (including a summary of sources and uses of funds and the type and amount of credit assistance requested from the DOT), and a description of the proposed project participants. The letter of interest should not exceed five pages. A multi-agency DOT Credit Program Working Group will review this preliminary submission to ensure that the project meets the most basic requirements for participation in the TIFIA program. The Working Group will then designate a lead modal agency (FHWA, FRA, or FTA) for the project.

2. *Formal Application.* Once approved for further review, the applicant will be notified by a representative from the designated modal agency of its eligibility to submit a formal application. The applicant must submit all required materials (generally described in 49 CFR 80.7 and detailed in the TIFIA application) to the DOT by August 2, 1999. The TIFIA application and additional program information may be obtained from the TIFIA web site at *http://tifia.fhwa.dot.gov* or through one of the program contacts listed in this notice.

3. *Sponsor Presentation.* Each applicant that passes an initial screening of the formal application for completeness and satisfaction of the eligibility threshold criteria will be invited to make an oral presentation to the DOT on behalf of its project. The DOT plans to schedule presentations within two weeks of the application deadline, and will discuss the structure and content of the presentation with the applicant at the time of the invitation.

4. *Project Selection.* Based on the formal application and oral presentation, the DOT shall evaluate each project's distinct public benefits and contribution to program goals according to each of the selection criteria described in 23 U.S.C. 182(b) and 49 CFR 80.15. The Secretary of Transportation plans to make final selections of projects within four to six weeks of the application deadline.

Charges

For fiscal year 1999, the DOT will require each TIFIA applicant to pay an application initiation charge of $5,000. The project sponsor applying for TIFIA assistance must submit this payment by the application deadline August 2, 1999. There will be no credit processing charge for the fiscal year 1999 application and approval cycle. For each application and approval cycle in fiscal year 2000 and beyond, the DOT may adjust the amount of the application initiation charge and will determine the appropriate amount of the credit processing charge (established to equal a portion of the costs to the DOT of evaluating applications, selecting projects to receive assistance, and negotiating credit agreements) on the basis of its program implementation experience. The DOT will publish these amounts in each **Federal Register** solicitation for applications.

Applicants shall not include application initiation or credit processing charges or any other expenses associated with the application process (such as charges associated with obtaining the required preliminary rating opinion letter) among eligible project costs for the purpose of calculating the maximum 33 percent credit amount.

If there is insufficient budget authority to fund the credit instrument for a qualified project that has been selected to receive assistance under TIFIA, the DOT and the approved applicant may agree upon a supplemental charge to be paid by or on behalf of the approved applicant at the time of execution of a term sheet to reduce the subsidy cost of that project. No such charge may be included among eligible project costs for the purpose of calculating the maximum 33 percent credit amount.

Dated: May 25, 1999.

Rodney E. Slater,

Secretary, Department of Transportation.

[FR Doc. 99–13785 Filed 6–1–99; 8:45 am]

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federal register

Wednesday
June 2, 1999

Part III

Department of Housing and Urban Development

24 CFR Part 203

Single Family Mortgage Insurance; Informed Consumer Choice Disclosure Notice; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 203

[Docket No. FR–4411–F–02]

RIN 2502–AH30

Single Family Mortgage Insurance; Informed Consumer Choice Disclosure Notice

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule implements a recent statutory amendment to HUD's Federal Housing Administration (FHA) Single Family Mortgage Insurance Program. The statutory amendment requires an original lender to provide certain information, in the form of a disclosure notice, to prospective borrowers who have applied for an FHA-insured home mortgage; and that HUD develop this disclosure notice. Specifically, through the disclosure notice, the lender must provide the prospective FHA borrower with an analysis comparing the mortgage costs of the FHA-insured mortgage with the mortgage costs of other similar conventional mortgage products that the lender offers and that the borrower may qualify for. The disclosure notice must also provide information about when the requirement to pay FHA mortgage insurance premiums terminates. This final rule takes into consideration public comment received on the February 16, 1999 proposed rule.

DATES: Effective Date: July 2, 1999.

FOR FURTHER INFORMATION CONTACT: Vance T. Morris, Director, Home Mortgage Insurance Division, Office of Insured Single Family Housing, Room 9270, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–8000; telephone (202) 708–2700 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background on the Informed Consumer Choice Disclosure Requirement

HUD's February 16, 1999 proposed rule (64 FR 7726) advised the public of our proposal to amend the Federal Housing Administration (FHA) Single Family Mortgage Insurance Program regulations to require lenders to disclose, through a notice, certain consumer information to prospective FHA borrowers. Because a number of comments received on the proposed rule indicated some misunderstanding about the reasons for this rulemaking, we believe it may be helpful to repeat, in this final rule, the background of the new informed consumer choice disclosure requirement.

a. New Statutory Requirement—Lenders Must Disclose Certain Information to Borrowers in Form of a Notice and HUD Must Develop the Notice

Section 225(a) of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (Pub. L. 105–276, 112 Stat. 2461)(FY 1999 HUD Appropriations Act) amended section 203(b)(2) of the National Housing Act (12 U.S.C. 1709(b)(2))(NHA) by adding the following language at the end of the section:

> In conjunction with any loan insured under this section, an original lender shall provide to each prospective borrower a disclosure notice that provides a one page analysis of mortgage products offered by that lender and for which the borrower would qualify. This notice shall include: (i) A generic analysis comparing note rate (and associated interest payments), insurance premiums, and other costs and fees that would be due over the life of the loan for a loan insured by the Secretary under this subsection with note rates, insurance premiums (if applicable), and other costs and fees that would be expected to be due if the mortgagor obtained instead other mortgage products offered by the lender and for which the borrower would qualify with similar loan-to-value ratio in connection with a conventional mortgage . . . assuming prevailing interest rates; and (ii) a statement regarding when the mortgagor's requirement to pay mortgage insurance premiums for a mortgage insured under this section would terminate or a statement that the requirement will terminate only if the mortgage is refinanced, paid off, or otherwise terminated.

1. Statutory Obligations Imposed on Lenders

This statutory amendment requires original lenders to provide prospective FHA-insured mortgage borrowers with:

(1) A one page analysis comparing the mortgage costs of the FHA-insured mortgage with the mortgage costs of other similar conventional mortgage products that the lender offers and that the borrower may qualify for; and

(2) Information about when the requirement to pay FHA mortgage insurance premiums terminates.

2. Statutory Obligations Imposed on HUD

Section 225(b) of the FY 1999 HUD Appropriations Act directs HUD to:

(1) Develop the disclosure notice document, through which the lender must disclose this information; and

(2) Develop this notice within 150 days of enactment of the FY 1999 HUD Appropriations Act through notice and comment rulemaking.

b. How the February 16, 1999 Rule Proposed To Implement These Statutory Requirements

HUD's February 16, 1999 proposed rule included, for comment, a model disclosure notice that provided the consumer information required to be disclosed by section 225(a) of the FY 1999 HUD Appropriations Act (or more accurately by amended section 203(b)(2) of the NHA). The proposed rule also included an amendment to HUD's regulations at 24 CFR part 203 that would add a new § 203.10. New § 203.10 would conform HUD's FHA Single Family Mortgage Insurance Program regulations to the statutory lender disclosure requirement.

In the February 16, 1999 proposed rule, we specifically solicited comments and recommendations regarding the format of the proposed disclosure notice. As we stated in the proposed rule, HUD anticipates lenders will develop generic disclosure notices that compare a typical FHA mortgage in the marketplace with typical conventional mortgages offered by that lender using a $100,000 sales price (or another amount that may be typical within the lender's market). We noted in the rule that lenders will be expected to modify their disclosure notices accordingly as conventional mortgage offerings and pricing change over time.

We also stated in the proposed rule that it was HUD's assessment that a generic disclosure notice (similar to those provided with ARMs) reflects the intent of Congress in passing this statutory requirement and does not place an unreasonable burden on lenders. Therefore, we are not requiring, through this rulemaking, a case-specific disclosure notice for each borrower who may qualify for both an FHA-insured mortgage and conventional financing. We reiterate the statement, made in the proposed rule, that to do otherwise would significantly increase mortgage origination costs and be counter to the intent of Congress in enacting the informed consumer choice requirement and the Paperwork Reduction Act of 1995.

II. Public Comments on the Proposed Rule

In order to complete rulemaking by the deadline imposed by section 225(b) of the FY 1999 HUD Appropriation Act,

we found it necessary to shorten the public comment period for the February 16, 1999 proposed rule to 30 days. By the close of the public comment period on March 18, 1999, we had received 27 comments on the proposed rule. The commenters primarily included mortgage lending institutions and associations representing lenders.

This section of the preamble presents a summary of the significant issues raised by the commenters and HUD's responses to their comments.

a. Support for the Proposal—HUD's Proposal Strikes a Reasonable Balance

The majority of the commenters were supportive of the proposed model disclosure notice and commended HUD's efforts to strike a balance between the borrower's need for information and minimizing the administrative burden placed on lenders. The following reflects a comment typical of these commenters:

> [We] applaud HUD's efforts to develop the Informed Consumer Choice Disclosure in a manner that provides consumers with meaningful, relevant information without adding to the administrative burden being borne by lenders. By not requiring case-specific examples, the proposed disclosure format allows lenders to be flexible but consistent in the way which pertinent information is provided to borrowers thereby striking a reasonable balance between the borrower's need for information and the effort required for lenders to produce the disclosure.

b. Opposition to the Proposal—Do Not Mandate Disclosure; Do Not Mandate Use of HUD's Proposed Disclosure Notice

Comments. Several commenters stated their opposition to the requirement that lenders provide a disclosure notice to prospective FHA borrowers. Other commenters in this group recognized that the disclosure requirement was statutory but objected to HUD's proposed model disclosure notice. These commenters stated that HUD's disclosure notice was too summary or brief in form and, therefore, was not very informative. These commenters stated that, because of its brevity, the disclosure notice might be misleading or confusing for the borrower.

Other commenters stated that the consumer is buried with information that he or she has little interest in receiving, and even less ability to decipher, and that implementing the disclosure in any form will only heighten the confusion surrounding mortgage lending. Another commenter stated that responsible lenders already follow procedures that ensure applicants are properly informed of the various products available to them and of the costs associated with mortgage loans. The commenter stated that HUD should focus on the few lenders that do not inform applicants of the various products available to them, instead of mandating that the whole industry adopt another disclosure notice.

HUD Response. As stated in the proposed rule, and reiterated in this final rule, section 225(a) of the FY 1999 HUD Appropriations Act (amended section 203(b)(2) of the NHA) imposes this disclosure requirement on lenders. We have no authority to waive this requirement. The statute specifies that the disclosure notice is to provide a one page analysis of mortgage products offered by the lender for which the prospective FHA borrower would qualify, and that this analysis is to offer comparison information. The statute imposes an obligation on HUD to develop the disclosure notice through notice and comment rulemaking. We have complied with this statutory obligation through this rulemaking.

We recognize that a lender may want to provide a borrower with more comparison information than a one page disclosure notice makes possible. We also recognize, as some commenters pointed out, that many lenders already provide this type of information in booklets and brochures that are readily available to borrowers. Nevertheless, by creating this statutory disclosure requirement, the Congress appears to have sought specific assurances that lenders are advising prospective FHA borrowers of any comparable conventional mortgage products that they may qualify for. The implementation of this requirement through regulation does not prohibit a lender from providing a borrower with information the lender has already compiled in addition to the one-page disclosure notice.

c. Specific Comments on the Model Disclosure Notice and New § 203.10

Comment—Additional Information Should Be Included in the Notice, and Certain Terms Should be Changed. Several commenters suggested various changes to the proposed model disclosure notice. Some of these suggestions consisted of stylistic or editorial changes. Other suggestions included substantive changes to the model notice. These changes included:

—Adding a line to compare the annual percentage rate (APR) of the mortgage products;
—Adding a ''total payment'' line to include the monthly mortgage insurance premium in line 6;
—Adding a third column to show the dollar differences between the first two columns;
—Changing the title of line 4 to ''Downpayment and Closing Costs'';
—Changing the title of line 4 to ''Required Equity Investment'';
—Changing the title of line 4 ''Cash Needed at Closing'';
—Clarifying that closing costs do not include points;
—Providing more explanation on how mortgage insurance payments change;
—Defining the percentage of private mortgage insurance coverage required;
—Identifying conditions under which mortgage insurance may not be dropped under a conventional mortgage; and
—Identifying any conditions that attach to the conventional loan that may require the continuation of mortgage insurance.

This list does not include all suggestions made by the commenters, but provides an overview of the various types of changes suggested by the commenters.

HUD Response—Model Notice Adheres to Statutory Requirements; Lenders Have Flexibility to Add Information They Believe Relevant. HUD appreciates all the suggestions that commenters offered on how the proposed model notice could be improved. As the model notice included in this final rule reflects, we adopted some, but clearly not all, of the changes recommended by the commenters. Consistent with President Clinton's memorandum on plain language (entitled ''Plain Language in Government'', 63 FR 31885, June 10, 1998), we revised some language in an effort to make the model notice conform with the President's directive. Of the suggested changes that we did not adopt in the final model notice, we note that many of the suggested changes would require more detailed information than a one-page analysis can reasonably include. More importantly, many of the suggested changes would require more information than the statute requires be included in the disclosure notice.

In developing the disclosure notice, we were cognizant of both the considerable information already provided to borrowers by many lenders and the degree of information we believe that Congress intended lenders to provide to borrowers in a one page analysis. We believe that Congress, in imposing this requirement on lenders, sought assurances that FHA borrowers would be made aware of any non-FHA mortgage products that they may qualify for, and determined that a one page

analysis would provide the appropriate ''notification'' of these non-FHA mortgage products. We believe that this ''notification of possible mortgage options'' was the main objective of this statutory requirement. For more complete information, the FHA borrower, once notified by the disclosure notice, can then follow-up with the lender and obtain more information on any conventional mortgages that the borrower may qualify for. We believe that the statutory language is clear that Congress was not mandating a detailed comparison of FHA versus conventional mortgage products, nor was it mandating a notice that would explain all applicable mortgage terms.

In developing the model disclosure notice, HUD's intent was to adhere to the statutorily required components of the notice and not to go beyond these requirements. Therefore, we structured the model notice to provide only the information statutorily required, which is to say, only the information sufficient to put the prospective FHA borrower on notice of conventional mortgage products that the borrower may qualify for, and to provide this information in a manner and format that would not impose an undue administrative burden on lenders.

As discussed in the proposed rule and later in this preamble, lenders may want to make additions to their disclosure notices. The model notice included in the final rule merely represents the format prescribed by the Commissioner. The model notice contains the minimum elements of an informed consumer choice disclosure notice. These elements must be included in a lender's notice. The lender may want to include additional lines, columns, or mortgage features that better reflect their mortgage products, or define terms lenders believe should be explained.

Comment—The Title of the Second Column of the FHA mortgage insurance Premium Information Tables is Unclear. Two commenters wrote that the titles of the second columns of the FHA mortgage insurance premium tables (entitled ''You will make payments for:'') were unclear. Both commenters were concerned that consumers might not realize that ''payments'' means insurance premium payments, rather than mortgage payments. One commenter suggested that the titles should be changed to ''You will make premium payments for:''. The other commenter suggested that the titles should be changed to read: ''You will make mortgage insurance payments for:''.

HUD Response—Clarification Is Made in Final Version of Model Notice. We agree that the title of the second column of the FHA mortgage insurance premium information tables in the February 16, 1999 proposed model notice was unclear. In order to be as clear as possible, in the model notice included in this final rule, we changed the title to reflect both commenters' suggestions. The title of the second column is now ''You will make mortgage insurance premium payments:''.

Comment—Does ''Associated Costs'' Include the Interest Rate? One commenter asked whether the phrase ''associated costs'' in the first paragraph of the proposed model notice included the interest rate. The commenter was concerned that requiring exact interest rate quotes on the disclosure notice would significantly increase the paperwork burden of the lender. The commenter suggested that the final model notice should clarify whether the phrase ''associated costs'' includes the interest rate.

HUD Response—Interest Rate Not Included in Associated Costs. The phrase ''associated costs'' does not include the interest rate. The disclosure notice does not require an interest rate quote.

Comment—Reference to ''Upfront Mortgage Insurance Premium'' Requires Revision. Three commenters made suggestions about line 10 of the model notice, entitled ''Upfront Mortgage Insurance Premium.'' Two commenters suggested that line 10 should use the upfront mortgage insurance premium (UFMIP) for non-first-time homebuyers. One of these commenters pointed out that the model notice uses the UFMIP for first-time homebuyers who obtain housing counseling, which implies that lenders should use this number. The other commenter suggested that line 10 should state the UFMIP as a percentage of the loan amount (either 1.75% or 2.25%), in addition to the dollar amount.

HUD Response—Lender Should Choose Appropriate UFMIP. The directions in the proposed rule for line 10 of the model notice provided that the lender should ''[s]how any upfront mortgage insurance premium charged. . .'' This instruction means that a lender should choose an appropriate UFMIP. In order to be clear, however, the final model notice includes a footnote that indicates which UFMIP was used in the table. Lenders must include a similar footnote.

Comment—The FHA Column Numbers Appear to be Incorrect. One commenter suggested that some of the numbers in the FHA column are incorrect. The commenter wrote that, assuming the base mortgage amount of $97,750 (line 2), the upfront mortgage insurance premium (line 10) would be $2,199.38, and the adjusted mortgage amount would be $99,949 (line 2 in parentheses). The commenter also suggested that the monthly mortgage insurance premium (line 8) would be $40.54.

HUD Response—Model Notice Based on First-Time Homebuyer UFMIP. The numbers in the FHA column in the model notice are based on a first-time home buyer UFMIP. The numbers suggested by the commenter are based on a non-first-time homebuyer UFMIP. As mentioned in the response to the previous comment, the final model notice has been revised to include a footnote that indicates which UFMIP was used in the table. In the case of the final model notice, the footnote indicates that the table uses a first-time homebuyer UFMIP.

Please note, the number listed for the monthly mortgage insurance premium (line 8) has been revised from $41.44 to $40.73 in the final model notice. This is a correction. The number listed in the proposed model notice was based on the mortgage amount including the UFMIP (line 2 in parentheses). It should have been based on the mortgage amount not including the UFMIP. The number listed on line 8 of the final model notice is now correct.

Comment—Remove the Phrase ''Lender's Judgment'' from Model Notice. The proposed model disclosure notice includes a sentence that states ''[I]n your lender's judgment, you may have the credit standing to qualify for more than one mortgage product.'' A few commenters requested that the phrase ''in your lender's judgment'' be removed from the model disclosure notice. These commenters stated that the phrase tends to indicate that the lender controls the borrower's eligibility for each mortgage product listed on the disclosure notice and that the lender has the authority to offer a borrower other mortgage products when, in some cases, the lender has no such authority.

HUD Response—Phrase Removed but Statute Requires Lenders to Exercise Judgment. Although we removed this phrase from the final model notice, we have included this language in the text of the final regulation. The statute expects lenders to exercise their judgment in determining whether a prospective FHA borrower may be eligible for a conventional mortgage product. The statute provides that ''in conjunction with any loan insured under this section (section 203(b)(2) of

the NHA) an original lender shall provide to each prospective borrower a disclosure notice that provides a one page analysis of mortgage products offered by that lender and *for which the borrower would qualify*'' (emphasis added). We believe that this language requires the lender to determine, based on the information the lender has about the prospective FHA borrower, whether the borrower may qualify for a conventional mortgage product. If the lender determines that the prospective FHA borrower may qualify for a conventional mortgage product, the lender must provide the disclosure notice to the borrower.

The final rule does not require, however, that this determination be a formal determination in any way. The final rule only requires the lender to make a determination based on the lender's initial assessment of the prospective FHA borrower's eligibility for a conventional mortgage product. We believe that the Congress intended the disclosure notice to pose as minimal a burden on lenders as possible. We also believe that Congress intended that, to be most useful, the disclosure be provided to borrowers as early as possible in the process. Requiring that the determination be based only on an initial assessment satisfies both these requirements because a lender need only make a quick initial determination, perhaps within a few minutes of meeting with a borrower, before deciding whether to hand out the notice.

The final rule emphasizes that the nature of determination is informal by using the language ''may qualify'' (§ 203.10(a)) in place of the statutory language ''would qualify''. The word ''may'' indicates a less certain determination than the word ''would'' requires. The use of the word ''may'' in the final rule indicates that the lender's determination need only be an informal, initial determination. Because we also believe that Congress intended the notice to be distributed as widely as possible, the final rule states that if a lender is unsure about a borrower's eligibility the lender should distribute the disclosure notice.

Comment—Providing the Disclosure Notice Will Mislead Borrowers That They Are Eligible for Non-FHA Products. A few commenters requested clarification regarding to whom the lender must provide the informed consumer choice disclosure notice. One commenter stated that providing the disclosure will lead the average applicant to believe that he or she will be equally likely to qualify for either FHA or conventional financing. This commenter stated that in most cases the average FHA applicant will not qualify for conventional financing. Other commenters asked whether a lender is to provide the disclosure only to applicants who will likely qualify for conventional financing.

HUD Response—The Statute Requires the Lender to Provide the Disclosure to a Prospective FHA Borrower Who ''Would Qualify'' for a Non-FHA Mortgage Product Offered by the Lender. The statute does not require a lender to provide every prospective borrower or every prospective FHA borrower with an informed consumer choice disclosure notice. As mentioned in the response to the previous comment regarding the phrase ''lender's judgment'', a lender is required to determine, based on the lender's initial assessment, whether a prospective FHA borrower may be eligible for a conventional mortgage product. If the lender determines that the borrower may be eligible, then the lender must provide a disclosure notice to the borrower.

Again, in imposing this requirement on lenders, we believe that there was concern on the part of the Congress that there are individuals who qualify for both an FHA-insured mortgage and a conventional mortgage, and Congress wanted assurances that these borrowers would be made aware of their choice of financing. In order to ensure that all prospective FHA borrowers that must receive a disclosure notice do, in fact, receive a disclosure notice, the lender should err on the side of providing a disclosure notice to a prospective FHA borrower. The final rule emphasizes this by stating that if a lender is unsure about a prospective FHA borrower's eligibility, the lender should provide a disclosure notice to the borrower.

One commenter suggested that a lender should be able to include in the disclosure notice a comparison of key underwriting requirements between conventional and FHA loan products, and this information would assist the consumer in understanding why conventional financing would not be a viable alternative. The statute, however, does not mandate this action on the part of the lender.

Comment—Clarify the Type of Comparison of FHA/Conventional Mortgage Products That Is Required. One commenter stated that it was the intent of the Congress that the disclosure notice should provide consumers with a broader comparison of conventional loan products and not just a single conventional loan product. Other commenters requested that the final rule make clear that the disclosure notice assumes hypothetical loan terms; that the notice is for illustration purposes only (that actual customer rate and loan terms may be different); or that where a lender serves more than one market, the lender can develop a generic notice suitable for all markets. Other commenters stated that the notice should require lenders to provide only a comparison of the most commonly required FHA mortgages and most commonly available conventional mortgage products, and requested that the final rule clarify that the lender may select a typical, conventional loan for comparison. Another commenter stated that HUD should stipulate to lenders that conventional loans used for comparison should include consideration of all conventional products offered by the lender that the borrower may qualify for with the best alternative used for comparison with the comparable FHA loan parameters. One commenter suggested that HUD's model notice include the following language for clarity purposes: ''As such, your lender has prepared a comparison of typical FHA and alternative conventional mortgage products for your review. The information below reflects terms and conditions that we have used recently for our FHA and conventional loans. The loan amount, costs, interest rate, premiums, and other information in the comparison will vary from your own loan transaction.''

HUD Response—The Lender Need Only Provide A Generic Comparison. We believe that the proposed rule was clear about the type of comparison that is required by the statute, that is a generic comparison. We stated in the February 16, 1999 proposed rule that HUD would not require a case-specific notice for each prospective FHA borrower who may qualify for both an FHA-insured mortgage and conventional financing. We stated that the disclosure notice should compare a typical FHA mortgage in the marketplace with a typical conventional mortgage offered by the lender. We understand, however, the concerns of lenders about the type of comparison that must be made, and have included additional language in the final rule and in the model notice that we believe eliminates ambiguity about the type of comparison required.

Comment—HUD's Proposal For the Time At Which the Lender Must Provide the Disclosure Should Be Changed. Two commenters stated that borrowers want and need to see the information provided in the disclosure notice before they begin their application process. Other commenters stated that the timing of the disclosure notice should conform to the timing of disclosure established

for statements required by the Real Estate Settlement Procedures Act (RESPA) and the Truth in Lending Act (TILA). Another commenter suggested that the trigger event should not be the signing of the loan, but when the application is received or prepared by the lender. These same commenters stated that, at a minimum, the final rule must clarify that when the proposed rule stated ''three days,'' HUD meant three business days.

HUD Response—Disclosure Notice Must Be Provided No Later Than Three Days After the Lender's Receipt of the Application. We appreciate these comments and recognize the need for clarification with respect to the time at which the lender must provide the disclosure notice. The final rule provides that the disclosure notice must be provided to a prospective FHA borrower no later than three business days after the lender's receipt of the application.

Comment—Rule Should Clarify If Mortgage Brokers Are Responsible for Providing the Disclosure Notice. A few commenters asked whether a mortgage broker is responsible for delivering the disclosure notice if the application is taken by a mortgage broker. One commenter noted that in the situation in which a broker takes the application, the broker might not deliver the application to the lender until well after the three-day period has expired.

HUD Response—A Mortgage Broker Is Not An Original Lender; Lender Is Responsible for Providing Disclosure Notice. The statute provides that the ''original lender'' must provide the informed consumer choice disclosure. Therefore, a mortgage broker providing the disclosure notice to the borrower will not fulfill the lender's obligation under the statute. As noted in the previous response, the final rule clarifies that the timing of the disclosure notice is no later than 3 business days after the lender's receipt of the application.

Comment—The Disclosure Notice Should Be Updated Only Once Annually. Several commenters were concerned about the frequency with which they would be required to update the disclosure notice. These commenters stated that since pricing of mortgage products can change as frequently as daily or weekly, it would appear that the expectation is that the lenders would be required to update the disclosure notices with the same frequency. The commenters stated that to update the disclosure notices for pricing changes as frequently as they occur defeats the intent of Congress in mandating a generic comparison. These lenders requested that the final rule provide that lenders need only update the disclosure notice once every 12 months.

HUD Response—The Final Rule Provides that the Disclosure Notice Need Only Be Updated Once Annually. We agree with the commenters that market conditions could technically require frequent revisions to the disclosure notice that would result in an undue administrative burden on lenders. HUD encourages lenders to update their disclosure notices periodically so that the notice remains meaningful to their borrowers, but the final rule only requires lenders to update their disclosure notices once annually.

Comment—Delay the Effective Date of its Rule Requiring Informed Consumer Choice Disclosure. A few commenters requested that HUD delay implementation of the informed consumer choice disclosure notice until after the Homeownership Protection Act (Pub. L. 105–216, 12 U.S.C. 4901 *et seq.*) (HPA) becomes effective on July 29, 1999. These commenters noted that this statute will change the maximum number of years that mortgage insurance will be required. The HPA requires automatic termination of private mortgage insurance (PMI), generally when the loan-to-value (LTV) is scheduled to reach 78 percent of its original level. The commenters stated that in addition to the HPA, the Federal Reserve Board plans to revise the Official Staff Commentary on Regulation Z to explain the interaction between the HPA and TILA.

HUD Response—Statute Provides No Authority for Delaying Implementation. We understand the concerns of the commenters, but believe that the FY 1999 HUD Appropriations Act does not provide HUD with the authority to delay implementation. In requiring HUD to develop the disclosure notice 150 days after enactment of the HUD FY 1999 Appropriations Act and to develop the disclosure notice through notice and comment rulemaking, we interpret this to mean that the only delay in implementation of this statutory requirement is to be HUD's development of the notice. To ensure prompt development, the Congress imposed a statutory deadline on HUD for development of the notice.

Comment—HUD Needs to Provide Additional Guidance on How Calculations Are to Be Made in the Comparison Chart and More Detailed Instructions on Preparing the Notice. A few commenters asked technical questions about how precisely calculations were to be done in the disclosure notice to provide a meaningful comparison to consumers.

HUD Response—HUD Will Provide Lenders More Detailed Instructions Through Mortgagee Letter. It is our intent that the disclosure notice impose as minimal an administrative burden on FHA approved mortgagees as possible. This rule is not the appropriate place to provide detailed processing instructions and additional guidance on calculations to lenders. We will be issuing a Mortgagee Letter and will provide specific guidance to lenders about the disclosure notice.

III. The Informed Consumer Choice Disclosure Notice—HUD's Model Notice

The following provides HUD's model informed consumer choice disclosure notice. To complete the generic disclosure format shown below, lenders should use the following instructions. At the lender's discretion, a lender may revise the disclosure notice to include additional line items or columns, further define terms, or explain additional features that better reflect the lender's FHA and conventional mortgage products so as to make a meaningful comparison.

BILLING CODE 4210–27–P

INSTRUCTIONS FOR CONSTRUCTING AN INFORMED CONSUMER CHOICE DISCLOSURE NOTICE

Line No.	Field Name	Instruction
1	Sales Price	Show $100,000 sales price (or any other amount you wish that is more reflective of the market).
2	Mortgage Amount	Compute the mortgage amount in accordance with FHA requirements and in accordance with the investor or lender requirements for the conventional financing.
3	Closing Costs	Show the same amount of closing costs for both the FHA and conventional financing. You should use good faith estimates to develop typical costs for the various mortgage programs you offer.
4	Downpayment Needed	Show downpayment amounts exclusive of prepaid expenses.
5	Interest Rate and Term of Loan in Years	Show interest rate and term of loan in years.
6	Monthly Payment (principal and interest only)	Show monthly principal and interest only.
7	Loan-to-Value	Compute loan-to-value by dividing mortgage amount, exclusive of any upfront mortgage insurance premiums, by the lesser of the sales price or appraised value.
8	Monthly Mortgage Insurance Premium (first year)	Show the monthly mortgage insurance premium, if applicable, based on FHA and private mortgage insurance company fee schedules.
9	Maximum Number of Years of Monthly Insurance Premium Payments	Show the maximum number of years that the monthly mortgage insurance premiums, if applicable, must be paid based on FHA requirements and lender/investor requirements for the conventional financing (if monthly insurance premiums terminate when the loan balance declines to a certain loan-to-value (LTV) ratio, show the estimated number of years it will take to reach that LTV).
10	Upfront Mortgage Insurance Premium (if applicable)	Show any upfront mortgage insurance premium charged on either the FHA mortgage or the conventional mortgage.

HUD MODEL NOTICE **INFORMED CONSUMER CHOICE DISCLOSURE NOTICE**

In addition to an FHA-insured mortgage, you may also qualify for other mortgage products offered by your lender. To assure that you are aware of possible choices in financing, your lender has prepared a comparison of the typical costs of alternative conventional mortgage product(s) below, using representative loan amounts and costs (the actual loan amounts and associated costs shown below will vary from your own mortgage loan transaction). You should study the comparison carefully, ask questions, and determine which product is best for you. The information provided below was prepared as of **[included month and year]**.

Neither your lender nor FHA warrants that you actually qualify for any mortgage loan offered by your lender. This notice is provided to identify the key differences between these mortgage products offered by your lender. **This disclosure is not a contract and does not constitute loan approval.** Actual mortgage approval can only be made following a full underwriting analysis by your mortgage lender.

		FHA Financing 203(b) Fixed Rate	Conventional Financing 97% with Mortgage
1	**Sales Price**	$100,000	$100,000
2	**Mortgage Amount**	$97,750 ($99,460 w/ Upfront Mortgage Insurance Premium)	$97,000
3	**Closing Costs**	$2000	$2000
4	**Downpayment Needed**	$4250	$5000
5	**Interest Rate and Term of Loan in Years**	7.00%/30 Year Loan	7.00%/30 Year Loan
6	**Monthly Payment (principal and interest only)**	$661	$645
7	**Loan-to-Value**	97.75%	97%
8	**Monthly Mortgage Insurance Premium (first year)**	$40.73[1]	$76.63
9	**Maximum Number of Years of Monthly Insurance Premium Payments**	30 Years	Approx. 13 Years
10	**Upfront Mortgage Insurance Premium (if applicable)**	$1710[2] (Included in Mortgage Amount, line 2)	n/a

[1]Monthly mortgage insurance premiums are calculated on the average annual principal balance, i.e., as the amount you owe on the loan decreases each year, so does the amount of the monthly premium.
[2]Based on an upfront mortgage insurance premium rate available for first-time homebuyers who obtain housing counseling.

FHA Mortgage Insurance Premium Information:

If you paid an upfront mortgage insurance premium, you will also be charged a monthly mortgage insurance premium for the period of time shown below, based on the initial loan-to-value and term of your mortgage. You are required to make these payments on your FHA-insured loan for the time shown unless you refinance or the mortgage is otherwise paid in full. (If you were *not* charged an upfront premium, as for example on condominiums, you will pay the monthly premium for the life of the mortgage.)

If the term of your mortgage will be greater than 15 years and with a loan-to-value ratio:	**You will make mortgage insurance premium payments for:**
Of 89.99 or Less	7 Years
Between 90.00 and 95.00	12 Years
Of 95.01 and Greater	30 Years

If the term of your mortgage will be 15 years or less and with a loan-to-value ratio:	**You will make mortgage insurance premium payments for:**
Of 89.99 or Less	None Required
Between 90.00 and 95.00	4 Years
Of 95.01 and Greater	8 Years

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IV. Findings and Certifications

Paperwork Reduction Act Statement

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2502–0537. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Environmental Impact

In accordance with 24 CFR 50.19(c)(1) of HUD's regulations, this rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Therefore, this rule is categorically excluded from the requirements of the National Environmental Policy Act of 1969 (Pub. L. 91–190, 83 Stat. 852, codified as amended at 42 U.S.C. 4321–4347).

Regulatory Flexibility Act

The Secretary has reviewed this final rule before publication and by approving it certifies, in accordance with section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this rule would not have a significant economic impact on a substantial number of small entities. The rule implements a statutory disclosure requirement imposed on lenders and provides lenders with a model format for that disclosure so that the lenders may comply with the statutory requirements.

Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612 (entitled ''Federalism''), has determined that the policies contained in this rule would not have substantial direct effects on States or their political subdivisions, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, review under the order is not required.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (5 U.S.C. 1531–1538)(UMRA) requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and on the private sector. This final rule does not impose, within the meaning of the UMRA, any Federal mandates on any State, local, or tribal governments or on the private sector.

List of Subjects in 24 CFR Part 203

Hawaiian Natives, Home improvement, Indians—lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

For the reasons discussed in the preamble, HUD amends 24 CFR part 203 as follows:

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

1. The authority citation for 24 CFR part 203 continues to read as follows:

Authority: 12 U.S.C. 1709, 1710, 1715b, and 1715u; 42 U.S.C. 3535(d).

2. Add § 203.10 to read as follows:

§ 203.10 Informed consumer choice for prospective FHA mortgagors.

(a) *Mortgagee to provide disclosure notice.* A mortgagee must provide a prospective FHA mortgagor with an informed consumer choice disclosure notice if, in the mortgagees's judgment, the prospective FHA mortgagor may qualify for similar conventional mortgage products offered by the mortgagee. The mortgagee should base this judgment on the mortgagee's initial assessment of the prospective FHA mortgagor's eligibility for a conventional mortgage product. If a mortgagee is unsure about a prospective FHA mortgagor's eligibility for a conventional mortgage product, the mortgagee should provide the prospective FHA mortgagor with an informed consumer choice disclosure notice.

(b) *Informed consumer choice disclosure notice.* (1) *Contents of notice.* The informed consumer choice disclosure notice must:

(i) Provide a one page generic analysis comparing the mortgage costs of an FHA-insured mortgage with the mortgage costs of similar conventional mortgage products offered by the mortgagee that the prospective FHA mortgagor may qualify for;

(ii) Provide information about when the requirement to pay FHA mortgage insurance premiums terminates; and

(iii) Meet the requirements of section 203(b)(2) of the National Housing Act (12 U.S.C. 1709(b)(2)).

(2) *Format of disclosure notice.* The informed consumer choice disclosure notice must be provided in a format prescribed by the Commissioner. HUD has prepared a model informed consumer choice disclosure notice that represents this format and that meets the requirements of section 203(b)(2) of the National Housing Act (12 U.S.C. 1709(b)(2)). The model informed consumer choice disclosure notice contains the minimum elements of an informed consumer choice disclosure notice. These elements must be included in a mortgagee's informed consumer choice disclosure notice. A mortgagee, however, may include additional elements in an informed consumer choice disclosure notice to better reflect the mortgagee's products or to provide information that the mortgagee believes is meaningful and helpful to the mortgagee's customers.

(3) *Availability of model disclosure notice.* HUD's model informed consumer choice disclosure notice is made available to FHA-approved mortgagees through Mortgagee Letter and is available to the public through the internet at HUD's web site at http://www.hud.gov or by contacting: Home Mortgage Insurance Division, Office of Insured Single Family Housing, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–8000; telephone (202) 708–2700 (this is not a toll-free number), or the nearest HUD Homeownership Center (Atlanta, GA (888) 696–4687; Denver, CO (800) 543–9378; Philadelphia, PA (800) 440–8647; or Santa Ana, CA (888) 827–5605). Hearing- or speech-impaired individuals may access these numbers via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

(c) *Timing.* When required under paragraph (a) of this section, a mortgagee must provide an informed consumer choice disclosure notice to a prospective FHA mortgagor not later than three business days after the mortgagee receives the prospective FHA mortgagor's application.

(d) *Revision of notice.* A mortgagee should revise its informed consumer choice disclosure notice periodically to reflect prevailing market conditions. To ensure that the informed consumer choice disclosure notice reflects prevailing market conditions, a mortgagee must revise its informed consumer choice disclosure notice at least once annually.

(e) *Applicability.* This section applies to any application for mortgage insurance authorized under section 203(b) of the National Housing Act (12 U.S.C. 1709) that the mortgagee receives on or after July 2, 1999.

(f) *Definitions.* As used in this section:

Application means the submission of financial information in anticipation of a credit decision.

Conventional mortgage means conventional mortgage as used in section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)) or section 302(b)(2) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717(b)(2)), as applicable.

Mortgagee means mortgagee as defined in § 202.2 of this chapter.

Prospective FHA mortgagor means a person who submits an application to a mortgagee to obtain mortgage insurance authorized under section 203(b) of the National Housing Act (12 U.S.C. 1709).

Dated: May 12, 1999.

William C. Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 99–13917 Filed 6–1–99; 8:45 am]

BILLING CODE 4210–27–P

federal register

Wednesday
June 2, 1999

Part IV

The President

Proclamation 7201—Prayer for Peace, Memorial Day, 1999

Federal Register
Vol. 64, No. 105
Wednesday, June 2, 1999

Presidential Documents

Title 3—

The President

Proclamation 7201 of May 26, 1999

Prayer for Peace, Memorial Day, 1999

By the President of the United States of America

A Proclamation

The challenges to our Nation's peace and freedom are as old as American history and as new as today's headlines. They have taken many forms through the years, from the bitter discord of civil war at home to the aggression of tyrants abroad. But the price of peace and freedom has always remained the same: the service and sacrifice of our young men and women in uniform.

Looking back across the decades, we marvel at the valor and determination of these gallant Americans who, in each generation, have stepped forward to preserve our freedom, defend our democracy, uphold our ideals, and protect our interests. The battles in which they fought and died—Brandywine, Gettysburg, San Juan Hill, Belleau Wood, Coral Sea, Inchon, Khe Sahn—are a testament to uncommon courage and indomitable spirit. Those who survived were forever changed. Those who died stay forever young in their loved ones' memories. Their final thoughts most likely were of home and family; their final actions purchased the freedom we enjoy today.

Now, on Memorial Day, our thoughts turn to them. We remember with profound gratitude those who took to the seas and skies in moments of peril for our Nation. We remember those who marched through mud or rice paddies, snow or sand, because they knew, as President Eisenhower reminded us, that ''a soldier's pack is not so heavy a burden as a prisoner's chains'' and that true peace is won only by those willing to die for it. We remember those in the Normandy American Cemetery overlooking Omaha Beach who, 55 years ago, relit the torch of freedom in a war-weary Europe. We remember those whose final resting place is unknown, but whose sacrifice is known to us all. The passing of time and the blessings of peace and prosperity can never make us forget what these brave Americans endured and what they lost so that right would triumph, freedom would survive, and our Nation would prevail.

In honor of all the courageous men and women who gave their lives in defense of our Nation and our fundamental ideals, I ask that every American say a prayer for lasting peace on this Memorial Day. I ask that every American remember our heroic war dead in some special way, whether by placing flowers on a veteran's grave, lighting a candle, observing a moment of silence, or saying a prayer of thanks. While we can never fully repay our debt to America's fallen warriors, we can remember their service and honor their sacrifice.

In respect and recognition of the courageous men and women to whom we pay tribute, the Congress, by joint resolution approved on May 11, 1950 (64 Stat. 158), has requested the President to issue a proclamation calling upon the people of the United States to observe each Memorial Day as a day of prayer for permanent peace and designating a period on that day when the American people might unite in prayer.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim Memorial Day, May 31, 1999, as a day of prayer for permanent peace, and I designate the hour beginning at 3:00 p.m. EDT of that day as a time to join in prayer. I urge the press,

radio, television, and all other information media to take part in this observance.

I also request the Governors of the United States and the Commonwealth of Puerto Rico, and the appropriate officials of all units of government, to direct that the flag be flown at half-staff until noon on this Memorial Day on all buildings, grounds, and naval vessels throughout the United States and in all areas under its jurisdiction and control, and I request the people of the United States to display the flag at half-staff from their homes for the customary forenoon period.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of May, 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.

William J. Clinton

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federal register

Wednesday
June 2, 1999

Part V

The President

Proclamation 7202—To Eliminate Circumvention of the Quantitative Limitations Applicable to Imports of Wheat Gluten

Federal Register
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Presidential Documents

Title 3—

The President

Proclamation 7202 of May 28, 1999

To Eliminate Circumvention of the Quantitative Limitations Applicable to Imports of Wheat Gluten

By the President of the United States of America

A Proclamation

1. On March 18, 1998, the United States International Trade Commission (USITC) transmitted to the President a unanimous affirmative determination in its investigation under section 202 of the Trade Act of 1974, as amended (the Trade Act) (19 U.S.C. 2252), with respect to imports of wheat gluten provided for in subheadings 1109.00.10 and 1109.00.90 of the Harmonized Tariff Schedule of the United States (HTS). Under section 202 of the Trade Act, the USITC determined that such wheat gluten is being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic industry producing a like or directly competitive article. Further, pursuant to section 311(a) of the North American Free Trade Agreement Implementation Act (NAFTA Implementation Act) (19 U.S.C. 3371(a)), the USITC made negative findings with respect to imports of wheat gluten from Canada and Mexico. Pursuant to section 202(e) of the Trade Act (19 U.S.C. 2253(e)), the USITC also transmitted to the President its recommendation on the action that would address the serious injury to the domestic industry and be most effective in facilitating the efforts of the domestic industry to make a positive adjustment to import competition.

2. On May 30, 1998, I issued Proclamation 7103, which implemented action of a type described in section 203(a)(3) of the Trade Act (19 U.S.C. 2253(a)(3)). Pursuant to section 203 of the Trade Act (19 U.S.C. 2253), and taking into account the considerations specified in section 203(a)(2) of the Trade Act, I determined to establish quantitative limitations on imports of wheat gluten, provided for in HTS subheadings 1109.00.10 and 1109.00.90, imposed for a period of 3 years plus 1 day, with annual increases in such quota limits of 6 percent in the second year and in the third year. These limitations were to apply to imports from all countries, and the quota quantity was to be allocated among such countries, except for products of Canada, Mexico, Israel, beneficiary countries under the Caribbean Basin Economic Recovery Act and the Andean Trade Preference Act, and other developing countries that accounted for a minor share of wheat gluten imports that I determined to exclude from any restriction. Pursuant to section 203(a)(1)(A) of the Trade Act (19 U.S.C. 2253(a)(1)(A)), I further determined that these actions would facilitate efforts by the domestic industry to make a positive adjustment to import competition and provide greater economic and social benefits than costs.

3. Despite the quantitative limitations on imports of wheat gluten, during the first restraint period quantities of wheat gluten the product of the European Community have been entered in excess of the allocated amount.

4. Section 204(b)(2) of the Trade Act (19 U.S.C. 2254(b)(2)) authorizes the President to take such additional action under section 203 of the Trade Act as may be necessary to eliminate any circumvention of any action previously taken under such section. Pursuant to section 204(b)(2) of the Trade Act, I have determined it is appropriate and feasible to take additional action pursuant to section 203(a)(3) of the Trade Act. Such action shall take the form of a reduction in the European Community's 1999/2000 wheat

gluten quota allotment in the amount of 5,204,000 kg, which represents the amount of wheat gluten that entered the United States in excess of the European Community's 1998 quota allocation. I determine this action is necessary to eliminate circumvention of the safeguard action previously undertaken in Proclamation 7103.

5. Section 604 of the Trade Act, as amended (19 U.S.C. 2483), authorizes the President to embody in the HTS the substance of the relevant provisions of that Act, and of other acts affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including but not limited to sections 203, 204, and 604 of the Trade Act, do proclaim that:

(1) The allocation of the quota quantity for wheat gluten for the restraint period from June 1, 1999, through May 31, 2000, inclusive, that was accorded to wheat gluten the product of the European Community by the Annex to Presidential Proclamation 7103 of May 30, 1998, as set forth in subheading 9903.11.06 of subchapter III, chapter 99 of the HTS, is modified by striking the allocated quota quantity set forth for the European Community ''25,983,000 kg'' from such subheading and by inserting in lieu thereof the new allocated quota quantity for the European Community ''20,581,000 kg''.

(2) In order to ensure that any imports of wheat gluten the product of any country, or the product of the European Community, having an allocated share of the quantitative restraints set forth in subheadings 9903.11.05 through 9903.11.07, inclusive, of the HTS and superior text thereto, are limited to the specified share during a quota period, the HTS is modified by adding at the end of U.S. Note 7 to subchapter III of chapter 99 the following new paragraph:

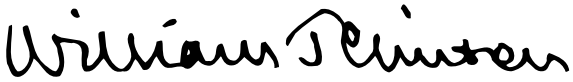
> ''Whenever a quantity is allocated to a country, to 'other countries' or to the European Community under such subheadings, and the quota quantity specified for such country or countries or for the European Community has been entered for the specified restraint period, any shipments of wheat gluten the product of such country or countries or of the European Community entered in excess of such allocated quota quantity shall be charged to the allocation for such country or countries or for the European Community for the subsequent restraint period. If the allocated quantity for a country or countries or for the European Community under subheading 9903.11.07, including any quantity carried over from the restraint periods provided for in subheadings 9903.11.05 and 9903.11.06 and charged against the appropriate allocation under subheading 9903.11.07, has been entered, any imports in excess of the allocated quota quantity for a country or countries or for the European Community shall be entered into bonded warehouse or shall be exported, and shall not be entered into the customs territory of the United States until 12:00 a.m. e.d.t. June 1, 2001. The Secretary of the Treasury is authorized to take any necessary action in order to ensure that no shipments in excess of the allocation for a country or countries or for the European Community for the period from June 1, 2000 through June 1, 2001, inclusive, is entered into the customs territory of the United States.''

(3) Subheading 9903.11.06 is modified by inserting after ''Other'' the word ''countries''.

(4) Any provision of any previous proclamation or Executive order that is inconsistent with the actions taken in this proclamation is superseded to the extent of such inconsistency.

(5) The modifications made in this proclamation shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after 12:01 a.m. e.d.t. on June 1, 1999, and shall continue in effect as provided until 11:59 p.m. e.d.t. on June 1, 2001, unless such actions are earlier expressly modified or terminated.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of May, 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.



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